

# ACTIVIST

**NALC**

A NEWSLETTER FOR BRANCH LEADERS OF THE NATIONAL ASSOCIATION OF LETTER CARRIERS  
VOL. 13, NO. 4

FALL 1998

## Postal inspectors and carrier rights: Asking, answering questions

**N**ALC stewards who have had the experience of dealing with postal inspectors know that too often, these people walk into a room armed not only with their badges and guns, but also with an attitude. Acting as if they have total control of all situations, inspectors may try to ignore or dismiss the legitimate rights of letter carriers and their union representatives.

These rights apply to two distinct situations—first, when inspectors question letter carriers, and the reverse, when NALC stewards seek to question inspectors as part of a grievance investigation. Stewards and other branch leaders must possess a thorough understanding of both kinds of rights. Armed with this information, stewards can be effective representatives, whether protecting carriers accused of wrongdoing or investigating grievances that may hinge on information possessed by postal inspectors.

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## Compensation: Get the best medical evidence

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**P**ut yourself in this situation: You're a letter carrier who has suffered an on-the-job injury, or maybe you have an illness or disease caused by conditions at work. In either case, you're hurting and feeling low. Then someone tells you that if you want to get your proper benefits, you're going to have to get up, ignore your pain and run a fiendish obstacle course. You must leap hurdles, climb ladders and crawl through tunnels. If

you're good enough, you will reach the end and can relax and concentrate on feeling better.

It sounds ridiculous, but unfortunately there really is an obstacle course for ill or injured letter carriers. The hurdles, ladders and tunnels may not have physical reality, but any carrier who has tried to follow the tortuous path to obtaining OWCP benefits can testify that those obstacles create

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## Compensation

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real frustration and pain.

The NALC steward can help ease a carrier's passage over this course, however. Although stewards may not be able to straighten and simplify the path, they can be strong supports and guides through the maze of red tape and paperwork.

One of the biggest hurdles is obtaining **medical evidence with effective medical rationale**. This process is equivalent to walking a tightrope over a pool filled with sharks. A misstep can earn you the enmity of your physician, but not walking the rope means total failure of your claim.

Medical rationale is a physician's written reasons in support of his or her medical opinion concerning the **causal relationship** between the medical condition of the carrier—the diagnosis—and what happened on the job to create that condition. The rationale basically explains how the doctor arrived at his or her medical opinion, and it must be preceded by key facts and descriptions, including a **definitive diagnosis** and a **definitive opinion** with no speculation. The rationale must also reflect **the doctor's knowledge of the carrier's on-the-job injury or conditions at work** that caused the disability or occupational disease. If medical rationale is not provided, the carrier's claim for compensation will most likely fail.

Stewards should note that **the need for strong medical rationale continues as a carrier's claim progresses** through various stages of the OWCP process. For example, the medical rationale is essential when a carrier first seeks compensation. Later, as the carrier recovers, management may offer a limited duty assignment that the carrier may not be able to per-

form. Again, the carrier's physician must supply medical evidence with medical rationale supporting the carrier's claim that the assignment is unacceptable.

If the carrier suffers a relapse or additional injury, his or her doctor must provide another medical report with medical rationale linking the new disability with the carrier's original on-the-job injury or occupational disease. Or a situation may develop in which OWCP obtains second and even third opinions from other physicians that are counter to the opinion of the carrier's physician. In such cases, the carrier may still prevail if his or her own doctor can supply convincing medical evidence with medical rationale.

This article highlights the elements of medical reports that contain effective medical rationale. Also included are examples of both weak and strong rationales. In addition, NALC stewards will find advice on how to work with a carrier's physician to produce a medical report with effective rationale. As noted above, doctors can be touchy about criticism, however well-meant. Concerns about the doctor's medical rationale need to be carefully phrased and diplomatically presented to avoid the risk of alienating the doctor.

## Causal relationship

In workers' compensation, it is necessary to show a causal relationship between the on-the-job injury or conditions at work and the disability, illness or disease. In OWCP lingo, the term "causal relationship" means "proximately caused." To prove that the disability, illness or disease was "proximately caused" by the on-the-job injury or conditions at work, you must show that the disability, illness or disease was either "directly caused" by the injury or employment

conditions *or* that the disability, illness or disease was "closely related to," "as a result of," or "following" the injury or employment conditions.

The distinction between "direct causation" and the other elements of "proximately caused" conditions can be illustrated by the following examples. Take the case of a letter carrier who is hit by a truck and immediately taken to the hospital. The carrier has a broken leg. Clearly the broken leg was caused by the truck accident—that is, there is a direct cause for the injury. A physician reporting this incident to OWCP would not need to provide medical rationale. The cause of the injury and resulting disability is clear.

However, there are many cases in which the cause of the disability is less clearly connected to an on-the-job incident or employment condition. In the above example, the carrier could recover from the broken leg, but three months later come down with symptoms of thrombo-phlebitis, or blood clots forming in the leg. The carrier's doctor may believe that the phlebitis is a result of the broken leg,

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but if the carrier is to obtain OWCP benefits, the doctor will have to provide a medical report that would include his or her medical reasons for why the on-the-job accident caused phlebitis.

To go a step further, suppose that six months after the phlebitis developed, the carrier suffers a stroke while sitting quietly in an easy chair at home. The carrier claims additional OWCP benefits for the stroke, believing that the original broken leg led to the phlebitis, which caused the stroke. Again, to obtain these benefits, the carrier's doctor will have to provide a medical report containing medical rationale reflecting the doctor's opinion that the accident caused the phlebitis and the phlebitis caused the stroke.

## What to look for

Medical evidence must provide a positive, **definitive** answer to the basic question in all OWCP cases: Was the on-the-job injury or conditions at work the cause of the employee's disability, illness or disease that now prevents the employee from working? The physician cannot simply state a belief or a likelihood that the two events are causally related. Rather, the medical evidence must stand up to intense scrutiny by OWCP and possibly the Employees' Compensation Appeals Board, which reviews the denial of claims before OWCP.

These agencies are looking at two elements that should appear in every medical report. First, the evidence in the report must have **probative value**, defined as "value in serving to prove a particular fact or contention." Opinions supported by valid medical reasons, such as test results, have more probative value than opinions lacking such medical reasons.

OWCP and the ECAB also look at the **weight of the evidence**. Although many people may interpret this phrase as meaning, "the more evidence, the better," OWCP is interested in the probative value of the evidence, including whether the physician offering the opinion has performed relevant tests, and whether the doctor is a specialist in the field or is board-certified. Board-certified physicians have passed rigorous tests and have earned high levels of respect within the medical community. An opinion from such a practitioner is given greater weight than opinions from other doctors, as is an opinion from a specialist rather than a general practitioner.

