

Purpose	This program is not the usual program on how to write grievances. This is a program on the rights of the union to appoint and certify its agents, (i.e., stewards) and the rights these people have to represent the union and its members. This program is not based on theory. It is based on written policies, step 4 decisions, arbitration awards, and NLRB awards.
What Next?	We are taking the approach that a new set of officers is elected or a new local is created. Now what happens. What must the Union do first.
Appointment Stewards is	First we must appoint stewards or if called for by the local constitution elect stewards and these people must be certified in writing to your local P.M.
Union Function	A step 4 decision in case A8-C-709 states "the selection and appointment of stewards is the sole and exclusive function of the Union". Step 4 H4C-3W-C-20157 addresses that a person on light duty may serve as a steward within Medical limitations.
Number of Stewards	The number of stewards is determined by Article 17, Section 2 of the National Agreement.
Alternate Stewards	The union may select alternate stewards to regular stewards when they are absent. The union will list the alternates in the sequence they will operate. No more than one alternate should operate at a time and this sequential list will keep members from shopping for stewards (Step 4, H4C-2M-3551). Once an alternate has initiated a grievance he/she may continue to process that grievance. Step 4 H1N-1J-C-5026.
Area Local Stewards	The area local may name stewards and certify them in writing at the regional level. If the steward is not an employee of the office in which the grievance is filed, he/she will be paid by the union. Travel time will also be at union expense. (Agreement at step 4, not a step 4 grievance).
Blanket Certification	Local unions may not make a blanket certification to cover a certain group of people such as hearing impaired. The union may certify in writing on a case by case basis. The union must be sure that a properly certified steward presents a grievance. In regional arb case S8T-3U-C-1642 the APWU lost a case because a clerk steward filed a case involving maintenance supervisors performing bargaining unit work.
Class Action	In case NC-NAT-4702 it was agreed that if a union files a class action that the union official filing such a grievance will be discussed with the union official filing the grievance.
Form 7020	Regional arb case W1C-5K-C-1229 states a steward must get a 7020 for each grievance. The National APWU has not attempted to reverse this decision.
Steward's Log	Step 4 H4C-1K-C-5589 states that management may keep a log of steward's time. In 1978, the recording of grievance time was ordered by a Government Accounting Office study.
Union Work Sheet	Step 4 H1C-3P-C-6922 states a steward may fill out the union step 1 work sheet on the clock during the step 1 process.
Grievant at Step 1 Investigation	Step 4 H1N-3U-C-36133 states that there is no contractual right for a grievant to accompany the steward during the step 1 investigation.
Grievant at Step 1 Decision	Case H4N-3W-C-8797 does state the grievant has a right to be present at the time a step 1 decision is rendered.

Immediate Supervisor

Three step 4 decisions (H1C-2W-C-12866, H1C-NA-C-17, and H4N-5E-C-36561) address this. A 204B can be the immediate supervisor and in a smaller office a postmaster can be an immediate supervisor.

Step 1 Observers

Both parties (APWU and USPS) agree observers, for learning purposes, may be present at step 1.

Off Clock Investigation

Many cases involving the investigation and processing of grievances off the clock have been arbitrated. Most cases cited are regional arb cases. Whether the union wins or loses depends on facts - all cases are not winners.

We list these cases by case number and arbitrator. The asterisk denotes a win.

Off Clock, Grievance Prep	Aaron	H8N-5K-C-14893
Off Clock, Grievance Prep	Bowles	C8C-4B-C-20807
Off Clock, Grievance Prep	Britton	S1N-3W-C-15477
Off Clock, Grievance Prep	Caraway	S1C-3U-C-9848
*Off Clock, Grievance Prep	Cohen	AC-C-13866
Off Clock, Grievance Prep	Collins	N1T-1J-C-1214
Off Clock, Grievance Prep	Collins	N1C-1M-C-9424
Off Clock, Grievance Prep	Haber	C8C-4G-C-30087
*Off Clock, Grievance Prep	Hardin	89-1A-08
*Off Clock, Grievance Prep	Hardin	S7C-3E-C-27197
Off Clock, Grievance Prep	Levak	W1C-5D-C-172
Off Clock, Grievance Prep	Levak	W1N-5F-C-10553
*Off Clock, Grievance Prep	Liebowitz	N7C-1W-C-15618
Off Clock, Grievance Prep	Liebowitz	N7C-1W-C-19318
Off Clock, Grievance Prep	Liebowitz	N7C-1W-C-26066
*Off Clock, Grievance Prep	Marlatt	S4T-3T-C-13446
*Off Clock, Grievance Prep	Marlatt	S4C-3T-C-23302
Off Clock, Grievance Prep	Marlatt	S7C-3B-C-29149
*Off Clock, Grievance Prep	Marlatt	S4V-3W-C-54509
*Off Clock, Grievance Prep	Martin	C7C-4S-C-10119
*Off Clock, Grievance Prep	McAllister	C8C-4B-C-34096
*Off Clock, Grievance Prep	Parkinson	E4C-2F-C-10505
*Off Clock, Grievance Prep	Stephens	S7C-3V-C-12928
*Off Clock, Grievance Prep	Stephens	S4C-3W-C-28984
*Off Clock, Grievance Prep	Zumas	E1C-2D-C-2884

As you can see, we have won 13 cases and lost 12. Therefore you know before you go to arbitration that this is a real crap shoot.

Step 2 Appeal On Clock

The union has the right to make written appeals to step 2 on the clock. This is in a 1972 case in Cincinnati by Arbitrator Fisher.

Step 1 Oral

This was re-enforced in a step 4 H1C-3W-C-9224. One of our locals had requested written decisions.

Step 1 Telephone

In addition in some cases, this oral decision could be made by telephone. (Step 4 H1C-5K-C-5466).

Step 1 Probationary Employee

Management at step 4 has issued two step 4 decisions stating a probationary employee does not have the right to a steward if he/she is being terminated. This is not the position of the NLRB in case JD-420-81 from Boston. We suggest a Board Charge if management so rules.

Union At Step 1

Article 15, Section 2, Step 1 states an aggrieved employee may be accompanied and represented by a steward or union representative. The union would always like to be present but it is not a contractual obligation and a step 1 may be resolved without the union present. (H1C-3D-C-25704). The union does have a right to be informed of settlement.

**Step 1
Resolve
Implementation**

If a step 1 resolution is not implemented, the union has a right to get a resolution through Regional arbitration or the grievance procedure. (H1C-3W-C-31937).

**Step 1 General
Nature**

If a steward requests to be released to investigate a grievance, he/she is only required to tell a supervisor the general nature of the grievance. (Step 4, H1C-3W-C-31937)(Arb case 89-1A-08).

**Management
Training On
Release**

Management in a recent document called Labor Relations Review had an article on Release of Steward.

It is possible for your use.

**Immediate
Release**

Many APWU stewards feel that they must be given immediate release to investigate grievances upon request to do so. Article 17, Section 3, states "such request shall not be unreasonably denied". In addition, case RA-72-135 Arbitrator Carl Warns wrote "The contract does not require the Employer on all occasions when a request to discuss a grievance is made to immediately discuss the grievance but rather to accommodate or balance the Employer's need to get the job done as quickly as possible with the right of the union to discuss and process a grievance under the grievance procedure. This means of course that on many occasions, the mission of the Employer may be somewhat delayed but on the other hand, the desire of the Union to process the grievance may also be somewhat delayed.

**Predeter-
mined Release
Time**

Step 4 (H1C-3W-C-44345) states "Reasonable Time cannot be measured by a predetermined factor".

There are several regional arbitrations on this issue. The two cases we feel locals should cite are E4V-2M-C-48 and E1C-2M-C-19245 from Charleston, West Virginia by Arbitrator Cushman.

When citing these cases, emphasize the fact Mr. Cushman was the Union's Chief Negotiator for 1971, 1973, and 1975 when the language of Article 17, Section 3 was written.

In case 48 Arbitrator Cushman writes, "This is not to say, however, that management may not ask a steward who seeks permission to investigate, adjust, or write a grievance to estimate the length of time that the steward anticipates the steward will be away from his or her work station. It is not to say also that a supervisor cannot decline to release a steward from duty during a period of time when the steward's absence would unnecessarily delay essential work. Nor is it to say that the supervisor may not specify a time period during which the absence of the steward would unnecessarily delay essential work. Nor does this decision in any way bar the Service from taking necessary action, as stated by Arbitrator Garrett, consistent with the Agreement in any case where the Postal Service can establish that a Steward has improperly obtained permission to leave his or her work station under the guise of investigating or preparing a grievance. Of course, the Postal Service may take appropriate action if it ascertains subsequently that a steward has not in fact engaged in bona fide steward activities for which he received release time. The Service may not anticipate this to be the case in advance. Nor does the Service have any generalized right to "control" the activities of union stewards".

In case 19245, Arbitrator Cushman writes, "The contractual provision that 'such requests shall not be unreasonably denied' represents an effort by the parties to accommodate the need for steward time to investigate and process grievances with the obviously important functions of efficient and productive processing of the mail. The steward does not have an absolute right to an immediate release. The supervisor does not have an absolute right to deny a requested release. Unless the demands of operations prohibit release, the release should be granted and supervisors must make every reasonable effort toward that end.

In the instant case, the Postal Service claimed that the demands of mail processing prohibited an earlier release. The union properly sought verification of the Postal Service's claim. Supervisor Montague did not testify. The Postal Service did not introduce the requested information which so far as this record is concerned is still the subject of a separate

grievance. Supervisor Addie Watkins, who was not involved on December 5, testified that the volume of mail became heavy at this time. She testified further that the OCR Records show only a portion of the mail volume. The Union, on the other hand, on the basis of the OCR Report claimed that only 45 minutes work was needed on the LSM. The information as to work load which would corroborate the Postal Service claim is solely in the possession of the Postal Service. The Service may not, on the other hand, refuse or fail to produce the corroborative data. Such a position impairs the Union's contractual right to seek factual review of volume data in order to ascertain whether the steward release was in fact "unreasonably denied". Article 31 of the Agreement requires the production of such information upon request. It is noted that no Postal Service representative who had knowledge of the facts testified that no qualified employee was available to replace the grievant. No substantial documentation was introduced by the Postal Service as to workload and service conditions. In the absence of a showing by the Postal Service that the demands of efficiency and production did indeed prohibit the release of the grievant under the circumstances prevailing on December 5, it must be determined that there was no compelling business reason for delaying the grievant's release. A bare assertion that business conditions prevailed barring the release is not enough. On this record, the Arbitrator is constrained to hold that the Postal Service unreasonably delayed the grievant's release on steward time. This does not mean that a requested release must be granted immediately or for the time period requested by the Steward. Nor does it mean that a request for steward time must be granted at the point in time requested by the steward. It does mean that steward release time must not be unreasonably delayed. The Postal Service claims that there was no showing that there was an adverse impact as a result of the delay or denial of the release at the time requested. The adverse impact is found in the violation of the Article 17, Section 3, right and a finding of violation is necessary to preserve the integrity of the Agreement.

AWARD

The Postal Service violated article 17, Section 3, when it unreasonably delayed affording release time to Steward Edens on December 5, 1984. Such unreasonable delay should not be repeated".

Arbitrator James Sherman is more specific in case S4C-3W-C-10500 when he writes: "When a Shop Steward requests official time to investigate or process a grievance, such request shall not be unreasonably denied and if at all possible he should be given the appropriate time upon his request. If business conditions are such that the request can not be honored immediately, the supervisor should make arrangements to grant the request within two (2) hours. If emergency conditions exist whereas the request can not be granted within the two (2) hours, the supervisor will advise the Shop Steward as to when and what time the request will be honored.

It is further agreed that, when an employee requests to see a Shop Steward, he should identify the reason for his request. His request should be honored immediately if possible. If his request can not be honored immediately, the supervisor should not ignore the employee's request and should make arrangements for the employee to see the appropriate shop steward within two (2) hours of the request and advise the employee of the arrangements".

