



# American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Douglas C. Holbrook  
Secretary-Treasurer  
(202) 842-4215

March 16, 1992

Mark Dimondstein, Local President  
Greater Greensboro Area Local  
P. O. Box 20591  
Greensboro, NC 27420

Dear Brother Dimondstein:

**National Executive Board**

- Moe Bitler  
President
- William Burrus  
Executive Vice President
- Douglas C. Holbrook  
Secretary-Treasurer

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Industrial Relations Director

Ken D. Wilson  
Director, Clerk Division

Thomas K. Freeman, Jr.  
Director, Maintenance Division

Donald A. Ross  
Director, MVS Division

George N. McKeithen  
Director, SDM Division

Norman L. Steward  
Director, Mail Handler Division

**Regional Coordinators**

James P. Williams  
Central Region

Philo C. Flemming, Jr.  
Eastern Region

Elizabeth "Liz" Powell  
Northeast Region

Archie Salisbury  
Southern Region

Raydell R. Moore  
Western Region

Thank you for your letter dated January 26, 1992 concerning the rights and obligations of stewards. I have asked our General Counsel's Office to give me some guidance in answering your letter, and this letter reflects the guidance they provided.

Stewards often receive confidential information when they are representing individuals either in the grievance procedure or otherwise as part of their responsibilities in enforcing the collective bargaining agreement. Stewards have a qualified privilege not to reveal information they have received in the course of their responsibilities as stewards. If the Postal Service interrogates stewards about what they have learned, such interrogation violates the National Labor Relations Act because it interferes with the performance of their union responsibilities.

The Code of Ethical Conduct under the Employee and Labor Relations Manual applies to Shop Stewards. It does not, however, give the Postal Service a right to interrogate Shop Stewards about what they learn as Shop Stewards. A distinction must be made, however, between information obtained by Shop Stewards acting in their capacity as stewards and information they obtain in other ways not resulting from performance of their union duties. Shop Stewards have no more privilege against cooperation with official investigations than any other employee, unless the Postal Service is seeking to obtain information the steward possesses because of the steward relationship with a member or members of the union.

Mark Dimondstein  
March 16, 1992  
Page 2

The Privacy Act does not apply to the Union. This is not to say that there are no privacy considerations in information obtained by the Union or by its stewards. Individuals in our society have a right of privacy and that right should not be invaded without justification. In any revelation of information concerning individuals, the individual's dignity and right of privacy should be respected.

Finally, although your letter did not raise the question, I want you to know that stewards who obtain information concerning criminal conduct in the course of the performance of their duties as stewards are not privileged to refuse to disclose that information in response to a subpoena from a federal or state grand jury. If confronted by legal process issued by or under the auspices of a court, stewards do not have the right to assert the type of professional privilege asserted by doctors or lawyers. Thus, it is possible for stewards to be placed in a difficult circumstance or even compelled to provide testimony against fellow union members if they hear confessions or receive incriminating evidence and are later subpoenaed to testify about what they know or heard.

I hope these comments sufficiently answer your questions.

With best wishes,

Yours In Union Solidarity,

Douglas C. Holbrook  
Secretary-Treasurer

DCH:mjm



## American Postal Workers Union, AFL-CIO

Greater Greensboro Area Local 711, P.O. Box 20591, Greensboro, NC 27420

1/26/92

Doug Holbrook  
Secretary-Treasurer  
American Postal Workers Union  
1300 L Street, N.W.  
Washington, D.C. 20005

Dear Brother Holbrook,

I hope this short letter finds you well as we head into the new year.

Could you please advise me on the matter of the Privacy Act obligations of Shop Stewards. If a steward is told something in confidence what are the legal obligations of that steward regarding the matter? Are there any aspects of the National Labor Relations Act that apply to the relationship of the steward to the grievant regarding disclosure of information? What are the ramifications if there are?

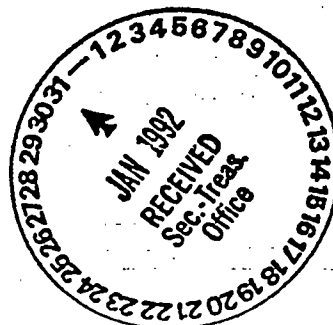
Furthermore, does the Code of Ethical Conduct under the ELM apply the relationship of Shop Steward and grievant?

Your answers to these questions would be most appreciated as well as any other thoughts you have on the above matter.