Carriers must ensure that the physician is qualified under the Federal Employees' Compensation Act. The FECA defines the term "physician" to include, in addition to a medical doctor (M.D.) or osteopath (D.O.), a

# USPS

## BY THE NUMBERS

<u>USPS Operations—AP12 1998</u>	<u>Number</u>	<u>Chg from SPLY*</u>
Total mail volume year-to-date (YTD) (billions of pieces)	181.4	3.4%
Mail volume by class (YTD in billions)		
<i>First-class</i>	93.2	1.0%
<i>Priority Mail</i>	1.1	11.4%
<i>Express Mail</i>	0.1	6.2%
<i>Periodicals</i>	9.5	-0.8%
<i>Standard A (bulk)</i>	75.5	7.2%
<i>Standard B (parcels)</i>	0.9	-0.8%
<i>International</i>	0.9	-5.1%
Daily DPS letter mail volume (pieces)	127 million	53.4%
<i>Percent of total letter mail</i>	29%	—
City routes with DPS mail	144,000	22.0%
<i>Percent of total</i>	86.2%	—
Daily delivery points (millions)	129.7	1.4%
<i>Percent city</i>	75.5%	—
<i>Percent rural</i>	24.5%	—
City carrier routes	167,311	-0.8%
Rural carrier routes	62,138	4.5%
Net Income (\$millions, YTD)	\$ 865	-38.1%
<i>Total Revenue</i>	\$55,308	3.3
<i>Total Expense</i>	\$54,442	4.4
<u>Employment/Wages—AP12/PFY 1998</u>		
City Carrier employment	241,303	1.3%
<i>Percent union members</i>	91.6%	—
<i>Percent career employees</i>	98.9%	—
City carrier casual/TE employment		
<i>Casuals</i>	6,943	-7.1%
<i>Percent of bargaining unit</i>	2.9%	—
<i>Transitionals</i>	2,602	-39.2%
<i>Percent bargaining unit</i>	1.1%	—
City carriers per delivery supervisor	19.6	-1.0%
Career USPS employment	785,479	2.9%
City carrier avg. straight-time wage	\$17.28/hr.	2.4%
City carrier overtime ratio (overtime/total work hours)	12.3%	—
<i>Ratio SPLY</i>	12.3%	—

\*SPLY = Same Period Last Year

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

podiatrist, dentist, clinical psychologist, optometrist or chiropractor within the scope of his or her practice as set forth in state law.

For chiropractors, the FECA limits their reimbursable services to manual manipulation of the spine to correct a subluxation shown by X-ray to exist. (The term, "subluxation," means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any X-ray film to individuals trained in the reading of X-rays.)

## Problems for carriers

Carriers can find a qualified doctor who tells the carrier that the on-the-job injury or condition of employment has caused the disability, illness or disease. However, persuading such a physician to write a report containing medical rationale that will with-

stand OWCP and ECAB scrutiny is not always a cut-and-dried proposition. NALC stewards and other officers who handle compensation claims should be aware of a number of options available to carriers who may have trouble obtaining proper medical evidence.

First, stewards should make sure that carriers give their doctor a copy of the guidelines for a proper medical report (see the box below). The guidelines explain the requirements for medical rationale, and ensure that doctors know that these requirements have been set down by OWCP, not by the carrier or the union.

Nevertheless, some physicians may resent being told what to do. They may write a report with an opinion that ignores these guidelines, most often by including speculative language such as the injury "could have," "might have" or "probably" led to the medical condition or dis-

ability. Speculation is unacceptable to OWCP, and the presence of such language in a medical report is sufficient to doom the carrier's claim.

Another problem carriers may encounter when attempting to get this type of medical report from their doctor is the doctor's refusal to give any medical reasons for their opinion. Such doctors may say, "My *opinion* is enough. I know what I'm talking about. Why should I have to write out reasons?"

These doctors need to be reminded that OWCP and the ECAB have continually stressed the need for medical reasons. For example, a recent ECAB decision contained this language:

"A physician's opinion supporting causal relationship between a claimant's disability and a specific employment incident or factors of employment is not dispositive on the issue of causal relationship simply because it is rendered by a physician.

# Guidelines for medical evidence

**E**vidence from physicians in support of an OWCP claim must be *written*, in a narrative form, on the doctor's stationery. The medical narrative must include the name of the injured or ill carrier, the dates of examination and treatment, and description of tests, X-rays, etc.

The doctor must have first read a written statement from the injured or ill carrier that describes the on-the-job injury or conditions at work that caused the disability or disease.

The doctor's statement *must* contain these items:

1 A written statement by the physician reflecting knowledge of the employee's injury or injuries or conditions of employment believed to be the causative factor(s). The physician

should ideally include or attach a copy of the written statement prepared by the employee, as described above, and should reference the employee's statement with remarks such as: "I have read the statement dated \_\_\_\_\_ prepared by \_\_\_\_\_, regarding the injury/injuries sustained on \_\_\_\_\_ and/or the conditions of employment at \_\_\_\_\_ during the period from \_\_\_\_\_ to \_\_\_\_\_."

2 A definitive diagnosis (*no impressions*).

3 An opinion in definitive terms (*no speculation*). Was the injury or disease caused, aggravated, accelerated, or precipitated by the injury/injuries and/or the conditions

of employment described by the employee? If the disability is considered temporary, then the opinion must specify the length of time that the employee will be disabled.

4 Medical reasons for opinion—how did the physician, from a medical point of view, arrive at the opinion. This is *very important* and should be as specific as possible—and include how any test results formed a basis for the opinion.

5 Period(s) of disability and the extent of disability during the period(s). This should specify whether the disability is total or partial, and if partial (as opposed to total disability for work as a letter carrier), the work limitations involved in working while partially disabled. ■



To be of probative value to an employee's claim, *the physician must provide rationale for the opinion reached*. Where no such rationale is present the medical opinion is of diminished probative value." In other words, OWCP cannot simply take a physician's word, but needs to see a supporting framework of medical reasons.

Sometimes a physician may tell a carrier that writing a report with medical rationale is simply too time-consuming. One way to avoid this situation would be for carriers to screen doctors by asking before the first visit if the doctor would be willing to handle a federal compensation case and the paperwork involved. Experienced branch compensation experts urge letter carriers to always make this inquiry, and to explain that the doctor will be dealing with the federal compensation system, which has different procedures from state systems.

This question should be asked over the phone before the first office visit. If the doctor does not wish to get involved, obviously the carrier should seek another doctor. Note that once a carrier exercises his or her right to the initial choice of a physician, the carrier cannot change physicians without OWPC approval.

Sometimes the doctor may initially be willing to help, but when pressed will protest that providing the required evidence is too time consuming. Branch compensation specialists advise that in such cases, the carrier might ask if another competent person in the office—a nurse or secretary—could draft a medical report for the doctor's signature.

