

**American Postal Workers Union, AFL-CIO**  
**Mark Dimondstein, President**

# **SHOP STEWARD'S TRAINING MANUAL**



**A Production of**  
**The Research and Education Department**  
**Joyce B. Robinson, Director**

Revised December 2017



## American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

**Mark Dimondstein**  
President

202-842-4250 (Office)  
202-842-4297 (Fax)

### National Executive Board

Mark Dimondstein  
President

Debby Szeredy  
Executive Vice President

Elizabeth "Liz" Powell  
Secretary-Treasurer

Tony D. McKinnon Sr.  
Director, Industrial Relations

Clint Burelson  
Director, Clerk Division

Steven G. Raymer  
Director, Maintenance Division

Michael O. Foster  
Director, MVS Division

Stephen R. Brooks  
Director, Support Services Division

Sharyn M. Stone  
Coordinator, Central Region

Mike Gallagher  
Coordinator, Eastern Region

John H. Dirzius  
Coordinator, Northeast Region

Kenneth L. Beasley  
Coordinator, Southern Region

Omar M. Gonzalez  
Coordinator, Western Region

Greetings APWU Shop Stewards:

Congratulations!

Whether you have been serving as a shop steward for years or are new to job, you are on the front line in the fight for respect and dignity in the workplace. Your determination and dedication – and that of other union activists – help make our union strong.

Much of this Steward Training Manual focuses on processing grievances. I am confident it will be a valuable resource as you work to enforce our Collective Bargaining Agreement.

However, a shop steward's duties go far beyond filing grievances. Yes, we need committed, forthright representation on the work room floor. But our union will only be strong enough to meet the challenges we face from postal privatizers if we have an engaged, active and empowered membership.

Shop stewards must lead the way in organizing our co-workers to attend informational pickets and picnics, union meetings and visits to congressional representatives. Stewards also must help sign up non-members to join the union. And stewards must mobilize union members to engage the public in our fight to preserve our treasured *public* Postal Service.

The success of the APWU and the labor movement will depend on activism and solidarity.

We look forward to working with you as we strengthen our union – a union that is standing up, fighting back, and winning!

In union solidarity,

A handwritten signature in black ink, reading 'Mark Dimondstein', is written in a cursive style.

Mark Dimondstein  
President

MD/lbb  
opeiu#2,afl-cio

## INTRODUCTION

The American Postal Workers Union wishes to commend you for accepting the challenge of becoming an APWU shop steward. The steward is the backbone of the Union. More than any other officer, he/she has the responsibility of interacting with the membership on a daily basis. It's through the steward that the lines of communications flow. He/she listens to complaints, accept criticism, solve problems, and enforce the Collective Bargaining Agreement. However, get little or no praise when a job is well done.

The steward has a special relationship to the rank and file member. Many members do not attend Union meetings and are not familiar with their local, state, or national Union officers. The steward is the one person, who interacts with the member on a daily basis. Usually, if the member has a high opinion of the steward and feels that the steward represents the interests of the workers, he/she will feel the same way about the Union.

Therefore, the steward has the responsibilities of: Enforcing the Collective Bargaining Agreement and Local Memorandum of Understanding; motivating the membership; organizing non-members; keeping members informed of APWU meetings, activities, and programs; referring members to the correct agencies for assistance, and encouraging political involvement.

Most importantly, remember once certified, the steward becomes the face and voice of the Union. His/her demeanor and professionalism, as well as work ethic, should always serve as a role model for APWU members to follow. In order to do an effective job, the shop steward must be familiar with the various handbooks and manuals utilized by the United States Postal Service, (USPS). *Many of these handbooks and manuals are on the Research and Education Department's Basic Shop Steward Training CD. Contact the Department at (202) 842-4225 for a copy.*

It takes a special type of person to be a good shop steward and with a little patience and a lot of practice you can become one of the very best. Although it may be an awesome responsibility, you will soon find it is filled with personal rewards and satisfaction. We welcome you aboard and remember that your local, state, and national officers are available to offer assistance and support.

***Acknowledgement: A special thanks to Nancy Olumekor and Pat-Davis Weeks, National Business Agents, for devoting their knowledge, time, and resources and for their outstanding efforts in gathering information for this Basic Shop Steward Training Manual. Their assistance and dedication were invaluable to me.***

Joyce B. Robinson, National Director of Research and Education Department  
American Postal Workers Union, AFL-CIO

## TABLE OF CONTENTS

Certification of the Shop Steward .....	1
Duties of Shop Stewards .....	2
Violating the Duty of Fair Representation .....	3-4
Shop Steward’s Rights.....	5-6
PS Form 7020 .....	7
PS Form 1260 .....	8
Steward’s “Special Immunity” .....	9-11
What is a Grievance.....	12-13
Tools of the Shop Steward .....	14
Proper Documentation of Grievances .....	15-76
Interrogation by OIG/Postal Inspectors.....	77-86
Steward’s Right to Refuse to Disclose Information.....	87-88
Processing Grievances.....	89
Proper Order to Place Documents in Grievance File .....	90-91
Grievance Chronology Sheet.....	92
Time Limits Step 1 .....	93
Extending Time Limits Request Form .....	94
Request for Information.....	95
Grievant/Witness Statement Form .....	96-97
Checklist for Step 1 Grievances .....	98-99
Completing the Step 1 Grievance Outline Worksheet .....	100

Step 1 Grievance Outline Worksheet .....	101
Settlement Implementation Form .....	102
Time Limits, Appeal to Step 2 .....	103
Checklist for Step 2 Grievances .....	103-104
Completing the Step 2 Grievance Appeal Form.....	105-106
Step 2 Grievance Appeal Form .....	107-108
Exhibit Sheet.....	109
The Step 2 Meeting.....	110
Addition Facts, Evidence, and/or Contentions Submitted at Step 2 .....	111-112
Receipt of Documents Form.....	113
Corrections and/or Additions .....	114
Statement of Corrections and/or Additions Form .....	115-117
Direct Appeal to Arbitration from Step 2.....	118-119
Step 2 Appeal to Arbitration Grievance Form .....	120
Checklist for Step 3 Grievances .....	121
Step 3 Grievance Appeal Form .....	122
Establishing a Grievance Committee .....	123
Test for Just Cause.....	124
Standards Determining Past Practices .....	125
Reducing Stewards Stress.....	126-127

## CERTIFICATION OF SHOP STEWARDS

APWU shop stewards are either appointed or elected under an article of a local's constitution and bylaws and it is the APWU's prerogative, not postal Management, to decide which shop stewards are certified. Even so, sometimes Management attempts to interfere in the selection of stewards. Whenever this occurs, it must be challenged immediately. It is not up to Management or the employee to pick and choose the steward or Union representative.

***Contract language applicable to steward certification and representation appears in the Collective Bargaining Agreement (CBA) Article 17.2, Appointment of Stewards and the Joint Contract Interpretation Manual (JCIM), Article 17.2.A.B.C. and D.***

\*\*\*\*\*

The local president must provide a list of all shop stewards/alternates to the Installation Head in accordance with ***Article 17.2.A*** of the CBA.

