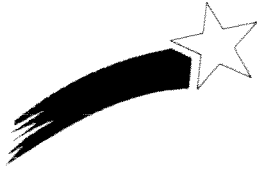


# **STEWARD RIGHTS**

**Iowa Postal Workers Union  
Fall Educational Conference**

**Robert D. Kessler/Dennis Taff  
National Business Agents**





## **EXERCISING OUR RIGHTS**

By now most of us have gotten tired of hearing about "management's rights." Every time we file a grievance some supervisor shows off his/her newly discovered contract knowledge by proudly citing Article 3 as if it somehow gave him/her some almost mystical right to violate the rest of the Agreement. And we know, too, by now, that Article 3 does no such thing. Article 3, by its very terms, expressly subjects itself (and management's rights) to the remainder of the Agreement.

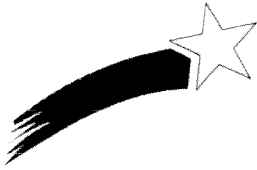
But this paper is definitely not about "management's rights." It is about our rights! It is time for us as stewards and officers of the American Postal Workers Union to quit fretting about "management's rights" and start talking about (and using) our own. The American Postal Workers Union and our Collective Bargaining Agreement are held in very high esteem among our fellow industrial unions. We did not collectively achieve that status by sitting on our rights! We got here by recognizing our rights; by understanding our rights; and, ultimately by putting them to work for us. Of course, a whole lot of success at the bargaining table in negotiating those rights didn't hurt any either.

Each of us knows stewards and officers who are looked up to and respected by their fellow officers and stewards, by our membership, and by management, alike. They did not earn that level of respect by sitting on our "Union rights"! They achieved their stature by recognizing our rights; by understanding them; and, ultimately, by putting them to work for the benefit of the membership. What can each one of us do to better understand and exercise our "Union rights"?

Article 17 of our National Agreement is our "Union rights" clause and the primary source of our contractual "Union rights." These "Union rights," whether expressed in terms of the collective whole or in the rights of the individual steward or even in terms of the employee's right to representation, ultimately give us the clout and wherewithal to enforce the remainder of the Agreement. The Labor-Management tableau ultimately is one of shifting and balancing "rights." The employer's rights against the employee's rights; Management's rights versus the Union's rights; the Supervisor's rights as opposed to the Steward's rights. As in any situation, merely possessing rights is not the be-all-end-all. Much more important than mere possession, is understanding those rights and being able to effectively utilize them. Unexercised rights are mere pieces of paper good for nothing more than clutter. Exercised rights are ultimately the tools which allow us to achieve the otherwise

unachievable. Much like as it is with our physical bodies, exercise of our "Union rights" will help us (both individually as stewards and collectively as the Union) grow even healthier and stronger. Lack of exercise will inevitably make us lethargic and weak.

The purpose of this paper will be to identify and analyze at least some of the "Union rights" incorporated in Article 17, the rest of the Agreement, and elsewhere, and to explore ways and means by which those "rights" can effectively be put to use to strengthen our Union and to protect our members. Article 17 provides us with the tools. The challenge is for us to understand those tools and to learn how to use them. We will not pretend to identify or discuss every Article 17 "Union right." But, we will make every effort to highlight at least a few. We will attempt to flesh out and give life to generic terms like "reasonable" and "necessary" in order to give meaning to Article 17's provisions. Hopefully, you will be challenged to take this project one step further by identifying and exercising your "Union rights" as well as your rights as stewards.



## APPOINTMENT OF STEWARDS

The selection, appointment or certification of stewards is the sole and exclusive function of the Union.<sup>1</sup> Depending upon your local constitution such stewards must be either appointed or elected and certified to the Employer in writing by the local union. The number of stewards permitted is determined by the formula found in Article 17, Section 2.A, of the National Agreement which is based on the **total** number of employees in the same craft per tour or station.<sup>2</sup>

An Area Local may name stewards and certify them in writing at the regional level. If the steward is not an employee of the office in which the grievance is filed, he/she will not be paid by the Postal Service. Travel time between offices will also be at union expense.<sup>3</sup>

Stewards must be certified to represent craft employees in specific work locations on their tour. Local unions may not make a blanket certification to cover a certain group of employees, such as hearing impaired. The union may designate in writing a Union officer of steward to investigate, present, and adjust a specific grievance or to investigate a specific problem to determine whether to file a grievance.<sup>4</sup> The union must be certain that a properly certified steward presents a grievance. In at least one regional arbitration case the APWU lost a grievance because a Clerk Craft steward filed a grievance involving Maintenance supervisors performing Maintenance Craft bargaining unit work.<sup>5</sup>

### ARTICLE 17, SECTION 2.A

The number of stewards certified shall not exceed, but may be less than, the number provided by the formula hereinafter set forth.

#### Employees in the same craft per tour or station

Up to 49	1 steward
50 to 99	2 stewards
100 to 199	3 stewards
200 to 499	5 stewards
500 or more	5 stewards plus additional steward for each 100 employees

Figure 1

<sup>1</sup>Step 4 Settlement, A8-C-0709, October 7, 1980

<sup>2</sup>Step 4 Settlement, H1C-3F-C 35597, November 30, 1984

<sup>3</sup>Step 4 Interpretative Agreement between USPS & APWU, June 2, 1982

<sup>4</sup>Step 4 Decision, A8-C-0740, July 10, 1980

<sup>5</sup>Arbitrator Britton, S8T-3U-C-1642, October 23, 1981

The union may select and appoint alternate stewards to serve when the regular stewards are absent. The union may select as many alternates to each steward as they choose and should list the alternates in the sequence they are to be made available. No more than one alternate should operate at a time and this sequential list will keep members from shopping for stewards.<sup>6</sup> If the steward is absent, an alternate may serve in his stead. All stewards need not be absent before an alternate is allowed to be released to represent employees.<sup>7</sup> Once an alternate has initiated a grievance he/she may continue to process that grievance.<sup>8</sup>

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<sup>6</sup>Step 4 Settlement, H4C-2M-3551, May 9, 1986

<sup>7</sup>Step 4 Decision, NC-S-4915, December 21, 1977

<sup>8</sup>Step 4 Settlement, H1N-1J-C-5026, May 24, 1984



## **RELEASE OF STEWARDS**

The steward's first and most basic step in representing his/her fellow craft employees always begins with requesting and receiving release to perform steward duties. Article 17, Section 3 spells out the obligation of the steward to request such release as well as the supervisor's duty to not unreasonably deny such request:

"When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance the steward shall request permission from the immediate supervisor and such request shall not be unreasonably denied."

Inevitably, in every Basic Steward Training Class in which we have ever participated, this provision has led to more questions than any other. Just what does it mean? "[S]uch request shall not be unreasonably denied." Clearly, a Steward's request for release can be denied. Under what circumstances? What is reasonable? What is unreasonable? How long can a steward be delayed? How much information must the steward give the supervisor at the time of the request?

As a general rule the American Postal Workers Union opposes any delay of a Union steward's request for steward duty time. We believe problems are best resolved as quickly as possible. This requires that problems be investigated as quickly as possible before memories fade, documents disappear, or rumors begin to materialize. The sooner a problem is eliminated the better for everyone concerned. However, denials of release time, and more frequently delays in releasing the steward do occur.



## **THE GARRET AWARD**

One of the earliest analyses of Article 17.3's "unreasonable denial" standard can be found in a National level Mailhandlers Union award by Arbitrator Sylvester Garrett. In holding that Article 17 prohibited the USPS from predetermining the amount of time which a steward would be released to investigate a grievance, Arbitrator Garrett said:

"Thus it now should be made clear that Article XVII, Section 3, does not authorize the Service to determine in advance the amount of time which a Steward reasonably needs to investigate a grievance. ...This is not to say, of course, that Management

cannot (1) ask a Steward seeking permission to investigate, adjust, or write a grievance to estimate the length of time that the Steward anticipates he or she will be away from his or her work station; or (2) that a Supervisor cannot decline to release a Steward from duty during a period of time when his or her absence during such period will unnecessarily delay essential work; or (3) that a Supervisor, in advance, may not specify a time period during which the Steward's absence will unnecessarily delay essential work."<sup>9</sup>



## THE CUSHMAN TRILOGY

Perhaps the best analysis of the significance of Article 17, Section 3 can be found in a series of regional level arbitration awards by Arbitrator Bernard Cushman. All three awards, on varying aspects of steward's rights, were issued on March 11, 1986. Because of their thoughtful analysis of Article 17, Section 3, they have become widely known as the "Cushman Trilogy." When reading these cases, it should be emphasized that Arbitrator Cushman was the APWU's Chief Negotiator during the 1971, 1973, and 1975 negotiations, when the language of Article 17, Section 3 was written. This gave him a unique perspective as to the intent of the negotiated language.

The first of these cases involved the failure to release a steward for four and one-half (4½) hours after his request. The arbitrator flatly rejected management's contention that it had the unilateral right to determine whether and when a steward was to be released. He held, instead, that "reasonableness" under Article 17.3 must be determined on a case-by-case basis.

"The contractual provision that 'such requests shall not be unreasonably denied' represents an effort by the parties to accommodate the need for steward time to investigate and process grievances with the obviously important functions of efficient and productive processing of the mail. The steward does not have an absolute right to an immediate release. The supervisor does not have an absolute right to deny a requested release. **Unless the demands of operations prohibit release, the release should be granted and supervisors must make every reasonable effort toward that end.**"<sup>10</sup> [emphasis added]

Because the Postal Service failed to provide the Union with corroborating data to prove that the demands of mail processing prevented immediate release, the grievance was granted.