This person would have access to the carrier's records and should possess the necessary medical knowledge, as well as being more available to the carrier and possibly more willing to review OWCP's guidelines and take the extra effort

to write a report with strong rationale. The doctor would, of course, have final review and must sign the report.

A final option for carriers having problems obtaining proper medical rationales would be to ask the steward or branch compensation specialist to become directly involved by talking to the doctor. In such cases, branch officers should realize that if they call or visit the doctor on the carrier's behalf, the branch may get a bill for

**Ask doctors before the first visit if they are willing to handle a federal compensation case.**

the doctor's time. A better idea would be to request the carrier to ask the doctor to call the steward or branch office directly.

In such conversations, the union representative should point out that neither the carrier nor the union is responsible for the rules. The rules exist, however, and must be followed if the carrier is to be helped. The doctor may respond more positively if the steward talks about how problems with the claims process can be harmful to the carrier's financial welfare, possibly hampering the carrier's

recovery or creating additional stress that may complicate the carrier's condition.

## Final notes

The importance of obtaining medical evidence with good medical rationale cannot be overstated. More claims fail for lack of this rationale than for any other reason. The medical evidence must meet the guidelines as found on page 4 to establish a clear causal relationship between an on-the-job injury or conditions of employment and the disability, disease or illness for which the letter carrier is seeking compensation. And remember that the best medical rationale expresses the medical reasons for the doctor's opinion **in definitive terms**.

Although neither carriers nor NALC stewards can force doctors to write medical reports that follow the guidelines, stewards should make sure that carriers are well-informed about the guidelines and the "rules of the game." Stewards can also coach carriers about the best way to approach physicians to obtain their cooperation. And stewards can always offer to speak directly to physicians on behalf of injured or ill carriers.

Certainly a carrier who has been injured on the job or is suffering from an occupational illness has enough problems already. Distraction and frustration stemming from problems with OWCP can only worsen an already bad situation.

In these cases, informed branch leaders can prove to be an invaluable resource, providing guidance and support as carriers confront an often overwhelming set of obstacles. With the help of skilled and dedicated NALC representatives, these carriers can safely reach the end of the obstacle course and the benefits and security they deserve. ■

## Inspectors

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A more detailed explanation of carriers' rights during all types of investigations appears in a Fall 1992 *NALC Activist* cover story, "The steward's role as protector: When the questioning begins." As was true of that story, this article provides a general overview of situations involving postal inspectors. Stewards with questions or concerns about a specific situation should always seek advice from other branch officers or their national business agent.

## When inspectors come

Bad things can happen to good people, so NALC stewards and branch leaders need to remind all letter carriers of their rights during interviews with postal inspectors. Educating carriers about how to conduct themselves during questioning is essential, as Postal Service management or inspectors themselves will generally not inform carriers of their basic rights.

Carriers' rights during interrogation by postal inspectors come from three sources—the *National Agreement*, a doctrine in labor law known as "Weingarten rights," and the protection in criminal law known as "Miranda rights." (These legal doctrines are named after the U.S. Supreme Court decisions in which the protections were first stated.)

**Article 17:** Contract language protecting carriers facing investigations by inspectors appears in Article 17, Section 3, which states in part 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." As noted in the *Joint Contract Administration Manual* (page 17-7), carriers have the right to have pre-interview consulta-

tions with their steward when facing interrogation by postal inspectors. (This right is stated in M-01092, *U.S. Postal Service v. NLRB*, a 1992 decision of the D.C. Circuit Court.)

**Weingarten:** Even if the contract did not provide for union representation during interrogations by the inspection service, carriers would have the right to union representation in most 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.

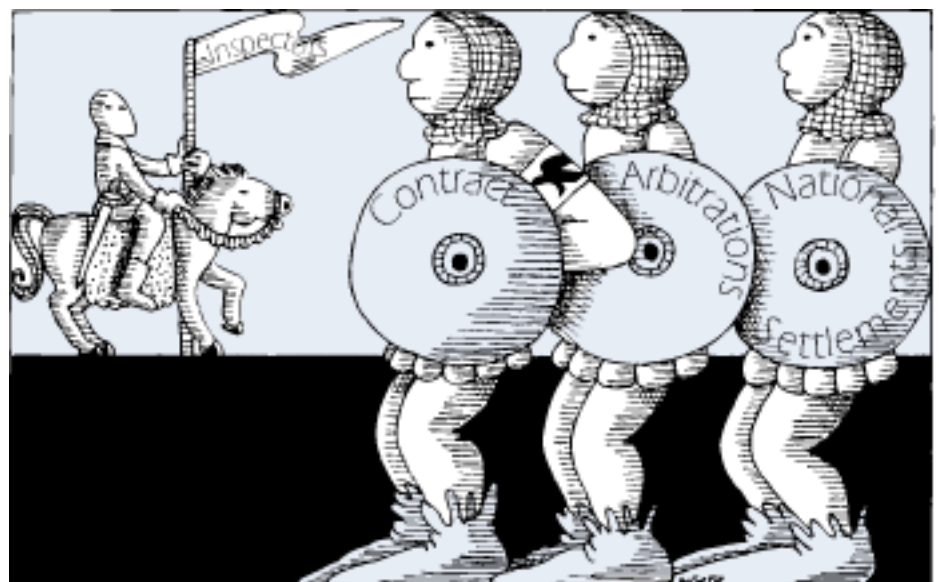
An investigatory interview is usually defined as questioning by management to search for facts that will be used to determine an employee's guilt, or to decide whether or not to impose discipline. The *Weingarten* rule does not apply to other kinds of meetings between management and carriers, including fitness-for-duty physical examinations and "official discussions." (Article 16, Section 2 of the *National Agreement* states that "For

minor offenses by an employee, ... discussions ... shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grievable." Because the threat of discipline should not be present during an official discussion, the carrier does not have *Weingarten* representation rights.)

Stewards and branch leaders should ensure that carriers know their right to union representation during *any* questioning by inspectors. It is also important for union representatives to understand that inspectors do not have to inform the carrier of this right. Carriers must request it and can insist that questioning not continue until a union representative is present.

Carriers cannot demand a *specific* representative. In fact, neither *Weingarten* nor the contract guarantees that the representative be a steward. If the steward is unavailable, another union officer can fill the bill. For this reason, all union officers should know about carriers' rights to representation and also be aware of their role before and during the inspector's investigation.

**Miranda:** 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.

## Cases involving inspectors

Stewards should understand that inspectors may request an interview with a letter carrier in three different sets of circumstances.

The first is when the carrier may be a witness or informant about someone else’s activity, i.e. another postal employee or even a customer (in cases involving mail fraud or drug shipments). No criminal activity on the part of the carrier being questioned is being alleged or even investigated. However, in these situations carriers are entitled to union representation during the interrogation and also have the right to a pre-interrogation consultation with the union representative.

