

ACTIVIST

NALC

A NEWSLETTER FOR BRANCH LEADERS OF THE NATIONAL ASSOCIATION OF LETTER CARRIERS
VOL. 17, NO. 3 FALL 2004

Campaign for Stewards' Rights

The quality of life for letter carriers in the workplace varies greatly from office to office. One of the most important factors in determining that quality is the presence or absence of a knowledgeable, effective shop steward. It is fundamentally important to a unit's letter carriers for the shop steward to protect their rights. The importance of that protection is exceeded only by the difficulty of achieving it.

It is not easy to be an effective steward. Reasons for this include the complexity of workplace rules, the individual personalities in the workplace, and competing demands from family and other non-work quarters. More significantly, it is not easy for a steward to be an effective representative because managers, consciously or not, view the steward as a challenge to their power and perceive it to be in their own interest to act to preserve that power. To quote the renowned abolitionist and orator Frederick Douglass:

Power concedes nothing without a demand; it never has and it never will.

So it is in the Post Office. Management never has and never will readily concede to limits on its power in the

workplace. Stewards must struggle to enforce and maintain the limits on management's power established by our National Agreement.

In the postal workplace, management wields immense power. That power is rooted in the contract and the law. Article 3 of the National Agreement grants the employer the exclusive right to hire, promote, transfer, assign and discipline employees; to maintain the efficiency of the operations; and so on. These exclusive rights flow directly from the law itself, the Postal Reorganization Act, which simply reflects a basic organizational principle of work in our society —workplaces are not democracies. Unlike our system of political governance, where universal suffrage means all citizens jointly decide important matters directly or indirectly through the ballot, our system of workplace governance reserves decision-making authority in the workplace to a small minority —management.

Fortunately, there are limits to postal management's power. Fortunate because of the truth of Lord Acton's oft-repeated adage that "power tends to corrupt, and absolute power corrupts absolutely." These limits
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Recruiting the Next Generation

I have to do everything; we can't get anybody to volunteer."

"We can't even get members to be stewards."

"These days the young people just don't care about the union."

"People are too busy with their own lives."

Branch activists have heard all this before, and most have said it many times. It is very hard to get young

people to give their time to union work. In fact it may be harder than ever today, when everyone seems to be busy 16 hours a day.

Losing and Replacing Leaders

While it is difficult to get people to join the ranks of union activists, it is
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Stewards' Rights

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on management's power are found, of course, in the National Agreement. For instance, management has the power to suspend, discharge or take other disciplinary action against employees. But Article 16 of the National Agreement limits such discipline to cases where there is just cause. Similarly, management has the power to assign employees to positions within the Postal Service. But Article 41 of the National Agreement limits that power by providing rules for bidding by seniority. The list goes on and on.

These limits on management's power would be empty promises without an enforcement mechanism. There is such a mechanism. It is the grievance-arbitration procedure found in Article 15. That procedure culminates in binding arbitration decisions which can be enforced through federal courts. But even the grievance-arbitration procedure is not self-enforcing. It requires effective shop stewards to force compliance with the National Agreement. In assuming this role, shop stewards take some of management's power away and assume it themselves on behalf of the letter carriers they represent. Of course, it is often not enough to simply point to the contract and the law. Sometimes it is necessary to fight a protracted campaign to wrest power away from management. This article provides guidance on how to conduct such a campaign.

Campaign Principles. Basic principles of a successful campaign for steward's rights include the following:

- Recognize that the campaign is a long-term, ongoing mission.
- Understand the power and importance of binding arbitration.
- Comply with the Union's contractual requirements.

- Maintain credibility and integrity.
- Be aware of management's manipulative techniques.
- Achieve solidarity of purpose and methods among branch officers, stewards and members.
- Expect intense management focus on your work.
- Vigorously exercise rights as letter carriers
- Be militant and unwavering in demanding Article 17 representation rights.

Recognize that the campaign is a long-term, ongoing mission. Most postal supervisors are strongly motivated by their desire to achieve bonuses and promotions. In many, the desire to exert control over others is strong and deep-seated. Stewards should understand that attempts to hold supervisors accountable to the constraints in the National Agreement will be viewed by managers as undermining their ability to achieve bonuses and promotions and to exert power over others. Stewards should expect that supervisors and managers will not readily submit to those constraints. The struggle will be ongoing. Even where the Union has taught management to respect letter carriers' rights, things can change. Management can be pressured by higher level management. New management can be rotated in. Stewards should not expect that one or two "cease and desist" settlements at Informal Step A will resolve issues once and for all when deep-seated motivations are involved.

Understand the power and importance of binding arbitration. At the earlier steps of the grievance procedure prior to arbitration, recalcitrant managers can simply disagree with the Union claim of a contract violation and maintain the status quo. However, this is not the case with arbitration, the last step of the grievance procedure. Article 15 Section 4.A.6 of the

National Agreement provides that all decisions of an arbitrator are final and binding. When an arbitrator finds that management violated the National Agreement, that decision is binding and the status quo is changed.

For example, consider a situation where management refuses to pay an employee an applicable call-in guarantee. At that point, the employee simply doesn't get paid the guarantee. That becomes the status quo. If a grievance is filed, then the Union may convince management at Informal Step A that it was wrong. Then again, management may, with a wink and a nod, continue to claim no violation and the employee would still not get paid. At Formal Step A, management could again claim no violation and the employee would still not get paid. At Step B, if management continued to claim no violation, the employee would remain unpaid.