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<sup>9</sup>Arbitrator Garrett, MB-NAT-562, January 19, 1977

<sup>10</sup>Arbitrator Cushman, E1C-2M-C 19245, March 11, 1986



This case also establishes the principle that the burden of proving the operational necessity of denying a steward's request for release is on the employer. The arbitrator also expressed a significant principle, sometimes called the Rule of Adverse Inference:

"The information as to work load which would corroborate the Postal Service claim is solely in the possession of the Postal Service. The Service may not, on the other hand, refuse or fail to produce the corroborative data."<sup>11</sup>

Finally, the arbitrator rejected the argument that the Union failed to show that the delay harmed it:

"The Postal Service claims that there was no showing that there was an adverse impact as a result of the delay or denial of the release at the time requested. The adverse impact is found in the violation of the Article 17, Section 3, right and a finding of violation is necessary to preserve the integrity of the Agreement."<sup>12</sup>

The award added:

"Such unreasonable delay should not be repeated."

In the second of these awards, Arbitrator Cushman determined that the United States Postal Service had no right, prior to release, to interrogate a steward about the names of grievants, the nature of the grievance, or the time necessary to investigate their grievances, citing Arbitrator Garrett's National Award. The supervisor was permitted only to ask how much release time the steward sought. "The Supervisor is not to make a preliminary determination of priorities as to the order and importance of investigation or grievances and substitute her judgement for that of the Union," Arbitrator Cushman wrote.<sup>13</sup> The arbitrator then went on to clarify the meaning of permissible interrogation:

"This is not to say, however, that management may not ask a steward who seeks permission to investigate, adjust, or write a grievance to estimate the length of time that the steward anticipates the steward will be away from his or her work station. It is not to say also that a supervisor cannot decline to release a steward from duty during a period of time when the steward's absence would unnecessarily delay essential work. Nor is it to say that the supervisor may not specify a time period during which the absence of the steward would unnecessarily delay essential work. Nor does this decision in any way bar the Service from taking necessary action, as stated by Arbitrator Garrett, consistent with the Agreement in any case where the Postal Service can establish that a Steward has improperly obtained permission to

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<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Arbitrator Cushman, E4V-2M-C 48, March 11, 1986

leave his or her work station under the guise of investigating or preparing a grievance. Of course, the Postal Service may take appropriate action if it ascertains subsequently that a steward has not in fact engaged in bona fide steward activities for which he received release time. The Service may not anticipate this to be the case in advance. Nor does the Service have any generalized right to 'control' the activities of union stewards."

Finally, in the third case, the Arbitrator held that where, in fact, a steward's work requires a delay in his release, Article 17 is not violated. However, he did hold that:

"Reasonable efforts to obtain replacements [for stewards] are obviously required by ... Article 17. What efforts must be made depends on the circumstances. Simply waiting until the volume of the work to which the Steward as employee is assigned to be reduced sufficiently to allow the employee to be released, does not always satisfy the requirement of reasonable efforts."<sup>14</sup>

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<sup>14</sup>Arbitrator Cushman, E1C-3M-C 19241, March 11, 1986



## **GENERAL NATURE OF THE GRIEVANCE**

As noted during the discussion of the Garrett and Cushman awards, the USPS has no right, prior to release, to interrogate a steward about the names of grievants, the nature of the grievance, or the time necessary to investigate their grievances. However, this does not prevent management from inquiring as to the general nature of the problem or grievance involved.<sup>15</sup> Additionally, there is nothing improper about the supervisor requiring an employee to relate the general nature of the problem or grievance before the employee sees a steward.<sup>16</sup>

This is not just a matter of semantics. Management has a right to inquire into the general nature of the problem. They do not have a right to interrogate the employee or steward about the specifics. Examples: I need to investigate an overtime problem - General; I need to find out why Jane Doe was bypassed for overtime in the 030 on March 2, 1994 - Specific; I need to investigate a disciplinary matter - General; I need investigate John Smith's Letter of Warning for Attendance he got last week - Specific. Neither the employee nor the steward should be required to divulge detailed information about the nature of the problem or grievance until or unless they desire to do so.

Management may not predetermine the amount of time needed to investigate or process a specific grievance.<sup>17</sup> At the same time the parties have agreed that management may ask a steward seeking permission to investigate, adjust, or write a grievance to estimate the length of time that the steward anticipates he or she will be away from the work station.<sup>18</sup> If management must delay a steward from investigating a grievance or continuing to investigate a grievance, management should inform the steward involved of the reasons for the delay and should also inform the steward of when time should be available. Likewise, steward has an obligation to request additional time when needed and to state reasons why this additional time is needed.<sup>19</sup> When service needs make it necessary for management to interrupt a steward's investigation of a grievance, the supervisor

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<sup>15</sup>Step 4 Decision, AC-C-11658, October 31, 1977; Step 4 Decision, AB-N-12079, February 24, 1976; Step 4 Decision, AC-N-26731, April 13, 1979

<sup>16</sup>Step 4 Settlement, H1C-3W-C 31937, July 26, 1984

<sup>17</sup>Step 4 Settlement, H1C-3W-C 44345, June 7, 1985

<sup>18</sup>Step 4 Settlement, H8C-3W-C 29737, February 23, 1982

<sup>19</sup>Step 4 Settlement, NC-C-16045, November 22, 1978

must advise the steward as to when she may resume her investigation.<sup>20</sup> Similarly, if management must delay an employee's request for a steward, management should inform the employee involved of the reasons for the delay and should also inform the employee of when time should be available.<sup>21</sup>

How long can the steward be delayed? How long can the employee be delayed in their request to see a steward? Again, the standard is one of "reasonableness." There is no specific time limitation imposed. Perhaps the best guidance available comes from a Postal Service document by Regional Employee & Labor Relations Director David Charters in 1977. Mr. Charters said:

"'Reasonable', in our opinion, dictates that in most cases, the grievant and steward should be able discuss the grievance without delay but 95 percent of the time with no more than a two-hour delay.

"While circumstances will sometimes necessitate a delay of more than two hours, normally the delay should not extend beyond the tour of duty in which the request is made. This determination will be based on the availability of the parties involved and service conditions."<sup>22</sup>



## **THE STEWARD ON OVERTIME**

Article 17, Section 4 provides for the compensation of stewards for steward duty time during the normal tour of duty. What happens when a representational situation arises and the steward is on overtime? Where an employee who is also a steward is working overtime and a representation situation arises, a steward's request to perform the function of a steward should not be denied solely because the steward is in an overtime status.<sup>23</sup> While stewards are not permitted to continue working into an overtime status for the sole purpose of processing grievances, they should not be precluded from processing grievances solely based on the fact that they have

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<sup>20</sup>Step 4 Decision, AC-S-15193, July 31, 1977

<sup>21</sup>Step 4 Decision, NC-C-12200, November 13, 1978

<sup>22</sup>Charters Letter to Central Region Employee and Labor Relations District Directors, March 10, 1977

<sup>23</sup>Step 4 Pre-Arb, W4N-5C-C 41287, September 13, 1988; [However, where an alternate steward is available, the Employer will not violate the Agreement when it provides an employee with the alternate steward because the "regular" steward is in an overtime status. See, Arbitrator Snow, H4C-3W-C 28547, January 8, 1990.]

entered an overtime status.<sup>24</sup>



## **ISSUE PREVIOUSLY DISCUSSED - OR MANAGEMENT PRESUMPTION OF NO GRIEVANCE**

The mere fact that an issue has been the topic of previous grievances does not preclude an employee's right to see a Union steward.<sup>25</sup> Similarly, there have been instances where management has refused to release a steward based on its presumption that a grievance will not arise from the matter being investigated. Arbitrator Jacobs addressed this very issue when presented with a grievance protesting management's blanket refusal to grant release time for the investigation of "complaints." Citing the "...or to investigate a specific problem" language of Article 17, Section 3, Jacobs concluded that "it is not necessary that a Grievance already be in process for a Steward to ask permission to investigate."<sup>26</sup>



## **STUDYING HANDBOOKS AND MANUALS**

Common sense indicates that by his or her very status, a steward must pursue any complaint or problem that relates to the role of a steward as a contract enforcer and problem solver. There are a wide range of activities that may require steward release time including, but not limited to, investigation of complaints, and the gathering of information and evidence, as well as interviewing. Indeed, the scope of activities necessitating a grant of release time broadly encompasses any set of circumstances that require the steward in his official capacity. In essence, it is up to the steward to determine whether a given situation requires the request for release time.

At least one arbitrator has held that a steward, however, will not be compensated for the time he spends studying and reviewing the general laws and doctrines associated with the grievance procedure. Only that time needed to review particular

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<sup>24</sup>Step 4 Settlement, February 26, 1986; Step 4 Settlement, H4C-5K-C 7100, September 4, 1987; Step 4 Settlement, H1C-3F-C 43497, August 1, 1985

<sup>25</sup>Step 4 Settlement, H1N-3U-C 16069, April 20, 1983

<sup>26</sup>Arbitrator Jacobs, E1C-2B-C 3291, December 7, 1985

documents and information related to a specific case is compensable. In order to receive remuneration, the Union has to establish, by a preponderance of the evidence, that the time requested by the steward was unreasonably denied.<sup>27</sup>



## **ALTERNATE STEWARD RELEASE**

Must the alternate steward be released if the regular certified steward is on-the-clock but unavailable because he/she is already processing grievances? The Postal Service position is that alternate stewards are entitled to be released when the regular steward is absent. Since Article 17, Section 2, specifies that no more than one steward may be certified to represent employees in a particular work location the alternate steward is not entitled to be released when the regular steward is present and processing grievances.<sup>28</sup> While it would seem logical that management should not be permitted to have it both ways, as discussed above, the Employer can insist that the employee see an alternate steward when the regular steward is in an overtime status with violating the National Agreement. Management should not be permitted to "steward shop" by insisting upon using the alternate steward when the regular steward is present, solely because heavy mail volumes exist, or worse, because they prefer not to deal with the regular steward.