Companion cases available are as follows:

Fort Meyer, Florida	S4C-3W-C-10357	Marlatt
Washington, D.C.	ADE-1707D	Krimsley
Milwaukee	C1C-4J-C-22995	McAllester

**Alter-
nate
Release
Estimate
Of Release**

Step 4 NC-C-12200 addresses an alternate time for release if a release is delayed.

In a National Level Case NB-562 from Inglewood, California, states, "Article 17, Section 3, does not authorize the Service to determine in advance the amount of time which a steward reasonably needs to investigate a grievance". In the opinion Arbitrator Garrett goes on to say, "This is not to say, of course, that Management cannot (1) ask a steward seeking permission to investigate, adjust, or write a grievance to estimate the length of time that the steward anticipates he or she will be away from his or her work station; or (2) that a supervisor cannot decline to release a steward from duty during such

**Steward On
Overtime**

period will unnecessarily delay essential work; or (3) that a supervisor, in advance, may not specify a time period during which the steward's absence will unnecessarily delay essential work.

One of the earliest subjects of the APWU certified for arbitration was the release of a steward while in an overtime status.

In a precedent setting pre-arb at the national level the following settlement was set forth on August 28, 1972.

Supervision in the Cincinnati Post Office will be instructed that the fact that an employee is on overtime status shall not be the sole determining factor in deciding whether or not such an employee shall have access to the employee's union representative for purposes of exercising his or her rights under Article XV of the National Working Agreement.

Additional step 4 decisions and at least one arbitration case have re-enforced this settlement.

**Steward
Discuss With
Chief Steward**

In Regional Arbitration Case N8C-1E-C-24620 the issue was "Did the Postal Service violate the parties' Agreement by denying steward Baumen's request to speak to Chief Steward Lukosus on May 20, 1981? What shall be the remedy, if any?"

In the opinion in this case Arbitrator Zack wrote, "Steward Baumen was entitled to contact Chief Steward Lukosus as a steward on the Article XI issue, and as the aggrieved in the Article XV11 issue, to file a grievance. I do not read that restriction on payment of one steward to bar Baumen as the aggrieved in the Article XV11 issue from access to his steward, Lukosus.

In the absence of any testimony as to any other reason for the denial of access to Lukosus, we find that denial to have been unreasonable and in violation of Article XV11".

**Review of
Documents**

Step 4 decision (H4N-3W-C-27743) there was mutual agreement that a steward has the right to on the clock time to review documents rather than to obtain copies.

**Work Area
Release**

In Regional Arb Case W8C-5D-D-19485 a steward was released to interview grievants and given five minutes for each interview. The steward took more time than allotted and a disagreement between steward and supervisor ensued. Discipline was issued and a grievance was filed to protest the discipline.

The Union defense was that a steward cannot have time limits set by management. In the opinion arbitrator Kotin writes, "In its narrowest form the issue posed in the instant arbitration is whether the Postal Service can arbitrarily establish a time limitation on a steward interviewing an employee with respect to a pending grievance. In the absence of any specific limitation in the labor Agreement on the amount of time that a steward can spend with an employee during working hours, the element of reasonableness must control. It is obvious that reasonableness does not lend itself to mathematical assessment. Inevitably, judgements are required. As applied to the instance situation the Arbitrator finds that by any test, a limitation of five minutes for discussion between a steward and a grievant is unreasonable. Without suggesting a maximum limitation, the Arbitrator notes that nothing bars the employer from interrupting what is in his opinion an overly long discussion to inquire as to its prospective duration. In such instances where the bounds of reasonableness have been breached, the employer may take such steps as are necessary to avoid an unwarranted loss of productive effort. To the extent that his actions are deemed by the Union to be violative of the labor Agreement, the grievance procedure constitutes the appropriate vehicle for resolution.

The factual configuration here present reflects, in the opinion of the arbitrator, a clash of attitude rather than a reasoned attempt to resolve the problem. The parties have dealt in their testimony and in their briefs, lengthily on "attitude" and "temperament". One must bear in mind that however amiable the relations between them. In such a context, demeanor and language may frequently be characterized as being less than friendly. The presence of such evidence of hostility of itself constitutes no impropriety on the part of either party unless it is expressed in vituperative, threatening, or abusive language. In the instant situation the arbitrator finds no

evidence of the presence of these elements. The record makes it patently clear that the protagonists in the persons of the grievant and representatives of management, were not particularly fond of each other. This arbitrator has found it advisable on frequent occasions to note that the employer-employee relationship does not require that they like each other - that they approve of each other - or that they respect each other. The sole limitation on the reflection of attitudes is that such reflection shall not in any way denigrate one or the other parties particularly in the presence of third parties. The arbitrator here finds no evidence of denigrative behavior. The record falls to reveal any ad hominem denigrating comments addressed by one party to the other. The contentions of the parties in their communication with each other were vigorously expressed with the intent of asserting rights that each of them believed he had.

With respect to the apparent violation of the "obey now, grieve later" rule, it is the opinion of the arbitrator that the factual configuration here present does not lend itself to a literal application of this principle. The right of the Union to interview employees was recognized as reflected in the permission granted to the grievant. This right was intrinsically impaired by the unrealistic time limitation of five minutes imposed by the Postal Service. Under these circumstances the arbitrator finds the failure to adhere to these limitations to be non-violative of any provision of the labor Agreement and to be outside the scope of insubordination.

With specific reference to the background of the suspension, the arbitrator finds that the grievant, however, repugnant his manner may have been to supervision, was within his rights in making such demands as he pressed against the Postal Service for necessary information. Admittedly the grievant may have been over zealous in the pursuit of justice for the employee he represented. Some mitigation should be recognized as a consequence of the Postal Service's failure to fulfill its commitments with respect to the setting of a time for meeting and providing the Union with information to which it was entitled.

AWARD

1. The grievant shall be made whole for all earnings lost as a consequence of his suspension.
2. The Letter of Warning shall be removed from his personnel file and shall be given no consideration as a basis for the imposition of any discipline in the future.

Case W1C-5D-C-11806 involves the refusal of management to let a union officer the right to investigate a grievance based on their belief the union officer (President) while on his day off did not have permission to enter the facility to investigate a grievance. In the discussion of this grievance Arbitrator Render states, "Based on the provisions of the contract, testimony given at the hearing, and the arguments of the representatives of the parties, the arbitrator has concluded that the Service violated Article 17, Section 3 of the contract. For the reasons given in detail below, the grievance is sustained.

It seems to the arbitrator that the Service has placed too much emphasis on what its representatives knew about the incident of February 5, rather than allowing Mr. Trepanier to independently investigate that matter for himself and to make his own determination as to what occurred on February 5. The purpose of section 3 is to permit stewards to investigate problems for the purpose the Service decided that there was no contractual violation and that no meritorious grievance arising out of the February 5 incident could be filed. Therefore, it denied Mr. Trepanier time to investigate the incident. The contract does not give the Service the right to allow stewards to investigate only those grievances which the Service thinks might have merit. Supervisory personnel of the Service probably do not believe that most incidents investigated by Union stewards are meritorious grievances. The traditional function of a union steward in investigating grievances for the purpose of determining whether to file a grievance. This assumes that from time to time the Union steward must investigate matters which may not have merit. Mr. Trepanier was denied this right to allow a union steward only to investigate such grievances as the Service thought might have merit would make Article 17 of the contract virtually meaningless. Stewards must have the right to investigate incidents which the Service thinks are not meritorious grievance.

The record in this case does not disclose precisely who the Service officials spoke with as a result of the February 5 incident, or who they did not interview. But suppose, for example,

one of the witnesses to the February 5 incident told Mr. Trepanier that the Union president had requested permission to come on the premises for the purpose of investigating another incident. That would present a clear conflict in testimony which the parties in the normal grievance procedure would be expected to resolve. The problem with the Service's position is Mr. Trepanier was precluded from asking anyone what happened on February 5. This is not the sense of section 3. Therefore, the arbitrator finds that the Service violated Steward Trepanier's contractual rights.

By the way of relief, the union requests that the arbitrator require the Service to post a notice, the contents of which were clearly not described by the union. Notices are normally posted in labor disputes in situations in which there is a need to inform the members of the bargaining unit about their contractual rights. It is not unusual to see notices regarding the terms of the fair labor standards act, non-discrimination status, OSHA and the like posted on bulletin boards in plants. The arbitrator does not believe this situation is comparable to those. All of those involved with the union, and it appears, a great number of bargaining unit employees who are not officials of the union, are well aware of the steward's rights provisions of this contract. The arbitrator has no doubt that his decision declaring the Service to have been in violation of Article 17, Section 3 will be circulated around the Yakima Post Office. Therefore, the need for posting for the purposes of informing the members of the bargaining unit of a contractual or rights secured by law is not present in this case.

A second reason sometimes given for posting notices in some decisions of the National Labor Relations Board is as a kind of punishment. The arbitrator does not believe that the officials of the Service who were involved in this incident, particularly Mr. Babich, should be punished or humiliated for what they did. The arbitrator believes that Mr. Babich acted honestly in denying Mr. Trepanier's request for union time. There is no evidence from which the arbitrator can infer that Mr. Babich's actions on February 5, were either malicious or for the purpose of undermining the union. For these reasons, the arbitrator declines to order any kind of posting of a notice of contractual violation.

AWARD

The grievance is sustained.

31 May 1985

Edwin R. Render
Arbitrator

Step 1 Settlement

If a grievant does not have the union present at step 1, the union has a right to be notified of the settlement. (Step 4 H1N-5G-C-8564).

Enforcement

Step 1 settlements are enforceable and this is clearly stated in Regional Arb case S4C-3W-C-56667 from Cape Canaveral.

In this case an emergency suspension was resolved by an SPO which was favorable to the grievant, but angered the Postmaster who tried to overturn the step 1 decision. In the award Arbitrator Britton wrote, "For the reasons given, the grievances are sustained. With respect to Case Number S4C-3W-C-56667, the employer is directed to discontinue the requirement that all grievances at Step 1 be presented to the Postmaster at the Cape Canaveral Post Office. With respect to Case number S4C-3W-C-56668, the employer is directed to comply with the Grievance Summary - Step 1, dated May 22, 1987, and signed by Superintendent of Postal Operations David A. Katz, which states, "That Mr. Cotter be exonerated from all charges and be made whole for lost work and pay, and that an agreement of suspension from May 16 through May 30 be served in lieu of notice of proposed removal and this proposal be rescinded immediately and removed from his O.P.F. immediately and no mention of it for any reason in the future. Also any information concerning the suspension shall be removed from his O.P.F. after 90 days and no mention of it for any reason in the future.

Steward Prior To Step 1

In a step 4 in case 4761 the issue is set forth.

A review of the material submitted at Step 4 indicates that the basis of this grievance is the denial by management of grievant's request to see his steward prior to the submission of a grievance at Step 1.

To have the steward so present, it is logical that a request must be made for the steward's presence at the meeting. Since the time of the steward is "on the clock" and the time of the employee during the grievant's meeting is "on the clock", the rule of reason would require that some minimal reason for seeing the steward be transmitted by the employee to his supervisor at the time the request is made. This, however, does not require a full disclosure of the subject which will be discussed, in the presence of the steward, at the step 1 meeting.

**Step 1
Steward For
Steward**

In Step 4 H1C-3W-C-41731 it was agreed that if a steward is aggrieved he/she has the right to be represented by another steward. The steward may also use self representation.

**Step 1
Supervisor
Must Discuss**

In Step 4 A8-W-538 it was agreed that a supervisor must discuss a grievance. In this case the supervisor told steward "you don't have a grievance" prior to hearing grievance.

This step 4 does not say the grievance must be sustained.

**Step 1
Union/
Grievant
Must Discuss**

In arbitration case NC-C-5187 the arbitrator Haber ruled the union or grievant must initiate/discuss a grievance. In this case the grievant called his supervisor and said "I intent to file a grievance". No step 1 meeting was ever held and the case was lost on a procedural basis.