In these situations the NALC representative should remain alert and watchful, should not hesitate to ask questions or request clarification from inspectors whenever necessary, and should take note of both the inspector’s questions and the carrier’s responses. Today’s “third-party” investigation could lead to tomorrow’s discipline.

The second situation that is likely to occur is when inspectors are part of an investigation that could lead to discipline of the carrier in question, but no criminal activity is being alleged. For example, an inspector

could question a carrier about whether the carrier forgot to pull a collection box. In such situations, the carrier has the right to a steward and a pre-interrogation consultation with that steward.

In these questioning sessions, the steward should follow the same procedures as if the person doing the questioning were a supervisor or other manager. Inspectors do not have special rights in these sessions and must respond to stewards as any other manager would respond.

Finally, inspectors may be investigating a carrier’s activity for possible criminal charges, possible discipline (if the investigation reveals no basis for criminal charges), or both.

In these cases—as in the second example—the steward has the right to be present at the interrogation and can have a pre-interrogation consultation.

Here it is important that stewards be prepared to offer the best possible advice to the carrier being questioned. If the carrier believes that he or she faces criminal charges, the steward **must advise the carrier to obtain an attorney and to refuse to answer questions until the attorney arrives.**

Although a steward’s advice can be useful in many situations, stewards don’t have legal training, responsibilities or rights. Therefore, if the situation involves potential criminal charges, a lawyer is the best representative for the carrier. Whatever clients say to their lawyers in private conversations is privileged, and lawyers cannot be forced to reveal that information under any circumstances.

On the other hand, if a carrier con-

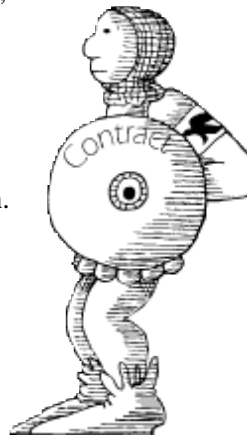
fesses criminal behavior to a steward, the steward may be forced to reveal that conversation in court. However, the National Labor Relations Board has held that an employer, which includes postal inspectors, may not require a steward to answer questions about any information obtained while acting in his or her capacity as steward.

Although stewards should never consent to act as a carrier’s legal representative, they can and should stay with the carrier and offer advice. After urging that a lawyer be summoned, the steward’s next action should be to warn the carrier against waiving his or her *Miranda* rights.

Inspectors will typically read the carrier’s *Miranda* rights, and then produce a form stating that the carrier is waiving *Miranda* rights. Usually inspectors ask for the carrier’s signature as if it were a simple matter of routine. However, carriers in this situation must be on guard and refuse to sign the waiver. Instead, carriers should remain silent and wait for the arrival of an attorney.

Postal inspectors will try very hard to get carriers to waive their rights. Inspectors may state that refusal to sign the waiver makes the carrier look guilty already. Or they may make all kinds of promises or threats, or play the “good cop, bad cop” game to break down the carrier’s resolve. Stewards and carriers alike must hang tough in the face of this intimidation. Although inspectors may make glib promises, the only true protections that carriers have in such situations are their legal rights to ask for a lawyer and to remain silent—no matter whether the carrier is innocent or guilty.

Stewards and carriers should also know that *Miranda* rights do not replace *Weingarten* rights. This means that carriers can have both a lawyer and a steward with them in the interrogation. Remember that even if criminal charges never materialize,





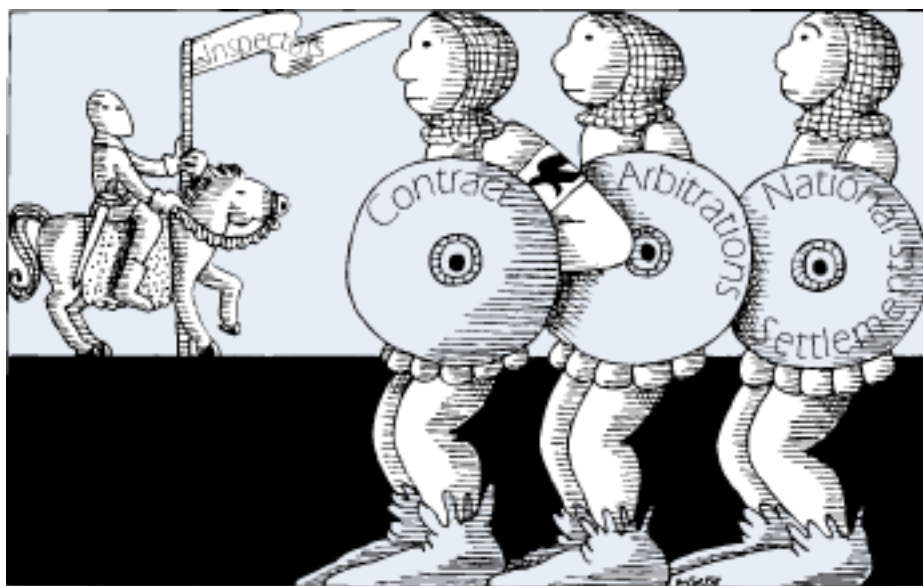
the carrier could still receive discipline as a result of the interrogation. In such situations, the steward who has remained with the carrier will be in a stronger position to develop any grievance resulting from the discipline.

## Putting the inspector On the hot seat

Imagine, for a moment, that you are a steward in the following situation. A postal inspector has conducted an investigation of a letter carrier. No criminal charges were filed, but the carrier is being disciplined by management. The carrier wishes to grieve the discipline. Although you were present during the Inspection Service's interrogation of the carrier, you realize that the union's defense of the carrier would be much stronger if you had access to the notes taken by the postal inspector during the *entire* investigation and could interview the inspector personally.

Why would stewards wish to interview inspectors or look at inspectors' notes? Knowing the details of the investigation can help stewards prepare a stronger defense. In addition, these sources may reveal information showing that the grievant is not guilty of the behavior that led to discipline, that is, the sources may contain "exculpatory" material. Perhaps the inspectors had stronger evidence pointing in a different direction, but chose not to reveal that evidence or go in that direction. A good steward could use these facts, obtained either from inspectors' notes or interviews, to raise questions about the grievant's culpability, or guilt.

Another reason to question inspectors would be to create doubts about their credibility. In most cases management presents only the investigative memorandum at early stages of the grievance process. Inspectors cor-



roborate the memorandum by testifying at the arbitration hearing. However, testimony at this late date leaves the union with no chance to prepare a meaningful challenge. By reviewing the inspector's notes and questioning the inspector early in the grievance process, a steward may discover, for example, that the inspector's interview of a key witness was very cursory, or that questions were poorly phrased, or answers were poorly articulated—any of which can cast doubt on the inspector's assertion of guilt.