- All local officers who are actively employed and serve as shop stewards “**must**” be certified and included on the list. ***This includes the local president;***
- A list of shop stewards and their designated sections and tours should be posted on all Union bulletin boards;
- Shop stewards should wear badges for identification purposes;
- In accordance with the language of the ***JCIM, Article 17.2.B***, stewards filing grievances outside their designated section and/or tour ***MUST*** have a special letter from the local president. This certification is not ongoing, but for a specific issue. Each time a new grievance arises, a new certification must be issued, and
- Certification for post offices with less than twenty employees or for Union representatives, who are not on the employer's payroll, is covered under the ***CBA, Article 17.2.C and D.***

**Special Note: *If challenged by Management, improper certification of a steward may render the grievance procedurally defective. Therefore, the steward should consult his/her local president for written certification.***

## DUTIES OF THE SHOP STEWARD

It is a mutual benefit for the Postal Service and APWU to have shop stewards available, during working hours, to discuss problems and potential grievances with members of the bargaining unit. Such discussions are essential for resolving potential disputes in an amicable manner and to avoid escalating into a grievance.

The steward's primary duty is to understand and enforce the contract. He/she must have the knowledge, ability, and determination to file grievances, in a timely manner, for every contract violation. The steward serves as a:

**Liaison** - The shop steward serves as a liaison between the Union officers, the Management officials, and the membership for the purpose of handling problems and resolving grievances.

**Confidant** - The steward should always handle grievances in a professional manner and assure that information obtained during a grievance investigation is held in the strictest of confidence.

**Leader** - As a leader, it is most important that shop stewards serve as role models and develop credibility among the membership to encourage participation in APWU programs.

**Organizer** - Organizing is critical to the APWU. The steward should assist with membership drives and be familiar with internal and external organizing policies.

**Educator** - Knowing the Collective Bargaining Agreement, (CBA) and Joint Contract Interpretation Manual, (JCIM) and keeping abreast of the changes in the various handbooks and manuals will assist the shop steward in informing members of their rights under the terms of the contract.

**Communicator** - The steward should be ready to assist members with problems, which affect their welfare, both on and off the job. Notifying the member of available resources is a primary job of the shop steward. In addition, the steward should notify the membership of upcoming Union meetings, events, educational conferences, and seminars.

**Political Activist** - The shop steward should work closely with the APWU's Legislative Department, Auxiliary, and Central Labor Councils to notify members of pending legislation which will affect postal jobs and benefits.

## VIOLATING THE DUTY OF FAIR REPRESENTATION

The Union is vested with the responsibility to represent all employees, both members and non-members to the best of its ability. The **Duty of Fair Representation, (DFR)** dictates that a Union official may not represent an employee in a **capricious, perfunctory, arbitrary, or bad faith** manner. The steward should not withdraw a case or negotiate a different settlement for a non-member than the one that he/she has negotiated for the member, if the fact circumstances of both cases are the same.

**Arbitrary** - The shop steward doesn't have an explanation why he/she failed to appeal a particular grievance, when past practice shows that similar cases have been appealed by the same steward.

**Example:** When asked why the grievance was not appealed, the shop steward may state that he/she did not think that it was a violation. If questioned by the National Labor Relations Board, (NLRB), the steward must be able to prove that he/she has not appealed similar cases of this nature.

**Capricious** - The shop steward has a reason why he/she did not appeal the grievance, but the reason is not logical.

**Example:** The shop steward refuses to appeal some cases addressing bargaining unit work because he/she is tired of doing the same type of grievances all the time.

**Perfunctory** - The shop steward does not conduct a proper investigation before closing the case and puts forth little or no effort to determine the facts.

**Example:** The grievant gives the shop steward a list of witnesses to interview. The steward has a heavy case load and does not follow up with the interviews.

**Bad Faith** - The shop steward allows personal feelings, Union politics, or bias to interfere with the representation of the employee.

**Example:** A national arbitration advocate withdraws a removal case prior to going to arbitration, and it was later discovered that the grievant had dated the advocate's spouse or significant other.



## **Rights of the Employee**

Although the courts do not define the standards reflecting the Union's Duty of Fair Representation, they do reject extremes and mark boundaries providing some guidelines to the limits of the duty. The employee has certain legitimate rights by which the Union must abide such as:

- The right to clear and unquestionable terms of the collective bargaining agreement. The Union cannot refuse to follow or enforce the rules and standards that it has established on behalf of bargaining unit employees, and
- The right to have his/her grievance decided on its own merits. The Union violates the Duty of Fair Representation when it trades a meritorious grievance, to secure a benefit for another individual or group of individuals.

## **Rights of the Union**

The Duty of Fair Representation does not prohibit the Union official from making sound, stable decisions to withdraw a grievance. Therefore:

- The Union has no duty to process frivolous grievances, and it must be free to settle a grievance in accordance with any reasonable interpretation. However, in settling such disputes, similar complaints should be treated consistently,
- The steward can make good faith judgments in determining the merits of a grievance, but the steward must use reasonable care and diligence in investigating, processing, and presenting grievances on the employee's behalf, and
- Using other officers or NBAs to review and concur with cases to be withdrawn, especially Notices of Removal, is encouraged to demonstrate that careful consideration was given to the case, prior to withdrawing the grievance.

***Special Note: Settlement of grievances for improper motives such as personal hostility, political opposition, or racial prejudices constitutes bad faith regardless of the merit of the case. The Union violates its duty to represent fairly, by refusing to process grievances for these reasons.***

## SHOP STEWARD'S RIGHTS

It is imperative that stewards know their rights under the *Collective Bargaining Agreement, (CBA), Article 17.3, Rights of Stewards* and under *Article 17 of the Joint Contract Interpretation Manual (JCIM)*.

### **Stewards Have the Following Rights:**

The following outlines basic steward rights as found in the *JCIM, Article 17.3*:

- The right to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance;
- The right to review documents, files, and other records which are necessary for processing the grievance or determining if a grievance exists;
- The right to interview the aggrieved employee, supervisors, and witnesses;
- The right to represent an employee during an Inspection Service or the Office of Inspector General (OIG) interrogation, when requested by the employee;
- The right to reasonable time on the clock to complete grievance forms, to write all appeals, including Step 3 appeals, and to write the Union's additions and corrections to Management's Step 2 decision, and
- The right to process post-removal grievances provided the grievance is non-disciplinary, not related to the removal action and initiated prior to the date of separation from Postal Service rolls.
- ***Stewards Have Superseniority.*** The language of the *Joint Contract Interpretation Manual (JCIM), Article 17.3, Superseniority*, "prohibits a steward from being involuntarily reassigned from a tour or facility/installation unless there is no duty assignment for which the steward is qualified. In other words, superseniority rights must be observed even if it requires an involuntary reassignment of another, more senior employee. **The prohibition applies only if there are APWU bargaining unit employees who continue to be represented by that steward. This rule does not apply to alternate stewards.**"

### **The Steward Should:**

- Be a respected leader of his/her section or tour;
- Police the contract and uphold local Union policies and always follow-up on questions and inquiries, and
- Make every effort to resolve a grievance at the earliest step and keep the grievant informed throughout the grievance progress.

## **Tips for the Steward**

1. Always listen to an employee's complaint. Tell the member if his/her complaint is not a violation of the Collective Bargaining Agreement, (CBA). Make sure the grievant understands the difference between "it doesn't seem fair" and a contract violation.
  