**Step 1
Supervisor
at Step 2**

In case H4C-4B-C-2811 the union grieves the presence of a supervisor at step 1 and step 2. There is nothing in contract to prevent this. Just as the union has a right to determine its representative at the various steps, so does management.

**Step 1
Telephone**

H4C-3W-C-27397 addresses discussing step 1 step 4 by telephone. The issue in this grievance is whether management may refuse to conduct step 1 discussions by telephone rather than in person.

The case was resolved as follows:

The intent of the parties is to resolve cases at the lowest possible level whether it is done by telephone or in person. Normally, the parties will meet on step 1 grievances in person, however, in unusual circumstances, to accommodate the process a step 1 grievance may be done by telephone.

**Step 1
204B Right
To Grievance
Procedure**

A bargaining unit employee serving as 204B has the right to grievance procedure especially if the discipline is not related to supervisory duties.

**Step 1
Union
Grievance**

If a union has filed a grievance the union official filing the grievance is the only person the supervisor discusses the grievance with. This stops the supervisor from shopping for union officials.

**Step 1
Union Work
Sheet**

The steward is allowed to fill out the step 1 work sheet on the clock.

**Information
Requests**

Information requests are very important and documents you request should be in writing although not contractually required. It is suggested you try to supply your NBAs with copies of information requests as part of any grievance file where you were denied information.

Information Requests

What information are you entitled to? Step 4 decisions and arbitration decisions state as follows:

All information

"We mutually agree that the disclosure provisions set forth in Article XV, XV11, XXX1 of the 1978 National Agreement intend that any and all information which the parties rely on to support their positions in a grievance is to be exchanged between the parties representatives to assure that every effort is made to resolve grievances at the lowest possible level".

Attendance Records

The Postal Service agrees that relevant information within the meaning of Article XXX1, including requests for attendance information, will be provided to the Union, upon receipt, pursuant to the routine use provisions set forth in the description of the systems of records issued under the Privacy Act, 45 Fed. Reg. 1570, Sec. 050.020 (1980).

Audits Personnel

In Regional Level Arbitration Case C4C-4B-C-2805, Arbitrator McAllister ruled Royal Oak Management violated the terms and conditions of the National Agreement when it denied the Union access to the audit/report dealing with the Personnel Department and the work performed by three Personnel assistants plus others. The Postal Service is direct to immediately provide the Union with the information requested. This information is not limited to the three Personnel assistants.

Best Qualified

In Regional Arbitration Case (N7C-1T-C-3610), Arbitrator Talmadge ruled the APWU is entitled to the rating sheets for best qualified applicants.

Bid Cards

If your local memo contains language that the union shall be present at time the bids are closed a local representative is entitled to a list of bidders. (Arb case S7C-3R-C-8845, Jacksonville, Florida, Moberly).

CA-1

The issue in this grievance is whether local management was proper in refusing the union's request for a copy of an employee's CA-1 (Federal Employee's Notice of Traumatic Injury).

After further review of this matter, we agreed that there was no national interpretive issue fairly presented as to the meaning and intent of Articles 17, 19 and 31 of the National Agreement. This is a factual dispute over the application of the provisions of Section 230 of the Handbook EL-806 (Health and Medical Service); Section 867.3 of the Employee and Labor Relations Manual; Appendix B, Sections 120.090 and 120.098 of the Administrative Support Manual; and Article 17, Section 3 of the National Agreement.

ASM 120.098 Reads As Follows:

- a. Purpose. To provide injury compensation to qualifying employees and to maintain a record of the events as a basis for managerial decisions.
- b. Use
 - (1) Information may be provided to the Department of Labor for the purpose of determining whether a claimant qualifies for compensation and to what extent qualification applies.
 - (2) Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by that organization to perform its duties properly as the collective bargaining representative of postal employees in an appropriate bargaining unit.

CA-17

Pursuant to the National Labor Relation Act, records from this system may be furnished to labor organization upon its request when needed by that organization to perform properly its

duties as the collective bargaining representative of postal employees in an appropriate bargaining unit.

Casual Staffing

We mutually agreed that documents, files, and other records requested by a steward must be relevant and necessary for the processing of a grievance or determining if a grievance exists. Such requests shall not be unreasonably denied. In the instant case, the record does not support the management position that the steward's request for information relative to PTF and casual staffing was irrelevant and unreasonable. The requested information shall be provided in accordance with Article 17, Section 3. Step 4 H1C-4K-C-17972

Cost of Information

In a very good Southern Regional Arbitration Award, (Case S7C-3W-C-33635, Orlando), Arbitrator Hutton S. Brandon ruled, "The Postal Service, Orlando, Florida, violated Article 31, Section 3, of the National Agreement when it imposed charges on the Union for the production of information which would have been waived for those falling in the "all other requesters" category provided under the Administrative Support Manual. The grievance is therefore sustained. The Postal Service is directed to cease charging the Union for production of information which charges would be waived with respect to "all other requesters" and to reimburse the Union for any payments of charges found improper herein and any like charges imposed subsequent to the filing of the grievance which is the subject of this Award".

Step 4s say after reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. This is a local dispute suitable for regional determination by application of Articles 17 and 31 of the National Agreement. The union agreed that they will be required to reimburse the USPS for any costs reasonably incurred in gathering requested information, in accordance with the schedule of fees outlined in Section 352.6 of the Administrative Support Manual. Management should provide the union an estimate and may require payment in advance. With this in mind, requests for information should not be denied solely due to compliance being burdensome and/or time consuming. Step 4 H4C-4Q-C-9747 (Smiliar Step 4s, H4C-1K-C-41761, H4C-3W-C-5153, H1C-4B-C-9692) 54596, H1C-4B-C-1416, S7C-3V-C-14190. H1C-4A-C-31135 and Regional Arb cases S4C-3T-

Clothing Allowance

In arbitration case E7C-2H-C-5328 Arbitrator Foster stated that the union is entitled to have information on clothing allowances.

Customer Complaint

In this case an employee was disciplined as a customer complaint. The union grieved the discipline action and requested the name and address of the complaining customer. Local officials refused to divulge the requested information contending that there were previous instances where the union had harassed complaining customers.

It is our decision, in this instance, that the union has a right to the requested information. Accordingly, the grievance is sustained. We would like to note however that union officials will be held accountable for their conduct towards US Postal Service customers. Step 4 NB-C-1930

Disciplinary Request

The parties mutually agree that the disclosure provisions set forth in Article XV, XVII, and XXXI, National Agreement intend that any and all information upon which the parties rely to support their position in a grievance is to be exchanged between the representatives to assure that every effort is made to resolve the grievance at the lowest possible level. Accordingly, provided managements' file contains the supervisors request for disciplinary action of M. G. Edwards (Local APWU 851080) same should be made available to the union. Step 4 A-W-1480 (H4C-5F-C-1641

Discussion Notes

Step 4 H4C-5C-C-45726 (Similar Step 4 H4C-4C-C-32156) states, "During our discussion, we mutually agreed that when requested, the union will be given the date and subject of a discussion, providing that such discussion was relied upon by the supervisor in a disciplinary action to establish that the employee had been made aware of his/her obligations and responsibilities.

Based on the evidence presented in this grievance, we find that the supervisor's personal notes are not available for review by the union steward. When these personal notes are kept in a file, they are kept only for the individual supervisor's own review and are not official records. Step 4 NC-S-10618

In addition to the two separate step 4 decisions cited above, National Level Arbitrator Richard Mittenthal ruled that a supervisor's notes are not to be made available to a steward. H8N-3W-C-207111

EEO Files

At the hearing, the Union stated it was unprepared to proceed until it had received from the Postal Service the EEOC file, which could well contain matter necessary to use to determine whether the grievance had validity, and how best to present the claim. After hearing arguments of both sides, the ruling was made that the union was entitled to the file requested (arb case C4C-4C-C-6939). (Similar Step 4s H1C-1E-C-20212 and H1C-1F-C-23352)

EI/QWL

In National Level Case H4T-2A-C-36687 Arbitrator Richard Mittenthal ruled that management must give the union minutes of EI, QWL.

Finance Audits

We mutually agreed that financial audit information acquired under the guidelines of Part 170 of the F-1 Handbook will be provided to the union upon request where the information is relevant and necessary for collective bargaining or the enforcement, administration or interpretation of the National Agreement. Step 4 A8W-2266

Grievance Appealed

Step 4 NC-N-3584 (Similar Step 4 H1C-3W-C-19209 states, "However, we note that if information requested by the union is relevant to a pending step 4 grievance the requesting union representative should be allowed access to that information in accordance with the applicable provisions of Article 17, Section 3 of the 1975 National Agreement.

Holiday Schedule

In Arb Case E7C-2H-C-5330 in a request for holiday scheduling which management denied because of a lack of specificity the arbitrator ruled. Management's insistence on such a high degree of specificity as a condition to the release of information requested by the union could, in some situations, cause the investigation to be compromised. While there does exist the possibility that the union will abuse its right to claim information by excessive demands on management and engage in fishing expeditions as a means of creating grievances unduly, until such a pattern is established justifying management to take a more restrictive position, good labor relations calls for full disclosure rather than the suppression of available information.

Hiring Register

In step 4 H4C-4B-C-14318 the issue was Article 31.2 of the National Agreement by denying the union copies of the registers, hiring work sheets, applications and other related information.

The register cards and hiring work sheets may not be made available unless depersonalized as stated in the P-11, Section 251.21. Accordingly, this grievance is denied. (Note P-11 is now EL-311)

Individual Records

Under the Privacy Act, the grievant may review and have copies of any information pertaining to himself that is contained in a record filed or cross-indexed under his name or other identifier except those specific records exempted by Part 353.325 of the Administrative Support Manual or any applicable law determined to apply in this case. (A8W-2729).

1. The parties agree that the original request for documents herein was made by an individual employee under the Privacy Act and the Postal Service responded to that request under the applicable provisions of law and the Employee Labor Relations Manual.
2. In responding to union requests for information, the Postal Service will comply with Article XVII and XXXI of the National Agreement A8W-0023.

Inspectors Report

Numerous step 4 and arbitration decisions give the union the right to review Inspector's Memos and audits.

The intent of the grievance decision concerning this case was not to deprive the union of relevant information concerning this case. On the contrary, the Postmaster should allow the union an opportunity to review that portion of the Inspection Service Audit which was used by the Postmaster as substantiation for his actions in this case. This would include specific examples of observed performance referenced by the Postmaster in his letter dated October 4, 1973, to the grievant. (AB-S-880) Step 4.

The grievances concern whether information related to criminal investigations conducted by the Postal Inspection Service should be released to the steward.

While the parties have consistently agreed that a steward shall not be unreasonably denied information necessary for processing a grievance or determining if a grievance exists, it is recognized that release of criminal investigatory information under the jurisdiction of the Postal Inspection Service may involve some inherent delay due to the need to determine if the information is appropriate for release to the steward and/or to receive appropriate approval for such release. (Step 4 H1C-4A-C-26986).

The grievances are sustained. The employer violated Articles 17.3 and 31.2 of the National Agreement, and Services 8(a)(S) and (1) of the NLRA, when it failed to provide the union with all relevant and requested information needed to investigate and process grievances resulting from the Operation Snowbird investigation. The employer is ordered to comply with these provisions in the future and to compensate the union for all costs involved in the processing of the instant refusal to furnish information grievances. (This decision is a LAMPS arb decision of case above which was remanded).

In case W7C-5M-D-14793, the APWU argued that the employer had violated Article 15.4.b.7, Article 17, and Article 31 when the union was not provided the requested information.

Arbitrator Carlton Snow ordered the following information be provided the union prior to proceeding with the case.