Finally, the union needs to get information from inspectors early in the grievance process to be able to decide whether to pursue a grievance to arbitration. Information that may be revealed in an interview or in the inspector's notes could have a profound impact on the union's decision.

For all these reasons, you request the notes as part of your investigation. Postal management tells you that you can't have the notes; a manager says, "You have the investigative memorandum that management relied on in issuing the discipline. That's all you need." Further, the inspector refuses to talk to you, saying that an interview would improperly reveal

police methods and sources, or that the interview would compromise an ongoing investigation.

Do not abandon this line of questioning. Insist on seeing the notes and interviewing the inspector. Despite assertions that inspectors don't have to comply with the union's requests for information, **postal inspectors have no special rights to avoid interviews or withhold information from stewards pursuing a grievance investigation.** When inspectors act as agents of management, they are no different from any other manager. In fact, the steward's right to question inspectors and obtain their notes has been upheld both by regional arbitration decisions and grievance settlements at the national level.

In these cases, the union charged that the Postal Service violated several sections of the *National Agreement* by either failing to make inspectors available for interviews, or by refusing to allow stewards to examine the inspector's notes.

Language stating these rights appears in Article 15, Section 2.2.(d), which requires the employer to "make a full and detailed statement of facts and contractual provisions relied



upon.” Also, Article 17, Section 3 states, “The ... Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such request shall not be unreasonably denied.”

**Postal inspectors have no special rights to avoid interviews or withhold information from a steward.**

Article 31, Section 3 requires the Postal Service to supply the union with “all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this agreement.”

## Support for stewards

In a 1987 case decided by Regional Arbitrator Joseph F. Gentile, postal management refused to allow an NALC steward to question postal

inspectors who had prepared a case against a letter carrier discharged for allegedly removing marked quarters from test letters. One inspector had stated in the investigative memorandum that he had recovered the marked quarters from the grievant during an interview.

This evidence, Arbitrator Gentile stated, was essential to the case against the grievant, and that the inspector was “clearly a percipient witness to the discovery of the two coins.” As a key witness, the inspector should have been available to the steward during the steward’s investigation. Arbitrator Gentile also cited a national-level settlement made March 10, 1981 (M-00225), which stated in part, “The Postal Service agrees that the steward who is processing and investigating a grievance shall not be unreasonably denied the opportunity to interview postal inspectors on appropriate occasions, e.g. with respect to any events actually observed by said inspectors and upon which a disciplinary action was based.”

Although the case decided by Arbitrator Gentile rested on the fact that an inspector had actually witnessed key events, other arbitration decisions have broadened the definition of “witness” beyond simply being physically present. In a regional arbitration decision, Arbitrator Thomas F. Levak wrote, “Postal inspectors constitute witnesses within the meaning of Article 17.3 whenever oral or written statements of a postal inspector are relied upon by management, in whole or in part, in reaching a disciplinary decision.” Without the right to interview such witnesses, Arbitrator Levak wrote, “The union would be left with nothing but a written investigative memorandum and a managerial disclaimer that, ‘I just relied on the investigative memorandum.’

“It goes without saying,” Arbitrator Levak continued, “that an investigative memorandum will never contain all of the observations and events discovered by the investigator, and that observations and events—and the manner in which such were observed or not observed—may be crucial to the union’s defense. The union is entitled to question the postal inspectors on all their observations and also on the manner in which their surveillance was conducted, in order to determine whether it can be considered reliable.”

Arbitrator Levak issued an interim award ordering the Postal Service to make the inspector available for an interview by the NALC steward.

**Postal inspectors constitute ‘witnesses’ within the meaning of the contract.**

However, when the hearing reconvened, the arbitrator discovered that USPS had flouted his award by refusing to allow the steward access to the inspector or copies of the inspector’s notes.

The arbitrator then sustained the grievance in full, without a hearing on the merits, writing that the Postal Service had violated the grievant’s right to due process. Arbitrator Levak explained of those due process

rights is worth reading:

"The Arbitrator construes and interprets just cause to include the due process requirement that a removed grievant has the right, through the union, to effectively examine her accuser; that notes taken by a service manager or by a postal inspector relative to removal are crucial to such an effective examination; and that the denial of those notes therefore denies a grievant her rights under Article 16.

"Second, when the Service utilizes postal inspectors to conduct an investigation in a removal case, it cannot be allowed to simply assert the defense that it relied only upon the formal investigative memorandum. The term 'statement of facts relied upon' as used in the *National Agreement*, cannot be construed so narrowly. A postal inspector, in a discipline case, acts as the agent of the Service, and the union is entitled to examine and explore all the facts within the knowledge of the inspector, not just those favorable to the Service. In short, a postal inspector is to be treated as any other witness, and the Service's position is therefore contrary to the *National Agreement*."

Another regional arbitration decision issued March 1, 1997 (C-16455) concerned management's refusal to allow the union access to an inspector in a case in which a carrier was discharged for alleged inappropriate conduct with a customer. A postal inspector had interviewed the customer, but postal managers told the NALC steward that the steward could not talk to either the inspector or the customer. Management also refused to provide documentation requested by the union.

Arbitrator Eyraud referred to Arbitrator Levak's ruling that "the postal inspectors were witnesses under Article 17.3 and should have submitted to interview." Arbitrator

Eyraud also wrote that the refusal to allow the union access to either witnesses or documents "amounted to a denial of due process to the grievant and are violative of the labor agreement. Any one of the above enumerated violations might be fatal to the removal of grievant here. Certainly, in their totality, they amount to a lack of due process and render the removal of grievant to be invalid and due to be set aside."

Supporting these regional decisions is a national-level grievance settlement reached July 14, 1997 (M-01308), in which the parties agreed that NALC representatives have a right to see postal inspectors' notes and tapes. The settlement states, in part:

**When inspectors act as agents of management, they have no special protection.**

"The USPS understands its obligation to release properly requested information to the union that is relevant and necessary for collective bargaining and/or contract administration.

"In this case, it appears that the notes and tapes relied upon to prepare the investigative memorandum should have been made available to the union."

## Advice to stewards

Any encounter with a postal inspector can be serious business for letter carriers and the stewards that represent them. In many cases, more than the carrier's job is at stake—the inspectors may be intent on pressing criminal charges that could put the carrier behind bars.

That's why it is critically important that stewards and other branch leaders know exactly what protections both the carrier and steward have when inspectors are involved. As detailed in this story, carriers have the right to request a union representative as soon as they reasonably believe that an interrogation could lead to discipline. Carriers also need to remember that if they are questioned concerning a possible crime, they have the right to remain silent and the right to have a lawyer present. NALC stewards should urge carriers to insist on those rights and also to refuse to waive any of their rights or make any statements.