Fraternally,

A handwritten signature in cursive script, appearing to read 'Mark Dimondstein', is written below the word 'Fraternally,'.

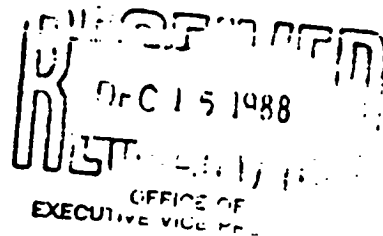
Mark Dimondstein  
Local President  
Greensboro Area Local





UNITED STATES POSTAL SERVICE  
Labor Relations Department  
475 L'Enfant Plaza, SW  
Washington, DC 20260-4100

December 12, 1988



Mr. William Burrus  
Executive Vice President  
American Postal Workers  
Union, AFL-CIO  
1300 L Street, NW  
Washington, DC 20005-4107

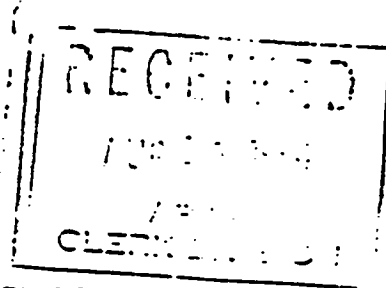
Dear Bill:

This letter is in response to your correspondence of October 20 regarding a previous letter of inquiry of the U.S. Postal Service's intent to modify its regulations to comply with a National Labor Relations Board's (NLRB) decision in Case 32-CA-4640 (P).

It is the policy of the U.S. Postal Service to comply with its contractual and legal obligations. In Pacific Telephone & Telegraph v. NLRB, 711 F. 2d 134, the Ninth Circuit Court of Appeals (which covers California and several other western states) held that an employee is entitled to consult with his representative prior to an investigative interview. Since preinterview consultation is the law in that circuit, and the U.S. Postal Service's policy is to comply with that law, no policy modifications will be made. The U.S. Postal Service will continue to comply with applicable provisions of the National Agreement, with regard to this matter, in installations not covered by the Ninth Circuit Court.

Sincerely,

*for William J. Downes*  
Joseph J. Mahon, Jr.  
Assistant Postmaster General



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UNITED STATES POSTAL SERVICE  
475 L'Enfant Plaza, SW  
Washington, DC 20260

AUG 8 1984

Mr. James Connors  
Assistant Director  
Clerk Craft Division  
American Postal Workers  
Union, AFL-CIO  
817 14th Street, N.W.  
Washington, D.C. 20005-3399

Re: Young  
Charleston, WV 25301  
H1C-2M-C 7183

Dear Mr. Connors:

On July 10, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the grievant was entitled to have a union steward present during a discussion under Article 16, Section 2, of the National Agreement.

After further review of this matter, we agreed that there was no national interpretive issue fairly presented as to the meaning and intent of Article 16 of the National Agreement. This is a local dispute over the application of Article 16, Section 2, of the 1981 National Agreement as discussions of this type shall be held in private between the employee and the supervisor. However, in cases where a reasonable basis exists for the employee to believe that the discussion will result in disciplinary action, a steward may be present. The parties at the local level should apply the above understanding to the specific fact circumstances in order to resolve this case.

Accordingly, we agreed to remand this case to Step 3 for further consideration by the parties.


Please sign and return the enclosed copy of this decision as acknowledgment of our agreement to remand this grievance.

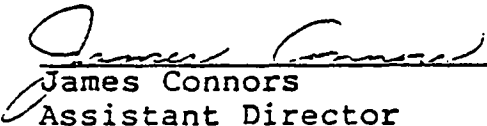
Mr. James Connors

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Time limits were extended by mutual consent.

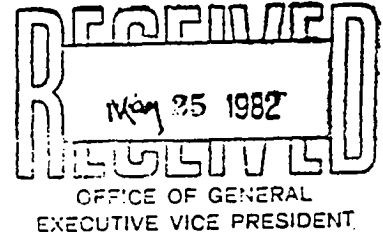
Sincerely,

  
\_\_\_\_\_  
Thomas J. Lang  
Labor Relations Department

  
\_\_\_\_\_  
James Connors  
Assistant Director  
Clerk Craft Division  
American Postal Workers  
Union, AFL-CIO



CHIEF POSTAL INSPECTOR  
Washington, DC 20260



May 24, 1982

Mr. William Burrus  
General Executive Vice President  
American Postal Workers Union, AFL-CIO  
817 14th Street, N.W.  
Washington, DC 20005

Dear Mr. Burrus:

This replies to your May 10, 1982, letter to Senior Assistant Postmaster General Joseph Morris concerning the role of stewards or union representatives in investigatory interviews. Specifically, you expressed concern that the Inspection Service has adopted a policy that union representatives be limited to the role of a passive observer in such interviews.