1. Copies of all Postal Inspection Service memoranda of investigations for assault and/or altercation involving bargaining unit members for the past three years in San Francisco. In particular, these materials should include reports on allegations of assaults committed by postal managers on bargaining unit members as well as by bargaining unit members on supervisors and managers. The materials should include any reports on incidents involving Supervisors Gwen Miles, Acting Supervisor C. Encarnacion, and Supervisor Frank Del Rosario. (There was an un rebutted assertion made at the arbitration hearing that management already has collected the relevant materials with regard to this specific request).
2. Copies of any official reports made by supervisors or managers on the day of February 21, 1989 with regard to the incident on February 21, 1989 between Supervisor Miles and Mr. Lacanlale. This order is intended to include a copy of any official reports made by Supervisors Jones, Tate, or other managers for both February 12, and February 27, 1989.
3. Copies of all work logs, LSM Operation records, and EDIT records maintained by Supervisors Jones and Tate on the night of February 21, 1989. This request includes any records of travel passes, 7020's, or stewards requests. It also includes clock ring records for the machine crew on February 21, 1989 as well as clock ring records for Supervisors Tate, Jones, Kaufman, and Castillo.

Leave Records

We mutually agreed that this grievance does not fairly present an interpretive question. If a steward seeks leave records kept in the tour superintendent's office, he simply requests investigative time from his immediate supervisor to go to that office to review the files. On reaching that office, it only makes sense that he advise the designated custodian of his purpose. Any request to review appropriate records necessary to process a grievance or determine if a grievance exists shall not be unreasonable denied. (Step 4 H1C-5K-C-21566).

LSM Staffing

The union grievance is sustained. The Postal Service violated that Agreement by refusing to permit the union to inspect the data prepared by Mr. Rowland dealing with the LSM Clerk job. The Postal Service shall immediately make this data available to the union for inspection. (Arb. case S8C-3W-C-2077, Arbitrator Caraway).

Maintenance Records

As brought out during our discussion of this case, contrary to the spirit and intent of the provisions in Article XV of the 1978 National Agreement, there was an apparent lack of disclosure of information in the processing of this grievance. Specifically indicated as not being furnished to the union is Maintenance Department Directive Number 63 dated June 5, 1978. (Step 4 A8-E-0017).

Management Releaser

During the discussion, we agreed that there was no dispute relative to the union steward's entitlement to the document requested and that, should there have been, such a dispute would have been left for local resolution. We also agreed that management retains the right to designate who will provide appropriate documents to union stewards. Step 4 H1C-2F-C-1244

Medical Records

Article 223.3 of Handbook EL-806, Health and Medical Service, will be adhered to when considering whether or not to release medical information to the appropriate union representative. Step 4 H1C-3P-C-14535.

The issue in this grievance is whether a union representative is required to obtain a signed release when requesting medical information as an authorized union representative while acting in an official capacity.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that this issue is suitable for regional determination based upon the particular fact circumstances of the case and the application of EL-806, Section 223.3. Step 4 H4C-3W-C-45065.

The issue in this grievance is whether an employee's medical records must be released to the union when they are requested during the investigation of a grievance.

During our discussion, we mutually agreed that the release of medical records to the union is provided for in the Administrative Support Manual, Appendix (p. 42) (USPS 120.090). Accordingly, this grievance is sustained and the records in dispute will be provided to the union. Step 4 H7N-1P-C-2187.

For the reasons set forth above the Postal Service is found to have been in violation of the Agreement when it refused to give the union representative access to the Mailhandler's medical file. It will now make it available. Management at the Peoria Post Office is cautioned that unless requests for access to information are so far afield that the information could not possibly bear on a valid issue the union is pursuing, it should carefully study the situation before refusing the request. Each case, however, must be judged on its merits and the parties are reminded that each is expected to cooperate with the other.

Regional arb case C4T-4A-C-15919, Grable.

Micro Film Records

In this Arb case SFL-13486 the union grieved that management would not make micro film records available to the Tour 1 steward when the accounting office was closed.

In his opinion and award denying the grievance Arbitrator Jerome Green writes, "The records in question were reasonably required by management, for security reasons, to be examined during the Finance Department's regular business hours in its office in the presence of Finance Department Personnel.

These records could have been examined by another steward on duty during day time hours without prejudicing the union's case to which the records related.

Nine Ninety

In arbitration case C4C-40-C-18011, the union

One requested Nine Ninety Ones of employees who applied for a best qualified position and were denied this information. Arbitrator Linda DeLeone Klein writes, "After reviewing the evidence presented at the hearing, the arbitrator finds that the Postal Service improperly denied the union access to information which was needed to challenge the promotion of Mr. Foster. Without essential documentation regarding Mr. Foster's qualifications and the ratings of the Promotion Advisory Board, the union could not adequately pursue the grievant's claim. However, denial of information does not mean that she is automatically entitled to the remedy sought. Without evidence pertaining to Mr. Foster's qualifications, the arbitrator cannot determine whether there is merit to the union's position. This matter is further complicated by the fact that personnel who were involved in the promotion and denial of information have retired since 1986.

The arbitrator is, therefore, directing the Postal Service to furnish the union with the information previously requested in the three documents marked Exhibit 1. This shall be accomplished within fourteen (14) days of receipt of this decision. The union shall then have fourteen (14) days to evaluate the information so received and make a determination as to whether or not to pursue the matter in arbitration. The arbitrator shall retain jurisdiction of this case for ninety (90) days in the event a second hearing is requested.

Information Request-Non Postal

While we must conclude that a local union steward's right to interview witnesses relevant to a grievance is not limited to postal employees only, and that a local union steward's request for access to information is not to be denied, solely, because of National involvement, we feel that the issues as they pertain to this specific grievance are now moot. The request to interview APC personnel was made in October, 1980 and APC personnel are no longer available in Cincinnati. Also, it would be virtually impossible for the parties at this level to determine the relevancy of the information initially requested by the local steward in October 1980. Due to the National union's early on concern over the APC program and the subsequent filing of a step 4 grievance, a request for relevant information must be honored at this level.

Without prejudice to the union's original position in this case, we propose to close this grievance and furnish to the national union for inspection all relevant information concerning the APC skills program, on request, in accord with Article XXXI, Section 2, of the National Agreement. Step 4 A8-C-2856.

Official Personnel Folder

However, we agree that a steward should be allowed to review an employee's Official Personnel Folder during his regular working hours depending upon relevancy in accordance with the applicable provisions of Article XVII, Section 3. Step 4 NC-E-2263.

Oral Requests for information are not required in writing, but this officer has already stated reasons why it is a good idea to reduce them to writing. In Regional Arb Case S1C-3Q-C-31919 Arbitrator Caraway overturned a local policy that all information requests must be in writing.

Overtime Desired List and Hours

Regional arbitration case E7C-C-2H-C-5328 and S1-3W-C-1994 state the union is entitled to the ODL and hours of overtime worked.

OWCP Files

The question raised in this grievance involved the denial of a request by the grievant to review her OWCP file.

Whether the information requested should be released is a question suitable for determination at the regional level. Further guidance to resolve this dispute is contained in 353.324 and 353.326 of the Administrative Support Manual. Step 4 H1C-5G-C-11760.

The union contends that this case is different from the normal workers compensation case. The Miami Post Office has not cooperate with the grievant and the union in this matter. They have not supplied certain information needed by the grievant in processing her claim. On several occasions she has requested forms and documents needed to process her claim, but management refused to supply these items. Therefore, the arbitrator has the authority to hear the case and render a decision. Regional Arb Case S1C-3W-C-13654

Arbitrator's Discussion

The administration of workers compensation claims lies solely with the Secretary of Labor, or his designee. Several court cases and arbitration awards (concerning Postal Service cases) are unanimous in declaring that the law specifically reserves the administration of the workers compensation program to the Secretary of Labor.

However, in the instant case there are other elements than just the process of making decisions concerning the application of the laws to the grievant's claim. One of the major contentions of the union was that management refused to supply relevant documents and data needed by the grievant in processing her claim. This charge could appropriately be considered by the National Labor Relations Board if the union claimed a violation of Section 8 (a) (5) of the Act. In addition, this arbitrator believes that it could properly be taken to arbitration in lieu of filing an Unfair Labor Practice, or as a grievance claiming a violation of the intent of Article 31.

At the hearing the arbitrator ruled that he did not have the authority to consider a claim concerning the administration of the workers compensation program, but that he did have jurisdiction to consider whether or not management supplied certain relevant information needed by the union and the grievant. At this point the arbitrator indicated that he might enter an award directing management to assist the grievant in her claims by furnishing any relevant information, as long as it was not burdensome on the employer. Management's advocate indicated that he thought that the current management officials would be willing to provide such assistance, and would not challenge such an award.

AWARD

The administration of the grievant's claim for workers compensation is outside the jurisdiction of the arbitrator. However, the actions of management in supplying relevant information concerning this claim is arbitrable.

The management of the Miami Postal Service is directed to assist the grievant in preparing her claims for compensation related to the injury she suffered on the job January 7, 1983. Such assistance specifically includes the furnishing, or making available for inspection, the relevant documents needed by the grievant.

Personnel Changes

Management at the Framingham Post Office violated Article 17, Section 1 of the Local Memorandum of Understanding (see Article 30 of the National Agreement) when it failed to furnish the union with notice of the personnel change which resulted from the posting, bidding and filling of the vacancy for Vehicle Operations Assistant Level 6, Announcement No. 86-65, November 25, 1986. The Postal Service at Framingham is directed to comply with the provisions of that LMOU section in the future. In all other respects, for the reasons stated in the Opinion, this grievance is denied. Regional Arb N7-V-1F-C-12045.

P.M. Discipline

P.M. Discipline Record.

In case S7C-3D-D-30166 from Hayden, Alabama a PTF clerk was charged with falsification of rural route counts which helped establish the Postmaster's rate of pay.

Management would not provide the union with a copy of the Postmaster's discipline record.

Posting Of Jobs

E7C-2H-C-5332. The allegation was "Delay in Posting jobs/washdown of jobs." The union requested a current list of all craft jobs and who they were assigned to, as well as a list of all jobs being considered for reversion. The arbitrator ordered management to provide the information.

Printouts

The question raised in this grievance is whether local management properly deleted the names of employees from the copy of a "76" printout furnished to the steward.

After reviewing the information provided, we mutually agree that if the names were relevant to the processing or resolution of a grievance, they should have been provided. Therefore, if the steward still desires the employee names, they will be furnished. Step 4 A8-W-675.

Productivity Records

The grievance concerns whether the stewards, on learning that local management is maintaining records of productivity of records pursuant to Article 17, Section 3.

We mutually agreed that the steward certainly is entitled to review records of this nature pursuant to Article 17 and Article 31. Step 4 H1C-5D-C-13804.

Quality Control Teams

We mutually agreed that a steward shall have the right to interview aggrieved employees, supervisors, and witnesses when processing a grievance or determining if a grievance exists. On the other hand, a reasonable basis for interviewing such aggrieved employees, supervisors, and witnesses must also exist. It appears that the type of cooperation expressed in the step 2 answer may have gone far in resolving this matter. Step 4 H1C-4H-C-18205.

Relevant

During our discussion, we mutually agreed that under Article 31, Section 2, of the National Agreement, Request for information pertaining to purely local matters should be submitted by local union representative to the installation head. If relevancy can be established pursuant to the provisions of Article 31, then management will provide such information to the union. Step 4 H4C-3W-C-21442.

Search Time

During our discussion, we mutually agreed that under Article 31, Section 2, of the National Agreement, request for information pertaining to purely local matters should be submitted by local union representative to the installation ahead.

If relevancy can be established, pursuant to the provisions of Article 31, then management will provide such information to the union.

It is our position if a search must be performed by professional or managerial personnel there will be a fee.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case. Step 4 N4C-eW-C-14386

SPLSM Reports

The Postal Service violated Article 31, Section 2 of the parties' National Agreement when it denied the Long Island New York Area Local's request for "SPLSM daily totals reports" for the period July 15 to October 15, 1981, at the Riverhead Sectional Center. The Postal Service shall promptly provide the local with such information. Regional arb case N1C-1M-C-11182.