Stewards should know their rights as well, both as interrogations proceed and afterwards, when investigating grievances that involve postal inspectors. Stewards can be front-line defenders of letter carriers in such intimidating situations. Also, stewards can turn the tables on inspectors, demanding interviews and the opportunity to review inspectors' notes and tapes. Union representatives should always remember that when postal inspectors act as agents of management, supplying the information on which discipline is based, they have no special status or protection. Despite badges and guns, the inspectors are required to honor the grievant's right to due process—which includes the right to question all accusers and learn what they know. ■

# A case of erroneous excessing

**T**he labor anthem, *Solidarity Forever*, states that “there can be no power greater anywhere beneath the sun” than the power of a union. One of the most basic expressions of the NALC’s power is contained in contract provisions that ensure maximum job protection for letter carriers in times of change and uncertainty.

As postal facilities adjust staffing requirements that have been affected by automation and DPS, NALC branch leaders need to stay current with language in Article 12 of the *National Agreement* that protects carriers from unnecessary or abrupt job

followed before any letter carrier can be excessed.

In her decision, issued August 13, 1998, Regional Arbitrator Kathleen Devine ruled that the Postal Service violated Article 12 when management sent a letter of excessing to a career letter carrier without first separating casual employees or minimizing hours worked by part-time flexibles. Contract language covering these requirements appears in the box on page 12.

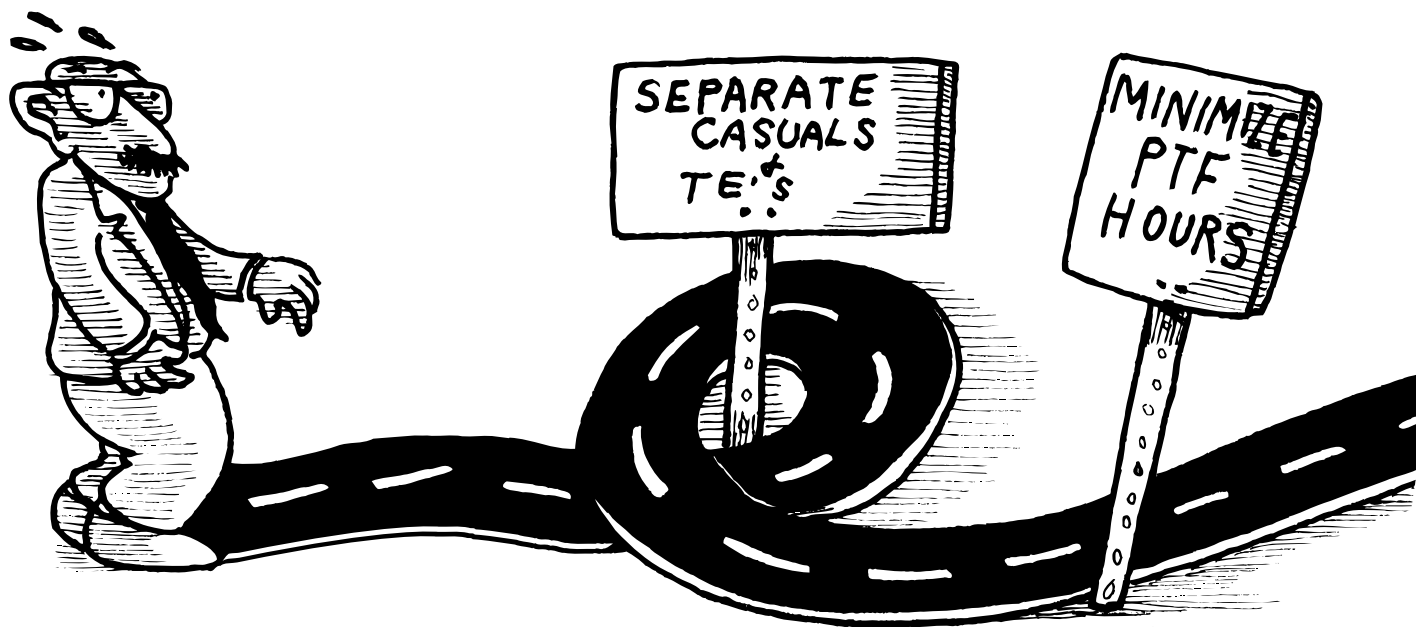
## NALC’s position

The union grieved a letter of

that management failed to meet. The first is the mandate, stated in Article 12, Section 5.C.5.a(2), that before excessing employees in the regular work force, USPS will separate all casuals “to the extent possible.” The NALC argued that in this case, management actually hired more casuals.

To support its argument that management is required to separate all casuals, *regardless of craft*, the union cited several earlier arbitration decisions upholding this argument.

The NALC advocate also presented evidence, in the form of an analysis of PTF hours, showing that management made no attempt to minimize



relocation. A cover story in the Fall 1997 *NALC Activist*, “Excessing and carriers’ rights,” deals with these and other issues involving excessing and withholding.

However, a recent arbitration decision (C-number) reveals that Postal Service management continues to violate key provisions of Article 12 that spell out the steps that must be

excessing issued to a full-time letter carrier because the union determined that management had not followed the steps set forth in Article 12 before issuing the letter. The grievance was not resolved at lower stages of the grievance process and it proceeded to arbitration on July 24, 1998.

The union advocate’s arguments concerned two specific requirements

the use of PTFs. In fact, PTF hours actually increased, in violation of Article 12, Section 5.C.5.a(3).

## USPS arguments

The Postal Service advocate denied any violation of Article 12, presenting evidence from route inspections showing that base city delivery hours

had been reduced by three hours and nine minutes a day, thus justifying the excessing of one full time city carrier.

In response to the union's charge of actually increasing the number of casual employees, the USPS advocate stated that the language of Article 12 is craft-specific. That is, Article 12 requires only the separation of casuals that are working in the same craft as the excessed employee. In this case, management hired more casuals only in the clerk craft.

Finally, the Postal Service advocate stated that management had indeed reduced PTF hours "to the extent possible." The union analysis showing an increase in PTF hours reflected special circumstances, the advocate stated, including bad weather in November, the Christmas holidays, and absences of regular full-time carriers during hunting season.

## The arbitrator rules

In making her decision, the arbitrator agreed with both arguments made by the NALC advocate. First, the arbitrator stated that the provision of

Article 12 requiring the separation of all casuals is clearly *not* craft-specific. As the arbitrator stated, "A reading of Article 12, in total, clearly refers to those instances in which the parties were referring to craft-specific language and those areas in which they were not." The language in question, Article 12, Section 5.C.5.a (2), states that the Postal Service "shall, to the extent possible, minimize the impact on regular work force employees by separation of *all casuals*." (Emphasis added)

The arbitrator also cited similar arbitration decisions, including a case heard by Arbitrator Herbert L Marx (C-number), in which Arbitrator Marx wrote, "The Postal Service is required...to look to casual employees and part-time flexible hours beyond the particular craft where the excessing is involved." Another decision by Arbitrator Michael E. Zobrak (C-12302) also states, "All casual employees are to be separated regardless of designation/activity code and the number of hours worked by PTFs is to be reduced, regardless of the craft designation."