At arbitration, however, things are different. Even if management continues to claim no violation, the arbitrator may disagree and award the requested payment to the employee.

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The status quo is reversed. Management knows that arbitration awards are enforceable by the courts. Thus, to the extent that the Union is able to convince an arbitrator, it is able to compel management.

This ability to take the ultimate decision on an issue out of management's hands and compel management to alter the status quo is one of the fundamental sources of a Union representative's power. In order to be effective, stewards must understand this basic fact, and then learn how to prepare cases that will be successful if taken to arbitration. Of course, the vast majority of grievances are resolved short of arbitration, but it is only the threat of arbitration that makes this possible.

Comply with the Union's contractual requirements. Local Union officers must understand and scrupulously comply with the contracts requirements regarding stewards and the grievance procedure. To do otherwise empowers management. For instance, Article 17.2A requires the Union to certify stewards and alternates in writing to management. Failure to so certify may give management the ability to ignore the uncertified steward's requests. Similarly, Article 15.2 requires that grievances be initiated within fourteen days of the date the employee or Union first learned or reasonably may have been expected to learn of its cause. Failure to file a grievance within the time limits may allow management to ignore the merits of a grievance with impunity by arguing that it is procedurally defective.

Maintain credibility and integrity. It's the right thing to do. It's also the smart thing to do. Always be professional. Remember, a steward's power is ultimately grounded in binding arbitration. If a case goes before an arbitrator, the Union wants the arbitrator to focus on what management did wrong. If the arbitrator thinks, for instance, that a steward acted unprofessionally by calling the postmaster a donkey in a letter, or that a steward made unsubstantiated claims, then the arbitrator is not focused on what management did wrong. Letters should be professional and to the point. Actions should be professional and polite, but firm when appropriate. However, don't tolerate management misbehavior. Grieve when management's behavior is beyond the pale.

Be aware of management's manipulative techniques. We all know the manipulative tactics managers use to impose their DOIS numbers. Expect that supervisors will use similar techniques on shop stewards. For instance, the supervisor may make preposterous charges in an attempt to anger the steward. Or the supervisor may complain to letter carriers that their

USPS

BY THE NUMBERS

<u>USPS Operations—AP5-2003</u>	<u>Number</u>	<u>Chg from SPLY*</u>
Total mail volume year-to-date (YTD) (Billions of pieces)	171.5	1.3%
Mail volume by class (YTD in billions)		
<i>First-Class</i>	82.2	-1.7%
<i>Priority Mail</i>	0.7	-2.4%
<i>Express</i>	0.1	-3.3%
<i>Periodicals</i>	7.6	-3.3%
<i>Standard A (bulk mail)</i>	78.8	5.1%
<i>Packages</i>	0.9	-0.1%
<i>International</i>	0.7	4.6%
Daily delivery points	142.6	1.2%
<i>Percent city</i>	74.0%	—
<i>Percent rural</i>	26.0%	—
City carrier routes	164,459	-0.3%
Rural carrier routes	70,533	1.3%
Estimated Net Income (\$mil.)	\$2,787.5	-36.1%
<i>Total Revenue</i>	\$57,561.0	-0.3%
<i>Total Expense</i>	\$54,773.5	2.6%
<u>Employment/Wages—AP5-2003</u>		
City carrier employment	228,016	-0.7%
<i>Percent union members</i>	91.7%	—
City Carrier Casuals	6,108	-8.1%
<i>Percent of bargaining unit</i>	2.7%	—
Transitionals	2	—
<i>Percent of bargaining unit</i>	0.0	—
City carrier per delivery supervisor	18.5	2.4%
Career USPS employment	707,806	-3.1%
City carrier avg. straight-time wage	\$21.02/hr.	2.3%
City carrier overtime ratio (OT hrs/total work hours)	13.9%	—
<i>Ratio SPLY</i>	12.6%	—

*SPLY = Same Period Last Year

This information compiled by the NALC Research Department from USPS Reports.

leave requests must be denied because the steward is using too much time. Or the supervisor will attempt to co-opt the steward with polite and pleasant behavior while continuing abusive behavior towards other letter carriers. The list of techniques goes on and on. The important thing to understand is that these techniques generally work only if the target reacts. Remember, he who angers you, controls you. Stewards who find it difficult to not react to management manipulations should consider reading William Ury's *Getting Past No – dealing with difficult people*, for ideas on how to develop skills in this area.

Achieve solidarity of purpose and methods among branch officers, stewards and members. One of the common manipulative techniques used by supervisors is to attempt to create divisions between other branch officers and shop stewards or between the letter carriers and shop stewards. Thus, it is absolutely imperative that branch officers and stewards be in agreement regarding goals and strategies. Regular meetings of officers and stewards to discuss ongoing issues and responses will help. Special meetings at the first sign of management efforts to drive a wedge between officers may be called for.

It's also important that branch members be organized. Line up members. Organize around issues – stewards cannot dictate what is important to members, but they can stay alert for issues that the members decide are important. When an issue appears, jump on it. It's an opportunity. Concerted activity is empowering. As with anything else, practice makes perfect. The more it's done, the better the group gets. Groups of letter carriers that are proficient at acting in concert will be invulnerable to management attempts to divide.