Staffing Reports

That is what the parties bound themselves to in Article 17, Section 3. Furthermore, while not raised, the Arbitrator notes that a contract must be read in its entirety when questions arise relating to the intent of the parties. Article 31, Section 2, fully supports the meaning and application I have found in Article 17, Section 3. The fact is the Postal Service has obligated itself to make available relevant information which, in actuality, could help the union process a grievance. Some local management might not like this concept, but the National Agreement governs.

The union is not required by the National Agreement to show damage to its capacity to file grievances before relevant information is forthcoming. The fact that, faced with this denial, the union did file grievances on the reversions is irrelevant.

AWARD

Royal Oak management violated the terms and conditions of the National Agreement when it denied the union access to the audit/report dealing with the Personnel Department and the work performed by three Personnel assistants plus others. The Postal Service is direct to immediately provide the union with the information requested. Regional arb C5C-4B-C-2805.

Sup/204 Application

The issue in this grievance is whether or not management must supply the local union with a list of names of all employees who applied for non-bargaining unit positions.

It was agreed that, if the local union provides a list of officers and stewards, the Postal Service will indicate which (if any) applied for a supervisor position within the past two years. Step 4 H4C-3W-C-27068.

**Supervisor
Attend Record**

The question raised in this grievance involved whether management is required to release attendance records of supervisory personnel when requested by the union.

After further review of this matter, we mutually agreed that no national interpretive issue is fairly presented in the particulars evidenced in this case. We further agreed that if the local union can substantiate that the subject information is relevant to establish desperate treatment, the information requested will be granted. However, this can only be determined after full development of the fact circumstances involved in this case. Therefore, this case is suitable for regional determination. Step 4 H1C-4K-C-26345. Step 4 H4T-3P-C-10526 is similar.

**Supervisor
Discipline
Record**

The question in this grievance is whether or management violates Article 17 of the National Agreement when a local union representative was denied access to specific information he claimed was needed for a grievance investigation. Specifically, the union representative requested information concerning the discipline issued to a supervisor who was involved in an incident in which an employee was removed. The National Union representative contends that the information that led to the supervisor receiving a letter of Warning for involvement in an incident that led to the removal of an employee may be a factor in representing the employee and saving his job. Step 4, H1C-3P-C-6054 similar step 4s are H1C-3D-C-24168, H1C-4K-C-17971 and H4C-2N-C-48829.

A recent national level arbitration case by the NALC with Assistant Director Bob Tunstall as the APWU representative at intervention reaffirms this.

In case H7N-5C-12397 by Arbitrator Snow it was held "Having carefully considered all evidence submitted by the parties concerning this matter, this arbitrator concludes that the Employer violated the parties' National Agreement when the Employer denied a Union request for information respecting the possible discipline of two supervisors from the grievant's post office, who are alleged by the Union to have engaged in specific misconduct both close in time to and similar to that charged against the grievant, so that the Union could compare the actual conduct and subsequent treatment of the grievant and the supervisors and/or potentially argue that the grievant's discharge was disparate and thus not for just cause."

**Supervisor
Discipline
Request**

The parties mutually agree that the disclosure provisions set forth in Article XV, XVII, and all information upon which the parties rely to support their position in a grievance is to be exchanged between the representatives to assure that every effort is made to resolve the grievance at the lowest possible level. Accordingly, provided managements' file contains the supervisors request for disciplinary action of available to the union. Step 4 A8W-1480.

Test Scores

It is the position of the Postal Service that neither the Privacy Act nor the National Labor Relations Act requires the employer to release employee-identified test scores. See 5 U.S.C. 552a et seq.; ASM Section 353.326; ASM Appendix USPS 301 (1979); NLRB v. Local 497, Inter. Brotherhood of Elec. Workers, 795 F.2d 836, 838-9 (9th Cir. 1986); and Salt River Valley Water Users; Assoc. V. NLRB, 769 F. 2d 639, 642-43 (9th Cir. 1985). Specifically, Section 353-326 of the Administrative Support Manual (ASM) provides for the release of information regarding individual postal employees to the unions under certain circumstances. Such releases must be in accordance with the collective bargaining agreement as well as the Privacy Act and the requirements of the NLRA. These regulations are consistent with the National Agreement under Article 19. Additionally, Article 31 has not been interpreted, and may not be interpreted, to override these statutory requirements. In summary, neither the National Agreement nor the applicable statutes require the employer to release employee-identified test scores or listing which would effectively reveal such scores. Step 4 H7T-5L-C-155 (Note: This case was not appealed to arbitration).

The grievance concerns the steward's request to review the mail classification course and the course examination to determine its validity.

Accordingly to the file, local management invited the union to the PEDC to review the course and test in question. However, the test is an accountable item and could not be released or copied for obvious reasons.

It is the position of the Postal Service that local management has made a reasonable response to the union's concern. Under the circumstances, the test cannot be released or copied. Step 4 H1C-1M-C-12997.

The issue in this grievance is whether management properly denied the union's request to review testing materials.

The facts in this case indicate that an employee did not receive a bid assignment based on her failure to pass the Postal Service driving test. The union requested specific test information. Management denied the union's request.

The union contends that management is required to release the requested information in accordance with provisions of the National Agreement.

The Administrative Support Manual, Part 353.324 states, "An individual may review and have copies of any information pertaining to himself that is contained in a record filed or cross-indexed under his name or other identifier, except the following: . . . d. Testing Material. Information within records that might compromise testing or examination materials". Therefore, the denial by management to release the subject information was proper in this instance. Step 4 H1C-5H-C-24295. Similar case H1V-4B-C-31145.

**Thirty Nine
Seventy One**

That the grievance shall be and hereby is allowed that the relevancy of information necessary for the union to determine whether to file or to continue processing of the grievance is to be determined by the Union, not management; that the cost of providing the material requested is not a factor, since the Postal Service may charge the union the reasonable costs incurred in obtaining the requested information. Regional arb C4C-4A-C-13074.

**Timely
Furnished**

We mutually agreed that there was no interpretative dispute between the parties at the National level as to the meaning and intent of Article XXXI or Article XVII of the National Agreement as they relate to a union steward's request for copies of, or access to documents, files and other records necessary for processing a grievance or determining if a grievance exists.

The parties agree that there shall be no "game playing" with regard to the above. If the union requests copies of information as per Article XXXI, they may be required to pay just costs reasonably incurred in obtaining the information and the information shall be furnished in a timely manner. When a steward requests to review information as per Article XVII, such a request shall not be unreasonably denied and it shall be furnished in a timely manner. Step 4 A8-S-2720.

**Twenty Six
Zero Eight
(2608) and
2609**

The question in dispute is whether the Step 1 Grievance Summary, PS Form 2608 should be furnished to the union open request.

It is our position that the disclosure provisions set forth in Article 17, Section 3 and Article 31, Section 2 of the 1981-1984 National Agreement are intended to impart information to the parties that is germane and supportive of a position in a grievance. The information is exchanged between representatives to ensure that both parties are cognizant of their respective arguments in order to achieve resolution at the lowest possible level.

It is mutually agreed that the Grievance Summary, PS Form 2608, is included in the aforementioned process when the designee, beyond Step 1, utilizes the Grievance Summary, PS

Form 2608 to support an answer to the grievance. Step 4 H1C-3A-C-252. Similar to Step 4s A8E-1172, A8C-1397, A8E-2864, H1C-2W-C-2008, H1C-3U-C-6105, H1C-3U-C-6106.

We mutually agreed that there was no interpretative dispute between the parties at the national level as to the meaning and intent of Article 17 of the National Agreement, as it concerns release of Form 2608 to union representatives. We further agreed to the following:

1. The PS Form 2608 is not completed by the Postal Service at the time of the Step 1 discussion. Therefore, it is not available for the union to review until step 2.
2. If the union requests to review the completed Form 2608 at step 2 or any subsequent step of the grievance procedure, it will be made available. Step 4 H1C-5C-C-7210 (similar step 4s, H4C-13592, H4C-2D-C-2320, H4C-2D-C-2448.

**Untimely
Grievance**

Union stewards are not precluded from obtaining access to materials necessary to process a grievance because management considers the grievance untimely (Article 17, Section 3). Step 4 H1C-5E-C-2321.

Video Tapes

The issue in this grievance is management is obligated to give the union a copy of the video tape that has been requested under Article 31.

During our discussion, we mutually agreed that the following would represent full settlement of this case.

If any part of the video has been or is intended to be used as a basis for disciplinary action, those portions will be reproduced and afforded to the union. The costs associated with reproduction will be born by the union.

Please sign and return the enclosed copy of this decision your acknowledgement of agreement to settle this case. Step 4 H4C-3U-C-11715.

If, as and when the Postal Service obtains custody or access to the video tapes at issue, the Service is to make those tapes available to the union in such manner as to enable the union to use them in preparation of a defense in the removal cases of the three employees. Regional arb N4C-1K-C-17232.

**Work
Schedules**

Union stewards 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.

According to the factual evidence in this case, the union contends that National Arbitrator Mittenhal's award in the "out-of-schedule pay for 204b's dispute" entitles all such employees who worked out-of-schedule, and were not compensated, to be paid retroactive to January 12, 1980. Although management disputes this, the union has reasonable cause to pursue their argument by requesting documentation of the out-of-schedule work, work performed by 204b's from that time. The request, however, shall be specific as to the employee records needed. Step 4 H1C-3W-C-8088

Interview rights of stewards are set forth in Article 17, Section 3. The question of what persons a steward may interview during his/her investigation are set forth in the following decisions.

**Aggrieved
Employee**

"The steward, chief steward or other union representative 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 requests shall not be unreasonably denied". step 4 H4C-3W-C-55195

**Area of
Interviews**

We did agree that if a steward deems it appropriate to interview a grievant outside the immediate work area, the steward shall not be unreasonably denied. Step 4 A8-S-1792. Regional Arb case.

The dispute is over the Employer's unilateral selection of location(s) within the Mountain Home installation that are utilized by the union steward, herein steward, to (a) investigate whether to file a grievance; (b) investigate and adjust a grievance; and (c) present a grievance at steps 1 and 2.

In fashioning the remedy, I have taken into account the grim current labor relations history at the installation that has actualized and institutionalized grievance filing. Each side is convinced that the other side is attempting to "do them in". Inevitably this has created a standoff. Good will is in short supply. For that reason, I must, regrettably, avoid granting a conventional remedy which is: the parties should bargain over a mandatory subject of bargaining -- ground rules for grievance filing, processing and resolution.

The union is not entitled, as a matter of right, to a private office to accomplish Purpose A through C. It is entitled to adequate privacy and common sense accommodations (e.g., the union should not be expected to interview employees in the rain or in sub freezing weather).

At the time when the Union initiates steps to accomplish Purposes A, B or C, the appropriate union representative shall attempt to reach agreement with local management as to the place(s) to be used to accomplish Purposes A through C. The employer shall take into account reasonable privacy considerations; the union shall take into account day to day operations and unforeseen exigencies. If no such agreement can be reached, the employer shall, without delay, make available a second floor private room or space. If the employer deems that the postmaster is without legal authority to make such room or space available to the union for one or all of the Purposes. If the only available private space is the Postmaster's Office, that space will be made available.

In light of the principle in Article 15, Section 3.A., the employer is directed to arrange to conduct Step 1 meetings at a place(s) other than at a supervisor's desk. The designated place(s) may vary depending upon availability and privacy consideration considerations. As in Purpose A through C, if a second floor room is not made available for the step 1 meeting, the Postmaster's Office shall be used for that Purpose.

In light of the principle and spirit enunciated in Article 15, Sec. 2, Step 2, the Postmaster or his designee shall conduct Step 2 meetings in his office or in a room which assures privacy.