Arbitrator Devine then considered the Postal Service's arguments that it could not reduce PTF hours because of "special circumstances" such as weather, the Christmas holidays, and absences due to hunting season. "I am not persuaded by their explanations," Arbitrator Devine wrote. "If I were to be so persuaded, I am certain there could be an explanation for every month in which part-time flexible hours increased. If so, the language of Article 12.5.C.5.a (3) would have no meaning."

Arbitrator Devine therefore ruled that the Postal Service had violated the *National Agreement* and directed that the letter of excessing be rescinded.

## Note to stewards

As this case illustrates, Postal Service management is capable of violating the most basic contractual provisions regarding excessing. Separating casuals and minimizing PTF hours are the first and perhaps most basic steps to be followed in the often complex procedure of excessing. If management can't "get it" at this stage, imagine the problems that can occur at other points in the process!

Stewards should pay particular attention to the arbitrator's discussion of the mandate to separate *all* casuals, not just those casuals performing letter carrier work. This ruling is supported by several additional arbitration decisions, as the arbitrator notes.

Note also that the union in this case presented well-documented evidence to support its assertion that PTF hours were not minimized. NALC stewards have a right to request such information from management, and this effort always pays off by creating a strong, convincing case. ■

# Know your contract: Excessing

Language in the *National Agreement* that speaks to the issues of separating casuals and minimizing part-time flexible hours are found in Article 12, Section 5.C.5 as follows:

### "Reduction in the Number of Employees in an Installation Other Than by Attrition:

"a. Reassignments within installation. When for any reason an installation must reduce the number of employees more rapidly than is possi-

ble by normal attrition, that installation:

- (1) Shall determine by craft and occupational group the number of excess employees;
- (2) Shall, to the extent possible, minimize the impact on regular work force employees by separation of all casuals;
- (3) Shall, to the extent possible, minimize the impact on full-time positions by reducing part-time flexible hours; ..."



# Working smarter with fewer interruptions

Let's begin this story about interruptions with a little exercise. Sit quietly at your desk or wherever you do your union work. Look at your watch. Wait. How long until the phone rings, or someone comes by to ask you a question, or something else happens to interrupt your flow of thought?

Chances are it won't be long at all. A survey of Americans at work revealed that most people are interrupted, on average, every nine minutes. That's bad news for NALC stewards and other branch officers trying to concentrate on important union duties. How can you possibly craft an effective grievance or resolve challenging problems for your members if you don't have 10 minutes to call your own?

Frazzled union representatives can take heart, however. Common-sense

sultant, Vern Harnish, whose audiotape, *Controlling Interruptions*, promises to help you free up an hour a day for meaningful work.

## Not all bad

Maybe you're thinking, "Wait a minute. I'm a union representative, and my job is to be available to members. Interruptions are what I do best." It's true that when you're in a helping role, you rely on other people to tell you what they need. Also, callers with urgent problems can help you feel effective and important, a trustworthy and reliable representative.

It's also true, however, that too many interruptions can provide an excuse to avoid other kinds of work—such as writing and planning. Constant interruptions of this kind of work can increase your feelings of stress and disrupt your flow of thought.

So how can you cut back on interruptions? Begin by gaining some knowledge of exactly what your interruptions are. Consultant Vern Harnish suggests keeping some kind of log of time spent at union work, noting the time, length and nature of each interruption.

If it seems too demanding to write down every single call, you can *sample* your interruptions. Here's how: For whatever block of time you set aside for union work, pick a time at which you will note exactly what you are doing. If you typically work from 4-6 p.m. Tuesday and Thursday afternoons, for example, set up a log sheet for 4:30 p.m. on each of those days. Set a timer or the alarm on your watch, if you have one, to beep at that time. When you hear the beep, write

down what you're doing at that moment.

If you collect these logs over a 10-day period, say, you should get a pretty good picture of what happens during your union time. You should also

**Gain knowledge of exactly what your interruptions are.**

**Decide which interruptions you can eliminate and which ones you can anticipate.**

have a good idea of the nature of your interruptions. The next step is to look at each of these types of interruptions and decide which ones you might be able to **eliminate** and which ones you can **anticipate**. For example, you may find yourself standing in line at a copy shop trying to copy union documents. That's an unnecessary interruption. A better idea would be to plan your schedule so that all the tasks that take you away from your desk can be accomplished together, *not* during your prime work time.

Maybe your kids interrupt you if you work at home. If so, you might want to rethink your schedule, have a talk with your family about interruptions, or move your workspace. If you need uninterrupted time to write, for example, consider going to your local

solutions exist that will help you cut back on interruptions so you can get more done. Here are some suggestions from a time-management con-

library. Many libraries provide computers; at a minimum, you'll be out of reach of the phone and drop-in visitors.

One suggestion to cut short drop-in visitors is to stand as soon as they arrive, and keep standing throughout the conversation. If necessary, you can even gently move them out of your workspace, talking as you walk them down the hall, or even out to their car.

## Pre-emptive strikes

Your log may reveal that you get a lot of calls that you could reasonably

**When you need to get a caller's attention, say their name.**

anticipate. For example, people may call you to check on the status of their grievance. You can eliminate these interruptions by choosing to call everyone with a pending grievance at a certain time. Just go down the list and leave messages or speak briefly to each grievant. In addition to stopping their calling you at inconvenient times, you'll also come across as efficient and on top of things.

## Handling what's left

Once you've assessed your interruptions and determined ways either to eliminate or anticipate those calls,

take a hard look at the time you spend on interruptions that can't be avoided. As a helping person, you probably take a few minutes with each caller for friendly conversation. Or maybe you don't want to be rude to your callers, so you let them decide when to bring up the point of the call. Or you may have trouble getting exceedingly talkative people off the phone.

An *NALC Activist* story in the Fall 1992 issue, "Taking control of telephone time," makes some basic points about effective handling of calls. Here are a few additional ideas that may also free up time.

**When you need to get a caller's attention, say their name.** You've been in this situation hundreds of times: someone has called, asked a question, and now has begun to rattle off unnecessary information, or seems too excited to hear what you have to say. Consultant Vern Harnish suggests that the most effective way to break into the flow is to say the person's name, followed by the phrase, "I need your help."