However, once an alternate steward has initiated a grievance, management has recognized the right of that alternate steward to continue processing that grievance, as determined by the Union. Of course, only one steward will be given time to process a particular grievance.<sup>29</sup>



## **THOSE PESKY 7020's**

In many offices management has consistently required the use of PS Form 7020 for steward release and no one, supervisor or steward thinks much more of it. It is just another way of postal life. In many offices, however, management uses the PS Form 7020 only intermittently when they feel a need to "harass" or "control" the union steward's activities. Management can require the steward to use PS Form

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<sup>27</sup> Arbitrator Levak, W1C-5D-C 172, April 18, 1983

<sup>28</sup> Step 4 Decision, H1C-3F-C 44026, August 7, 1985

<sup>29</sup> Step 4 Settlement, H1N-1J-C 5026, May 24, 1984

7020, Reason for Absence, when the steward requests to be released for steward's duty time.<sup>30</sup> USPS Handbooks F-21 and F-22 both provide for the use of PS Form 7020 for steward release. A Western Regional Arbitration Award held that the steward may even be required to get a Form 7020 for each individual grievance.<sup>31</sup> The National APWU has not attempted to reverse this decision.<sup>32</sup> However, management should be required to be consistent in their application of the Form 7020 requirement. They are not permitted to require individual stewards or tours to utilize the Form as a means of harassment.<sup>33</sup>



## **STEWARD ON LIGHT DUTY**

A shop steward on light or limited duty may be released to perform steward duties unless the steward's medical restrictions preclude such activity.<sup>34</sup> Each situation would need to be evaluated on a case-by-case basis in light of the specific limitations of the steward. In most cases, the steward's restrictions would probably be more conducive to steward duty time than normal productive duties.

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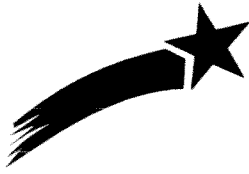
<sup>30</sup>Step 4 Settlement, H7C-4U-C 18406, November 1, 1989

<sup>31</sup>Arbitrator Rentfro, W1C-5K-C 1229, June 4, 1981

<sup>32</sup>Step 4 Settlement, H1C-3W-C 22796, December 2, 1983

<sup>33</sup>Step 4 Settlement, H4C-3W-C 16023, January 28, 1987

<sup>34</sup>Step 4 Settlement, H4C-3W-C 20157, February 3, 1987



## **RIGHT TO INFORMATION**

The most difficult task facing the Union steward in successfully processing grievances is being able to **PROVE** his/her allegations. Just stating that some incident caused a violation of our National Agreement is not enough. Stating that the charges in disciplinary cases are not true or not for just cause is not sufficient. The steward must successfully refute management's allegations.

With experience and time, our stewards usually learn the hard way (by losing) what is required to win a grievance when the Employer violates the Collective Bargaining Agreement. However, far too many good stewards never get that far because frustration and failure become too heavy a burden to bear. In the process, many bona fide grievances are lost because we did not prove our cases.

When the Union trains new stewards, we instill in them high expectations. To one degree or another, we tell them their rights as stewards. However, no matter how emphatically we convey to new stewards the enormous authority they possess to obtain almost all information and evidence needed to **DOCUMENT** and **PROVE** a grievance, knowing their rights and believing in them still make the difference.

Ultimately, we will discover that exercising our right to obtain information and building a complete and solid grievance file as a consequence is very satisfying indeed. While knowing that we have **PROVEN** our case is gratifying in itself, knowing that we have required management to assist us by providing the documents and witnesses we need to do so can be pure nirvana! For most of us, this is why we got into this business in the first place.

Exercising our Article 17 rights obtain information and documents begins with your information request. These requests are critical to building a successful grievance file. There is no mandatory contractual requirement to submit information requests made pursuant to Article 17 in writing.<sup>35</sup> However, for obvious administrative purposes, it is beneficial for both the Union and for management if such requests are submitted in writing. [See Appendix F for sample Request for Information Form] Without a doubt, your grievance file must contain copies of all your information requests and related denied information grievance moving papers in any case where you were denied information.

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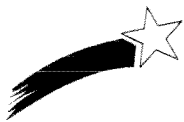
<sup>35</sup>Step 4 Settlement, H8C-3W-C 32282, September 27, 1983



What information are you entitled to? Article 17, Section 3, teaches that the steward:

“...may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.”

Step 4 decisions and arbitration awards make it clear that you are entitled to **ALL** information that is relevant and necessary to your case if management has it. The sky truly is the limit. Let your imagination soar. Experience teaches us that the information we need is usually there. We just need to identify it and **REQUEST** it! Some discussion of various documents and information to which we are entitled follows in the hope that this will stir your own creativity to seek out the information you need.



## **INFORMATION IN MANAGEMENT'S GRIEVANCE FILE**

The Union is entitled to receive a copy of all relevant documents contained in management's grievance file. The disclosure provisions of Articles 15, 17, and 31 of the National Agreement require that all information which the parties rely on to support their positions in a grievance shall be exchanged between the representatives in order to assure that every effort is made to resolve grievances at the lowest possible level.<sup>36</sup>

While such documents do not include either side's notes or working papers, documents which must be shared include copies of PS Forms 2608 and 2609 (Management's Grievance Summaries - Step 1 and Step 2). [See Appendix F] When management's representative at Step 2 or above utilizes the Form 2608 to support their decision or when the 2609 is utilized by management's representative at Step 3 or above, these forms must be given to the Union. Since the PS Forms 2608 or 2609 are not prepared until after the Step 1 or Step 2 meetings, these documents cannot be supplied until the Step 2 or Step 3 meeting, respectively.<sup>37</sup>

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<sup>36</sup>Step 4 Settlement, N8-N-0027, August 16, 1979

<sup>37</sup>Step 4 Settlement, H1C-5F-C 12077, September 14, 1983; Step 4 Settlement, H4V-3S-C 56545, January 7, 1988



## **EI/QWL MINUTES**

Do you have reason to believe that the Letter Carriers, Rural Carriers, or Mailhandlers in your office discussing matters involving the wages, hours or working conditions of APWU represented craft employees with management through their EI/QWL meetings? Although neither management nor the other Unions will probably like it, you do have a right to obtain copies of the Employee Involvement/Quality Work Life (EI/QWL) meeting minutes.<sup>38</sup> The Union is entitled to request and receive EI/QWL minutes if there is a reasonable belief that a subject matter directly affecting wages, hours, or working conditions of APWU represented bargaining unit members have been discussed at an EI/QWL meeting. "Minutes" includes agendas or other written comments relative to an EI/QWL meeting.<sup>39</sup>

Usually when management intends to resist our Article 17 information request they begin by making an issue of "relevancy." In a National level award on the subject of EI/QWL minutes, Arbitrator Mittenthal provided a helpful analysis of the "relevancy" requirement which would be equally applicable to any other Article 17 request:

"No doubt some type of investigation precedes the submission of a grievance. Information is developed and a decision is made by APWU as to whether or not a grievance is warranted. If there seems to be no merit in a particular complaint, presumably no grievance would be filed. It is for the APWU alone to 'determin[e]...if a grievance exists...', to 'determine whether to file...a grievance...' If the information it seeks has any 'relevancy' to that determination, however slight, its request for this information should be granted. Assume for the moment that the EI/QWL minutes were not 'relevant' to the work jurisdiction grievance filed five weeks after APWU initially requested these minutes. That assumption cannot control the disposition of the present case. Whether a piece of information is 'relevant' to the merits of a given claim is one thing; whether such information is 'relevant' to APWU determination to pursue (or not pursue) that claim through the filing of a grievance is quite another. The latter question allows 'relevancy' a far broader reach and should have permitted the APWU, for the reasons already expressed, to receive the appropriate EI/QWL minutes. The Postal Service view that APWU's request for these minutes was a mere fishing expedition is not persuasive."<sup>40</sup>

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<sup>38</sup>Step 4 Settlement, H7C-3W-C 33738, August 1, 1991

<sup>39</sup>NLRB Settlement, 3-CA-14483-1(P), et al., April 9, 1992

<sup>40</sup>Arbitrator Mittenthal, H4T-2A-C 36687, November 16, 1990



## **ATTENDANCE INFORMATION**

The Union is entitled to receive attendance information. As with most information requests involving information regarding specific individual employees, the most expedient method is often to obtain the written authorization of the subject individual[s]. [See Appendix F] When the subject individual is our grievant, this is usually rather routine. However, in many circumstances the Union is nonetheless entitled to receive attendance information even without the subject individual[s]' release. For example, while management will often resist providing such information, this entitlement does include restricted sick leave lists.<sup>41</sup> It also includes PS Forms 3971,<sup>42</sup> with or without a signed third party release.

