

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.



158 Postmaster's  
Admin Authority

UNITED STATES POSTAL SERVICE  
475 L'ENFANT PLAZA SW  
WASHINGTON DC 20260

Mr. William Burrus  
Executive Vice President  
American Postal Workers  
Union, AFL-CIO  
1300 L Street, N.W.  
Washington, DC 20005-4128

Re: H7C-NA-C 89

Dear Mr. Burrus:

On several occasions, you met with Thomas E. Keefe, Jr. in prearbitration discussions of the above-captioned grievance.

The issue in this grievance concerns a Postmaster's administrative authority.

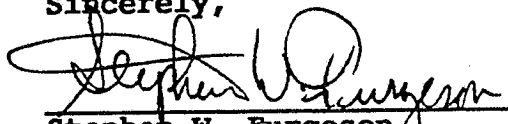
During the discussions, it was mutually agreed that when facilities are consolidated or when a new installation is established as a result of administrative changes, such action does not change the coverage of any existing LMOU. Matters associated with "consolidation" are addressed by application of Article 30.E.


Also it was mutually agreed that when finance numbers within an installation are changed, deleted or created, such changes, in and of themselves, do not change the coverage of an existing L.M.O.U. covering the installation.

Please sign and return the enclosed copy of this decision as your acknowledgement of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

  
Stephen W. Furgeson  
General Manager  
Grievance and Arbitration  
Division

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

DATE

11-26-89



## American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus  
Executive Vice President  
(202) 842-4246

June 14, 1991

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

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

Anneth D. Wilson  
Director, Clerk Division

Thomas K. Freeman, Jr.  
Director, Maintenance Division

Donald A. Ross  
Director, MVS Division

George N. McKeithen  
Director, SDM Division

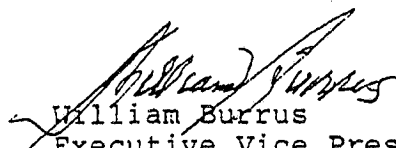
Norman L. Steward  
Director, Mail Handler Division

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. Fleming, Jr.  
Eastern Region

Elizabeth "Liz" Powell  
Northeast Region

Archie Salisbury  
Southern Region

Raydell R. Moore  
Western Region

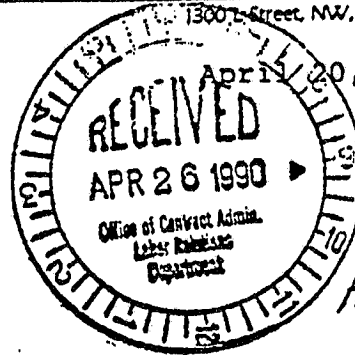
Sherry A. Cagnoli  
Asst. Postmaster General  
Labor Relations Department  
475 L'Enfant Plaza, SW  
Washington, DC 20260-4100

WB:rb



# American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005



April 20, 1990

OFFICE OF APWU  
LABOR RELATIONS DEPT.  
90 APR 25 PM 2:47

*H7C-NAC-89*

William Burrus  
Executive Vice President  
(202) 842-4246

Dear Mr. Mahon:

The Postal Service has changed the administrative authority of the postmaster, Kansas City, Kansas and as a result has invalidated the provisions of the Kansas City, Kansas and Kansas City, Missouri Local Memorandums.

National Executive Board  
Vice Biller  
President

William Burrus  
Executive Vice President

Douglas C. Holbrook  
Secretary-Treasurer

Thomas A. Neill  
Labor Relations Director

D. Wilson  
Clerk Division

K. Freeman, Jr.  
Maintenance Division

Donald A. Ross  
Director, MVS Division

George N. McKethen  
Director, SDM Division

Norman L. Steward  
Director, Mail Handler Division

The provisions of Article 30 of the National Agreement provide that the duration of Local Memorandums are concurrent to the National Agreement with the only exceptions as provided by Article 12. None of the exceptions of Article 12 apply to the action of the Kansas City office.

The Union hereby initiates a step 4 grievance contesting the employer's interpretation of the agreement and request that all affected employees be made whole.

Sincerely,

*William Burrus*  
William Burrus  
Executive Vice President

Regional Coordinators

James P. Williams  
Central Region

Philip C. Fleming, Jr.  
Eastern Region

Elizabeth "Liz" Powell  
Northeast Region

Archie Salisbury  
Southern Region

Raydell R. Moore  
Western Region

Joseph J. Mahon, Jr.  
Asst. Postmaster General  
475 L'Enfant Plaza, SW  
Washington, DC 20260-4100

WB:rb