Harnish notes that we are all unconsciously primed to respond to the sound of our own name. Notice how many times people in a crowded room will break off conversation because they think they hear their name spoken somewhere in the crowd. Then, once you have your caller's attention, the phrase, "I need your help," increases the likelihood that the caller will cooperate. People want to be needed, they like being in a superior position. You can follow this appeal by saying what you need to say, as follows: "Sarah. I need your help. I have to take another call now, but I want to call you back with the answer to your question. When can I reach you?"

Another ploy to get long-winded people off the phone is to ask **closed-**

**ended questions**, that is, questions that can be answered with a simple "yes" or "no." Open-ended questions are an important way to gather information—for example, "What happened then?" or "How do you feel about that?" But if you keep asking

**Ask questions that can be answered with a simple yes or no.**

open-ended questions throughout the conversation, you encourage people to keep talking. When you want to wrap things up, don't ask, "Is there anything else I can help you with?"—an open-ended question. Instead, ask, "Have we covered all the bases on this issue?" The answer may be, "Yes," and you can end the conversation. Even if the answer is "No," you will be able to move in a specific direction and be that much closer to hanging up.

Remember that you offer the best service to the letter carriers you represent by being effective and efficient. You don't want to become an ogre, shouting at every person who cuts into your union time. On the other hand, you need to get things done. With practice, the above tips can help you handle interruptions with poise and grace. You will feel more in charge of your life, and ultimately have more time not only for your union work, but for family, friends and fun. ■

# Listen to labor singing

**S**eems like labor activists never get to have fun. It's work, work, work—whether you're trying to talk folks into joining the union, keeping up with troublesome situations on the job, or even trying to get people to bring food to the branch picnic. Maybe it's time to take a break, kick back and relax with some music that will recharge your batteries and give you something to smile about.

That's what today's labor music is all about. Sure, it's rousing, educational, motivating stuff. But it's also just plain fun. So check out some of these sounds—particularly if the last time you listened, labor music was mostly all folk songs and guitar. Today you've got a choice of rock, jazz, Latino music or blues—with almost everything in between.

So here are some suggestions for lively listening. You might consider popping these selections on the stereo during your next branch meeting or at informal branch get-togethers. And try writing your own versions—it's easier than you might think.

Most recordings are available from the Labor Heritage Foundation except as noted. For a complete catalog, write the Foundation at 815 16th St., N.W., Washington, D.C. 20006 or phone 202-842-7880. Shipping charges also apply.

**Bones of Contention.** In its first album, *Power*, this Washington, D.C.-based rock band offers a unique mix of traditional labor standards ("Which Side Are You On," "Step By Step," "Joe Hill's Last Will") and fierce original songs ("The Corporate Stomp," "We Gotta Get Organized"). The Bones' high-energy playing hammers home a pro-union message.



Especially noteworthy is a super-charged version of "Solidarity Forever," retitled "Rockin' Solidarity." (Cassette \$10, CD \$15)

**New York City Labor Chorus.** Formed in 1991, this highly regarded 100-member group has released its third recording, *On the March*. Soloists include folk legend Pete Seeger and NALC Branch 36 member **Percy McRae**, whose vibrant bass voice gives life to songs of Paul Robeson. The Chorus's other recordings are "In Solidarity" and a live concert album recorded in 1993, also with Pete Seeger. Recently *Sing Out!* Magazine praised the all-volunteer chorus as "A marvelous concept and the members should be proud of the beautiful and passionate music." (Cassette \$10, CD \$15. For *On the March*, write the NYC Labor Chorus, c/o Fund for Labor Education, 2109 Broadway, Suite 206, New York, NY 10023).

**Dr. Loco's Rockin' Jalapeno Band.** Funky rhythms and a boogie beat underlie songs about racism, world peace and workers' rights on the recording, *Movimiento* Music. Imagine a blend of blues, jazz, polkas

and salsa played on instruments ranging from the flugelhorn to conga drums. There's only one word for this kind of music: PAR-TEE! (Cassette \$10; CD \$15).

**Anne Feeney.** In a slightly more traditional mode, Pittsburgh singer Anne Feeney offers rabble-rousing music for organizers everywhere. Her most popular recording, *United We Bargain, Divided We Beg*, includes a great reggae rendition of "Bread and Roses" as well as parodies of popular songs that spotlight the problems of nurses ("Your Nursin' Heart) and assembly-line workers ("Punch It In.") Feeney also contributes new lyrics to "Solidarity Forever."

**Pete, Woody, Utah, Holly.** The Labor Heritage Foundation also offers all your favorites, labor standards that still bring tears to the eyes and a shiver down the spine. There's the classic recording, *Talking Union*, with the Almanac Singers, including Woody Guthrie and Pete Seeger. (Cassette only, \$10).

Woody's other union music is well-represented, with a total of 10 recordings, including a three-CD set of music and interviews, *The Library of Congress Recordings*, and a recording of previously unreleased Folkways recordings, *Folkways Masters 1944-1949*.

On *This Train Still Runs*, Holly Near and ex-Weaver Ronnie Gilbert sing songs from Ronnie's play about Mother Jones. Labor agitator and all-around rascal Utah Phillips has three recordings on his own, and a new release of his storytelling backed by music by Ani DeFranco, *The Past Didn't Go Anywhere*.

So find your groove and march on singing! ■

# Regional Training Seminars

**L**isted below are regional training and educational seminars scheduled to begin before February 1, 1999.

For more information, contact your national business agent.

## **Atlanta Region (Florida, Georgia, North Carolina and South Carolina)**

October 23-24, North Carolina State Training Seminar, Broyhill Hotel, Boone, NC.

November 6-8, Florida State Training Seminar, Amtel Marina Hotel & Suites, Ft. Myers, FL.

November 7-8, South Carolina State Training Seminar, Ramada Inn, Charleston, SC.

National Business Agent Matthew Rose, (954) 964-2116.

## **Cincinnati Region (Ohio, upstate New York)**

October 4-5, Ohio State Regional Grievance and Arbitration Seminar, Radisson Inn North, Columbus, OH.  
National Business Agent Bill Cooke, (518) 382-1538.

## **KIM Region (Indiana, Kentucky and Michigan)**

October 11-12, Indiana State Training Seminar, Evansville, IN.

October 24-25, Kentucky State Training Seminar, Owensboro, KY.  
National Business Agent Ron Brown, (810) 589-1779.

## **Minneapolis Region (Minnesota, North Dakota, South Dakota and Wisconsin)**

October 18-21, Minnesota State Training Convention, Madden's Resort on Gull Lake, Brainerd, MN.

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

October 31-November 1, Wisconsin State Fall Training Seminar, Wisconsin Rapids, WI.  
National Business Agent Barry Weiner, (612) 378-3035.

## **St. Louis Region (Iowa, Kansas, Missouri and Nebraska)**

October 18-20, Iowa State Fall Training Seminar, Holiday Inn, Amana, IA.

National Business Agent Joe Miller, (314) 872-0227.

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