According to the National Labor Relations Board the Union is also entitled to receive Absence Analysis Records (PS Forms 3972) for all employees in a particular section or pay location when such information is necessary and relevant to an issue of disparate treatment. These records must be provided without deletion of identifiers such as the employees' names.<sup>43</sup>



## **EEO SETTLEMENTS**

Another area where management will usually resist our Article 17 information requests includes EEO Settlements and case files. However, an administrative EEO case cannot be settled in a manner that is contrary to the provisions of the National Agreement or your Local Memorandum of Understanding.<sup>44</sup> It goes almost without saying, then, that where the Union has reason to believe this has been done (or for that matter, in any other situation where the information contained in the EEO file is relevant to our grievance) the Union is entitled to receive relevant EEO settlements or other information from the case files.<sup>45</sup>

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<sup>41</sup>Step 4 Settlement, H8C-5D-C 8083, April 14, 1981

<sup>42</sup>Step 4 Settlement, H8C-5K-C 17508, October 14, 1981

<sup>43</sup>NLRB Decision, 11--CA--14242(P), [307 NLRB No. 170], June 30, 1992

<sup>44</sup>Step 4 Settlement, H1C-3F-C 25743, December 9, 1985

<sup>45</sup>Step 4 Settlement, H1C-1E-C 23353, March 16, 1984

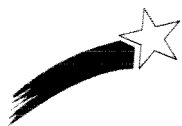


## **POSTAL INSPECTORS' or OIG REPORTS**

Management often relies upon reports from the Postal Inspection Service or OIG when issuing discipline. Neither the Postal Inspectors nor OIG have never been known for their cooperation with the Union and management is often reluctant to provide information regarding the Inspectors' Investigative Memoranda. However, the Union is clearly entitled under Article 17 to receive and review all of those portions of Inspection Service Reports upon which management relies in issuing discipline or taking any other action.<sup>46</sup>

On the other hand while a steward should not be unreasonably denied information necessary for processing a grievance or determining if a grievance exists, it should be recognized that release of criminal investigatory information under the jurisdiction of the Postal Inspection Service or OIG may involve some inherent delay due to the need to determine if the information is appropriate for release to the steward and/or to receive appropriate approval for such release.<sup>47</sup>

The Union's right to relevant information is not limited to the P.I.'s Investigative Memorandum. Where the Inspectors have utilized worksheets, notes or other related documents in preparing their Reports the Union has good claim to these documents as well.<sup>48</sup>



## **204-B DETAILS (FORMS 1723)**

All four (4) APWU represented Craft articles require management to notify the local union of all temporary supervisor (204-B) details. Maintenance Craft Article 38.7.G, for instance, reads as follows:

"Form 1723, Notice of Assignment, shall be used in detailing employees to temporary supervisor (204b). The Employer will provide the Union at the local level a copy of Form(s) 1723 showing the beginning and ending time and date of all such details. (similarly, see Clerk Craft, 37.3.A.9; Motor Vehicle Services Craft, 39.2.A.9; Material Support Craft, 41.2.G.3)"

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<sup>46</sup>Step 4 Decision, AB-S-880, March 12, 1974

<sup>47</sup>Step 4 Decision, H1C-4A-C 26987, August 2, 1984

<sup>48</sup>Step 4 Settlement, H8C-3T-C 27940, August 19, 1981

Copies of the Form 1723 should be provided to the Union in advance of the detail.<sup>49</sup> The Form 1723, which shows the times and dates of a 204-B detail, is the controlling document for determining whether an employee is in 204-B status.<sup>50</sup> In such cases, the amended Form 1723 should be provided in advance, if the Union representative is available.<sup>51</sup>

It is highly recommended that you maintain a file of these Forms 1723. It is a good idea for the stewards in each section to monitor 204-B assignments to be certain that management is providing these forms in a timely manner. If you aren't getting them, enforce your rights and demand to be provided with the Forms 1723 in advance of the details. It is only basic good sense to know who your supervisor is. Just as important, since nobody but nobody likes to do bargaining unit work like a 204-B out to make a favorable impression, we need these Forms 1723 to enforce Article 1.6.



## **MEDICAL INFORMATION**

We enter one of the most troubling arenas in which we exercise our Article 17 rights to information when requesting release of medical information which is necessary for grievance determination and subsequent investigation and processing from management. Management or the Medical Office often responds that certain information is "unavailable," "protected," cannot be released without the employee's permission, or cannot be released according to regulations.

The truth is, however, that there are specific contractual provisions providing for the release of medical information/records which can be used to our advantage in the grievance/arbitration process. To begin, of course, the most advantageous procedure for obtaining medical records with the least amount of resistance will always be with the specific authorization of the subject individual. Management Instruction EL-860-98-2<sup>52</sup> which replaced Part 2 of USPS Handbook EL-806, Health and Medical Services,<sup>53</sup> specifically provides at page 6 that:

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<sup>49</sup>Step 4 Settlement, H4C-4U-C 34244, November 11, 1989

<sup>50</sup>Step 4 Pre-Arb, H1N-5H-C 26031, January 12, 1989

<sup>51</sup>Ibid

<sup>52</sup>Management Instruction EL-860-98-2, May 15, 1998

<sup>53</sup>See Step 4, H1C-3P-C 14535, (date not legible)

"Employees or applicants, i.e., individuals to whom the records pertain (record subjects) or any designees authorized in writing by those individuals:...may obtain copies of their medical records in response to written requests..."

However, in many cases this may not be practical. We are not always readily able to obtain such a release from the subject individual. A case in point which comes immediately to mind might be the circumstance where a Letter Carrier is reassigned to the Clerk Craft under the provisions of Article 13 in our Collective Bargaining Agreement or the rehab provisions of Employee & Labor Relations Manual (ELM) 540. Even here, the Union has very specific rights to review and receive an employee's medical records or light duty requests without release from the subject employee.<sup>54</sup>

Section D.2.6 of the Appendix – Privacy Act Systems of Records, to USPS Handbook AS-353, describes as a "Standard Routine Use" the disclosure to Labor Organizations, noting

*"Disclosure to Labor Organizations. As required by applicable law, records may be furnished to a labor organization when needed by that organization to perform its duties as the collective bargaining representative of Postal Service employees in an appropriate bargaining unit."*

This general language specifically provides for the release of information "consistent with the appropriate provisions of applicable collective bargaining agreements..." In the case of medical information, the appropriate provisions are included in Management Instruction EL-860-98-2, cited above. That MI specifically requires the release of information to be granted to collective bargaining representatives under the guidelines even absent the employee's authorization, stating (at page 8):

*"In certain cases, employee medical records may be provided without an employee's authorization to a postal union official under the collective bargaining agreement to which the USPS is a party. Requests from postal union representatives without an employee's authorization must be carefully reviewed. Information that is relevant and material to collective bargaining is available to an authorized representative *only when acting officially.*"*

Management **must** adhere to these regulations when a collective bargaining representative does submit a detailed request as outlined in the Management Instruction making certain the request letter specifically answers the "a." and "b." questions found therein. We can expect management to deny the request that fails to contain the required specific answers relating to the nature of the issue and the

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<sup>54</sup> Arbitrator Moberly, Vereatha Lee Arbitration, April 20, 1979; Step 4 Settlement, H7N-1P-C 2187, November 16, 1988

relevancy of the request to the stated issue. On the other hand, management may not arbitrarily or unreasonably deny the Union's request when the necessary responses are provided. In submitting requests for medical records we should always carefully review our needs so as to limit our request as narrowly as possible.

After all, we, as an organization, must respect our member's (and all employee's) right to privacy if we are to insist on our Employer doing the same. Nonetheless, we are properly entitled to such information as is relevant and is necessary to the processing of our grievance. In an enlightening Central Region Arbitration Award, Dean Robert Grabb of the University of Minnesota Law School assessed the situation thusly:

"[T]he Postal Service is found to have been in violation of the Agreement when it refused to give the union representative access to the Mailhandler's medical file. It will now make it available. Management at the Peoria Post Office is cautioned that unless requests for access to information are so far afield that the information could not possibly bear on a valid issue the union is pursuing, it should carefully study the situation before refusing the request. Each case, however, must be judged on its merits and the parties are reminded that each is expected to cooperate with the other."<sup>55</sup>



## **OWCP RECORDS**

You can expect much the same response from management when you request OWCP records as you get for Article 17 requests for medical records. Under the guise of protecting individual privacy, USPS managers will do their best to frustrate the Union's attempts to gain access to these records. Unfortunately, in all too many cases this alleged concern for privacy is really a cover-up for these managers own misdeeds in delaying or hindering rightful claims by injured workers. Keep the faith, however. You do have a right to receive and review relevant OWCP records. Local management may not refuse, for example, the union's request for a copy of an employee's CA-1 (Federal Employee's Notice of Traumatic Injury).<sup>56</sup> Similarly, the release of an employee's CA-17 to the Union is not a violation of the Privacy Act.<sup>57</sup>

Appendix B of the Administrative Support Manual, 120.098 Personnel Records - Office of Workers' Compensation Programs (OWCP) Record Copies - instructs as follows with regard to the maintenance of these records and to their release to Union

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<sup>55</sup> Arbitrator Grabb, C4T-4A-C-12286, September 2, 1987

<sup>56</sup> Step 4 Settlement, H1C-4F-C 24949, May 30, 1984

<sup>57</sup> Step 4 Settlement, H4C-2G-C 37538, July 1, 1987

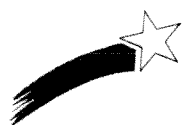
officials:

"a. Purpose. To provide injury compensation to qualifying employees and to maintain a record of the events as a basis for managerial decisions.

b. Use

...

(2) Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform its duties properly as the collective bargaining representative of postal employees in an appropriate bargaining unit."