Please be assured that it is not Inspection Service policy that union representatives may only participate as passive observers. We fully recognize that the representative's role or purpose in investigatory interviews is to safeguard the interests of the individual employee as well as the entire bargaining unit and that the role of passive observer may serve neither purpose. Indeed, we believe that a union representative may properly attempt to clarify the facts, suggest other sources or information, and generally assist the employee in articulating an explanation. At the same time, as was recognized in the Texaco opinion you quoted, an Inspector has no duty to bargain with a union representative and may properly insist on hearing only the employee's own account of the incident under investigation.

We are not unmindful of your rights and obligations as a collective bargaining representative and trust that you, in turn, appreciate the obligations and responsibilities of the Inspection Service as the law enforcement arm of the U. S. Postal Service. In our view, the interests of all can be protected and furthered if both union representative and Inspector approach investigatory interviews in a good faith effort to deal fairly and reasonably with each other.

Sincerely,

  
K. H. Fletcher

April 24, 1986

Mr. William Burrus  
Executive Vice President  
American Postal Workers  
Union, AFL-CIO  
817 14th Street, N.W.  
Washington, D.C. 20005-3399

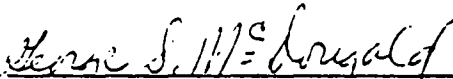
Dear Mr. Burrus:

Recently, you met with Sherry Cagnoli, Office of Labor Law, in prearbitration discussion of case number HLC-NA-C 96, Washington, D.C. The parties mutually agreed to a full and final settlement of this case as follows:

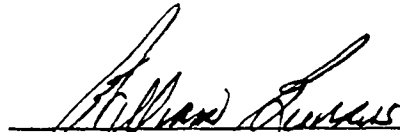
The parties agree that the right to a steward or union representative under Article 17, Section 3 applies to questioning of an employee who has or may have witnessed an occurrence when such questioning becomes an interrogation.

Please sign and return the enclosed copy of this letter acknowledging your agreement to settle this case, and withdrawing HLC-NA-C 96 from the pending national arbitration listing.

Sincerely,



George S. McDougald  
General Manager  
Grievance and Arbitration  
Division  
Labor Relations Department



William Burrus  
Executive Vice President  
American Postal Workers  
Union, AFL-CIO

Enclosure

4-24-86  
(Date)





UNITED STATES POSTAL SERVICE  
475 L'Enfant Plaza, SW  
Washington, DC 20260

August 28, 1984

Mr. William Burrus  
Executive Vice President  
American Postal Workers Union,  
AFL-CIO  
817 14th Street, N. W.  
Washington, D. C. 20005-3399

Re: M. Biller  
Washington, D. C. 20005  
H1C-NA-C 96

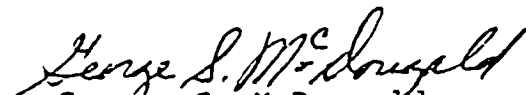
Dear Mr. Burrus:

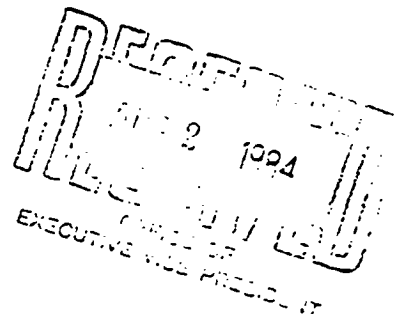
This is in response to your August 3 letter requesting clarification of our August 1 letter concerning the above-referenced grievance.

Our August 1 letter to you was not intended to imply that if an employee who is meeting with the Inspection Service as a witness believes that he is being interrogated, that employee may request representation. Talking with a witness is an interview, and does not fall within Article 17, Section 3, that requires Union representation to be provided upon request during the course of an interrogation.

I hope that this response will serve to clarify the matter.