Expect intense focus by management on your work and scrupulously comply with all workplace rules. Stewards should consider it a compliment when management begins microscopically focusing on their work. It generally means that the supervisor perceives the steward as a threat to his or her power. It is usually a sign that the steward is being effective. Compliment or not, however, it is important for the steward to not be vulnerable to this scrutiny. The steward must know and comply with all workplace rules. For instance; seatbelts on when vehicle is in motion; engine off when exiting vehicle; 30 minutes for lunch, etc. The list is long, but stewards must respect the rules. To do otherwise allows management to place the focus on what the steward did wrong rather than what it did wrong. Stewards must keep the focus on management's errors. In addition, stewards cannot reasonably expect other carriers to comply with rules they themselves violate.

Stewards should vigorously exercise their rights as letter carriers. There are many reasons that stewards should be zealous in exercising their rights as individual workers. First, stewards who don't exercise their rights may be perceived by other carriers, as well as supervisors, as being too timid to do so. Such a perception will limit, rather than enhance, a steward's ability to enforce the contract. Second, exercising rights is exercising power. Practice makes perfect. The Steward's job requires the exercise of power and they should avail themselves of the opportunities whenever possible. Third, Stewards should lead by example.

For example, if all carriers exercised their rights to copies of 3996s and 1571s, the steward's job would be much easier. Lead by example. Stewards can't reasonably

expect other carriers to demand copies of 3996s when the steward doesn't do so. Complete Forms 3996 and 1571 in accordance with the requirements of the M-39 and M-41. Always request, and require management to provide, *completed* copies of the 3996s and 1571s, in accordance with Article 41.3.G. Grieve when management fails to comply. This may require a grievance every workday for a month or more before management finally learns that it must comply. If so, the exercise will be instructive for management and empowering for the steward.

Similarly, internal postal regulations, as well as the OSHA, require local management to complete a Form 1769 whenever there is an accident. Article 14.2 of the National Agreement gives every letter carrier the right, upon written request, for a copy of the 1769 when he or she is involved in an accident. Stewards involved in accidents should immediately request the 1769, in writing.

M-39 Section 271g gives bid-holders the right, upon meeting certain overtime/auxiliary assistance criteria, to request and receive a Special Count and Inspection. Steward's who have routes that are over 8 hours should invoke 271g. It's the right thing to do, because it's not fair to PTFs for regulars to have routes over 8 hours. (If there are eight 10-hour routes, there need be only 9 full-time regulars – if there are ten 8-hour routes, there must be 12 full-time regulars). It also sets a good example for other carriers.

The above three are simply examples. There are many other letter carrier rights and stewards should exercise them all whenever possible.

Stewards should be militant and unwavering in demanding their representation rights. The national agreement and the law give stewards strong representation rights. These rights include, but are not limited to:

- The right to investigate and process grievances on the clock.

- The right to the information required to investigate and process grievances.

- The right to attend meetings in order to represent letter carriers.

- Superseniority rights.

All of these rights are important and stewards should expect and demand that they be observed. The right to investigate and process grievances on the clock and the right to attend meetings are the subject of articles in this issue. Other steward rights will be reviewed in future articles in the *NALC Activist*.

Shop Stewards have positions of great responsibility. These responsibilities include being an educator, being a counselor, being a problem solver, being a negotiator and understanding the National Agreement. But most of all, stewards must vigorously enforce the National Agreement at all times. If this requires stewards to fight, they must be prepared to do so. The basic principles explained in this article will help stewards fight a campaign to enforce their rights. But they should never forget that they are not alone in this struggle. More specific advice and guidance is always available from other experienced stewards, branch officers and our National Business Agents. Seek it out and use it. ■

Next Generation

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very easy to lose people. In fact, these days a lot of NALC people are talking about massive retirements of long-time branch leaders.

How much does a branch lose in energy, experience, skills and wisdom when a 20-year branch activist retires? It's hard to measure, but most would agree that one good leader can make a real difference in a local union. So a sudden departure can leave a major void.

The challenge, then, is replacing retirees with new branch leaders. To remain strong, the branch needs to have somebody ready to step into the shoes of retiring leaders.

The "Escalator" of Leadership

Viewed over many years, branch leadership works like an escalator.

Near the top of the moving stairs are 15- and 20-year activists who are usually the top branch officers. They have done it all in the union. They have the know-how to run an organization with multiple activities, programs, grievances, financial responsibilities and more.

When these people leave, the branch needs to have the other, lower steps filled. There should be some mid-level activists halfway up the escalator and interested in moving up to the top jobs. And when they do, there must be newer activists on the lower steps willing to take on more responsibilities. And of course, somebody standing at the bottom must be willing to take the first step into union activism.

Map Your Branch

Try mapping your branch leadership. Write down each officer and steward position, the name of the person holding it, his or her total years of union activism and finally, the likely number of years until the activist retires.

Now, for every activist likely to retire within 5 years, explore the possibilities. Say this person left tomorrow. What branch functions would suffer? Who is going to have to take on extra work? Take a look at the steps just below this person on your leadership escalator. How long will it take to replace the leader? Who is capable of doing the job? Willing to do it? How long will it take to get the new person up to speed?