2. **The Steward Should Never:**
  - Allow Management to set time limits, dictate the time to investigate, interview or write a grievance;
  - Speak against the Union in front of Management or take Management's side in a dispute between the worker and the Management official. Disagreements between Union representatives should occur in private, never in front of Management;
  - Make decisions which can be construed as setting Union policy;
  - Hold back information relative to the processing of the grievance;
  - Advise the grievant that his/her case is a "sure win" in arbitration, or
  - Cite non-citable settlements in their grievances.
  
3. **Stewards Should Have a Working Knowledge of:**
  - Collective Bargaining Agreement (CBA) or contract;
  - Joint Contract Interpretation Manual (JCIM);
  - Regional Joint Contract Application Manual (JCAM);
  - Local Memorandum of Understanding (LMOU/Local Memo), and
  - Postal Service Handbooks, Manuals, and Post Office Rules and Regulations.
  
4. **The Steward Should Utilize:**
  - Notes from Labor Management and Safety and Health Meetings;
  - Arbitration Awards and National Level, Step 4 Decisions;
  - APWU Website for updated information, and
  - Local Precedents and Past Practices.

**Special Note:** *The steward should ensure that he/she has a signed PS Form 7020, PS Form 1260, and/or clocked out on the appropriate clock ring for Union representation. A copy of both forms are included on the following two pages.*

## Authorized Absence From Workroom Floor

(See reverse for instructions)

Employee Name/No. of Employees		
Leave Unit _____▶		
Arrive _____▶		
Leave _____▶		
Return to Unit _____▶		
<input type="checkbox"/> Steward's Duty Time <input type="checkbox"/> Meeting Time <input type="checkbox"/> Other Time		

Reason for Absence

PS Form **7020**, May 1998

### ***Instructions***

Use this form when employees leave for:

- scheme examinations,
- medical unit,
- guide duty,
- civil defense,
- time devoted to grievances,
- consultations with personnel section, or
- consultation with administrative officials.

The tour supervisor ensures the collection of this form from work center supervisors for transmittal to the timekeeper, where appropriate, and/or to the finance manager who totals time recorded on these forms and charge to the appropriate operation number.

PS Form **7020**, May 1998

Name (Last, First, MI)			SSN		DES/ACT	
DPP (PSDS) MMDD (ETC)	Tr. Code	FON-LU	Route Number		Time (HRs./100s)	
Input by (Initials)	Date	Signature of Supervisor			Pay Loc.	Date

PS Form 1260, March 1993

**NONTRANSACTOR CARD**

## STEWARD'S SPECIAL IMMUNITY

A steward's responsibility is to uphold the rights of bargaining unit employees under the Collective Bargaining Agreement, (CBA). To accomplish this goal, the law allows the steward to assume the status of an equal when dealing with Management. Sections 7 and 8 (a) (1) of the National Labor Relations Act provides a safeguard against employer retaliation for statements made during the course of grievance meetings. Therefore, while acting as a steward, the steward is protected by immunity from discipline based on his/her conduct.

- The National Relations Board (NLRB) applies the “**Special Immunity Rule**” so that stewards are not prevented from carrying-out their duties to represent bargaining unit employees.
- Steward's “**Special Immunity**” takes effect when it is necessary for a steward to investigate or adjust a grievance or to investigate a specific problem to determine whether to file a grievance.
- A steward is generally protected against discipline when they raise their voice or use abusive language when in the status of a steward. **However, he/she cannot be disruptive on the workroom floor or use violence, physical, or verbal threats against a supervisor.**
- The safest course of action for the steward to follow in potential insubordinate situations is to leave the grievance meeting. He/she should put the supervisor on notice that they are interfering with the grievance investigation and return to work. Next, he/she should file a grievance and/or unfair labor charge.
- In order to be in a protected status while discussing or investigating a grievance, stewards should either have a signed PS Form 7020, PS Form 1260, and/or clock out on the appropriate clock ring for Union representation.
- When the steward leaves his/her section or enter another section within the installation to investigate grievances or a specific problem, authorization should be obtained from both supervisors.

### **When Does Immunity Take Effect?**

Immunity takes effect when it is necessary for a steward to investigate a grievance or specific problem to determine whether to file a grievance.

### **The Steward's Tone of Voice or Abusive Language**

- Probably, the most frequent sort of conduct by a steward that attracts the wrath of Management is what might be perceived as the steward's use of abusive language during a discussion with Management pertaining to a grievance.

**Example:** The steward and supervisor are in a heated argument over disciplining an employee for using sick leave. If the steward raised his/her voice to make a point, he/she would be protected. However, if during the discussion, the steward started arguing about a matter unrelated to a grievance, he/she probably would not be protected against discipline.

### **When Counseling Employees to Refuse to Answer Questions**

- In addressing this issue, the National Labor Relations Board, (NLRB) ruled that an employer may lawfully discipline a shop steward for advising employees who witness an event, which could give rise to disciplinary action against other employees, not to answer the employer's questions about what happened.
- It is advisable to refrain from conduct which could be perceived as suggesting that employees refuse to obey the orders of a supervisor concerning work related duties.

### **A Direct Order to Cease Grievance Investigations**

- Arbitrators have held that a supervisor does possess the authority to terminate a conversation or interview through a direct order to a steward so long as the order is conveyed in a clear and responsible manner and does not constitute a mere emotional outburst in anger.
- However, even when the order is given in the correct form, a shop steward clearly has the right to question the order and argue its propriety, so long as the argument is not carried to the extreme.
- A steward has the right to aggressively process a grievance in good faith, and does not have to back down and show subservience at the whim of a supervisor.

### **Disruption of the Workplace**

- A charge by Management that a steward is disrupting the workplace may be sustained as the basis for discipline. The outcome of such a charge depends on the circumstance and who instigated the situation.
- The consensus appears to be that a steward's limited immunity does not protect him/her where the disruption is shown to have been caused by the steward's conduct and other mitigating factors are not present.

### **Safeguarding Immunity**

To insure that his/her conduct or speech is protected, the steward should:

- Utilize a PS Form 7020, PS Form 1260, and/or clock out on the appropriate clock ring for Union representation, when discussing or investigating a grievance,

- Request permission from his/her immediate supervisor when it is necessary to leave the work area to investigate grievances, and
- Request permission from the other supervisor to enter his/her section to interview employee(s) to investigate grievances.

### **Tips for the Steward**

1. The steward should always request a private meeting with the supervisor to discuss issues, grievances, and concerns.
2. The steward should remember that his/her responsibility is to uphold the rights of the members. To accomplish this goal, the law allows the steward to assume the status of an equal when dealing with Management.
3. However, the steward should keep a cool head and not become outraged or indignant, and should avoid confrontations on the workroom floor.

**Special Note: *If the steward is issued discipline, he/she should never represent himself/herself because of personal involvement. He/she should request that another steward serve as his/her representative.***



## **WHAT IS A GRIEVANCE?**

The *Collective Bargaining Agreement, (CBA), Article 15.1, Definition*, defines a grievance as: “A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.”

### **Class Action Grievances**

The language of the *Joint Contract Interpretation Manual (JCIM), Article 15.2, Step 1, Class Action Grievances*, states: “Should the grievance affect more than one employee in the office, the Union may initiate a class action grievance on behalf of all affected employees and Management is obligated to designate an appropriate employer representative.