Sincerely,

  
George S. McDougald  
General Manager  
Grievance Division  
Labor Relations Department





# American Postal Workers Union, AFL-CIO<sup>98R</sup>

817 Fourteenth Street, N.W., Washington, D.C. 20005 • (202) 842-4246

WILLIAM BURRUS  
Executive Vice President

August 3, 1984

Robert Eugene  
Labor Relations Department  
United States Postal Service  
475 L'Enfant Plaza, S.W.  
Washington, D.C. 20260

Re: M. Biller  
Washington, D.C. 20005  
HIC-NA-C 96

Dear Mr. Eugene:

This is in regard to your decision of August 1, 1984 in the above referenced grievance. I do not fully understand the employer's interpretation of the right of employees to union representation. You state that "we agree that the right to representation under Article 17 and that provided by Weingarten are not necessarily the same."

My understanding of the above is that in those circumstances when "an employee" believes that the interview has become "an interrogation" such employee may request representation and it will be provided consistent with the contractual provisions.

Please clarify that the union may determine whether or not to appeal the employer's decision.

Sincerely,

  
William Burrus,  
Executive Vice President

WB:mc  
Enc.

**NATIONAL EXECUTIVE BOARD • MOE BILLER, President**

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Executive Vice President  
DOUGLAS HOLBROOK  
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Director, Clerk Division

RICHARD J. WEVODAU  
Director, Maintenance Division  
LEON S. HAWKINS  
Director, MVS Division  
SAMUEL ANDERSON  
Director, SDM Division

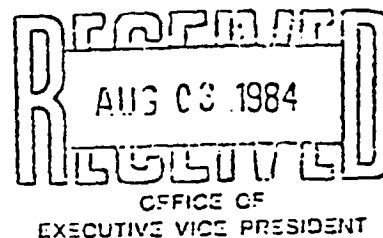
THOMAS A. NEILL  
Industrial Relations Director  
KEN LEINER  
Director, Mail Handler Division

**REGIONAL COORDINATORS**  
RAYDELL R. MOORE  
Western Region  
JAMES P. WILLIAMS  
Central Region

PHILIP C. FLEMMING, JR.  
Eastern Region  
NEAL VACCARO  
Northeastern Region  
ARCHIE SALESBURY  
Southern Region



UNITED STATES POSTAL SERVICE  
475 L'Enfant Plaza, SW  
Washington, DC 20260



AUG 1 1984

Mr. William Burrus  
Executive Vice President  
American Postal Workers  
Union, AFL-CIO  
817 14th Street, N.W.  
Washington, D.C. 20005-3399

Re: M. Biller  
Washington, D.C. 20005  
HLC-NA-C 96

Dear Mr. Burrus:

On May 24, 1984, we met to discuss the above-referenced national level grievance which requests the Postal Service's interpretation of Article 17, Section 3, of the 1981 USPS/APWC-NALC National Agreement, which sets forth an employee's right to Union representation during Inspection Service interrogations.

The national level grievance takes issue with an August 19, 1983, memorandum from E. E. Flanagan, Assistant Regional Chief Inspector - Criminal Investigations, Northeast Region, discussing a Step 3 settlement. That grievance concerned the denial of a request for representation by an employee who was being interviewed by Postal Inspectors as a witness to an occurrence. Inspector Flanagan's position was that the employee was not entitled to union representation under those circumstances, and the Inspector also expressed his understanding of the origin and limits of the Article 17 provision.

The Union has expressed its disagreement with the Inspector's interpretation, stating that "Article 17 is clear in its intent" and that the parties did not intend "to restrict the right of representation to only those circumstances generating Weingarten rights."

Mr. William Burrus

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The Postal Service agrees with the Inspector's position that an employee who is being interviewed as a witness is not entitled to union representation under Article 17. In that circumstance, the employee is not the subject of a criminal investigation and, hence, is not being interrogated. This distinction between interrogations and interviews has been consistently applied by the Inspection Service. It also is supported by the bargaining history of the representation provision in Article 17, Section 3.

Early during the 1973 contract negotiations, the Union proposed the following language:

3. When the Inspection Service interviews or interrogates an employee, a steward or union representative shall be present (Emphasis added).

The version finally agreed upon, however, did not refer to "interviews." Rather, the language incorporated in the 1973 Memorandum of Understanding and, subsequently, in the 1978 Agreement, was as follows:

If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted.

Hence, the Article 17 right to representation is limited to interrogations and does not extend to all interviews by the Inspection Service.