Even if your local leader map shows that replacements are available, the unexpected can happen.

Changes occur in people's lives, often suddenly: illness can strike, parents may need care, and so on.

The Solution: Secondary Leaders

The only way to guarantee that the branch remains strong is to make recruiting and developing leaders a top priority. In particular, current leaders must **identify, recruit, train, mentor, support, reward and encourage a group of capable secondary leaders in the branch.**

Branches that do this successfully will always be strong, because they will never be dependent on a particular leader. And a strong union is the greatest legacy a union leader can leave behind.

The challenge is figuring out how to do all of this. That requires a longer discussion, which will continue in the next issue of the *Activist*. Let's begin here and now by considering the matter of motivation.

What Motivates Union Activists?

If you ask a group of union activists why they first got interested in the union, you will get many different answers. Yet there are certain common themes in the reasons people usually give.

For one, **money is not a main motivator** for most union activists. Most NALC activists begin as shop stewards, who often work long hours, face stress and uncertainty, and receive paltry pay, if any. Since these people work very hard, there must be something besides money motivating them. Otherwise, who would take a job with such rotten working conditions?

To be certain, there are powerful motivations at work here. Many members get involved, for example, **to oppose management maltreat-**

ment of letter carriers and obtain some measure of **justice on the job**. These people are idealists, although they might not describe themselves that way. They believe that people should be treated with dignity and decency, and they are willing to fight to make that happen. They also get deep satisfaction from **helping out their fellow letter carriers**.

Many activists got started in NALC for an equally powerful reason—to **challenge themselves**. They saw a chance to make a difference and decided to see what they could do. Union activists get to flex their

intelligence and curiosity, to test their courage and cool in the face of adversity, and to hone their speaking, persuasive and political skills.

Opportunities for personal growth are often strong motivators. And mastering a new challenge brings a sense of power and satisfaction.

There are other motivations besides these two main ones, of course. Some people come from union families and **believe in the labor movement**, so activism comes naturally to them. Most activists find social benefits—the union becomes a place to call home in the world of

adult society. Others seek the respect that good leaders receive from others. Some are ambitious to move up the union ladder into a top local position, or higher.

If union activists are motivated by a combination of these factors, how does that help us recruit them to leadership positions in the branch? How can we tap these fundamental motivations to attract the next generation of union leaders?

The next issue of the Activist will explore the “How To” of recruiting and developing the next generation of leaders. Stay tuned. ■

YOUR CONTRACT

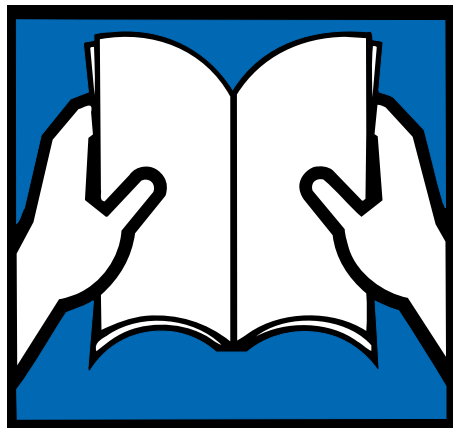
Steward Time

The National Agreement gives shop stewards the right to investigate and process grievances on the clock. The right to investigate applies even in situations where the steward later determines, upon investigation, that no valid grievance actually exists. These rights are established by Article 17, Section 4 of the National Agreement which provides the following:

Section 4. Payment of Stewards

The Employer will authorize payment only under the following conditions:

Grievances—Informal and Formal Step A: The aggrieved and one Union steward (only as permitted under the formula in Section 2.A) for time actually spent in grievance handling, including investigation and meet-



ings with the Employer. The Employer will also compensate a steward for the time reasonably necessary to write a grievance. In addition, the Employer will compensate any witnesses for the time required to attend a Formal Step A meeting. Meetings called by the Employer for information exchange and other conditions

designated by the Employer concerning contract application.

Employer authorized payment as outlined above will be granted at the applicable straight time rate, providing the time spent is a part of the employee's or steward's (only as provided for under the formula in Section 2.A) regular work day.

NALC and the Postal Service have agreed to the following joint explanation of these provisions on Page 17-5 of the current *Joint Contract Administration Manual (JCAM)*.

Right to steward time on the clock. Although a steward must ask for supervisory permission to leave his or her work area or enter another one to pursue a grievance or potential grievance, management cannot “unreasonably deny”

requests for paid grievance-handling time.

Management may not determine in advance how much time a steward reasonably needs to investigate a grievance. National Arbitrator Garrett, MB-NAT-562/MB-NAT-936, January 19, 1977 (C-10835). Rather, the determination of how much time is considered reasonable is dependent on the issue involved and the amount of information needed for investigation purposes (Step 4, NC-S-2655, October 20, 1976, M-00671). Steward time to discuss a grievance may not be denied solely because a steward is in overtime status (Prearbitration Settlement, W4N-5C-C 41287, September 13, 1988, M-00857). It is the responsibility of the union and management to decide mutually when the steward will be allowed, subject to business conditions, an opportunity to investigate and adjust grievances (Step 4, N-S-2777, April 5, 1973, M-00332). If management delays a steward from investigating a grievance, it should inform the steward of the reasons for the delay and when time will be available. Likewise, the steward has an obligation to request additional time and give the reasons why it is needed. (Step 4, NC-C 16045, November 22, 1978, M-00127).

