



UNITED STATES POSTAL SERVICE  
ROOM 9014  
475 L'ENFANT PLAZA SW  
WASHINGTON DC 20260-4100  
TEL (202) 268-3816  
FAX (202) 268-3074

SHERRY A. CAGNOLI  
ASSISTANT POSTMASTER GENERAL  
LABOR RELATIONS DEPARTMENT

**MEMORANDUM FOR REGIONAL MANAGERS, LABOR RELATIONS  
FIELD DIRECTORS, HUMAN RESOURCES**

**SUBJECT: Court of Appeals Ruling**

While Article 17.3 of the National Agreement provides that requests for union representation during the course of an Inspection Service interrogation be granted, the policy of the Inspection Service has been to refuse an employee's request for a private preinterview meeting with his union representative. However, on June 30, 1992, the United States Court of Appeals for the District of Columbia Circuit enforced the National Labor Relations Board's ruling of June 21, 1991, which found that a bargaining unit employee being subjected to a Weingarten interview by the U.S. Postal Inspection Service has a statutory right to meet privately with his union representative prior to the start of the interview as part of his Weingarten rights. Since employees have the right to consult privately with a union representative prior to a management meeting that may result in discipline, the court extended this protection to employees meeting with Postal Inspectors.

Therefore, whenever a Weingarten interview is necessary, a request, made by the employee or the union representative, for a preinterview meeting with the union representative should be honored. The only exception recognized by the court is where an employee has been given notice of a Weingarten interview and that employee has had ample opportunity to consult with his union representative. See Climax Molybdenum Co. v. NLRB, 227 NLRB 1189 (1977), enforcement denied, 584 F.2d 360 (10th Cir. 1978). (The time elapsed between notice and interview was seventeen and one-half hours). However, even assuming that a court would recognize a shorter period of time between notice and interview, it is preferable to allow a preinterview meeting if requested. It is evident that the courts, in these cases, will defer to Board discretion in the area of employee-union representative consultation.

In any event, this decision does not eliminate the need for all employees, including union representatives, to cooperate in investigations. Several sections of the ELM impose a duty on all postal employees to disclose and/or report any violation of federal criminal or postal statutes, as well as to cooperate with any postal investigation. (See e.g., ELM 664, 666.3, 666.52, 666.6).



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36 USC 380

The Court recognized in footnote 5 of its opinion that since union representatives are not attorneys, they do not enjoy the same protections as attorneys. In other words, their communications with the employee to be interviewed are not privileged. Furthermore, union representatives may not counsel employees being interviewed to remain silent; stewards who do so and obstruct investigations may be subject to disciplinary action.

Finally, the court also upheld the decision of the Board requiring the posting of a compliance notice in every facility where the APWU represents bargaining unit employees. Information concerning the distribution and posting of these notices will be provided at a later date.

If you have any further questions concerning this matter, please contact Reginald Yurchik at (202) 268-3834.

Sherry A. Cagnoli

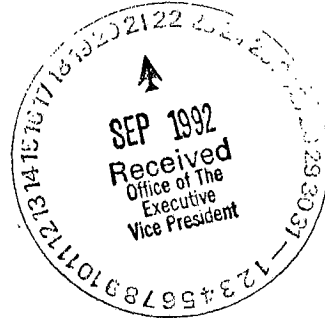


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LABOR RELATIONS DEPARTMENT

September 18, 1992

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



*242*  
*Book your Review*  
*9/20*

**RE: Memorandum for Regional Managers, Labor Relations  
 Field Directors, Human Resources**

**Dear Mr. Burrus:**

Since my recent attempts to reach you by telephone have been unsuccessful, I have enclosed for your review and comments a memorandum the Labor Relations Department intends to issue to the field regarding the recent U.S. Court of Appeals for the District of Columbia Circuit decision concerning employee pre-interview meetings with union representatives.

This memorandum substantially summarizes the Postal Service's position on this matter.

Please let me know if you have any questions or comments.

Sincerely,

**Stephen W. Furgeson**  
**General Manager**  
**Grievance and Arbitration**  
**Division**

**Enclosure**



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 38 USC 380



# American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

October 5, 1992

**William Burrus**  
Executive Vice President  
(202) 842-4246

*Dear Mr. Ferguson:*

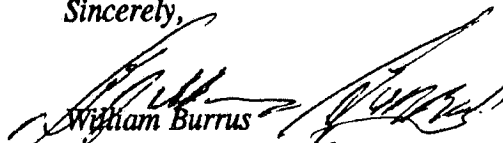
*This is to respond to your letter soliciting comments on the draft instructions for implementing the "Bell" decision.*

*My comments are as follows:*

- 1. I believe it to be appropriate to include a copy of the Board's Order as reference for the instructions.*
- 2. All references to "Clymax Molybdenum" should be deleted as the court did not rule that it was in agreement with that decision. As you know, the Tenth Circuit denied enforcement in that decision.*
- 3. The paragraph addressing employees' responsibility to cooperate is beyond the Board's Order and the reference to obligations of shop stewards is contrary to Board law. A blanket threat to discipline shop stewards for counselling non-cooperation would be in violation of the Bell decision and the Act.*