The Union's March 12, 1984, grievance letter does not expressly challenge this position, but rather focuses on the interplay of Article 17 and Weingarten representation rights. In this regard, we agree that the right to representation under Article 17 and that provided by Weingarten are not necessarily the same. For example, as noted above, Article 17 is limited in scope to interrogations rather than "investigatory interviews." We note, however, that as a practical matter, the two bases for representation frequently produce the same result.

In conclusion, we believe that our policy with respect to the

Mr. William Burrus

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union representation provision of Article 17, Section 3, is correct based on the language of that provision and the parties' bargaining history and practice.

Sincerely,

A handwritten signature in cursive script, appearing to read "R. L. Eugene", with a long horizontal flourish extending to the right.

Robert L. Eugene  
Labor Relations Department



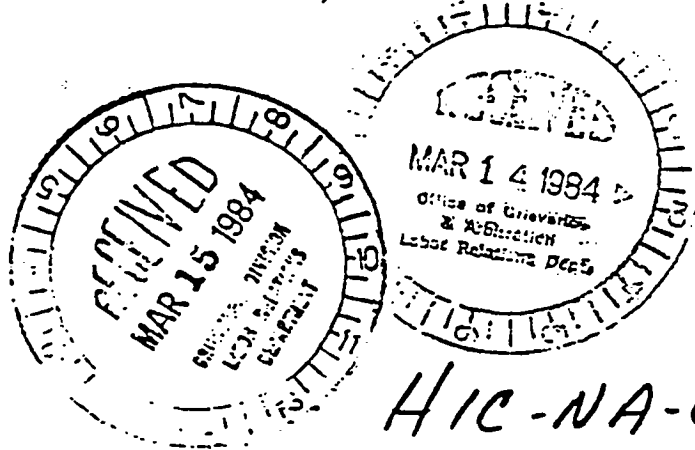
# American Postal Workers Union, AFL-CIO

817 Fourteenth Street, N.W., Washington, D.C. 20005 • (202) 842-4250

98E  
*[Handwritten initials]*

March 12, 1984

James C. Gildea  
Assistant Postmaster General  
Labor Relations Department  
475 L'Enfant Plaza, S.W.  
Washington, D.C. 20260



*HIC-NA-C 96*

Dear Mr. Gildea:

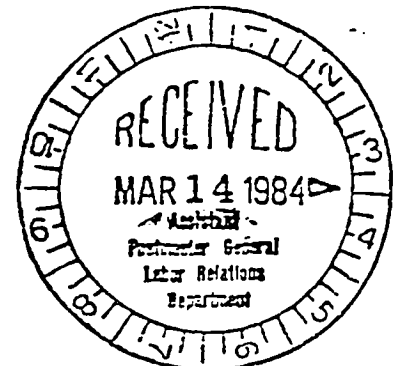
The attached letter from the Assistant Regional Chief Inspector, E.E. Flanagan, interprets provisions of Article 17, Section 3 of the National Agreement. The union disagrees with this interpretation. Our notes of the 1978 negotiations do not reflect that the parties intended to restrict the right of representation to only those circumstances generating Weingarten rights. The language of Article 17 is clear in its intent and the union interprets such language as applying at all times during the course of an interrogation by the Inspection Service.

In accordance with provisions of Article 15 the union submits this issue as an interpretive dispute.

Sincerely,

*[Handwritten signature: Moe Biller]*  
Moe Biller  
President

MB:WB:mc  
Enc.



**NATIONAL EXECUTIVE BOARD • MOE BILLER, President**

WILLIAM BURRUS  
Executive Vice President  
DOUGLAS HOLBROOK  
Secretary-Treasurer  
JOHN A. MORGEN  
Director, Clerk Division

RICHARD I. WEVODAU  
Director, Maintenance Division  
LEON S. HAWKINS  
Director, MVS Division  
MIKE BENNER  
Director, SDM Division

JOHN P. RICHARDS  
Industrial Relations Director  
KEN LEINER  
Director, Mail Handler Division

**REGIONAL COORDINATORS**  
RAYDELL R. MOORE  
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Central Region

PHILIP C. FLEMMING, JR.  
Eastern Region  
NEAL VACCARO  
Northeastern Region  
ARCHIE SALISBURY  
Southern Region

DRAFT LETTER TO POSTAL INSPECTOR WHO IS DEMANDING  
TESTIMONY FROM STEWARDS

Dear Inspector \_\_\_\_\_:

I am writing in response to your request that I provide you a formal statement concerning the actions of grievant \_\_\_\_\_, who is the subject of a removal action by the United States Postal Service. Because the information you are seeking was obtained by me in the course of the performance of my duties as a Union steward, I consulted a National Officer of the American Postal Workers Union, AFL-CIO concerning my responsibilities. I have since been advised by them, and by the National Union's General Counsel's Office, that I may not lawfully be asked to disclose information obtained by me in the course of my performance of my duties as a steward. Under decisions of the National Labor Relations Board, particularly Cook Paint & Varnish Co., 258 NLRB 1230 (1981), stewards may not lawfully be asked by employers to give testimony against individuals based upon information obtained by stewards in the performance of their duties as stewards. Accordingly, I respectfully refuse to provide you the evidence you are seeking against grievant \_\_\_\_\_.

For your information, I am enclosing with my letter a recent excerpt from the Report of the General Counsel of the National Labor Relations Board. As you will see, pages 9 through 11 of that Report discuss these principles. The case commented upon by the General Counsel is one in which a grievant allegedly uttered threats against the plant manager in the presence of a steward who was assisting the grievant on proposed discipline for other reasons. The General Counsel found it unlawful for the employer to request a statement from the steward about the alleged threats.

On the basis of this information, I hope you will agree that it would be inappropriate for me to provide you a statement in this matter.

Sincerely,

~~158~~ 98

April 7, 19~3

Letter No. 93-5

**PERSONAL ATTENTION**

All Regional Clef Inspectors All Inspectors In Charge

Right of Bargaining Unit Employee to a Pre-Interview consultation with Union Representative.

The United States Court of Appeals for the District of Columbia Circuit affirmed a National Labor Relations Board's Decision and Order which had found that a bargaining unit employee of the Postal Service being interrogated by a Postal Inspector is entitled to a pre-interview consultation with the employee's union steward as part of the employee's Weingarten rights.

This decision overrules the ISM instructions, Contained in Section 432.333 (ISM, TL-1, 06/06/91), which permit pre-interview consultation only in noncriminal interviews, but not in criminal interviews. The Court of Appeals decision allows the employee and a steward to consult prior to any investigatory interview which may result in disciplinary action being taken against the employee.

The new Section 432.333 follows:

**432.333 Pre-interview Consultation.** In any investigatory interview which qualifies for the presence of a union representation under Weingarten, the employee must be permitted to consult privately with the union representative prior to the interview. This right for a pre-interview consultation arises only when the employee will be interviewed, has requested a union representative, and the union representative will be present during the interview. The employee or the union representative must ask for a pre-interview consultation. If the employee is arrested prior to the interview, the Inspector should maintain control of the Prisoner but also attempt to accommodate a request for privacy to the extent possible.

Of greater interest to the investigating inspector is the Court's comment that a union representative's discussion with a bargaining unit employee is not privileged communication. The Court stated, "A steward, unlike a lawyer, can be compelled to testify in court as to his knowledge of criminal conduct, and postal employees are obligated, by (postal) regulation, to report to USPS misconduct of which they are aware." Thus, it would be permissible to interview the steward regarding admissions the employee may have made during the consultation. Moreover, if the steward is not cooperative, the steward should be reminded of an employee's obligation under ELM section 666.6 to cooperate in an official investigation.

One event would require the inspector to interview a union representative. It occurs when, following consultation, the employee refuses to be interviewed by the inspector. The union



representative should be interviewed regarding the advice provided to the employee and the basis for the advice. The principal concern of the Inspection Service, in denying pre-interview consultations in criminal investigations, was belief that the union representative would interfere with legitimate investigatory interests by counselling the employee to refuse to be interviewed.

The Postal Service had argued before the Court that the postal unions had a practice of frustrating management interviews. The Court, however, found that insufficient evidence had been introduced for it to conclude there was a policy of noncooperation, but it reserved for later consideration the issue of whether the NLRB must excuse an employer from granting pre-interview consultations where there is a union-enforced policy of noncooperation. Therefore, the discovery of any evidence of such a policy of noncooperation by any postal union should be referred in writing to the attention of the Independent Counsel of the Inspection Service.