*The Union may designate one steward or Union official, in writing, to the installation head/designee in lieu of all other stewards to file one class action grievance on behalf of all of the employees in an office/facility/installation. When the Union notifies Management of an office/facility/installation wide class action grievance, Management will advise the Union of the Management representative, whom they designate to handle the complaint.*

*When the Union files a class action grievance, all affected employees are covered and individual grievances shall not be filed on the same issue. All relevant information necessary to file or continue the processing of the grievance will be provided.”*

### **Tips for the Steward**

1. Develop a procedure, at Labor Management Meetings, to handle Class Action Grievances. The Union should insist that Management identify, in writing, those representatives designated to handle those grievances.
2. If Management refuses to identify the appropriate representatives, the steward should not miss the time limits and should request a Step 1 meeting with the immediate supervisor. He/she should notify the local president. The local president should seek advice from the National Business Agent or Regional Coordinator and make note in the grievance papers that Management failed to assign a USPS designee.
3. A class action grievance involves more than one employee and must be initiated by the Union. The steward should list the names of the affected employees, along with their Employee Identification Numbers (EINs). If the remedy is not equal or differs from employee to employee, clearly identify the remedy each employee is entitled to receive.

4. *If an employee files a grievance that later becomes a class action, it should be changed to a class action grievance, prior to the Step 1 Meeting.*
5. Remember that the Union cannot ask for a class action remedy if the grievance is filed under only one employee's name. Unless clarified later at the Step 2 meeting, only that employee could be subject to the requested remedy.

**Special Note:** *Avoid this remedy: "Pay the appropriate employees, at the appropriate rate, for the appropriate amount of hours due." Listing the affected employees and identifying his/her entitlements individually, along with his/her EIN, assures quick payment into the Grievance Arbitration Tracking System (GATS).*

## TOOLS FOR SHOP STEWARDS

The following tools will assist the steward with the performance of his/her duties:

- Collective Bargaining Agreement (CBA), or contract;
- Joint Contract Interpretation Manual (JCIM);
- Regional Joint Contract Application Manual (JCAM);
- The Local Memorandum of Understanding (Local Memo);
- Seniority List(s);
- 1187s (Authorization for Dues Deduction to Join the Union);
- Step 1, 2, and 3 Grievance Forms, and Direct Appeal to Arbitration Forms;
- Request for Information Form;
- Overtime Desired List(s);
- Holiday Schedule;
- Job Postings;
- Article 37 Questions and Answers;
- The Local and National Constitutions;
- Collective Bargaining Reports (CBR), Special Editions;
- ELM - Employee and Labor Relations Manual;
- EL 921 - Supervisors Guide to Handling Grievance;
- F-15 - Travel and Relocation;
- Pub. 223- Directives and Forms Catalog;
- El 312- Employment and Placement, and
- Tablets, writing pads, and pens for taking statements and notes.

## **PROPER DOCUMENTATION OF GRIEVANCES**

In order for the Union to prevail in arbitration, it is important to include the proper documentation in the grievance file. Listed below are various contract violations and the documentation which must be included when filing those types of grievances.

*Don't Just Say it - - Prove it with Document(s) or Statement(s)!*

**But, remember the Golden Rule**

*A Document Supports an Argument. It Does Not Make an Argument!*

## **ABSENT WITHOUT APPROVED LEAVE (AWOL)**

The Postal Service's leave policy must be administered on an equitable basis, considering both the needs of the Employer and the welfare of the individual employee. The supervisor may not arbitrarily nor capriciously disapprove leave, nor may he/she charge every unscheduled request for annual leave or sick leave as AWOL. For example, if the supervisor is satisfied that a request for annual leave is legitimate, but the employee has insufficient annual leave, the request should be approved but recorded as Leave Without Pay, (LWOP).

### **Documentation Needed**

- Grievant's PS Form 3971 (Request for or Notification of Absence), denying the leave;
- Grievant's PS Form 3972 (Absence Analysis);
- Grievant's paystub documenting that the absence was charged to LWOP instead of to annual or sick leave;
- Evidence or documentation verifying the nature of the requested leave (a medical problem, an emergency such as repair to an automobile, e.g.);
- Copy of FMLA certification, if applicable;
- Clock rings or time cards;
- Grievant's call-in records, or "Leave Usage Log List Report;"
- Steward's notes from the interview with the supervisor;
- Steward's notes from the interview with the grievant;
- Notice of the discipline, if discipline was issued;
- The grievant's statement; this is a must;
- Witness statement(s), if applicable;

- PS Forms 3971 and/or 3792 of other employees, if disparity is claimed;
- Call-in records for other employees, if disparity is raised as an argument;
- Confirmation call-in number if Interactive Voice Recognition, (IVR) system was used to report the absence;
- Notes of any interviews conducted by either the Union or Management, and
- Steward's statement of the facts and contentions of the case.

### **Tips for the Steward**

1. Before processing the grievance, determine if this was an AWOL charge based upon a "no-call, no-show," tardiness, insufficient or lack of documentation, or insufficient leave balance. If the issue is late notification of an absence, determine if the employee reported the absences as soon as he/she was able to do so as required by the *Employee Labor Relations Manual, 512.412, Emergencies, 513.332, Conditions for Authorization, and 515.51, Notice and Documentation*.
2. When interviewing the supervisor, find out why documentation presented by the grievant, was unacceptable. If the supervisor alleges that the grievant didn't call-in and the grievant insists that he/she did, ask the grievant who took the call, the tour of duty, and the time the call was made.
3. If the supervisor requested documentation, determine why the grievant failed to submit it. Determine when the request for the documentation was made.
4. Check for discrepancies in Management's case, such as improper notations on PS Form 3972.
5. Remember that the grievant has 14 days from the time when he/she first became aware of the AWOL charge to file the contractual grievance. Discipline, if issued, would most likely be issued on a later date and a different timeline for that grievance would come into play as well as a different remedy.

**Special Note: *If discipline was issued, file two separate grievances, one on the AWOL Charge, which is a contract case, and the other on the Discipline Issued, which is a discipline case.***

### **Appropriate Remedy**

- That the AWOL charge be rescinded and removed from the employee's record, and
- That the AWOL be converted to the requested leave (sick leave, annual, or LWOP).

## ADMINISTRATIVE LEAVE/ACT OF GOD

The language of the *Joint Contract Interpretation Manual (JCIM)*, Article 10.5, *Administrative Leave*, states, “*Administrative Leave is defined as absence from duty authorized by appropriate postal officials without charge to annual or sick leave and without loss of pay.*” The language of the *Employee Labor Relations Manual (ELM)*, 519.21, *Acts of God*, authorizes administrative leave from duty due to “*Acts of God.*”

### Documentation Needed

- Local Memorandum of Understanding, (LMOU or Local Memo) provisions on curtailment;
- Newspaper, television, radio, videotapes, or tape recordings of the disaster;
- State, local, or federal declarations of emergency;
- Witness statements from each employee outlining the method of transportation normally used, routes taken, efforts made, and problems encountered;
- Notice of any cancellations of USPS services to customers, letter or rural carriers, MVS, or contract routes, etc.;
- Mail arrival and departure records;
- Machine run times/volume reports/tour condition reports;
- The steward’s notes taken from the interview with the supervisor;
- The steward’s notes taken from the interview with all witnesses;
- Public transportation records, if, airports, city buses, or taxi cabs were not operating;
- The steward’s notes taken from the interview with the installation head or postmaster, to determine why the administrative leave was not authorized;
- Highway Patrol or local authority road condition reports;
- PS Forms 3971 and/or 3792 of other employees, whose leave was either denied or approved;
- “Leave Usage Log List Report,” for the entire facility;
- List of employees by tour and start time, identifying those who made it to work and those who didn’t, including supervisory personnel, and
- Steward’s statement of the facts and contentions of the case.