## **SUPERVISORS' ATTENDANCE AND DISCIPLINE RECORDS**

No information request you submit will ever raise your supervisor's blood pressure faster or get a more immediate denial than a request for a supervisor's attendance or discipline records. Management will contend that such information is never relevant in that supervisors cannot be compared to craft employees. They will strenuously argue the Employer's strong interest in preserving the confidentiality of such records concerning its supervisors under the Privacy Act.

They will take this position and stonewall the Union's legitimate Article 17 information request even though they know they are wrong. The parties at Step 4 have agreed that if the local union can substantiate that a supervisor's attendance record is relevant to establish disparate treatment, the information requested will be granted.<sup>58</sup> The parties at Step 4 have also acknowledged that a supervisor's discipline record, when relevant, can be made available to the Union.<sup>59</sup> In spite of all this "agreement" the Postal Service merely continued to contend that all such requests were not relevant.

In a National level arbitration award, Arbitrator Snow rejected the USPS position in holding on the issue of release of supervisors' discipline records for comparative purposes:

"Having carefully considered all evidence submitted by the parties concerning this

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<sup>58</sup>Step 4 Settlement, H4T-3P-C 10526, November 13, 1986

<sup>59</sup>Step 4 Settlement, H1C-3P-C 6054, September 14, 1982



matter, this arbitrator concludes that the Employer violated the parties' National Agreement when the Employer denied a Union request for information respecting the possible discipline of two supervisors from the grievant's post office, who are alleged by the Union to have engaged in specific misconduct both close in time to and similar to that charged against the grievant, so that the Union could compare the actual conduct and subsequent treatment of the grievant and the supervisors and/or potentially argue that the grievant's discharge was disparate and thus not for just cause."<sup>60</sup>

The National Labor Relations Board has also consistently held that supervisor's disciplinary records for similar incidents involving the same rules violations are relevant to disciplinary grievances on behalf of craft employees. Rejected the USPS' claim of confidentiality as well, the NLRB has ordered the release of such information to the Union for purposes of addressing the issue of disparate treatment.<sup>61</sup>

In 1993, the USPS and APWU signed a National Labor Relations Board Settlement Agreement in which it once more agreed to furnish information regarding supervisors which is necessary and relevant to the processing grievances. Most importantly, the USPS agreed that it would no longer seek to affirmatively defend a refusal to furnish supervisory records on the grounds that the release of such records is barred by the Privacy Act.<sup>62</sup>

The Union does have a right to review and receive relevant supervisory discipline records. Unlike, requests for information concerning bargaining unit employees, which are usually presumed to be relevant, information about supervisors requires a demonstration of relevance. The Union must be prepared to establish relevance of the requested records. The factors which will vary with each Request for Information include:

1. A statement by the Union explaining the postal policy or rule that is being applied and the information requested is to determine if it is being uniformly applied to supervisors and bargaining unit employees.
2. Did the suspected supervisory violation involve the same or similar policy?

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<sup>60</sup>Arbitrator Snow, H7N-5C-C 12397, July 29, 1991

<sup>61</sup>NLRB Decision, Case 32--CA--10619(P) [307 NLRB No. 63], April 30, 1992

<sup>62</sup>NLRB Settlement, Case 6-CA-24756(P), *et al.*, August 9, 1993. This Settlement Agreement does not require the Union to sign a confidentiality agreement in order to obtain these records. (See February 25, 1994, Downes Letter). However, care must be exercised to protect the privacy of information obtained during the grievance process.

3. Was the suspected supervisory violation during the same general time frame?
4. The source of the Union's suspicion that a supervisor was engaged in similar conduct. The Union must have a factual basis for believing that the supervisor conducted a similar infraction--"mere suspicion" that the requested records will reveal evidence of misconduct will not suffice. The factual basis need not be first hand knowledge of the requesting Union official. Reports from employees or similar objective information usually will be sufficient foundation.



## **OTHER TYPES OF DOCUMENTATION**

Most other USPS official records are available for inspection and review when relevant and necessary to the processing of a grievance. An employee's Official Personnel Folder (OPF) can be a critical source of relevant information which should not be disregarded.<sup>63</sup> Records of Financial Audits should always be requested and reviewed when investigating an Article 28 or Letter of Demand grievance.<sup>64</sup> Discipline Proposals, or other locally developed forms are important sources of information to review in discipline grievances.<sup>65</sup> If any portion of a video tape has been or is intended to be used as the basis for disciplinary action, those portions will be reproduced and afforded to the Union.<sup>66</sup> Similarly, the Union is entitled to receive and review records relative to PTF and casual staffing<sup>67</sup> or casual personnel records<sup>68</sup> as well as customer complaints<sup>69</sup> or productivity records<sup>70</sup> when such information is necessary and relevant to the investigation or processing of a grievance. On the

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<sup>63</sup>Step 4 Decision, NC-E-2263(NC-60), August 18, 1976

<sup>64</sup>Step 4 Settlement, H8C-5D-C 18942, October 14, 1981

<sup>65</sup>Step 4 Settlement, H4C-5F-C 1641, December 18, 1985

<sup>66</sup>Step 4 Settlement, H4C-3U-C 11715, October 16, 1987

<sup>67</sup>Step 4 Settlement, H1C-4K-C 17972, August 25, 1983

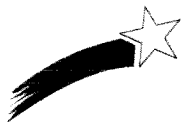
<sup>68</sup>Step 4 Decision, AC-C-15566, August 26, 1977

<sup>69</sup>Step 4 Decision, NB-C 1930(N-37), November 18, 1974

<sup>70</sup>Step 4 Settlement, H1C-5D-C 13804, December 23, 1983

other hand, copies of hiring registers, hiring worksheets, applications and other related information will be made only if depersonalized as stated in USPS Handbook EL-311, Personnel Operations, Section 251.21.<sup>71</sup> Similarly, the USPS will not release test scores or listings which would effectively reveal such scores.<sup>72</sup>

Regional arbitrators have also addressed the question of requests for information in numerous cases. Arbitrator Talmadge, for instance, indicated that the Union is entitled to the rating sheets for applicants for best qualified positions.<sup>73</sup> Similarly, Arbitrator Klein ruled that the Union was entitled to PS Forms 991 (Applications) of all applicants in grieving the selection of a best qualified position.<sup>74</sup> In another case, Arbitrator Foster stated that the Union is entitled to have such information as clothing allowances, Overtime Desired Lists and records of hours worked as well as holiday schedules and related information.<sup>75</sup> Parenthetically, it is worth noting that in the holiday scheduling case management had originally denied the request because of a lack of specificity. In an interesting analysis of this question, the arbitrator ruled that management's insistence on such a high degree of specificity as a condition to the release of information requested by the union could well cause the Union's investigation to be compromised. While there does exist the possibility that the union will abuse its right to claim information by excessive demands on management and engage in fishing expeditions as a means of creating grievances unduly, until such a pattern is established justifying management to take a more restrictive position, good labor relations calls for full disclosure rather than the suppression of available information, the arbitrator held.



## **INTERVIEWS**

Grievance investigation properly is much more than a mere paper chase. Impressive as those inch thick files can be we should never lose track of the fact that grievances are about problems. Grievances are about disputes, differences, disagreements or complaints. The unique thing about most problems, disputes, differences, disagreements or complaints is that they usually involve people; real live, breathing individuals!

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<sup>71</sup>Step 4 Decision, H4C-4B-C 14318, October 24, 1986

<sup>72</sup>Step 4 Decision, H7T-5L-C 155, September 14, 1988

<sup>73</sup>Arbitrator Talmadge, N7C-1T-C-3610, January 30, 1991

<sup>74</sup>Arbitrator Klein, C4C-4O-C 18011, April 20, 1990

<sup>75</sup>Arbitrator Foster, E7C-2H-C-5328 et al., November 16, 1989

Since the Postal Service is also a government bureaucracy our problems will also inevitably involve mountains of paperwork. We would never under emphasize the importance of documentation. Document! Document! Document! And, when all else fails, document some more. That is the stuff that winnable grievances are made of. But, never lose sight of the fact that grievances are also about people. "People" means interviews. It means collecting witness statements. As our good friend Jerry Fabian so often reminds us, it usually means taking "copious notes." In other words, it means good, old-fashioned, often tedious, hard work.

Article 17 expressly gives us the "right to interview the aggrieved employee(s), supervisors and witnesses." Yet, all too often we still see otherwise well investigated grievance files without a single witness statement - without a single interview note. When a grievance goes to arbitration, the Union usually puts on its case by introducing witnesses. Even most documents are entered into evidence through these witnesses. Why is it that we so often forget to thoroughly interview and process these witnesses at the earliest step? This officer still cringes every time I see a new steward, in his/her haste to "investigate" a grievance, forget to interview (or at least get a statement from) the grievant. They were denied overtime; they got the Letter of Warning; they observed the supervisor doing bargaining unit work. Isn't what they saw; what they did; or, how they felt about it, important enough to include in our grievance record? Ultimately and most importantly, it is this personal ground work that not only wins our grievances; it sells our members on the strategies and effectiveness of their Union.