The Remedy does not hold that the union has veto authority over the place(s) to be used to accomplish Purposes A through C. Similarly, the Remedy does not grant to the Employer the right to unilaterally determine the places that are to be used for the aforementioned Purposes. Regional arb S7C-3B-C-21378.

It is interesting to note that under the terms of the agreement that stewards are recognized as the union representative for the adjustment of grievances. Those adjustments, it appears to me fall into three or four categories, they are:

1. Interview of witnesses.
2. Interview of complaints by prospective grievant.
3. Investigation of files, etc.
4. Writing of grievances.

There is no doubt in anyone's mind that there must be a place for the interview to occur. If the interview occurs within the facility and during working hours, then in that event, that interview, until revealed to management, is a private matter between the union steward and the bargaining unit member. This being the case, it therefore follows, that interviews of such a nature are entitled to the privacy it deserves. The question is, does the supervision determine such physical area or does the union determine such physical area.

A rule of arbitral law is that an employer may promulgate such plant rule as is reasonable and may discipline for such rule violation, if the rule is known and if discipline for violation is

even handedly applied. The method for testing that rule is at the time of its inception by the filing of a grievance or by contesting the discipline imposed for a violation of that rule. The latter is the method chosen in the instant cause and is quite proper, therefore. The fact that the testing of the rule did not occur prior is not a defense against such contest now. Des Moines, Iowa arb case.

The regulation or rules as to the place of meeting may be regulated by the employer and in an unilateral manner unless there is a contractual provision to the contrary. However, that rule, just as any other rule must be reasonable. It must not be promulgated so as not to defeat, harass or annoy the filing of grievances, the investigation of grievances or the interview of witnesses. It appears from the record, therefore, at least from the union's testimony, that from the geographical spot of the foreman's desk, it was impossible to carry on the work of unionism within the facility and therefore the rule was unreasonable.

It is noted in the record, that the employer did not contest the facts spread on the record by the union to the effect that the desk was in a busy, noisy, viewable and non-private area. While the employer may regulate the area in the facility for such union activity, such regulation must provide an area in which there is available the privacy accorded to such matters.

It is noted in the record that the lounge was used for such matters. The lounge proved unsatisfactory because of the seemingly unbusinesslike manner in which such union business was carried on in the lounge. While the employer was proper in changing the area because of the lounge problems, a more suitable spot than the foreman's desk should have been chosen.

The grievant is charged with insubordination. Such insubordination is not well founded. The fact is the rule upon which the insubordinate activity was based, was improper because the rule was unreasonable in its application.

The grievant is also charged with a violation of Article XV, Sections 1 and 2. Section 1 is merely the definition of a grievance. Section 2 is merely the procedural aspect of filing and processing the grievance. I find no improprieties of the grievant under these sections.

Management has the right to operate its facility, but its acts must be of such a nature so that the representational aspects of union activity in and around the facility, as allowed under the contract, is not circumvented. If time is allowed for such representational activity, so should reasonable space. By this, I do not mean that a union may have carte blanche and choose its own space. That still belongs to management. Again, however, management is charged with reasonableness.

The union has contended that the instant case provides an example of a broad stroke against unionism; that the instant case provides an exception to the work now, grieve later rule; that there was no rule in the facility at all. I cannot agree with these contentions. The fact is, this is a case of an unreasonable rule, because the unilateral rule as promulgated interfere with contractual language mutually agreed upon by the parties. Regional arb case AC-C-11,555.

**Interview
Concurring
Official**

The question in this grievance is whether management violated Article 17 of the National Agreement by denying the union's request to interview Tour Superintendent Symcak, the management official who concurred in a disciplinary action.

The union contends that Mr. Symcak must make himself available for an interview on all disciplines on which he concurs.

During our discussion, we agreed that no national interpretative issue involving the terms and conditions of the National Agreement is fairly presented in this case. Article 17.3 lists the categories of employees -- aggrieved, supervisors and witnesses -- that stewards have the right to interview. The article also provides that request shall not be unreasonably denied. Step 4 H1C-4A-C-19626.

**Interview
Customer**

Based on the evidence presented in this grievance, we find that in the specific circumstances considered, the request to interview the customer was properly denied. However, in cases where a customer's complaint is directly used

to affect the wages, hours and working conditions of an employee, the steward shall be allowed to conduct such an interview if the customer agrees. Step 4 NC-W-9980.

**Interview
E&LR Rep.**

The question in this grievance is whether management violated Article 17 of the National Agreement by denying the union's request to interview Labor Relations Representative McCellan in conjunction with a disciplinary action.

The union contends that E&LR representative must make themselves available for interviews about any disciplinary action they review, advise, concur in, or write.

During our discussion, we agreed that no national interpretative issue involving the terms and conditions of the National Agreement is fairly presented in this case. Article 17.3 lists the categories of employees -- aggrieved, supervisors and witnesses -- that stewards have the right to interview. The article also provides that requests shall not be unreasonably denied. Step 4 H1C-4A-C-19625

**Interview
Of Grievant**

This grievance involves denial of a union steward's request to speak to a possible grievant.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case.

We agreed that as stated in Article 17.3 of the National Agreement requests from properly certified union stewards to conduct the kind of union business described shall not be unreasonable at a local installation on a given date is not a matter than requires national interpretation but must be determined based on the facts involved. Step 4 H4C-4D-C-10931

**Interview of
Grievant and
Presence At
Step 1**

After further review of this matter, we mutually agreed that no national interpretive issue is fairly presented in the particulars evidenced in these cases. Normally, the steward determines how much time the grievant needs to be present during the processing of a grievance. However, the immediate supervisor may set a specified time to begin and end a period of grievance handling activity due to service needs. If additional time is necessary, the steward should discuss the additional time is necessary, the steward should discuss the need with the supervisor. Additional time may be granted in conjunction with the previously specified time or at a later time or date. The parties agree that any request for time or date. The parties agree that any request for grievance handling time or denial of that request is subject to the rule of reason based upon local fact circumstances. Step 4 H1C-4B-C-25900

**Interview
Of Inspectors**

In a recent pre-arbitration settlement with the NALC, the Postal Service agreed that a 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 observe by said inspectors and upon which a disciplinary action was based.

In the administration of this settlement, steward's requests to interview postal inspectors should be directed to the postmaster or his designee. Such requests will then be forwarded to the inspector-in-charge who will determine whether the steward's request to interview the postal inspector will be granted.

We recognize that the administration of this settlement is potentially time consuming, however, there are certain legal aspects which must be taken into consideration by the inspector-in-charge before such meetings can be arranged. In this regard, we must make every effort to operate within the time constraints outlined in Article XV of the National Agreement.

Postal inspectors will be advised of this settlement and its intent via a separate memo from Headquarters' Inspection Service. Please take the necessary steps to advise appropriate field managers of the above-referenced settlement. Case N8-N-0224 Wheeling, WV Arb Case.

In this case, a determination needs to be made as to whether or not grievant was removed for just cause. In addressing such, it became necessary for me during the arbitration hearing to make a ruling relative to whether or not a fair opportunity had been provided the union and/or

grievant to review all relevant matters surrounding the aggrieved-of removal action to the extent such was permitted under the Agreement. Here, the union notes that its representative was denied an opportunity to interview the Postal Inspectors who allegedly completed an investigation into this matter.

Now, there is little dispute over this point for the record clearly reflects that Local Union President Schneid wrote the Wheeling Postmaster on 9 March 1989, wherein he requested: "the opportunity to interview either Postal Inspector S. Liskiewicz or A. P. Covelli". In turn, the Postmaster, in penning a note to Schneid the next day, stated: "[y] our request for an audience with the Postal Inspectors to review local grievance 04-89 has been declined by the Postal Inspectors". It is in this regard that the union challenged the Service's right to proffer exhibits and testimony via a witness from the Postal Inspection Service. In sustaining this motion, I ruled that the Service could not rightly proffer testimony of witnesses that the union had been denied an opportunity to interview following a request for such inasmuch as the contract clearly provided for such a right. Simply stated, I held that the Service was estopped from proffering any testimony from the Postal Inspection Service. When looking at Article 17, Section 3 of the Agreement, it is clear to me that the parties intended that there be, to the extent practical, a full disclosure of all matters surrounding a particular grievance. I believe that union representatives are to be accorded an ample opportunity to review appropriate documents, files and records and, if necessary, to interview individuals who are involved in the matter at issue.

Now, the record reflects that the Service took the position that there would be no "audience" with the Postal Inspectors because the Inspectors had declined to be interviewed. While I can speculate as to whether the Inspectors were apprehensive or reluctant about being interviewed prior to arbitration, such is of little import, for their behavior led to an untenable situation, a situation that effectively precluded grievant and his representative from learning all relevant facts, etc. being relied upon by the Service. Accordingly, I reaffirm my ruling in this matter, i.e., that the Service is estopped from using Postal Inspectors as witnesses in the instant arbitration; such, I believe, being properly predicated upon the provisions of Article 17, Section 3 of the Agreement. Regional arb E7C-2F-D-19852

**Interview
Non-Postal
Off Site**

The parties agree to recognize the following as nationally established policy regarding a steward's request to leave the work area while on-the-clock to interview a non-postal witness:

In accordance with Article 17 of the 1981 National Agreement, a steward's request to leave his/her work area to investigate a grievance, shall not be unreasonably denied. Subsequent to determining that a non-postal witness possesses relevant information and/or knowledge directly related to the instant dispute under investigation, a steward may be allowed a reasonable amount of time on-the-clock, to interview such witness, even if the interview is conducted away from the postal facility. However, each request to interview witnesses off postal premises must be reasonable and viewed on a case by case basis. For example, it is not unreasonable for a supervisor and/or steward to telephone the prospective witness to ascertain availability and willingness to be interviewed and, if willing, to establish a convenient time and locale. (National Memo of Understanding December 6, 1982 APWU & Management. Similar Step4s: H8N-3W-C-21294, H1C-3W-C-11184, and H1N-3U-C-13115.

In Regional Arb Case H1N-1J-C-27273 the award on this subject reads as follows:

The Postal Service violated Article 17 of the Parties' Agreement by refusing to allow the grievant time on the clock to interview certain non-Postal Service persons. His grievance is sustained. He shall be reimbursed for his claim in full.

**Interview
Other Crafts**

The parties at this level agree that a steward may interview employees of different crafts if such request is being made pursuant to Article 17, Section 3, of the National Agreement. However, if the steward is investigating a grievance not relevant to the steward's craft, the provisions of Article 17, Sections 2.B. and 2.E., must be followed. Step 4 H1T-5H-C-28879

**Interview By
Steward**

The parties negotiated certain restrictions and obligations in the steward's rights to handle

Terminated

such discussions with employees. But they never negotiated a time limit on such discussions.

As noted by Arbitrator Bowles in case number C8C-4B-C-20807, relied on by the Postal Service:

"Supervision may violate the contract in unreasonably limiting or withholding permission for a time, so that in ultimate result the union's representative is effectively frustrated in his efforts to investigate and write up grievances".

That is what happened in this case. The evidence shows that the unilateral termination of the session was premature; that there were multiple problems under discussion; and that it was necessary to resume the conference the next day to completely cover the several problems raised by Marcum.

In the absence of any testimony to the contrary by the supervisor, we must conclude that the investigation was being carried out in good faith by Baumen and that its termination by Gallagher was improper. The requested remedy of discipline for Gallagher is not within our authority.

DECISION

The Postal Service violated the parties' Agreement when it terminated the grievance investigation between Steward Baumen and Clerk Marcum on June 26, 1981. Such improper and premature termination of steward discussions of problems with bargaining unit members should not be repeated. Regional arb N8C-1E-C-24632 (Similar case Regional Arb E4V-2M-C-48 also cover protected status.

Investigation Appealed Grievance

The issue in this grievance is whether management violated the National Agreement when a union steward was denied permission to investigate a grievance after the grievance was appealed to Step 3.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. It is not required that investigation of a grievance be completed before a grievance may be appealed to another step of the grievance procedure.