The new Section 432.337 instruction is the following:

**432.337 Interview of Union Representative.** If, following consultation with a union representative, the bargaining unit employee declines to be interviewed, the Inspector should interview the representative to ascertain what advice was given the employee to cause the declination. The Inspector should attempt to determine if the representative was instructed by or following a policy of the union to dissuade the employee from cooperating with the interviewing Inspector. The interview of the representative should be conducted in an area separate from the employee, or at a later time. The comments of the union representative should be sent, in writing, to the attention of the Independent Counsel of the Inspection Service.

/s/ K. J. Hunter

K. J. Hunter

THIS ABL WILL REMAIN IN EFFECT UNTIL INCORPORATED IN ISM 432.

**APWU**

158  
98

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**American Postal Workers Union, AFL-CIO**

1300 L Street, NW, Washington, DC 20005

OFFICE OF ATTORNEY  
LABOR RELATIONS DEPT.  
91 JUN 18 PM 2:44

William Burrus  
Executive Vice President  
(202) 842-4246

June 14, 1991

RE: H7C-NAC-89

Dear Ms. Cagnoli:

**National Executive Board**

Moe Biller  
President

William Burrus  
Executive Vice President

Douglas C. Holbrook  
Secretary-Treasurer

Thomas A. Neill  
Industrial Relations Director

Wendell D. Wilson  
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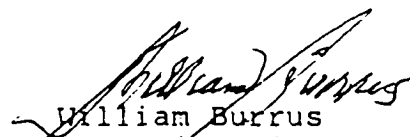
Norman L. Steward  
Director, Mail Handler Division

By letter of April 20, 1990 the Union initiated a step 4 grievance protesting the employer's administrative authority of postmasters to change the terms of local memorandums. Despite the Union's request, the employer has failed to respond.

Pursuant to provisions of Article 15 of the National Agreement the Union appeals this dispute to arbitration. We protest the employer's refusal to discuss this issue pursuant to contractual provisions which requires the employer to apprise the Union of its position.

Your prompt attention of this matter is appreciated.

Sincerely,

  
William Burrus  
Executive Vice President

**Regional Coordinators**

James P. Williams  
Central Region

Phillip C. Flemming, Jr.  
Eastern Region

Elizabeth "Liz" Powell  
Northeast Region

Archie Salisbury  
Southern Region

Raydell R. Moore  
Western Region

Sherry A. Cagnoli  
Asst. Postmaster General  
Labor Relations Department  
475 L'Enfant Plaza, SW  
Washington, DC 20260-4100

WB:rb

**NATIONAL LABOR RELATIONS BOARD****OFFICE OF THE GENERAL COUNSEL****WASHINGTON, D.C. 20570**REPORT OF THE GENERAL COUNSEL

This report covers selected cases of interest that were decided during the period from March through September 30, 1994. It discusses cases which were decided upon a request for advice from a Regional Director or on appeal from a Regional Director's dismissal of unfair labor practice charges. It also summarizes cases in which I sought and obtained Board authorization to institute injunction proceedings under Section 10(j) of the Act.

A handwritten signature in cursive script that reads "Frederick L. Feinstein".

Frederick L. Feinstein  
General Counsel

getting the Employer to either sign a bargaining agreement or cease doing business. The Union admitted as much when it told the Employer that the "games would stop" if the Employer would sign a contract. In addition, the evidence of unprotected substantial slow-down and sabotage activities supported the conclusion that the Union was engaged in an aggressive campaign to use the unprotected conduct of partial strikes to achieve its goals. The Union's campaign ultimately succeeded in closing down the Employer.

We further decided that, since the striking employees had to have known that they were participating in a strategy of intermittent strikes, each employee's conduct was unprotected regardless of whether he or she engaged in one, two, or all three of the unprotected stoppages. As the Board stressed in Pacific Telephone, supra, 107 NLRB at 1550, the employer there, faced with intermittent strikes that were totally disrupting its business, "was not required to pause during the heat of the strike to examine into the degree of knowledge of each [striker], all of whom were [acting on behalf] the same Union. It was sufficient . . . that each of the [strikers] was a participant in the strike strategy..." 107 NLRB at 1551-1552. Accordingly, we decided to dismiss the charges.

Discipline of Union Steward for Refusing  
to Cooperate with Employer Investigation

In another case considered during this period, we concluded that an employer could not lawfully discipline a union steward for refusing to provide it with a written account of an employee's conduct witnessed as a result of her performance of her duties as steward.