Your right to interview includes a right to interview the aggrieved employee (including a right to review related documents with the aggrieved member).<sup>76</sup> It includes a right to interview the issuing supervisor or any other employee who is involved in a grievance<sup>77</sup> including a concurring official.<sup>78</sup> In cases where management is relying upon a Postal Inspection Service Investigative Memorandum, the investigating Union steward has a right to interview the Postal Inspectors who conducted the Postal investigation.<sup>79</sup> The right to interview witnesses includes the right to interview employees in other crafts.<sup>80</sup> It also includes the right on-the-clock time to interview

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<sup>76</sup>Step 4 Decision, NB-S-6239 (N-146), November 11, 1975

<sup>77</sup>Step 4 Decision, NC-W-12728, November 29, 1978

<sup>78</sup>Step 4 Settlement, H1C-4A-C 19626, October 24, 1983

<sup>79</sup>Step 4 Settlement, H7N-3W-D 3069, September 23, 1988

<sup>80</sup>Step 4 Settlement, H1T-5N-C 28879, June 7, 1985

customers<sup>81</sup> or other non-postal employees<sup>82</sup> when appropriate. The right to conduct interviews includes the right to a suitable private area for conducting interviews when doing so on postal property.<sup>83</sup>



## **JOB DISCUSSIONS**

Perhaps we should take time to mention at least one record that we are not entitled to get under Article 17. Supervisor's (as well as the employee) are authorized by Article 16, Section 2, to keep personal notes of official job discussions given to craft employees. While the supervisor is required to tell us the date and subject of the job discussion<sup>84</sup> the supervisor's personal notes of the discussion are not available for review by the union steward.<sup>85</sup> Of course, while the supervisor may also tell other supervisors the date and subject of the discussion, once the supervisor shares his/her actual job discussion note[s] with some other person, the Employee & Labor Relations Manual, Part 314.5 teaches that those notes then become level 2 records subject to be released under Article 17.



## **REQUESTING INFORMATION ON AN UNTIMELY GRIEVANCE**

Union stewards are not precluded from obtaining access to materials necessary to process a grievance because management considers the grievance to be untimely.<sup>86</sup> The issue of timeliness is ultimately one to be determined through the grievance/arbitration procedure. The Union still has reasonable cause to pursue their argument by requesting appropriate documentation.

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<sup>81</sup>Step 4 Decision, NC-W-9980, July 3, 1978

<sup>82</sup>Step 4 Pre-Arb, H8N-3W-C 21294, January 12, 1989

<sup>83</sup>APWU/USPS MOU, December 6, 1982; Step 4 Pre-Arb, H8C-3D-C 25721, May 14, 1982

<sup>84</sup>Step 4 Settlement, H4C-4C-C 32156, April 21, 1988; Step 4 Settlement, H4C-5C-C 45726, July 27, 1988

<sup>85</sup>Step 4 Decision, NC-S-10618, October 6, 1978

<sup>86</sup>Step 4 Settlement, H1C-5E-C-2321, May 12, 1982



## **REQUESTING INFORMATION AFTER GRIEVANCE HAS BEEN PROCESSED TO A HIGHER STEP**

Many times it becomes necessary to develop additional information after a grievance has been appealed to a higher step. It may be that this information is requested by a Union official to prove contentions the steward believed were agreed to by both parties or that issues and/or rebuttals were raised at a higher step or in preparation for arbitration. Maybe (strictly hypothetically, of course, because I do know this could never really happen) the Step 1 steward simply forgot to seek certain relevant information or documentation. Or perhaps your National Business Agent is just overly cautious and is requesting more information than really is necessary. No matter what the reason, when additional documentation or interviews are requested, you have a contractual right to obtain that information. A request for information should never be denied solely on the basis that the grievance has been processed to a higher step in the grievance/arbitration process.<sup>87</sup>



## **MANAGEMENT (204-B) APPLICATIONS**

Our APWU Constitution prohibits officers and stewards from serving as 204-B's or applying for management (EAS) positions. A member who has applied for a management position is also ineligible to run for office or become a steward unless he/she withdraws that application. It is a relatively simple matter of observation to know who has served as a 204-B in your office. Knowing who has applied for management positions is not quite so simple. However, if the local union submits a list of its officers and stewards (or candidates for office) the Postal Service is obligated to indicate which (if any) have applied for a supervisory position within the past two (2) years.<sup>88</sup>

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<sup>87</sup>Step 4 Decision, AB-C-4422, June 17, 1975; Step 4 Decision, NC-M-3584, March 7, 1977

<sup>88</sup>Step 4 Pre-Arb, H4C-3W-C 27068, February 13, 1990



## **WHO MUST PROVIDE THE INFORMATION?**

Probably just because this is the Postal Service where nothing can be quite as simple as it seems, once it is agreed that the Union is entitled to information under Article 17, a dispute usually erupts over who in management is required to provide the particular documentation. Sometimes (and I know this never really happens) management accuses us of trying to harass a particular supervisor by making him/her chase all over retrieving documentation not normally under his/her control. Be careful when demanding that a specific supervisor provide requested documentation. Management does retain the right to designate who will provide appropriate documents to Union stewards.<sup>89</sup> For example, a Time and Attendance Supervisor may be designated to provide leave records or a Finance Officer might be responsible for providing payroll records.



## **INFORMATION MUST BE PROVIDED IN A TIMELY MANNER**

A right to information is not worth much if you can't get it when you need it. It doesn't take us long to realize that we have time limits for processing our grievances. Whether it is to meet the contractually imposed time limits for processing grievances or the self-imposed constraints of orderly grievance processing, we need to receive timely responses to our information requests. There should be no "game playing" with regard to providing the steward copies of, or access to documents, files and other records necessary for processing a grievance or determining if the grievance exists. The information must be provided in a timely manner.<sup>90</sup>

What is a timely response to an information request? The Administrative Support Manual, at Parts 352.522 and 353.427 gives us guidance with it's provision that custodians must respond to both Freedom of Information Act and Privacy Act requests within ten working days. Since our Article 17 information requests will normally fall within these parameters this should establish the outer time limits for a timely management response.

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<sup>89</sup>Step 4 Settlement, H1C-2F-C 1244, April 23, 1982

<sup>90</sup>Step 4 Settlement, H8C-3W-C 35511, December 18, 1981



## **A MATTER OF COST**

When submitting information requests under Article 17 or Article 31 do not forget that Article 31 specifically provides that while the Employer must furnish such information, the Employer may also "require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information." Your Local Treasurer, being the fiducially responsible individual treasurers always are, will undoubtedly appreciate your keeping this thought very much in mind!

The "costs reasonably incurred" in obtaining requested information can be ascertained by referring to the fee schedule outlined in Section 4-6.5 of USPS Handbook AS-353, *Guide to Privacy and the Freedom of Information Act*,<sup>91</sup> which replaced<sup>92</sup> Subchapter 35 of the Administrative Support Manual (ASM).<sup>93</sup> Management can provide the Union with an estimate and may require payment in advance. Of course, with this in mind, it follows that requests for information should not be denied solely on the basis that they are burdensome or time consuming.<sup>94</sup> In a very instructive Southern Region Arbitration Award, Arbitrator Brandon ruled,

"The Postal Service, Orlando, Florida, violated Article 31, Section 3, of the National Agreement when it imposed charges on the Union for the production of information which would have been waived for those falling in the "all other requesters" category provided under the Administrative Support Manual. The grievance is therefore sustained. The Postal Service is directed to cease charging the Union for production of information which charges would be waived with respect to "all other requesters" and to reimburse the Union for any payments of charges found improper herein and any like charges imposed subsequent to the filing of the grievance which is the subject of this Award."<sup>95</sup>

The referenced fee schedule in Section 4-6.5.b of USPS Handbook AS-353 provides for reimbursement for manual search or review time at \$32 / hour. The

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<sup>91</sup>USPS Handbook AS-353, Guide to Privacy and the Freedom of Information Act (2005).

<sup>92</sup>See September 2003 Transmittal Letter for USPS Handbook AS-353.

<sup>93</sup>Previous Agreements tied reimbursement costs to Parts 353.634 of the ASM, See, for instance, Step 4, H7C-3W-C 34068, March 16, 1992.

<sup>94</sup>Step 4 Settlement, H4C-1K-C 41761, June 14, 1988

<sup>95</sup>Arbitrator Brandon, S7C-3W-C-33635, June 3, 1990



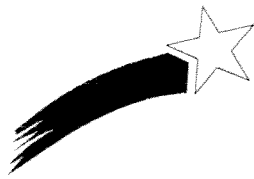
fee for duplicating any record is 15 cents per page. However, a Union's request for information falls with the "All Other Requesters" category of AS-353, 4-6.5.b, which provides an exception in that the first 100 pages of duplication and the first two (2) hours of search time are provided without charge. In addition AS-353, 4-6.5.a provides that additional costs above this exclusion are waived **unless they exceed \$10.**

It is clear that the steward should wisely give careful thought when requesting copies of documents or records from management. Will the request exceed 100 pages? Will it likely require more than two (2) hours of search time? (Parenthetically, we would remind you that "search time" is time spent searching for records. "Search time" does not include time spent copying records. Reimbursement for time spent copying records is contained within the duplication fee.)

The steward has another option which should always be considered before just paying for copies of management's records. Article 17 does provide for the "review" of documents and records. The steward should always consider exercising his/her contractual right to review and hand-copy necessary documents relevant to a grievance.<sup>96</sup> Whether or not this is practical must be determined on a case-by-case basis. The creative steward will realize there are always other options to consider as well. Consider whether information requests can be split between multiple grievances. On the other hand, realize that according to AS-353, 4-6.2 the USPS is entitled to aggregate multiple requests when it is clear the Union is merely breaking a single request down into a series of requests in order to avoid the assessment of fees. Requests made by more than one steward can only be aggregated when the USPS has a concrete basis on which to conclude that the requesters are acting in concert.