An employee must be given reasonable time to consult with his or her steward, and such reasonable time may not be measured by a predetermined factor. (Step 4, 1C-3W-C 44345, May 9, 1985, M-00303) Although Article 17, Section 4 provides that the grievant and a steward shall be paid for time actually spent in grievance handling and meetings with management, there are no contractual provisions requiring the payment of travel time or expenses in connection

with attendance at a Formal Step A meeting. (Step 4, N8-S-0330, June 18, 1980, M-00716) Nor does the National Agreement require the payment of a steward who accompanies an employee to a medical facility for a fitness-for-duty examination. (Step 4 Settlement, NC-N-12792, December 13, 1978, M-00647).

The appropriate remedy in a case where management has unreasonably denied a steward time on the clock is an order or agreement to cease and desist, plus payment to the steward for the time spent processing the grievance off-the-clock which should have been paid time.

Stewards should always enforce their right to investigate and process grievances on the clock. Stewards who cannot enforce their own rights as steward cannot reasonably expect to be able to help enforce others' rights. Nor can they be expected to prevail in grievances. Remember, grievances concerning steward time are not just for the steward's benefit. Rather, they seek to protect the Union's right and legal responsibility to represent all letter carriers.

Stewards confronting problems obtaining time on the clock should keep the following guidelines in mind.

Time limits. Remember that the time limits for an underlying grievance are not waived even if management violates Article 17 by refusing to provide steward time. For example, a grievance protesting the lack of just cause for the letter of warning issued to a carrier must be filed within fourteen days of the issuance of that letter of warning, even if management has denied the Union's repeated requests for time. If necessary, stewards must investigate and process grievances off-the-clock and then file a separate timely grievance concerning the denial of steward time.

Documentation. A steward must

be able to prove that requests for time were made and properly submitted. While Article 17 does not require that requests be made in writing, it is recommended that stewards present them in writing to the supervisor, keep a copy, and document on the copy who received the request. One method of documentation is to have the receiving supervisor sign and date the request to acknowledge receipt. This works well if the supervisor agrees to sign. If the supervisor refuses to sign, the steward should clearly record on the copy who received it and the time and date it was submitted. In addition, the steward should make a record of the supervisor's response on the copy.

The Postal Service has agreed (Step 4 Settlement M-00127 and JCAM at page 17-5) that if management delays a steward from investigating a grievance, it should inform the steward of the reasons for the delay and when time will be available. If management does not provide time and access to the steward at the time a request is presented, the steward should ask for the reasons for the delay and when time will be scheduled. The steward should make a written record of the response.

If the supervisor does not tell the steward when time will be made available, the steward should present a second written request the next day, following the same format as the first request, but clearly indicating in writing that it is a second request and that no response was received to the first. Likewise, if there is no response to the second request, a similar third request should follow the next day. If there is still no response, a grievance should ensue.

If management responds verbally to the request by telling the steward when the time and access will be provided, it is advisable for the steward to document that response by writing

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a letter or memo to the supervisor stating the steward's understanding of the scheduling. For example:

Today at 8:30 AM I presented a request to you for time to investigate a possible grievance concerning a letter of warning issued to carrier Smith. At the time, you stated that time would be made available on [date] Please let me know if my understanding of your response does not agree with yours. Please also let me know the time of day the investigative time will be scheduled.

In addition, if the steward believes the delay is unreasonable, it may be necessary to initiate a second grievance investigation regarding the reasonableness of the delay. Clearly, in these circumstances, one grievance can quickly escalate into many more. Much work, organization and energy is required to write and maintain the necessary letters, memos and requests to document management's intransigence. In addition, much emotional energy will be spent contending with management's hostility that will undoubtedly follow. When the supervisor gets a third repeated request for time, noting no response to the first two, he will hear, somewhere at the back of his mind, the ominous tolling of a bell. That's when the hostility may erupt. The steward should not react emotionally to that hostility, but rather should perceive it as confirmation that the process is working. If the hostility degenerates into inappropriate behavior, additional grievances may even be necessary. The above documentation process is difficult, but it ensures that the resulting grievance file is sufficient to meet the Union's burden of proof.

Grievances. Although grievances concerning the denial of steward rights must be separately filed and processed, any Article 17 grievances should be linked to the underlying grievance through argument in those underlying

grievances. In such a grievance, the steward should link the Article 17 violation by arguing, for example:

In addition [to all of the other arguments against the just cause of the letter of warning made by the Union] management has violated the grievant's rights to due process by refusing to provide the steward time to investigate the grievance. Those refusals are the subject of Union grievances [insert grievance numbers]. All of the arguments and evidence in those grievances are hereby incorporated into this grievance.

Remedies. Careful attention should be given to the requested remedy in the Article 17 grievances concerning steward time. The basic principle to be applied in settling such grievances is stated in the JCAM as follows:

The appropriate remedy in a case where management has unreasonably denied a steward time on the clock is an order or agreement to cease and desist, plus payment to the steward for the time spent processing the grievance off-the-clock which should have been paid time.