The Employer's plant manager had requested the steward to attend a meeting, along with an employee and the employee's supervisor, concerning possible discipline of the employee. At the end of the meeting the employee was terminated and the group left the office. As they walked into the adjoining hall, the employee allegedly told the plant manager that he was "a rotten, no good bastard, [and if the employee] had his money right now [he'd] drag [the manager] outside and kick his \_\_\_\_\_." The plant manager told the supervisor and the steward that he wanted statements from them setting forth what the employee had said. When the steward objected she was advised that she would be subject to discharge if she did not provide the

statement. The steward thereupon submitted the statement as directed.

We concluded that the threat of discharge unlawfully interfered with the individual's protected right to serve as union steward. Although the discharged employee's intemperate remarks may not have been protected, the steward would never have witnessed the outburst but for her role as steward. The outburst, which occurred as the parties were leaving the plant manager's office, was not viewed as separable from the events for which the steward's attendance had been required, but rather, was considered as part of the "res gestae of the grievance discussion." Cf., Thor Power Tool Company, 148 NLRB 1379, 1380 (1964), enf'd., 351 F.2d 584 (7th Cir. 1965). Further, even if the disciplinary meeting were found to have ended prior to the outburst, the steward's role was considered a continuous one, inasmuch as the discharged employee still had a right to file a contractual grievance protesting his discharge, and the steward would likely be involved in that process. It was therefore concluded that the threat occurred during a time when the individual was acting as steward.

Further, the threat was deemed to have a chilling effect on the steward's right to represent the discharged and other employees in an atmosphere free of coercion. A requirement that stewards, under threat of discharge, prepare written reports on the conduct of employees they have been requested to represent, clearly compromises the steward's obligation to provide, and an employee's right to receive, effective representation. Employees will be less inclined to vigorously pursue their grievances if they know that the employer can require their representative to prepare reports on their conduct at such meetings, including spontaneous outbursts which may or may not be protected. The Board has also recognized that employer efforts to dictate the manner in which a union must present its grievance position may have a stifling effect on the grievance machinery and could "so heavily weigh the mechanism in the employer's favor as to render it ineffective as an instrument to satisfactorily resolve grievances." Hawaiian Hauling Service, Ltd., 219 NLRB 765, 766 (1975), enf'd., 545 2d 674 (9th Cir. 1976) (employee discharged for calling the general manager a liar during a grievance meeting on the employee's prior discipline.) By placing the steward under threat of discharge if she refused to supply the statement the Employer was deemed to have stifled vigorous opposition to its grievance/discipline decisions and to have heavily weighted the grievance process in its own favor.

While acknowledging that a union steward does not enjoy absolute immunity from employer interrogation, the Board, in its decision on remand in Cook Paint and Varnish Co., 258 NLRB 1230 (1981), held that an employer had unlawfully threatened to discipline a steward for refusing to submit to a pre-arbitration interview and refusing to make available notes taken by the steward while processing the grievance that was being arbitrated. The Board noted that the steward had not been an eyewitness to the events, and that his involvement occurred solely as a result of his processing the grievance as union steward. The Board then noted that the notes sought by the employer were the substance of conversations between the employee and the steward, and that such consultations were "protected activity in one of its purest forms." The Board concluded that to allow the employer to compel disclosure of such information under threat of discipline manifestly restrained employees in their willingness to candidly discuss matters with their representative. The Board added that such employer conduct cast a chilling effect over all employees and stewards who seek to communicate with each other over potential grievance matters and also inhibited stewards in obtaining needed information since the steward would know that, upon demand of the employer, he would be required to reveal the subject of his discussions or face disciplinary action himself.

We concluded that while there were factual differences, Cook Paint is consistent with a finding that the Employer's threat to the steward in the instant case violated the Act. Thus, while Cook Paint involved employer attempts to discover the contents of employee communications to a steward, both cases involve the sensitivity of a steward's status vis-à-vis the employees he/she represents. Thus, like the steward in Cook Paint, the steward herein was not involved in the misconduct that was the subject of the meeting or that occurred immediately thereafter, was present solely because of her status as steward, and was compelled under threat of discharge to provide a written account of an event to which there were other witnesses, making her version merely cumulative. If an Employer were permitted to threaten stewards with discipline for failing to cooperate in employer investigations in circumstances such as these, it would place a steward in a position of sharp conflict of interests, having to choose between protecting his job and providing effective and strenuous representation to the employee he was chosen to represent.

Accordingly, we authorized the issuance of an appropriate Section 8(a)(1) complaint.