## **Tips for the Steward**

1. If the denial of administrative leave was unilateral rather than on a case by case basis, provide proof that Management did not determine the cause of the absence in accordance with the language in the *ELM, 519.213, Special Conditions*, to bolster the merits of the case.
2. In addition, the language of the *Employee Labor Relations Manual (ELM), 519.2: Special Conditions*, authorizes administrative leave under certain circumstances such as civil disorders, state and local civil defense programs, voting or registering to vote, blood donations, attending funeral services for certain veterans, relocation, examination, or treatment for on-the-job illness or injury.

### **In order for the grievance to have merit, the Union must prove that:**

- The event was an Act of God;
- It was a community disaster;
- The impact was general in scope rather than personal in nature;
- Groups of employees were prevented from working or reporting to work;
- The employee was not already in a leave status;
- The employee made a diligent effort to report to work;
- The employee was dismissed prior to the end of his/her tour, and/or
- The employee was prevented from reporting due to curtailment or secessions of operations.

### **Appropriate Remedy**

- That the employee be reimbursed for all paid leave used in lieu of administrative leave;
- That the employee be made whole for any unpaid leave;
- That the absence be charged as administrative leave;
- That the absence not be cited or used against the employee, and
- That the employee be made whole for denial of any paid holiday leave in accordance with the language of the *CBA, Article 11.2.A and B, Eligibility*, if applicable.

## **ADVANCE SICK LEAVE**

The language of the *Joint Contract Interpretation Manual (JCIM), Article 10.5, Advance Sick Leave*, states, “Up to thirty days (240 hours) of sick leave may be advanced to an employee with a serious disability or ailment if there is reason to believe the employee will return to duty (*ELM, Section 513.511*). The Postal Service installation head has authority to approve such requests. An employee is not required to use all annual leave before receiving advance sick leave.” Also, see, the language of the *Employee Labor Relations Manual (ELM), 513.5, Advanced Sick Leave*.

### **Documentation Needed**

- A copy of the letter requesting advanced sick leave;
- Grievant’s medical documentation and statement;
- Management’s letter denying the request;
- The steward’s notes taken from the interview with the supervisor;
- The steward’s notes taken from the interview with all witnesses;
- Grievant’s PS Forms 3971 and 3972 documenting the type of leave charged to the grievant;
- PS Forms 3971 and/or 3792 of other employees, if disparity is claimed;
- Grievant’s paystub showing the annual leave or LWOP used each pay period;
- Documentation or statements demonstrating that other employees were treated more favorably;
- Grievant’s past record of attendance related discipline;
- Copy of the Restricted Sick Leave List;
- Medical documentation for any previous serious illness which used up significant amounts of the grievant’s sick leave;
- All advanced sick leave requests and action taken, regardless of craft, for the previous year, and
- Steward’s statement of the facts and contentions of the case.

### **Tips for the Steward**

1. The fact that an employee has exhausted their sick leave is not a basis for denying advanced sick leave. If the employee can reasonably be expected to return to work and repay the advance, and supports the request with appropriate medical documentation of a serious medical condition, the installation head may not arbitrarily deny the request.



2. A careful review of the employee's sick leave usage over his/her career is necessary information to challenge any claim by Management that the employee does not have the ability to repay.

### **Appropriate Remedy**

- That the employee be granted the maximum of advance sick leave requested in accordance with the terms of the *ELM 513.5*,
- That the employee's annual leave be restored and changed to advance sick leave, if applicable, and
- That the LWOP be changed to sick leave.

## **CONSECUTIVE OFF DAYS**

The language of the *Collective Bargaining Agreement (CBA), Article 8.2.D, Work Schedules*, states, “*In postal installations which have 200 or more man years of employment in the regular work force, career employees in mail processing operations, transportation and vehicle maintenance facility operations will have consecutive scheduled days off, unless otherwise agreed to by the parties at the local level.*”

### **Documentation Needed**

- Notice to the employee or Union of the intent to abolish and repost the duty assignment;
- Copy of original duty assignment posting(s) to show history of consecutive off days;
- New duty assignment posting;
- Daily overtime records;
- Daily Mail Volume Reports and Delayed Mail Reports, if any;
- Position description of duty assignment(s) which was affected;
- Provisions in Local Memorandum of Understanding (LMOU or Local Memo);
- Work schedules of Postal Support Employees, (PSEs) and Part Time Flexibles, (PTFs);
- The steward’s notes taken from the interview with the supervisor;
- The steward’s notes taken from the interview with all witnesses;
- Documentation of other duty assignments in the section or office with consecutive and split off days;
- Copy of work schedules listing skills (window qualified, scheme qualified, etc.);
- Copy of employees training records, if qualifications are not listed on the work schedule, and
- Steward’s statement of the facts and contentions of the case.

### **Tips for the Steward**

1. In accordance with the language of the *CBA, Article 8.2.C, Work Schedules*, “*The employee’s normal work week is five (5) service days, each consisting of eight (8) hours, within ten (10) consecutive hours, except as provided in Section 1 of this Article. As far as practicable the five days shall be consecutive days within the service week.*”

2. Scheduling with split days off in order to avoid overtime is not the intent of the language as there is no mention in the language of the *CBA*, **8.2.C** of operational efficiency.
3. The language of the *JCIM*, **Article 8.1, Workweek**, defines the work week for full-time regular employees in traditional fulltime regular duty assignments.
4. Shorter or longer work weeks will, however, exist for full-time employees in Non-Traditional Full-Time (NTFT) duty assignments, in the Clerk and MVS Crafts. Part-Time Regulars in the Maintenance craft have schedules of less than 40 hours.
5. The work week for employees in Non-Traditional Full-Time (NTFT) duty assignments will be in accordance with the Non-Traditional Full-Time (NTFT) Duty Assignments MOU and the Overtime Rules for Non-Traditional Full-Time (NTFT) Duty Assignments.

### **Appropriate Remedy**

- That the duty assignment(s) be restored to consecutive off days,
- That the current incumbent employee(s) be granted out of schedule pay for all hours worked and returned to former duty assignment(s), and
- That the former incumbent employee(s) be granted out of schedule pay for all hours worked and returned to the duty assignment(s) with consecutive off days.

