

American Postal Workers Union, AFL-CIO

Memorandum

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From the Office of TOM NEILL
Director, Industrial Relations

M E M O R A N D U M

TO: Headquarters Officers
Regional Coordinators
National Business Agents

SUBJECT:

FROM: *Tom* Thomas A. Neill, Director
Industrial Relations Department

DATE: January 31, 1990

RE: Legal Issues

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APWU

Certain issues which have legal consequences keep coming up. The purpose of this memo is to suggest ways to deal with these issues that will minimize the APWU's exposure to lawsuits. In most cases, these suggestions go beyond what the APWU is required to do, however, in appropriate cases doing a little more than necessary may prevent the desire to sue or may make winning the eventual lawsuit easier. Unless otherwise stated, these are suggestions, not APWU policy.

If you have any questions on how to handle a specific case, please feel free to contact my office.

1. Notification to Grievants.

While courts have suggested that it would be better if unions made grievants aware of the conclusion of grievances affecting them, none have found that notification is required. Courts do say that grievants have an obligation to exert due diligence to find out what is going on. Grievants should be reminded that they are required to tell the APWU at the appropriate levels if they move while a grievance is pending.

Proof that the APWU notified a grievant of developments helps the APWU defend itself, especially when grievants are slow to sue. The courts and the NLRB have a six-month time limit for filing against unions. If the APWU can prove that a grievant knew about the alleged problem more than six-months before the case was filed, the APWU can usually have that grievant's suit dismissed with minimal expense.

There are two types of situations where it would be good to attempt to notify grievants effectively: (a) when you are trying to get grievants to attend meetings or hearings about grievances concerning them, and (b) when an arbitration award concerning them is received or a grievance concerning them is dropped.

Notification is most difficult when grievants are no longer employed by the Postal Service. To be able to document attempts to reach these grievants to attend meetings or an arbitration, at times it may make sense to send duplicate mailings -- one by regular mail, the other certified, return receipt requested -- with the notation "regular and certified mail" on the dated cover letter. This way, if a grievant fails to pick up the certified letter, but the regular mail piece is not returned, a strong argument can be made that the grievant has been notified. Especially if the letter you are sending tells an employee that the grievance over his or her discharge will be dropped if the grievant does not contact you by a certain time or appear at a preparation meeting, it makes sense to try to make sure the grievant receives the letter.

When a grievance is over, either because it is dropped, a settlement is reached or an award is issued, it helps the APWU establish a time limit defense if there is proof that the grievant was notified of the result of the grievance procedure. In some parts of the country, notification can be most efficiently accomplished by the NBA; in others, the Locals will be more effective; in still others, the practice may vary Local by Local. To help the National preserve its time limit defense, NBAs should make sure that each grievant is notified, either by the NBA office or by the Local, with proof of delivery, when a case that reaches Step 3 is over. Locals which have taken on notification responsibility should be reminded regularly of the importance of notification. If a Local which has been doing the notification to grievants has a change in officers, the NBA should review the procedure with the new officers and see if a change is desired.

2. Receipt of NLRB Charges.

If you are mailed an NLRB charge against the APWU by the NLRB, you should call my office immediately. Often the Board wants a statement from an NBA or other National Officer. You should not speak to a Board Agent unless you have been directed to do so by the APWU's attorneys. Even if it is a case against a Local, you should not speak to a Board agent without speaking to the attorneys. Please call my office to arrange to speak to the attorneys at O'Donnell, Schwartz and Anderson.

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3. Receipt of Summons and Complaint or Subpoena.

When people want to sue the APWU, they often begin by mailing or delivering the legal papers to an NBA or Regional Coordinator. When this happens, no matter how frivolous the case seems to be, it is imperative that the APWU attorneys know about the situation immediately. Often courts require the APWU to file its response to the lawsuit in only 20 days, so speed is essential. If the APWU fails to do so, the Union might automatically lose!

If you receive papers in a lawsuit against the APWU or yourself for representing the APWU, you should call my office immediately. You should also copy what you received, including the envelope, and mail the copy with a brief explanation of how you received it, to my office by Express Mail on the day received if at all possible. Often the attorneys will want grievance files. Do not hold up mailing the summons and complaint in order to get all the grievance files together. Do not sign anything and return it to the person suing or that person's lawyer, except, of course, the green return receipt for certified mail. Do not call the grievant or the grievant's lawyer after a lawsuit has been filed. This procedure applies whether the lawsuit was filed in Federal Court, State Court, Small Claims Court or any other court!

The same procedure applies when you receive a subpoena in a case, whether or not the APWU is a party. It is imperative that the APWU's attorneys know about the situation immediately, as time for response to a subpoena is often extremely short. Call my office as soon as you receive a subpoena. If you cannot reach me, call O'Donnell, Schwartz and Anderson at (202) 898-1707 and tell them that you have received a subpoena. Do not call or talk to the grievant, the grievant's lawyer or anyone else connected with the case unless directed to do so by the APWU's attorneys.

4. Requests for Grievance Files.

Grievants, their lawyers and, occasionally, USPS Representatives request copies of APWU grievance files. For the most part, they are not entitled to copies; however, to avoid unnecessary litigation, the following responses are suggested:

a) Grievant - After making an appointment, grievants should be allowed to come to the Union's office to see the moving papers of grievances affecting them. The moving papers are limited to: Step 1 Worksheet (if used and shown to management), Step 2 Appeal Form, Step 2 Answer, Step 3 Appeal Form, Step 3 Answer, Appeal to Arbitration, and Arbitration Award. Notes, supporting documents,

including statements from someone other than the grievant, should not be included. Grievants should be allowed to look -- you do not have to give grievants copies of grievance documents. You should alert other Union officials who may get approached by a grievant, especially Local officers, and advise them that this is an appropriate procedure to follow.

b) Grievant's Attorney - After receiving written authorization from a grievant stating that a lawyer is authorized to see documents relating to that grievant, the same procedures that apply to the grievant apply to the grievant's lawyer.

c) USPS Representative - Occasionally a USPS representative loses a file. It is appropriate to copy the moving papers and all previously exchanged supporting documents and give them to the representative. Remove all notes.

5. Requests for Other Documents.

Under the LMRDA, Unions are required to make copies of their Constitutions and Bylaws available to their members. It is also appropriate to make available copies of the collective bargaining agreement. Again, this means if people make appointments they should be allowed to come in and see these documents, but they are not entitled to copies. Of course, Contracts and Constitutions can be bought through the APWU Order Department.

6. Files.

When a grievance is closed, either because an arbitration award has been issued or because the grievance is withdrawn or settled, the file should be straightened up and put away. There is no reason to leave copies of the collective bargaining agreement in files. Arbitration awards and sign-offs referred to in preparation of the case can be removed for use in other cases if a list of awards and sign-offs is left in the file. Files should not be stripped of notes and evidence -- to do so would leave the APWU without the documents that might be necessary to prove the APWU provided fair representation.

There are two schools of thought on how long grievance files should be kept -- either as long as possible or the minimum necessary. No hard and fast rule exists. Much depends on your storage space and level of grievance activity. If you store files outside your office, please make sure the Secretary-Treasurer's office knows so the APWU's insurance policy can be modified if necessary.