The remedy should be designed to fix the underlying problem. If a simple verbal agreement by management at Informal Step A to cease and desist violating Article 17, fixes the problem, fine. If, however, such an agreement is simply used by management as a ruse, or if the problem has been ongoing, then the Union is under no obligation to settle on that basis.

Remedies should target the culpable supervisor(s). If the underlying problem is that a particular supervisor is unaware of management's Article 17 obligations, then the remedy might require the supervisor to review JCAM chapter 17, or perhaps a remedy might involve the steward reviewing JCAM chapter 17 with the supervisor. If the underlying problem is that a particular supervisor knows

the requirements of the JCAM, but simply chooses to violate them, then the remedy might include a written acknowledgment by the supervisor that he violated Article 17 and a promise to stop. Or it might include an instructional letter signed by the culpable supervisor's superior advising the supervisor that he violated the National Agreement and the law and orders him to cease and desist; with a copy provided to the Union.

In any event, the remedy should escalate in succeeding grievances, where the prior remedy did not solve the underlying problem. The rationale for escalating remedies is similar to management's rationale when it issues progressively more severe discipline. The idea is that the minimum remedy necessary to resolve the problem should be used, but that if the problem continues, a more severe remedy may be necessary.

Moreover, each succeeding Article 17 grievance should specifically cite each of the prior Article 17 grievances. Where patterns exist, the Union should point them out and argue accordingly. The Union should argue that the prior agreed-to remedies did not resolve the underlying problem and therefore a more significant remedy is required. The Union should cite the following implicit agreement of the parties, noted in the JCAM at page 41-15 that endorses the concept of contract compliance incentives:

"In circumstances where the violation is egregious or deliberate or after local management has received previous instructional resolutions on the same issue and it appears that a "cease and desist" remedy is not sufficient to insure future contract compliance, the parties may wish to consider a further, appropriate compensatory remedy to the injured party to emphasize the commitment of the parties to contract compliance. In these circumstances, care should be exercised to insure that

the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy.”

The remedy should flow from the strength of the case. If the provable facts of the case are weak, the steward is not in a strong position to demand an enhanced remedy. On the other hand, if the facts of the case are strong and if management’s violations were egregious, deliberate or repeated, the steward should be less willing to resolve the grievance for a toothless remedy. Finally, never for-

get that any remedy should, as confirmed by the JCAM, include payment at the appropriate rate to the steward for all time used off the clock because of the violation.

Seek assistance. Violations of stewards Article 17 rights are fundamentally different from run of the mill contract violations in one important respect. They challenge and undermine the very ability of the Union to fulfill its legal obligation to represent letter carriers. Stewards who encounter difficulties exercising

their Article 17 rights should bring the matter to the attention of their branch officers. Branch officers should contact their National Business Agent if they are unable to resolve the problem. In extreme cases it may be necessary to consider filing Unfair Labor Practice charges with the National Labor Relations Board as a last resort. Branch officers should contact their National Business Agent for advice prior to filing charges with the NLRB. ■

Union Representation During Meetings.

Article 15 of the National Agreement mandates meetings at different steps of the grievance procedure. Additionally, Article 17 and the law give letter carriers rights to Union representation during certain types of meeting with management representatives. These meetings are important and stewards should not permit supervisors to short-change them. They provide an opportunity for the parties to fulfill mutual obligation to attempt to resolve grievances at the lowest possible step. They also present opportunities for the steward to step outside the normal superior-subordinate relationship with supervisors and meet them on a level playing field. In these meetings, the steward is the supervisor’s equal in authority. Such opportunities should not be minimized. Stewards and other Union grievance representatives should know and exercise their rights in meetings with management. The most frequent types of meetings are Informal and Formal Step A meetings and *Weingarten* situations or interrogations by postal inspectors.

Informal Step A Meetings

During the Informal Step A discussion the supervisor and the steward (unless the grievant represents him/herself) have full authority to resolve the grievance. It should be a meeting between equals. Both parties must use the JCAM as their guide to the contract. A resolution at this informal stage does not establish a precedent. While either representative may consult with higher levels of management or the union on an issue in dispute, this section establishes that the parties to the initial discussion of a grievance retain independent authority to settle the dispute. Where it can be demonstrated that management’s representative lacked authority, i.e. someone else made the decision, discipline has sometimes been overturned by arbitrators.

The presence of a grievant at an Informal Step A meeting is a matter for the grievant and the steward to decide. Management may not prohibit the presence of the grievant at the meeting. The Union should weigh any relevant factors and decide on the presence of grievants at grievance meetings.

If a letter carrier instead files his or her own grievance, management must give the steward or other union representative the opportunity to be present during **any portion of the discussion which involves adjustment or settlement of the grievance**. See JCAM page 15-2 and pre-arbitration settlement M-01065, April 2, 1982. The failure to give the Union this right is properly the subject of a separate grievance.

If management refuses to hold a timely Informal Step A Meeting or issue a timely decision, the grievance should be appealed to Formal Step A without a meeting or decision unless the parties have agreed to an extension of the time limits. See Article 15.3.C and JCAM page 15-11. It is strongly recommended, but not required that any extension of the time limits be in writing.