## CROSSING CRAFTS OR OCCUPATIONAL GROUPS

The language of the *Collective Bargaining Agreement (CBA), Article 7.2.B and C, Employment and Work Assignments*, states, “*In the event of insufficient work on any particular day or days in a full-time or part-time employee’s own scheduled assignment, Management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee’s knowledge and experience, in order to maintain the number of work hours of the employee’s basic work schedule.*”

*During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as Management determines necessary.”* **Remember that the language says “heavy work load” not lack of employees in one craft due to excessing.**

### Documentation Needed

- Position description(s) of the employees assigned across crafts, occupational groups, or levels;
- Position description(s) of employees normally performing this work;
- Clock rings of employees assigned across crafts, occupational groups, or levels;
- Clock rings or work hour summaries in gaining craft (overtime level in gaining craft);
- Mail Volume Reports;
- Transfer hours report;
- PS Form 1723 (Assignment Order), if used;
- PS Form 1230 A or B (Time Cards, Weeks 1 and 2), if used (Usually in smaller offices);
- Witness statements verifying that work was available in employee’s own craft or occupational group;
- Documents showing that work was available in employee’s own craft;
- Witness statement describing the specific work and tasks performed by cross crafts employee;
- Witness statements from represented craft stating these tasks have historically been performed by that craft;
- The steward’s notes from the interview with the supervisor and all witnesses;

- Medical restrictions of employee being assigned across craft lines, if applicable;
- Light/limited duty job offer (if applicable);
- Copy of Overtime Desired List, (OTDL) from section where the work was performed;
- Request for Information for operational condition that caused the assignment of work to cross craft lines;
- Regional Instructions 399 (RI 399) inventory, if applicable;
- Copy of any craft excessing, if applicable, and
- Steward's statement of the facts and contentions of the case.

### **Tips for the Steward**

1. The language of the *Joint Contract Interpretation Manual (JCIM), Article 7, Sections 2.B and C, Work Assignments*, provides the assumption that qualifying conditions are reasonably unforeseeable or somehow unavoidable.
2. While Management retains the right to schedule tasks to suit its needs on a given day, the right to do this may not fairly be equated with the opportunity to, in essence, create "insufficient" work through intentionally inadequate staffing.

### **Appropriate Remedy**

- That Management pay the **available and qualified** craft employee(s), *at the appropriate rate*, for all hours worked by the cross craft employee(s), and
- That the craft and the Union be made whole.

## DENIED ANNUAL LEAVE

The language of most *Local Memorandum of Understanding, (LMOU or Local Memo)*, has provisions on vacation scheduling guaranteeing employees certain rights to approved annual leave for their scheduled vacations. Some LMOU's even provide for guaranteed incidental leave up to certain fixed percentages during the year. All requests for incidental annual leave other than those guaranteed under the Collective Bargaining Agreement, (CBA) must be approved or disapproved by the supervisor. Where no specific procedures are spelled out in the LMOU, the supervisor's decision may not be discriminatory and must be equitable, and considered on a case-by-case basis.

### **Documentation Needed**

- Grievant's PS Forms 3971 and 3972;
- Grievant's PS Form 3971 denying the leave request;
- PS Forms 3971 and/or 3792 of other employees granted leave;
- Local Memorandum of Understanding (LMOU or Local Memo);
- Vacation calendar or leave book;
- Seniority List;
- Names of employees granted annual leave with less seniority than the grievant;
- Time cards and clock rings of employees working on that date;
- Work schedule and other employees' PS Forms 3971s for the day in question;
- Steward's notes from the interview with the supervisor;
- Grievant's statement and a copy of his/her annual leave balance;
- Witness statements or interviews;
- Names of employees out on extended leave, if applicable;
- Grievant's job description and/or skills;
- List of PTF or PSE employees qualified and available to work;
- The list of employees, waiting for available dates to become open on the leave calendar, if applicable, and
- Steward's statement of the facts and contentions of the case.

### **Tips for the Steward**

1. Where no language is in a *Local Memorandum of Understanding, (LMOU or Local Memo)*, regarding annual leave, the language in the *Collective Bargaining Agreement (CBA), Article 10, 3.D, Choice of Vacation Period*, applies.
2. Check the leave book to determine if the maximum numbers of employees, guaranteed leave by the LMOU, have been granted leave during the Choice Vacation Period. If the leave request was denied during the Non-Choice Vacation Period, determine if the LMOU provides for incidental leave.
3. Also, the language of the *Joint Contract Interpretation Manual (JCIM) Article 10.2.B* requires that “*Career employees will be given preference over non-career employees when scheduling annual leave. This preference will take into consideration that scheduling is done on a tour-by-tour basis and that employee skills are a determining factor in this decision.*”

### **Appropriate Remedy**

- That the leave requested by the grievant be granted,
- That in the event that the grievance is resolved after the date of the requested leave, the employee shall be granted annual leave up to the amount of annual leave denied, which shall not be held against the leave quota, and
- That based on Management’s repeated failure to comply with the leave provisions, the employee shall be granted “other paid leave” in the amount of the annual leave denied.

## **DENIAL FAMILY AND MEDICAL LEAVE (FMLA)**

During each leave year, when properly documented, eligible employees are entitled to up to twelve weeks, (480 hours) of approved leave under the Family and Medical Leave Act (FMLA). These absences must be for the employee's own incapacitation, or the incapacitation of the employee's spouse, child, or parent, due to a serious medical condition, or as the result of the birth or adoption of a new son or daughter.

FMLA also provides Military Family Leave. "Qualifying Exigency Leave" provides up to 12 workweeks, (480 hours) of approved leave to be used for a family member on active duty with a qualifying exigency or who has been notified of an impending call or order to covered active duty. "Military Caregiver Leave" provides up to a total of 26 workweeks, (1040 hours) in order to care for a family member who is a current covered service member or a covered veteran with a serious illness or injury.

### **Documentation Needed**

- Notification letter from Management with the reason for denial of the leave and copies of all documents that Management gave the employee;
- Management's completed copies of PS Form WH-381-Notice of Eligibility and Rights and Responsibility and PS Form WH-382-Designation Notice, which should have been provided to the employee;
- Employee's medical documentation and all FMLA forms and/or certifications submitted to Management with proof of submission, if the grievant had the documentation dated stamped, sent by: certified mail, express mail, faxed, email, and/or delivery confirmation;
- Employees written request for additional time to submit required documentation, if applicable;
- Grievant's PS Forms 3971 and 3972 for absences approved as FMLA;
- Grievant's PS Forms 3971 and 3972 for absences disapproved as FMLA;
- A copy of Management's correspondence with the doctor, if applicable;
- Clock rings for the current leave year to determine when the employee's absences were charged to FMLA;
- Grievant's statement;
- Clock rings to show that grievant worked 1250 hours prior to the first day of FMLA requested leave;
- Notes from the interview with the supervisor, and
- Steward's statement of the facts and contentions of the case.



## Tips for the Steward

1. When properly documented and requested, FMLA leave requests must be approved and may not be the subject of discipline or other adverse action.
2. The employee does not have to specifically request FMLA leave to invoke the protection of the Act but must give the Employer enough information to determine the condition is covered under the Act. However, an employee with pre-existing FMLA certification is required to notify Management when he/she calls-in that the leave is needed for the pre-existing certification.
3. Management must inform employees requesting leave, whether or not he/she meets the eligibility requirements under FMLA. If the employee is eligible, the notice must specify any additional information needed as well as the employees' rights and responsibilities. If he/she is not eligible, Management must provide a reason for the ineligibility.
4. If the leave is designated as FMLA-protected, Management must advise the employee how much of the leave will be counted against the employee's FMLA leave entitlement. If Management determines that the leave is not FMLA-protected, Management must notify the employee of the decision.
5. When the leave would qualify for FMLA protection, Management must retroactively designate the leave as FMLA, with an appropriate notice sent to the employee.
6. The *Joint Contract Interpretation Manual (JCIM), Article 10, Employee Responsibilities-FMLA*, requires the employee to, "Provide documentation required for FMLA-covered absences within a reasonable period of time (i.e., fifteen days from the time the employer requests documentation, unless it is not practical under the circumstances)."
7. When the employee cannot submit documentation within the time period required, make sure that the employee submits a written request to Management advising that additional time is needed.
8. When requesting paid leave for FMLA absences in lieu of unpaid leave, the employee must comply with the USPS's normal leave policies, including providing additional documentation for intermittent absences of more than 3 days when required.