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<sup>96</sup>Step 4 Settlement, H4C-4G-C 9747, June 3, 1986



## **PAYMENT OF STEWARDS**

Article 17, Section 4 authorizes the payment of stewards "for time actually spent in grievance handling, including investigation and meetings with the Employer [as well as] time reasonably necessary to write a grievance" at Step 1 and Step 2.



## **THE GRIEVANCE PROCESS**

The Union steward may properly complete the Union's Step 1 Worksheet while interviewing the aggrieved employee or preparing for the Step 1 meeting.<sup>97</sup> The steward is so entitled to reasonable investigative on-the-clock time for handling grievances. Such investigative time could conceivably include the mechanics of copying, logging or converting of information from original documents to graphs, forms, notes, etc.<sup>98</sup> as well as time to review documents provided in preparation for grievance presentation.<sup>99</sup> Stewards are entitled by Article 17 to be compensated for Step 2 meetings scheduled within the employee's tour. However, it should be noted that there is no contractual obligation to hold Step 2 meetings during the steward's normal schedule.<sup>100</sup> Nor is there any provision for compensating employees whose attendance at grievance hearings extends beyond their normally scheduled work hours.<sup>101</sup> The Union representative is entitled to time on the clock to prepare corrections or additions to management's Step 2 Grievance Decision,<sup>102</sup> as well as to prepare the Step 3 appeal.<sup>103</sup> It should be noted, however, that only the Union's Step 2 representative is entitled

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<sup>97</sup>Step 4 Settlement, H1C-3P-C 6922, August 20, 1982

<sup>98</sup>Step 4 Settlement, H8C-3D-C 21690, August 4, 1981

<sup>99</sup>Step 4 Settlement, H4N-3W-C 27743, May 1, 1987

<sup>100</sup>Step 4 Settlement, H1C-5F-C 9523, May 11, 1983

<sup>101</sup>Step 4 Settlement, H1C-5H-C 17671, April 27, 1984

<sup>102</sup>Step 4 Settlement, A8-S 0309, December 7, 1979

<sup>103</sup>Arbitrator Mittenthal, A8-E-021, December 10, 1979

to time on-the-clock to prepare the additions and corrections.<sup>104</sup>



## **TRAVEL TIME**

When it becomes necessary for a steward to leave his/her work area to investigate, present and adjust grievances, management will compensate the steward for the time spent traveling to and from his work area within the same building.<sup>105</sup> However, management is not obligated for payment to stewards involved in the processing of grievances for travel time between stations.<sup>106</sup> Similarly, there is no obligation to pay a grievant for time spent traveling between buildings or stations to and from a Step 2 meeting.<sup>107</sup>

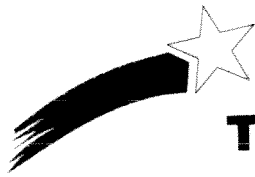
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<sup>104</sup>Step 4 Decision, A8-S-0759, July 16, 1980

<sup>105</sup>Step 4 Settlement, H1C-3W-C 8906, October 6, 1982

<sup>106</sup>Step 4 Decision, H8C-5K-C 21926, January 18, 1982

<sup>107</sup>Arbitrator Mittenthal, H8N-1A-C 7812, January 18, 1982



## **THE GRIEVANCE PROCEDURE & THE UNION'S RIGHTS**

The National Agreement gives employees the right to file their own grievances at Step 1. Article 15 also clearly permits the Union to initiate grievances to remedy asserted contract violations adversely affecting either employees' or the Union's rights.<sup>108</sup>



### **THE IMMEDIATE SUPERVISOR/STEP 1**

Grievances are to be filed with the immediate supervisor. The immediate supervisor in a smaller office, for instance, could be the Postmaster.<sup>109</sup> The immediate supervisor could also be a 204-B.<sup>110</sup> When a Union steward files a Class Action Step 1 grievance it should also be filed with that steward's immediate supervisor.<sup>111</sup>

The supervisor must discuss all grievances filed by the Union at Step 1. He/She may not summarily dismiss or refuse to discuss a matter simply because of a belief that no valid grievance exists.<sup>112</sup> Note, however, that the Union/Grievant has an equal obligation to discuss all grievances at Step 1.<sup>113</sup> It is not sufficient to merely "file" the grievance without discussion.

The intent of the parties is to resolve grievances at the lowest possible level. Normally, the parties are expected to meet on Step 1 grievances in person. However, in unusual circumstances, to accommodate the process a Step 1

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<sup>108</sup>Sr. Asst PMG Brown Memorandum dated Sep. 24, 1973; Step 4 Agreement dated July 8, 1977

<sup>109</sup>Step 4 Settlement, H1C-NA-C 17, October 1, 1982

<sup>110</sup>Step 4 Settlement, H4N-5E-C 36561, February 26, 1988

<sup>111</sup>Step 4 Settlement, H1C-2W-C 12866, August 3, 1984

<sup>112</sup>Step 4 Settlement, A8-W-538, February 28, 1980

<sup>113</sup>Arbitrator Haber, NC-C 5187-D, September 14, 1987

grievance may be done by telephone.<sup>114</sup> Similarly, the Step 1 Oral decision could be made by telephone as well.<sup>115</sup>

Many offices have a practice of reducing Step 1 resolutions to writing. This is the best possible method of documenting agreements between the parties and we highly encourage it. However, it must properly be noted that, contractually, neither party is required to reduce a Step 1 agreement to written format.<sup>116</sup> The Step 1 is oral. If the grievance is denied, the supervisor must initial the Union's Step 2 appeal form to verify the date of the Step 1 decision upon request.<sup>117</sup>



## **THE GRIEVANT'S RIGHTS**

As noted above, the employee has the right to file her own grievance at Step 1. However, the employee also has a right to the assistance of a Steward at Step 1 as well as a right to meet with the Steward before the Step 1 meeting.<sup>118</sup> There is no contractual right for the grievant to accompany the steward during grievance investigation.<sup>119</sup> However, the steward may certainly go over related documents with the grievant during her Step 1 interview with the grievant.<sup>120</sup> The grievant does have a right to be present at the time a Step 1 decision is rendered.<sup>121</sup> The Union has the right to determine the necessity of the grievant's presence at the Step 2 meeting.<sup>122</sup>

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<sup>114</sup>Step 4 Pre-Arb, H4C-3W-C 27397, January 19, 1989

<sup>115</sup>Step 4 Settlement, H1C-5K-C 5466, September 14, 1982

<sup>116</sup>Step 4 Settlement, H1C-3W-C 9224, October 6, 1982

<sup>117</sup>Step 4 Pre-Arb, H4C-3F-C 3994 et al., August 30, 1985

<sup>118</sup>Step 4 Decision, APWU #4761, August 1, 1973.

<sup>119</sup>Step 4 Settlement, H1N-3U-C 36133, February 20, 1985

<sup>120</sup>Step 4 Decision, NB-S 6239 (N-146), November 11, 1975

<sup>121</sup>Step 4 Settlement, H4N-3W-C 8797, March 21, 1986

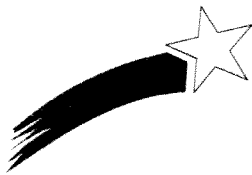
<sup>122</sup>Step 4 Settlement, H4C-5D-C 5830, December 3, 1985



## **THE UNION'S RIGHT TO BE PRESENT AT STEP 1**

As discussed above, Article 15 leaves to the employee the option of having a Union representative present at Step 1 discussions with the supervisor. Section 9(a) of the National Labor Relations Act, on the other hand, mandates that the Union must be given the opportunity to be present when grievances are adjusted.<sup>123</sup>

Section 9(a) insures that no "under the table" deals will be made between management and individual employees. Note, however, that this opportunity to be present does not include the right to reject a settlement offer. If the Union representative feels that a settlement is inconsistent with the National Agreement, the Union may file a grievance on that issue.



## **STEWARDS REPRESENTING STEWARDS**

The steward who chooses to represent himself may well have a fool for a client. Nonetheless, nothing in Article 15 or 17 denies the right of a steward to process his/her own grievance at Step 1 or at Step 2.<sup>124</sup> At the same time, nothing in Article 17 prohibits the steward or alternate steward from being represented by another steward when filing a grievance either.<sup>125</sup> This does not mean, of course, that the steward has any more right to "steward shop" than any other employee. He should be represented by the steward, or appropriate alternate, in his section.<sup>126</sup>

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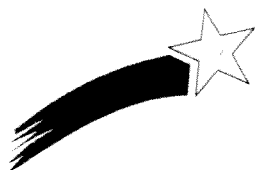
<sup>123</sup>Step 4 Pre-Arb, H7C-4J-C 18047, June 17, 1992

<sup>124</sup>Step 4 Decision, N-E-874, July 7, 1972

<sup>125</sup>Step 4 Settlement, H1C-3W-C 9616, June 24, 1983; Step 4 Settlement, H1C-3W-C 41731, February 15, 1985

<sup>126</sup>Step 4 Decision, NC-S-7847, October 21, 1977

An employee may also sign, in her capacity as a Union steward, agreement for her own request for a temporary schedule change.<sup>127</sup> We do not suggest that this good policy. We only note the fact that Article 17 does not prohibit the practice.