Formal Step A Meetings

The National Agreement requires the parties at Formal Step A to make a full and detailed statement of facts relied upon, contractual provisions involved, and, for the Union, the remedy sought. The JCAM, at page 15-5, requires the Formal Step A parties to

work together to ensure that each grievance is fully developed factually and contractually. Union representatives should not allow management to shirk the responsibility. They should take the necessary time to comply.

The presence of a grievant at a Format Step A meeting is a matter for the Union representative to decide. Management has agreed to this in a Step 4 settlement (M-0790) and in the JCAM at page 15-6.

The parties may mutually agree to jointly interview witnesses at the Formal Step A meeting to assure full development of all facts and contentions.

In grievances protesting discharge, either party has the unilateral right to call two witnesses. Again, the Union representative should analyze the potential benefits of such witnesses in the context of specific grievances and use them when appropriate. The JCAM page 15-6 provides that all witnesses at Formal Step A meetings will be on the clock, including travel time to and from the meeting.

Weingarten Rights

In addition to the specific provisions of Article 17, Section 3 of the National Agreement which concern interrogations by Postal Inspectors (see below), letter carriers have the right to union representation in many other meeting situations by virtue of the Weingarten doctrine.

This legal principle, established by the U.S. Supreme Court in 1975 in a case titled *NLRB vs. J. Weingarten Inc.*, provides that employees are entitled to assistance from their union representatives during any investigatory interview which the carrier **reasonably believes may lead to discipline**. An investigatory interview is usually defined as questioning by management to search for facts that will be used to determine an employee's guilt, or to decide whether or not to impose discipline. The Weingarten rule does not apply to some kinds of meetings between management and

carriers, such as fitness-for-duty examinations and "official discussions" under the provisions of Article 16, Section 2 of the National Agreement which states that "For minor offenses by an employee, ... discussions ... shall be held in private between the employee and the supervisor. See National Arbitrator Aaron, C-03769, January 6, 1983.

The steward cannot exercise *Weingarten* rights on the employee's behalf. And unlike "*Miranda* rights," which involve criminal investigations, the employer is not required to inform the employee of the *Weingarten* right to representation.

Under *Weingarten* employees have a right to a pre-interview consultation with a steward. In a *Weingarten* interview the employee has the right to a steward's active assistance—not just a silent presence. The employer would violate the employee's *Weingarten* rights if it refused to allow the representative to speak or tried to restrict the steward to the role of a passive observer.

Although ELM Section 666.6 requires all postal employees to cooperate with postal investigations, the carrier still has the right under *Weingarten* to have a steward present before answering questions in this situation. The carrier may respond that he or she will answer questions once a steward is provided.

Interrogations by Postal Inspectors

Stewards should also be aware of the specific language in the fifth paragraph of Article 17, Section 3 of the National Agreement which states that "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." This sentence reinforces employees' *Weingarten* rights and clearly informs postal inspectors that stewards have the right to represent employees if requested. Stewards should under-

stand that, just as with *Weingarten* rights, the inspectors are not obligated to inform carriers of their right to union representation; rather the carrier must request it and can insist that questioning not continue until a union representative is present. Federal Courts have extended the right to pre-meeting consultations with a Union representative to cover Inspection Service interrogations. (M-01092, U.S. Postal Service v. NLRB, D.C. Cir. 1992).

For more information on *Weingarten* Rights and Interrogations by Postal Inspectors, see the Fall 1998 *NALC Activist*, available online at the Contract Administration section of the NALC website at www.nalc.org.

Miranda Warnings

Most people—especially fans of TV cop shows—know that before the police can question anyone about possible criminal activity, the suspects must be "*Mirandized*," or informed of their rights to have a lawyer present and to remain silent. *Miranda* rights, like *Weingarten* rights, stem from a U.S. Supreme Court decision. Stewards should ensure that all letter carriers know that as soon as an inspector reads a carrier his or her *Miranda* rights, the carrier should ask both for a steward (if not already present) **and an attorney**. For more information on situations involving *Miranda* warnings, see the article *Post-Miranda Questioning* in the Spring 2003 *NALC Activist*.

Stewards may be called upon to represent the Union in many types of meeting other than those discussed in this article. For example, Labor/Management Meetings, Safety Committee Meetings, Benefit Committee Meetings and the like. Stewards should respect the process, fully exercise their rights and recognize that they are management's equal during any such meetings.

Employer Claims

To Waive or Not To Waive

You've just received a Letter of Demand (LOD) from the Postal Service for \$500. According to the claim, management made a pay calculation error after you bid, a year ago, from a carrier technician position (Grade 2), to carrier position (Grade 1).

Section 437 of the *Employee and Labor Relations Manual* (ELM) allows an employee or former employee to request a waiver of a Postal Service claim that involves pay (among other items), including: salary, wages, compensation for services including premium pay, holiday pay, as well as payment for leave.

So should you file a request for a waiver? In many cases the answer is yes.

An employee may request a waiver of payment within three (3) years following the date on which the erroneous payment of pay was discovered. The applicant requests a waiver of claim on PS Form 3074, *Request for Waiver of Claim for Erroneous Payment of Pay*. This form is submitted to installation management, which then prepares a report and submits it to the Minneapolis Accounting Service Center. The Accounting Service Center makes the determination as whether or not to waive the claim.