## Appropriate Remedy

- That the requested leave be changed to FMLA approved leave, and
- That all records be corrected to reflect approved FMLA leave.

## **DENIAL OF HOLIDAY PAY**

The language of the *Collective Bargaining Agreement (CBA), Article 11.2, Eligibility*, states, “*To be eligible for holiday pay, an employee must be in a pay status the last hour of the employee’s scheduled workday prior to or the first hour of the employee’s scheduled workday after the holiday.*”

*The language of the CBA, Article 11.3, Payment*, states, “*An employee shall receive holiday pay at the employee’s base hourly straight time rate for a number of hours equal to the employee’s regular daily working schedule, not to exceed eight (8) hours.*”

The language of the *Joint Contract Interpretation Manual (JCIM), Article 11, Holidays*, states, “*Only full-time and part-time regular employees receive holiday pay. Part-time flexible employees do not. Instead, part-time flexible employees are paid at a slightly higher straight-time hourly rate to compensate them for not receiving paid holidays.*”

### **Documentation Needed**

- Copy of Holiday Schedule for employee’s work area/section;
- Grievant’s clock rings/time cards;
- Grievant’s 3971, if applicable;
- Copy of call-in log, Leave Usage Report, if applicable;
- Copy of documentation demonstrating emergency that prevented employee from reporting as scheduled on his/her holiday or designated holiday;
- Copy of Holiday Volunteers’ List;
- Grievant’s statement;
- Witness statement(s), if applicable;
- The steward’s notes taken from the interview with the supervisor and all witnesses, and
- Steward’s statement of the facts and contentions of the case.

### **Tips for the Steward**

1. The language of the *Collective Bargaining Agreement (CBA), Article 11.6.C, Holiday Schedule*, states, “*An employee scheduled to work on a holiday who does not work shall not receive holiday pay, unless such absence is based on an extreme emergency situation and is excused by the Employer.*”
2. An employee scheduled to work on a holiday who does not work may not receive holiday pay, unless their absence is based on an extreme emergency situation. Therefore, the employee must demonstrate that the emergency situation was such that a reasonable supervisor should have approved the absence and holiday pay.

3. An employee who is working or on approved, paid leave, during the holiday period is considered to be “in a pay status” and therefore, eligible for holiday pay.
4. Holiday pay shall be paid at the employee’s base hourly straight time rate for a number of hours equal to the employee’s regular daily working schedule, not to exceed eight (8) hours.
5. Holiday pay is in lieu of other paid leave to which an employee might otherwise be entitled on the employee’s holiday.

### **Appropriate Remedy**

- Pay the employee, not to exceed, eight (8) hours holiday pay for their holiday or designated holiday.

## **DENIED INFORMATION REQUEST**

The language of the *Collective Bargaining Agreement (CBR), Article 31.3, Information*, states, “*The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.*”

*“Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or his designee.”*

*"Nothing herein shall waive any rights the Union may have to obtain information under the National Labor Relations Act, as amended. (The preceding Article, Article 31, shall apply to PSEs)."*

### **Documentation Needed**

- The Request for Information form, signed and dated as received by Management;
- Management’s denial of the information request;
- All follow-up correspondence or further requests;
- All data and witnesses statements relevant to the case;
- The original grievance paperwork;
- Any documentation which shows that the requested information is relevant to the original grievance;
- The steward’s notes taken from the interview with the supervisor with an explanation from the supervisor stating why he/she denied the information request, and
- Steward’s statement of the facts and contentions of the case.

### **Tips for the Steward**

1. Be specific on the information requested.
2. Keep a copy of the Request for Information, (RFI) that was signed by Management to prove that it was submitted.
3. When a Request for Information is either denied or ignored, file an additional grievance citing a violation of the *CBA, Articles 15, 17, and 31*.

4. When a Request for Information is either denied or ignored, submit a second request for that information (RFI), with proof of delivery to Management.
5. When appealing the original grievance to Step 2, include copies of both the first and second Request for Information forms, with proof of delivery to Management. ***Reference the fact that Management did not provide the requested information.***
6. If the information is not provided by the time the original grievance is denied at Step 1, follow-up with a separate grievance on the failure of Management to provide the requested information. In the Denial of Information or Failure to Provide Information grievance, the Union should state this language in the grievance, ***“The withheld information would have proven the Union’s case. When Management denies the Union access to relevant information, full development of the grievance cannot be achieved. Without such full development and without everything being placed before the parties for discussion, there is no real probability of resolving the grievance at the lowest possible step.”***
7. The steward should explain in the Denial of Information or Failure to Provide Information grievance, why the information is necessary to prove the Union’s case and why it seriously damages Management’s case.
8. If Management does not provide the requested information, by the time the parties meet at Step 2, include in the Union’s corrections or additions that Management did not provide the requested information.
9. If appealing the original grievance to Step 3, reference the fact that Management did not provide the requested information.

### **Appropriate Remedy**

- That the original grievance be sustained.

## **DENIED LIGHT DUTY REQUEST**

The language of the *Collective Bargaining Agreement, (CBA) Article 13.2.A, Temporary Reassignment*, states, “Any full-time regular or part-time flexible employee recuperating from a serious illness or injury and temporarily unable to perform the assigned duties may voluntarily submit a written request to the installation head for temporary assignment to a light duty or other assignment. The request shall be supported by a medical statement from a licensed physician or by a written statement from a licensed chiropractor stating, when possible, the anticipated duration of the convalescence period. Such employee agrees to submit to a further examination by a Public Health Service doctor or physician designated by the installation head, if that official so requests.”

The language of the *Joint Contract Interpretation Manual (JCIM) Article 13.1, Assignment of Ill or Injured Regular Workforce Employees*, states, “The provisions of Article 13 govern a voluntary request for light duty work by employees temporarily or permanently incapable of performing their normal duties as a result of illness or injury.”

The language of the *JCIM, Article 13.2.C, Local Implementation*, “requires that the installation head make a bona fide effort to identify light duty work, including giving the matter “the greatest consideration” and “careful attention.” Management is required to provide the employee a written explanation if light duty work is not provided. A dispute concerning whether light duty was available may be addressed through the grievance-arbitration procedure.”