## **WEINGARTEN RIGHTS**

An employee has a right to Union representation in any meeting with the employer which the employee reasonably believes might result in disciplinary action against that employee. This right of an employee to a steward in an investigatory interview situation was formulated by the United States Supreme Court. [See Weingarten v NLRB, 420 U.S. 251 (1975)]

In order to effect his Weingarten rights, the employee must: 1) reasonably believe that discussions during the meeting might lead to discipline against the employee; and, 2) request such representation.<sup>128</sup> The National Labor Relations Board (NLRB) has extended the Weingarten rule to include a right for a pre-interview consultation between the steward and employee. [See Pacific Tel. & Tel. Co., 111 LRMM (1982)] There is no duty to bargain with the union representative during the investigatory interview. However, it is also clear that the employer may not require the steward to remain passive during the interrogation.<sup>129</sup>

Weingarten rights are limited to investigatory interviews. Employees are not entitled to Union representation during an official job discussion, for example.<sup>130</sup> Similarly, employees are not entitled to the presence of a steward if they are merely called to the supervisor's office to receive a disciplinary action.<sup>131</sup>

[For an excellent analysis of the legal principles of the Weingarten rule by National Arbitrator and Law Professor Carlton J. Snow, see Appendix D.]

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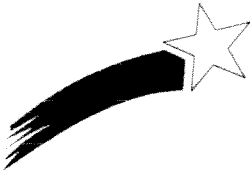
<sup>127</sup>Step 4 Settlement, H1C-5G-C 30220, May 13, 1985

<sup>128</sup>Step 4 Settlement, H4C-4K-C 11812, December 9, 1986

<sup>129</sup>Chief Postal Inspector Fletcher's letter dated May 24, 1982

<sup>130</sup>Step 4 Settlement, H1C-1J-C 23689, February 27, 1984; Step 4 Settlement, H1C-3W-C 21550, August 24, 1983

<sup>131</sup>Step 4 Settlement, H1C-3W-C 8243, 10-14-82



## **STEWARD IMMUNITY**

Another important "Union Right" which finds its source in the law is the concept of "Steward's Immunity." For decades, the principle of "Steward's Immunity," has been recognized by arbitrators and the National Labor Relations Board (NLRB). Sections 7 and 8(a)(1) of the National Labor Relations Act are the steward's safeguard against retaliation for statements made during the course of union representation. There is a general right under these sections for employees "...to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection..." These provisions are interpreted by the NLRB as prohibiting the discipline of stewards for abusive remarks made to a supervisor during a grievance meeting or bargaining session. This is distinguishable from the situation where an employee ordinarily can be disciplined for disrespect to a supervisor.

The Board applies the special immunity rule so that stewards are not prevented from carrying out their duty to represent the bargaining unit. Without the rule, stewards would be hesitant to speak freely. They would have to carefully choose every word they said to management or hold back from zealously presenting a grievance for fear of overstepping the line that is toed by ordinary employees.

Arbitrators have so unanimously adopted the general theme of the NLRB special immunity rule that rarely is the source of this rule cited in arbitration opinions. "Steward Immunity" has become somewhat of a common law or unwritten rule of labor arbitration.

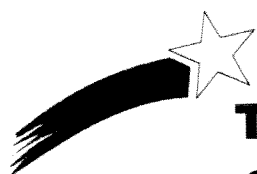
What is not quite so unanimous is agreement on the precise parameters of the immunity rule. In grievances involving similar facts, arbitrators have handed down varying opinions as to whether a steward's immunity has shielded him/her from discipline. Consequently, one arbitrator might view your conduct as being proper while another reaches quite the opposite conclusion. Exercise caution in applying arbitration-made rules to your personal situation.

As a general rule, "Steward's Immunity" takes effect when it is necessary for a steward to investigate or adjust a grievance or to investigate a specific problem to determine whether to file a grievance. A steward is generally protected against discipline when they raise their voice, use profanity, or other berating language while in the status of a steward. Both the location and subject of the discussion are taken into consideration.



Always remember that you are wearing two (2) hats simultaneously; the hat of the obedient employee and the hat of the zealous steward. This does not mean you must "tiptoe" around a supervisor when investigating or discussing a matter. It does mean that you should always be aware of what "hat" you are wearing at the particular moment. Your dual responsibilities as an employee and as a steward requires a common sense application.

[For more detailed information on Steward's Immunity see reprint from CBR 88-05 (October 1988) at Appendix E.]



## **THE PROBLEM WITH SUPER-SENIORITY**

While serving as a steward or chief steward, an employee may not be involuntarily transferred to another tour, to another station or branch, or to another installation. Management may, however, assign the steward to a different work location on the same tour or in the same station.<sup>132</sup> Management may also take other actions which are appropriate or necessary, such as excessing the junior full-time employee in order to provide the steward with an assignment on/at his original tour or station.<sup>133</sup>

Article 17, Section 3 does not prohibit management from changing a steward's work hours<sup>134</sup> or off days<sup>135</sup> as long as there is no change of tour. Article 17 does not prohibit a light/limited duty assignment on a different tour.<sup>136</sup> Article 17 contains no provisions which prohibit the reassignment of alternate stewards.<sup>137</sup>

The issue of a steward's super-seniority can be a touchy one for the Union and for the steward as well. Excessing inevitably becomes an emotional issue for

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<sup>132</sup>Step 4 Settlement, H1C-3W-C 42377, June 5, 1985

<sup>133</sup>Step 4 Settlement, H1N-4B-C 26932, July 20, 1984

<sup>134</sup>Step 4 Decision, H1C-3W-C 33981, October 4, 1984

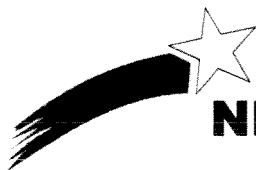
<sup>135</sup>Step 4 Settlement, H1C-5F-C 4151, October 26, 1982

<sup>136</sup>Step 4 Settlement, H8T-2F-C 10193, April 20, 1984

<sup>137</sup>Step 4 Decision, H1C-3W-C 14358, March 22, 1983

those affected. When a junior steward exercises super-seniority to remain while a more senior employee is excessed the emotion becomes super-charged. This can become a political liability for the Union and adversely impact the credibility of the steward.

Ultimately, in this writer's opinion, super-seniority should only be exercised for the benefit of the whole, and not on behalf of the individual steward. Management should never be permitted to use excessing to rid themselves of a "problem" steward, thus denying the membership on that tour or at that station effective representation. A steward, on the other hand, should not be permitted to exercise super-seniority merely for their own personal benefit to the detriment of senior employees.



## **NEW EMPLOYEE ORIENTATION**

Article 17, Section 6, guarantees the local Union "ample time" to participate in new employee orientation.<sup>138</sup> Union representatives may properly distribute Union related materials<sup>139</sup> and employees may complete dues withholding authorizations<sup>140</sup> during employee orientation. Nothing in Article 17 precludes management from sitting in on or observing the Union's new employee orientation if they so choose.<sup>141</sup> While the APWU does not agree, management's contention that Article 17 creates no obligation to allow the Union to give orientation to employees transferring from another installation is worthy of note.<sup>142</sup>

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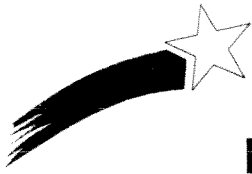
<sup>138</sup>Step 4 Decision, NC-W-5872, May 20, 1977

<sup>139</sup>Step 4 Settlement, H8W-3W-C 34023, August 10, 1982

<sup>140</sup>Step 4 Settlement, H1C-5K-C 424, April 19, 1984; Step 4 Settlement, H4N-4J-C 2536, August 29, 1985.

<sup>141</sup>Step 4 Settlement, H1C-3W-C 4470, May 26, 1982

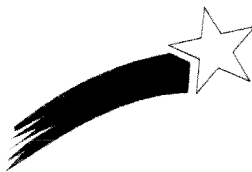
<sup>142</sup>Step 4 Decision, H1C-5L-C 27183, December 7, 1984



## **LABOR/MANAGEMENT COMMITTEES**

Article 17, Section 5, provides for regularly scheduled Labor/Management Committee meetings at the local level. The local Union is entitled to one paid designated representative at the Labor/Management Committee meeting. Besides this representative, the APWU may have present one designee representing a different craft within the APWU if there is an item on the Labor/Management agenda pertaining to that craft. That individual is to be compensated on a no loss, no gain basis for the time necessary to dispose of that specific item.<sup>143</sup>

The parties expect that the Labor/Management Committee process will be a good faith effort to resolve issues. Management is required to make every effort to respond to all issues discussed at Labor/Management Committee meetings in as short a time as practical.<sup>144</sup>



## **BULLETIN BOARDS**

Article 22 of the parties' National Agreement requires the Employer to provide bulletin boards for the exclusive use of the Union in postal facilities. The Union determines what is, and what is not to be posted on these bulletin boards. Perhaps the most controversial postings (at least for non-members) have been when the Union has chosen to post so-called "scab lists." The Union does have a right to post non-member lists on their bulletin boards in the Post Office.<sup>145</sup> Management may not interfere with the posting of notices on the Union's bulletin boards until or unless the Postal Service can prove that the material is unsuitable for posting or will cause an adverse impact upon the ability of postal authorities to

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<sup>143</sup>Step 4 Decision, A-C-1185(91), January 10, 1973

<sup>144</sup>Step 4 Decision, NC-S-11532, October 27, 1978

<sup>145</sup>Step 4 Pre-Arb, H8C-NA-C 49, October 15, 1981; Step 4 Settlement, H4C-4L-C 21829, May 8, 1987

management its operations efficiently and productively.<sup>146</sup> The Postal Service has acknowledged that posting of non-member lists are neither illegal nor improper.<sup>147</sup>

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<sup>146</sup>Arbitrator Gamser, N8-W 0214, July 24, 1981

<sup>147</sup>Assistant PMG Gildea letter dated June 30, 1975