Management is not obligated to compensate a second steward or union official for time spent reinvestigating a grievance already investigated by another steward or union official. Step 4 H4N-3R-C-43838.

Investigation Document Review

There is no provision for having the grievant accompany the steward while the latter is investigating a grievance. However, in accordance with Article XVII, second paragraph of Section 3, the steward may review documents necessary for the processing of a grievance and has the right to interview the aggrieved employee. As long as the request is reasonable, there is no reason why the steward could not go over related documents with the grievant during the interview. Step 4 NB-5-6239

Investigation Time Limits

Regional Arbitrator case C1C-4T-C-1377 contains good language on time limits set by management for investigation of a grievance by a steward.

BACKGROUND

"G. Fox was in the process of documenting a maximization grievance. There were a total of 19 employees time cards and schedules to document. Information was not in order or complete. This took considerable amount of extra time. As of 9/29/81, Fox had used approximately 21 hours. On that date, D. D. Brewer (Manager of Fox) sent word by J. Anderson (Supr) that Fox's time was out. The union feels 21 hours is not a reasonable amount of time to complete this documentation".

Discussion By

Article XVII - Representation, sets forth the

Arbitrator

rights of stewards in the investigation and adjustment of grievances. In the collective bargaining process, the steward occupies an important position and serves a vital function. Understandably, the parties have set forth with some particularity what the rights of the steward are. Grievances cannot be adjusted fairly and promptly unless there is timely and full investigation so that the total facts may be marshalled for presentation. In the long view, the proper exercise of the functions of the steward conduces to the welfare of the employer since it is part of the mechanism for getting rid of uncertainty and doubt and bringing to a problem or potential problem the essential facts requisite for solution. Involved in this case, of course, is an investigation to determine whether or not there is a grievance.

Here the key consideration is that of reasonableness - whether the grievant needed all the time that he used or whether he needs additional time to complete his investigation. Admittedly, there will be differences between and among persons in their investigating methods and techniques. Contract protection is not intended to serve as a vehicle for unnecessary, protracted investigation, nor can the right be curtailed or in effect defeated by a standard imposed by management, whose representative might use a more effective and speedy methodology in investigation. In many instances, as here, management knows what the investigation of the steward would likely reveal or not reveal, and it is understandable if management was perplexed by the time that the grievant was taking to find out what was already known to them.

On the basis of that which was received in evidence and delineated by representatives of the parties, the arbitrator is of the opinion that 63 hours total for the completion of the investigation would be clearly unreasonable and excessive. The denial of a total of 63 hours would not be an unreasonable denial. But the posture of the case is an investigation that was started and was not completed. The grievant might well employ less time-consuming and efficient methods to complete his investigation, and it is possible that the arbitration itself has provided the grievant with some insight that he did not have before the hearing. The investigation should be completed, and the grievant should be given an opportunity to obtain that information which he needs and a reasonable time for review of that information. The summary denial of any additional time to the grievant, not only before he had completed his investigation, but also before there was any careful attempt to find out from him what problems he was encountering and, too, without prior notice to him that he was going to be denied additional time, was unreasonable. Accordingly, the grievant shall be given an additional 9 hours to complete his investigation. It will be left to the parties as to how the 9 hours will be granted on the basis of that which was offered before him, the arbitrator is of the opinion that one hour a day is patently an inefficient method.

ISSUE:

Was the grievant, Gary Fox, unreasonably denied permission from his supervisor to review documents, files and other records necessary for determining if a grievance exists?

ANSWER:

Yes. The claim of the grievant that he needs a total of 63 hours for such an investigation was not supported by the evidence, and such a period would be clearly excessive. He is entitled to additional time for completion of such investigation, and the arrangements for his leaving his work area for such investigation to obtain and study pertinent records will be left to the parties.

Investigation Time Limits

Expedited non citable arb case E8-C-2D-D-2471 also contains very interesting language on time limits.

This matter involves the seven day suspension of the grievant, a union steward, for failure to comply with an order of one of his tour superintendents limiting the time for his leaving the work area to investigate a grievance. Article XVII, Section 3 of the Collective Bargaining Agreement makes no reference to any time frame limitations for such investigations but merely states that the request by a steward to leave the work area "shall not be unreasonably denied".

There are basically two issues involved. The primary question relates to whether the U.S. Postal Service may set a time frame under the terms of the Collective Bargaining Agreement

for the investigation of grievances by union stewards. Assuming the foregoing question in the affirmative, the second issue pertains to whether the grievant was justifiably disciplined for returning to his work area after a deadline set by a tour superintendent, and whether, as to effectuating such discipline, the Postal Service must act more promptly than in the instant matter.

The evidence presented, disclosed that the grievant requested permission to leave his work area the National Airport on the evening of March 10, 1978, to investigate a grievance at the Central Post Office. After certain discussions with his foreman and a tour superintendent, the grievant refused to accept an authorized absence contingent upon his returning to the work area by a certain time. The grievant then proceeded with his regular duties until shortly thereafter, he was given an unconditional Authorized Absence Form (7020) by one of the foreman. While proceeding from the work area, one of the tour superintendents verbally informed him that he had better return within forty-five minutes or face a serious problem.

In regard to the first issue, there is no authority for the arbitrator, especially in an expedited arbitration proceeding, to interpret the Collective Bargaining Agreement as to management rights. In addition, there is nothing in the evidence presented to the arbitrator in regard to any determined policy of the U.S. Postal Service as to time limitations for union stewards to conduct grievance investigations. This being so, it is the opinion of the arbitrator that the U.S. Postal Service, through one of the tour superintendents, may not arbitrarily limit the time period for a union steward to conduct a grievance investigation on an ad hoc basis. The terms of the Collective Bargaining Agreement as pertinent to this issue apply solely to whether a union steward shall be granted permission to leave the work area in the first place and not as to how long of a period such leave may take. Therefore, until there is either an official policy or a specific interpretation as to management's rights in limiting the time frame for departure, the U.S. Postal Service may not on the one hand grant a union steward permission to leave the work area and, subsequently, on the other hand, limit the time of his absence. Should the need for the steward - employee's services in the work area be necessary, he or she should not be granted permission to leave the work area until the services are no longer necessary. The foregoing is borne out by a letter from the Director of Employee & Labor Relations of the United States Post Office, dated April 23, 1980 (Union Exhibit 10) to Mr. Sidney Brooks, President of the American Postal Workers Union, stating that "Management will not unreasonably deny union stewards time to investigate and adjust grievances", and that, when due to operational requirements, immediate release can not be granted, "Management will give the stewards an approximation of when they can expect to be released".

Based upon this determination of the initial issue, it is apparent that the tour superintendent did not issue the grievant a valid instruction to report back to the work area within forty-five minutes after initially authorizing his absence. The grievant, Alfred E. Davis, therefore, is not subject to disciplinary action. However, it is to be noted that the U.S. Postal Service was not derelict in its duty of informing the grievant of the alleged failure to comply as soon as possible after the subject incident since it made several attempts to bring notice of same to the grievant's attention.

The appeal of the grievant, Alfred E. Davis, is, therefore, upheld.

**Step 2
Appeal**

In arbitration case C1N-45 held in 1972, Arbitrator Patrick J. Fisher ruled that completing the step 2 appeal form is on the clock.

**Step 2
Form
Initialing**

1. When requested, the immediate supervisor will initial the step 2 grievance appeal from which only verifies the date of the decision.
2. The step 2 grievance appeal form will have sufficient information completed for the immediate supervisor to determine that he/she is in fact verifying a decision date of the grievance that was heard.

Step 4 pre-arbs on following cases:

H4C-4F-C-3994	H4C-3F-C-5051	H4C-3F-C-5064
H4C-3F-C-4015	H4C-3F-C-5060	H4C-3F-C-5065
H4C-3F-C-5037	H4C-3F-C-5061	H4C-3F-C-5066

H4C-3F-C-5038
H4C-3F-C-5050

H4C-3F-C-5062
H4C-3F-C-5063

H4C-3F-C-5067
H4C-3F-C-5068

**Step 2
Alternate
Union Rep.**

Management should accommodate reasonable in cases of extended absence or illness on the part of the representative at step 2. Step 4 A8-3-0759

**Step 2
Class Action**

The grievance concerns local management's method of using the union president's name in the subject heading of grievances filed on behalf of the union. See below:

Subject: Step 2 meeting (Stafford)
Local Grievance #107-83

We mutually agreed that there is nothing contractually improper about management indicating the name, in parenthesis, of the steward who filed the union grievance on the subject line of the step 2 answer.

To use the union president's name when he did not file the grievance and does not desire that his name be used, under the circumstances, seems arbitrary and not conducive to good labor-management relations. Step 4 H1C-3W-C-22217

**Step 2
Grievant
Present**

Recently, a pre-arbitration discussion was held on the above referenced case. The issue in this case is whether management properly denied the grievant's presence at a step 2 meeting. (H4C-4B-C-2899)

In accordance with Article 15.2 Step 2 (c) and (d) the parties reaffirm and agree to these principles that:

1. If a grievant is not available to attend the scheduled Step 2 meeting, the parties may agree to reschedule the meeting to a date mutually convenient in order for the grievant to be present.
2. There must be adequate notice given by the union, and a significant reason demonstrated by the union in order to justify rescheduling the step 2 meeting beyond the required seven (7) day limit.
3. The parties mutually agree to extend the step 2 meeting to a date mutually agreed upon.
4. All time spent in the step 2 grievance meeting will be on a no gain/no loss basis in accordance with Article 17.4. Step 4 H7C-3R-C-241 reaffirms the above language.

Similar Step 4 decisions H4C-5D-C-5830, H4T-3B-C-33224, H8N-5B-C-13172, NC-S-4634, H4N-1E-C-28034

**Step 2
Management
Designee**

The question in this grievance is whether management violated Article 15 of the 1981 National Agreement by designating a postmaster from another post office to serve as the step 2 official at the Mountain Home Office. The union contends that in offices with more than twenty employees, management cannot have a step 2 designee from outside the installation.

It is the position of the Postal Service that, as stated in the step 2 decision, Article 15 does not preclude the employer from designating a step 2 designee, but indicates the action which must be taken in associate offices of twenty or less employees.

Information in the file indicates that local officials determined that the designation should be made in order to reduce labor-management problems in the office. We find the action taken to be consistent with sound labor-management relations and not in violation of the National Agreement. Step 4 H1C-3F-C-10264

Step 2 Meeting

The issue in this grievance is whether step 2 grievance meetings are being properly scheduled.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed to reaffirm the following principles:

1. If one of the parties is not available to attend the scheduled step 2 meeting, the parties may agree to reschedule the meeting to a mutually convenient date.
2. There must be adequate notice given by the union, and a significant reason demonstrated by the union in order to justify rescheduling the step 2 meeting beyond the required seven (7) day limit. Step 4 H7C-5K-C-8258 (Similar Step 4 H4C-3W-C-14958)

Step 2 Observer

Both the union and the employer have historically had persons other than the actual designated representatives attend step 2 meetings as observers. However, such persons shall attend at the mutual consent of the parties designated to discuss the grievance. Step 4 H8N-3U-C-126250

Step 2 Meeting Non-Scheduled Hours

The issue in this grievance is whether an employee is entitled to overtime compensation for time spent at a grievance hearing outside of their regular work hours.

After further review of this matter, we agreed that there was no national interpretive issue fairly presented as to the meaning and intent of Article 17 of the National Agreement. This is a local dispute over the application of Article 17, Section 4 of the National Agreement. We agree that Article 17 contains no provisions for compensating employees whose attendance at grievance hearings extends beyond their normally scheduled work hours. The parties at step 3 are to apply the above understanding in order to resolve this case. Step 4 H1C-5H-C-17671 (Similar step 4 decisions H4C-1M-C-23649, H1C-5D-C-7904, H1C-5F-C-9523, and H1V-3W-C-6843 and H1C-3D-C-18533).