The February 2003 award C-25015 by Regional Arbitrator Bierig concerned just such a situation. The facts of the case were not in dispute. In April of 2002, an employee bid from a carrier technician position (Grade 2) to a letter carrier position (Grade 1). From that point until September, 2002 the employee was paid at Grade 2. Subsequently man-

agement discovered its error and issued the employee a letter of demand in the amount of \$409.05. The employee filed a grievance, and was instructed by the union to also file a request for waiver, PS Form 4037. The employee's request was denied by the Accounting Service Center because allegedly the employee did not meet the criteria in Part 437.6 of the ELM.

At the arbitration hearing, the union argued that the employee had in fact met the criteria set forth in Part 437.6 of the ELM and that if an employee meets the criteria, the claim must be waived. Part 437.6 of the ELM states:

437.6 Action by Eagan

Accounting Service Center. The Eagan ASC waives the claim if it can determine from a review of the file that all of the following conditions are met:

- a. The overpayment occurred through administration error of the Postal Service. Excluded from consideration for waiver of collection are overpayments resulting from errors in time keeping, key-punching, machine processing of time cards or time credit, coding, and any typographical errors that are adjusted routinely in the process of current operations.
 - b. Everyone having an interest in obtaining a waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation, fault, or lack of good faith.
 - c. Collection of the claim would be against equity and good conscience and would not be in the best interest of the Postal Service.
- This language was the focal point

of the grievance. According to the union, the employee met the criteria set forth. Part 437.6a of the ELM requires that the overpayment was the result of administrative error. The Postal Service countered, claiming that the error was in fact one of coding and therefore a waiver could not be granted. Arbitrator Steven M. Bierig determined that while the Postal Service claimed that the error was one of coding, it had failed to meet its burden of proving this was so.

Part 437.6b sets forth the second waiver requirement—that everyone involved acted reasonably and in good faith. The Postal Service argued that the employee knew his pay was not correct and, therefore, he acted in bad faith. The union provided the employee's pay records for the period he was improperly paid, showing that his pay varied so widely from one pay period to the next that the employee likely did not realize his pay was incorrect.

The arbitrator further concluded that it would not be in the best interest of the USPS to collect the monies owed. He reached this conclusion based the employee's credibility, length of service, and excellent work record.

Most importantly, Arbitrator Bierig concluded that if an employee meets the criteria set forth in Part 437.6 of the ELM, "the language of Section 437.6 is mandatory." As a result, the arbitrator determined that the Postal Service violated the National Agreement when it refused to waive the letter of demand.

Stewards seeking additional information about employer claims and letters of demand should review the article on this subject in the Summer 2000 *NALC Activist*, available online in the CAU section of the NALC website at www.nalc.org. ■

Regional Training Seminars

Listed below are regional training and educational seminars scheduled to begin before January 1, 2005.

Contact your National Business Agent for more information about these scheduled regional training seminars.

Pacific Northwest Region 2 (Alaska, Idaho, Montana, Oregon, Utah, Washington)

November 16-18, 2004, Train the Trainer, at the McKenzie Conference Center, Springfield, OR.

National Business Agent Paul Price, (360) 892-6545.

Denver Region 4 (Arizona, Arkansas, Colorado, Oklahoma, Wyoming)

October 10-11, 2004, Wyoming State Association, Casper, Wyoming.

October 30-31, 2004, Arizona State Association, at the Prescott Resort, Prescott, AZ.

National Business Agent Wes Davis, (501) 760-6566.

St. Louis Region 5 (Iowa, Kansas, Missouri, Nebraska)

October 16-17, 2004, Nebraska Fall Training, at the Mid-Town Holiday Inn, Grand Island NE.

October 24-27, 2004, Iowa Fall Training, at the Holiday Inn, Amana Colonies, IA.

National Business Agent Art Buck (314) 872-0227.

Minneapolis Region 7 (Minnesota, North Dakota, South Dakota, Wisconsin)

October 23-24, North Dakota State Association Fall Training Seminar, Fargo, ND.

October 30-31, 2004, Wisconsin state Association Fall Training Seminar, at the Heidel House, Green Lake, WI.

National Business Agent Barry Weiner (612) 378-3035.

Atlanta Region 9 (Florida, Georgia, North Carolina, South Carolina)

October 22-23, 2004, North Carolina Training Seminar, at the Holiday Inn, Durham, NC.

October 14-17, 2004, Florida Training Seminar, at the Radisson Hotel, St. Petersburg, FL.

November 6-7, 2004, South Carolina

Hotel/Charleston Airport, Charleston, SC.

National Business Agent Judith Willoughby (954) 964-2116.

Dallas Region 10 (New Mexico, Texas)

October 9-11, 2004, Region 10 Fall Training School, at the Hyatt Regency, Houston Intercontinental Airport, Houston, TX.

National Business Agent Gene Goodwin (281) 540-5627.

Boston Region 14 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

November 20-22, 2004, Regional Stewards Training, at the Sheraton Sashua Hotel, Nashua, NH.

National Business Agent John Casciano (617) 363-9299.

New York Region 15 (Connecticut, New Jersey (Metro), New York (Metro), Puerto Rico)

October 26-27, 2004, Region 15 Leadership Conference, at the Wyndham Condado Plaza, San Juan PR.

National Business Agent George Mignosi (212) 868-0284.

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