*I am available for further discussion after you have had the opportunity to review my objections.*

*Sincerely,*



*William Burrus*  
Executive Vice President

*Steve Ferguson*  
*Labor Relations Department*  
*475 L'Enfant Plaza, SW*  
*Washington, DC 20260*

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*opeiu#2*  
*afl-cio*

**National Executive Board**

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President

William Burrus  
Executive Vice President

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Secretary-Treasurer

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Industrial Relations Director

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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

Philip C. Fleming, Jr.  
Eastern Region

Elizabeth "Liz" Powell  
Northeast Region

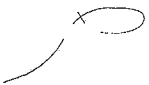
Archie Salisbury  
Southern Region

Raydell R. Moore  
Western Region

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If you have any further questions concerning this matter, please contact Reginald Yurchik at (202) 268-3834.

Sherry A. Cagnoli





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**MEMORANDUM FOR REGIONAL MANAGERS, LABOR RELATIONS  
FIELD DIRECTORS, HUMAN RESOURCES**

**SUBJECT: Court of Appeals Ruling**

While Article 17.3 of the National Agreement provides that requests for union representation during the course of an Inspection Service interrogation be granted, the policy of the Inspection Service has been to refuse an employee's request for a private preinterview meeting with his union representative. However, on June 30, 1992, the United States Court of Appeals for the District of Columbia Circuit enforced the National Labor Relations Board's ruling of June 21, 1991, which found that a bargaining unit employee being subjected to a Weingarten interview by the U.S. Postal Inspection Service has a statutory right to meet privately with his union representative prior to the start of the interview as part of his Weingarten rights. Since employees have the right to consult privately with a union representative prior to a management meeting that may result in discipline, the court extended this protection to employees meeting with Postal Inspectors. Therefore, whenever a Weingarten interview is necessary, a request, made by the employee or the union representative, for a preinterview meeting with the union representative should be honored.

This decision, however, does not eliminate the need for all employees, including union representatives, to cooperate in investigations. Several sections of the ELM impose a duty on all postal employees to disclose and/or report any violation of federal criminal or postal statutes, as well as to cooperate with any postal investigation. (See e.g., ELM 664, 666.3, 666.52, 666.6).

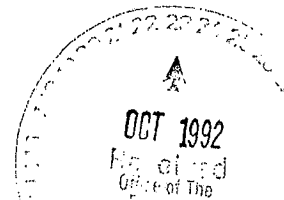
The Court recognized in footnote 5 of its opinion that since union representatives are not attorneys, they do not enjoy the same protections as attorneys. For example, their communications with the employee to be interviewed are not privileged. Furthermore, employees being interviewed do not have the right to remain silent unless they are the subject of a criminal investigation.



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

October 21, 1992

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



Re: Memorandum for Regional Managers, Labor Relations  
Field Directors, Human Resources  
Subject: Court of Appeals Ruling

Dear Mr. Burrus:

I am in receipt of your letter dated October 5, 1992, and  
acknowledge your comments discussed therein.

Please find enclosed a revised copy of the memorandum with  
references to Climax Molybdenum and employee's  
responsibilities having been deleted.

Please let me know if you have any further questions.

Sincerely,

Stephen W. Furgeson  
General Manager  
Grievance and Arbitration  
Division



# American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

October 23, 1992

**William Burrus**  
Executive Vice President  
(202) 842-4246

*Re: Memorandum for Regional Managers, Labor Relations  
Field Directors, Human Resources*

*Subject: Court of Appeals Ruling*

*Dear Steve:*

**National Executive Board**

Moe Brier  
President

William Burrus  
Executive Vice President

Douglas C. Holcomb  
Secretary-Treasurer

Thomas A. Nelson  
Industrial Relations Director

Kenneth D. W. Smith  
Director, Clerk Division

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Norman L. Steward  
Director, Mail Handling Division

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Central Region

Philip C. Flemming, Jr.  
Eastern Region

Elizabeth "Liz" Powell  
Northeast Region

Richie Salisbury  
Southern Region

Lydell R. Moore  
Western Region

*This is in further response to your Memorandum on the above subject. I continue to object to the content of the instructions as amended in your letter of October 21, 1992. My objections are as follows:*

- 1. It is apparent that you have deliberately omitted the Inspection Service from the officers to which the instructions are directed. As the objectionable policy emanated from the Inspection Service it is imperative that they be included as recipients of USPS policy change.*
- 2. The most recent draft continues the reference to employees' responsibilities and I continue my objection that such reference is beyond the Board's Order.*
- 3. Repeated reference to footnote 5 does not include it as a part of the Board's Order. In addition, you have been selective in your citation of footnote 5 which observes that "[t]hese considerations were not aired before the Board,". I object to the inclusion of any reference to the obligations of union stewards as beyond the Order of the Board.*
- 4. Your Memorandum does not specifically provide for the inclusion of a copy of the Board's order.*