Step 2 Meeting Privacy

It was mutually agreed to resolve the instant case based upon the understanding that local management shall make reasonable efforts to hold step 2 grievance meetings in private and without due interruption. Step 4 A8W-1227 (Similar Step 4 A8W-2761).

Step 2 via Telephone

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We agree that where the local parties are in mutual agreement, grievance discussions may take place via telephone. Step 4 H7N-5K-C-4965

Step 2 Settlement Offers

The issue in this grievance is whether management was proper in offering a resolution to a grievance that included a stipulation that the grievant would withdraw all other administrative appeals (EEO, MSPB, NLRB).

After further review of the matter, we agreed that there was no national interpretive issue fairly presented as to the meaning and intent of Article 15 of the National Agreement.

The parties at this level agree that either party can make settlement offers at the various levels of the grievance procedures. These offers may include the disputed stipulations, however, the union and/or grievant is free to decline or counter such offers. Neither party should attempt decline or counter such offers. Neither party should attempt to coerce the other party into an unfair, unreasonable or inappropriate settlement. The union may pursue any grievance to the full limit of the provisions of Article 15 of the National Agreement. Step 4 H1C-5G-C-10661

Step 2 Resolution Form

The question in this grievance is whether management is properly using a locally developed form to document resolutions concerning employees complaints.

On a non-precedent and non-citable basis and without prejudice to the position of either party, the parties at the national level agree to the following as final settlement of this grievance:

Use of the subject form is proper, however, for a grievance to be properly settled or adjusted at step 2, the union must concur with the agreement. Step 4 H1C-3A-C-30906

**Step 2
Additions
And
Corrections**

During our discussion, we concluded that the question in this grievance is whether under Article XV of the National Agreement, a union officer actively employed at the installation and who was not the steward who processed the grievance at step 2 can be the union representative responsible for preparing any corrections or additions to the step 2 decision and the appeal to step 3, on-the-clock.

After reviewing the information provided, it is our position that Article XV indicates that the union representative who presents the grievance at step 2 should also be the one who prepares any necessary corrections and additions to the Step 2 decision. The union can designate an officer (actively employed for pay purposes.) to prepare the appeal to step 3.

This opinion, is supported by the following excerpts from Article XV:

Article XV, Section 2C - The installation head or designee will meet with the steward or a union representative . . . This phrase gives both management and the union the prerogative to designate anyone of their choosing to participate in the step 2 discussion.

Art. XV, Section 2D - At the meeting the union representative shall make a full and detailed statement of facts relied upon ... This phrase indicates that one individual was selected to discuss the grievance.

Art. XV, Section 2F - Where agreement is not reached the Employer's decision shall be furnished to the union representative in writing Here, again, one person, obviously the same person who discussed the grievance, will receive the written answer.

Art. XV, Section 2G - If the union representative believes that the facts or contentions set forth in the decision are incomplete or inaccurate, such representative should within ten days of receipt of the step 2 decision, transmit corrections or additions desired necessary This passage clearly indicates that the same person who receives the answer in Section 2F is to prepare corrections or additions.

Art. XV, Section 2H - The Union may appeal an adverse Step 2 decision to Step 3. Note that the term the union representative is replaced by the union. At this point, the union has an option of designating someone else to prepare the appeal.

In the instance grievance, we conclude that the Clerk Craft President may prepare the appeal to Step 3 on-the-clock if he is the one person designated to do so by the union. He may not prepare any corrections or additions to the step 2 decision on-the-clock, if he was not the union representative at step 2. Step 4 A8-S-0759 (Similar step 4 decisions A8-W-1271 and A8-S-0309)

**Step 2
Corrections**

It is agreed that the Shop Steward shall be permitted a reasonable amount of time on the clock to write a Union Statement of Correction and Additions to the step 2 decision per Article 15.2.2.g (pages 60-61). It is also understood that the Shop Steward shall upon request of management give the general nature of the grievances and the number involved. If for whatever reason(s) the time cannot be made available on date of request, the manager shall give reasons why, and set a reasonable time no later than the next work day of Shop Steward. Regional arb S4C-3W-C-19330

**Step 2
Additions
Corrections
By Management**

Normally, the Postmaster or management step 2 representative will not issue letters of rebuttal concerning corrections and additions to the union. However, should this occur, the appropriate union representative will be allowed reasonable official steward time to prepare a written response. Step 4 H8N-3W-C-28234.

**Steward
Travel
To Step 2**

National Arb Case H8N-1A-C-7812 address Travel
from a station to a step 2 meeting.

Subject:

Payment of Grievant - Travel Time for Step 2 Meeting.

Statement of the Issue:

Whether the Postal Service's failure to pay a grievant for time spent traveling to and from the Step 2 meeting on his grievance was a violation of the National Agreement?

DISCUSSION AND FINDINGS

A grievant can receive payment under Article XVII, Section 4 "only" if he satisfies certain express "conditions". He is paid for steps 1 and 2 of his grievance "for time actually spent in grievance handling, including investigation and meetings with the employer", providing the "time spent" is part of his "regular work day".

The issue words in this contract clause, it seems to me are "grievance handling". They encompass a broad range of grievance activity. They include "investigation", "meetings with the employer", and other similar kinds of grievance action. But all of these activities, to be covered by Article XVII, Section 4, must have one essential characteristic. They must involve the "actual...handling" of a grievance.

A grievant may occasionally have to travel to a Main Post Office to participate in his step 2 meeting. That is what happened to Roventini. But such traveling cannot reasonably be said to involve the "actual...handling..." of a grievance. While the grievant is on a bus or train enroute to the meeting, he is not engaged in the "actual...handling..." of his grievance. He is traveling, nothing more. His "grievance handling" begins only when he arrives at the meeting. It follows that he has not satisfied the express "conditions" of Article XVII, Section 4 and is not entitled to payment for his travel time.

This conclusion is consistent with the parties' negotiating history. Article XVII, Section 4 has had a provision for payment for "time actually spent in grievance handling..." since 1971. NALC (actually the Postal Labor Negotiating Committee) proposed adding the following language to the "grievance handling..." clause in the 1975 negotiations: "...including travel and transportation, investigation, preparation, and writing grievances". (Emphasis added). The Postal Service rejected this proposal. NALC proposed adding the following language to the "grievance handling..." clause in the 1978 negotiations: "The employer shall also compensate union representatives for time spent in and traveling to and from meetings called by the employer..." (Emphasis added). Again the Postal Service rejected this proposal. Given this history, it would appear NALC recognized in 1975 and 1978 that "time actually spent in grievance handling..." did not include travel time.

Moreover, when the parties added a witness payment clause to Article XVII, Section 4 in the 1978 negotiations, they expressed the Postal Service's obligation in a much different way. They stated, "...the employer will compensate any witnesses for the time required to attend a step 2 meeting". Clearly, the "time required to attend..." includes travel time. The grievant payment clause, "time actually spent in grievance handling", says nothing whatever about "time required to attend..." meetings. It can hardly be interpreted to mean the same thing as the witness payment clause.

Arbitrator Mittenthal denied the grievance.

**Step 2
Travel
Within
Building**

The question in this grievance is whether management violated Article 17 of the National Agreement as it relates to time spent by employees traveling to and from step 2 meetings.

During our discussion, we agreed to resolve this issue based on our mutual understanding that, when it becomes necessary for a steward to leave his/her work area to

investigate, present and adjust grievances, management will compensate the steward for time spent traveling to and from his/her work area within the same building.

We also agreed that stewards, as well as witnesses required to attend step 2 meetings, will be compensated for time spent traveling to and from step 2 meetings provided the travel is not outside the building. Step 4 H1C-3W-C-8906 (Similar step 4 decisions H1C-3W-C-9215, H1C-5K-C-1438, H8-S-0330, NA-S-0255, H1C-3W-C-7840, H1C-3W-C-8905, H1C-3W-C-24515, and H1C-4D-C-26904).

**Step 2
Witness**

The issue in this grievance is whether local management violated the National Agreement when the union's request for a witness to be present at a step 2 meeting was denied.

During our discussion, we mutually agreed to the following:

The necessity of the presence of a grievant at a step 2 meeting is determined by the union.

In accordance with Article 5, Section 2, (Step 2)(d), of the National Agreement, "The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions". and ...in cases involving discharge, either party shall have the right to present no more than two witnesses".

Please sign and return the enclosed copy of this decision as your acknowledgement of agreement to settle this case. Step 4 H4C-5K-C-33325.

**Step 3
Appeal Of
Remand**

The issue in this grievance is whether the union must reappeal to step 3 a case which has been remanded from step 4.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. No appeal to step 3 is necessary when a case is remanded from step 4. Step H1C-3A-C-46843

**Step 3
Appeal On
Clock**

National Level Arbitration Case AB-E-021 addresses the issue of step 3 appeals on the clock.

Statement of the Issue: "Is the Postal Service required to pay union stewards for time spent in writing appeals to step 3 of the grievance procedure, pursuant to Article XVII, Section 4 of the 1978 National Agreement?"

Decision

For these reasons, I find that the word "including" in Article XVII, Section 4 is not a term of limitation. It follows that the payment for "grievance handling" is not limited to the three enumerated tasks. Steward Romine's action in appealing cases from step 2 to step 3 was plainly "grievance handling". He is therefore, entitled to be paid for that time provided the appeals are truly step 2 work. That question is discussed below.

In reaching this conclusion, I have fully considered another Postal Service claim. It emphasizes the following sentence which was added to Article XVII, Section 4 in the 1973 National Agreement: "The employer will also compensate a steward for the time reasonably necessary to write a grievance". It argues, that express inclusion of this writing as a form of compensable "grievance handling" indicates that other kinds of writing (e.g., the appeal from step 2 to step 3) are not covered. This argument is not persuasive. The fact is that this sentence represents nothing more than the parties' adoption of Arbitrator Fisher's award. The parties also continued to use the term "grievance handling". By doing so, they appear to have adopted Arbitrator Fisher's rationale that this term was broad enough to include tasks other than those enumerated in Article XVII, Section 4.

One other crucial question must be resolved. Stewards are paid only for step 1 and step 2 "grievance handling". The union maintains that preparation of the appeal from step 2 to step 3 is part of step 2 and is hence covered by Article XVII, Section 4. The Postal Service says this appeal is a step 3 activity.

Article XV, Section 2 describes the various steps of the grievance procedure. The final stage of step 2 and the initial stage of step 3 read as follows:

Step 2 - "(h) The union may appeal an adverse step 2 decision to step 3. Any such appeal must be made within fifteen (15) days after receipt of the employer's decision unless the parties' representatives agree to extend the time for appeal. Any appeal must include copies of (1) the standard grievance form, (2) the employer's written step 2 decision, and, if filed, (3) the union corrections or additions to the step 2 decision".

Step 3 - "(a) Any appeal from an adverse decision in Step 2 shall be in writing to the Regional Director for Employee and Labor Relations, with a copy to the employer's step 2 representative, and shall specify the reasons for the appeal".

These provisions offer little assistance. It is more useful to examine the steward's function and the actual mechanics of moving a grievance from step 2 to step 3. The steward meets with the Postal Service representative; he makes a detailed statement of the facts and contract clauses on which he relies; he introduces evidence if appropriate; he argues his case. This is of course the step 2 meeting. Later, he receives the Postal Service's decision. If it is adverse, the union may choose to appeal the grievance to step 3. In that event, the steward has other tasks to perform. He corrects the facts and contentions in the step 2 decision if necessary; he puts together the required documents; and he writes out the reasons for the appeal. It seems to me that this is also a step 2 activity. For not until the appeal is perfected, not until these papers are filed with the Postal Service Regional Director, does the dispute actually reach step 3. Anything which precedes that filing is a step 2 activity. This view is, I think, consistent with the language of the grievance procedure itself.

Thus, Steward Romine's appeals from step 2 to step 3 involved step 2 "grievance handling" and the time he spent on this paper work was compensable under Article XVII, Section 4.