*In addition, Local Memorandum of Understanding (LMOU or Local Memo) may contain language addressing light duty assignments in accordance with the CBA, Article 30, Item 15, The number of light duty assignments, Item 16, The method to be used in reserving light duty assignments, and Item 17, The identification of assignments that are to be considered light duty,.*

### **Documentation Needed**

- A written request from the grievant requesting a light duty assignment;
- Letter from the physician outlining the grievant’s restrictions, which was submitted to Management as part of the light duty request;
- Item 15, 16, and 17 of the LMOU/Local Memo;
- USPS letter denying the light duty request;
- Names of employees awarded and denied light duty within the past year;
- Evidence of work available within the grievant’s restrictions;
- Documentation of Management efforts (or lack thereof) to find work;

- Management documents showing office policy on light duty assignments;
- The grievant's PS Forms 3971 and 3972 for period of time the light duty was denied;
- Work schedules, clock rings, and time cards showing PSEs doing work within employee's medical restrictions;
- Notes from the steward's interview with the supervisor;
- Notes from the steward's interview with the grievant;
- Grievant's statement, and
- Steward's statement of the facts and contentions of the case.

### **Tips for the Steward**

1. The language of the ***JCIM, Article 13.4.A, General Policy Procedures***, "*requires that every effort shall be made to assign light duty employees within their present craft or occupational group, even if the light duty assignment results in a reduction of casual work hours. After all efforts are exhausted in that area, consideration will be given to reassignment to other crafts or occupational groups within the same installation.*"
2. Any full-time regular or part-time flexible employee recuperating from a serious illness or injury is entitled to request light duty work. The Employer must give the greatest consideration to such requests and make every effort to locate and provide appropriate light duty work.
3. If adequate work is available, employees should be assigned to their craft; in the work facility to which the employee is regularly assigned; within the employee's regular hours of duty. Employees may be assigned outside of the work facility, only if there is not adequate work available within the employee's limitation in his/her assigned work facility.
4. The language of the ***JCIM, Article 13.4.M, Advance Local Notification***, states, "*Management will give the local Union president advance written notification when it is proposed to reassign an ill or injured light or limited duty employee to a cross-craft assignment into an APWU represented craft.*"
5. The language of the ***JCIM, Article 13.3.C, Local Implementation***, "*provides that changes may be made in an employee's regular schedule and work location in order to accommodate a light duty request.*"

### **Appropriate Remedy**

- That the grievant be accommodated in a light duty assignment;
- That the grievant be made whole for all work hours, where work was available within his/her restrictions;
- That the grievant be reimbursed for all paid leave used, while the employee was denied light duty accommodation, and
- That the grievant be paid out of schedule pay, if applicable.



## **DENIED SICK LEAVE**

The language of the *Collective Bargaining Agreement, Article 10.5, Sick Leave*, states, “*The Employer agrees to continue the administration of the present sick leave program which shall include the following specific items:*”

- A. *Credit employees with sick leave as earned.*
- B. *Charge to annual leave or leave without pay (at employee’s option) approved absence for which employee has insufficient sick leave.*
- C. *Employee becoming ill while on annual leave may have leave charged to sick leave upon request.*
- D. *For periods of absence of three (3) days or less, a supervisor may accept an employee’s certification as reason for an absence.”*

The language of the *Collective Bargaining Agreement, Appendix B, Sick Leave for Dependent Care*, states, “*The parties agree that, during the term of the 2010 National Agreement, sick leave may be used by an employee to give care or otherwise attend to a family member having an illness, injury or other condition which, if an employee had such condition, would justify the use of sick leave by that employee. Family members shall include son or daughter, parent and spouse as defined in ELM Section 515.2. Up to 80 hours of sick leave may be used for dependent care in any leave year. Approval of sick leave for dependent care will be subject to normal procedures for leave approval.”*

Also, language of the *Employee Labor Relations Manual (ELM), 513.11, Sick Leave for Employee Incapacitation*, states, “*Sick leave insures employees against loss of pay if they are incapacitated for the performance of duties because of illness, injury, pregnancy and confinement, and medical (including dental or optical) examination or treatment.”*

### **Documentation Needed**

- Grievant’s PS Form 3971 denying leave request;
- Grievant’s PS Form 3972;
- Medical documentation, submitted by the grievant;
- Sick leave call-in records, if available;
- Grievant’s statement;
- Witness statements;
- The steward’s notes taken from the interview with the supervisor;
- The steward’s notes taken from the interview with all witnesses;

- Documentation showing other employees, who were treated differently;
- Restricted sick leave records, if applicable;
- Evidence of a “blanket policy” to require medical documentation;
- Documentation of expenses for obtaining medical documentation under a “blanket policy” or “deems desirable” instruction;
- FMLA or dependent care sick leave documentation, if applicable;
- Record of grievant’s sick leave balance, and
- Steward’s statement of the facts and contentions of the case.

### **Tips for the Steward**

1. The language of the *Employee Labor Relations Manual (ELM)*, 513.365 *Failure to Furnish Required Documentation*, states. “If acceptable substantiation of incapacitation is not furnished, the absence may be charged to annual leave, LWOP, or AWOL.”
2. The language of the *Joint Contract Interpretation Manual (JCIM) Article 10.5 Medical Certification*, states, “*ELM, Sections 513.361 and 513.362 establish three rules:*
  - 1) “For absences of more than three days, an employee must submit “medical documentation or other acceptable evidence” in support of an application for sick leave (“three days” means three scheduled workdays).
  - 2) For absences of three days or less, a supervisor may accept an employee’s statement explaining the absence unless the employee has been placed in restricted sick leave status, in which case verification is required for every absence related to illness regardless of the number of days involved. However,
  - 3) For absences of three days or less a supervisor may require an employee to submit documentation of the illness “when the supervisor deems documentation desirable for the protection of the interests of the Postal Service.”
3. The supervisor is responsible for approving/disapproving each sick leave request. Such approval may not be unreasonably, arbitrarily, or capriciously denied.
4. For absences of three days or less when the supervisor “deems documentation desirable,” the employee should file a separate grievance for the expenses associated with obtaining the documentation.
5. The *ELM 513.39, Restricted Sick Leave* contains the detail requirements when an employee is placed on restricted sick leave.

### **Appropriate Remedy**

- That the absence be changed to approved sick leave, and
- That the grievant be compensate for all expenses incurred to obtain medical documentation.

## **DENIED STEWARD DUTY TIME**

The language of the *Collective Bargaining Agreement, (CBA), Article 17.3, Rights of Stewards*, states, “When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and such request shall not be unreasonably denied. In the event the duties require the steward leave the work area and enter another area within the installation or post office, the steward must also receive permission from the supervisor from the other area he/she wishes to enter and such request shall not be unreasonably denied.”

### **Documentation Needed**

- Written request for steward duty time;
- Management’s written denial of the request, if available;
- Steward’s notes from the interview with the Supervisor;
- Documentation as to number and general nature of grievances pending;
- Dates and times request for steward duty time was denied within the past six months;
- Statements from witnesses verifying that Management refused to release the steward;
- Mail volume reports for the dates steward duty time was denied;
- Overtime reports for the dates steward duty time was denied;
- If the issue of denying steward duty time was discussed at Labor Management Meetings, include the minutes from those meetings;
- Steward’s time cards, clock rings, or Electronic Time Clock (ETC), reports;
- Copies of previous grievances filed on the issue;
- Copies of Unfair Labor Practices filed on the issue, and
- Steward’s statement of the facts and contentions of the case.

### **Tips for the Steward**

1. Review the language in the *Joint Contract Interpretation Manual (JCIM) Article 17, Representation, for Steward’s Rights*.
2. The steward has the rights to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance.

3. The steward has the rights to review documents, files, and other records which are necessary for processing the grievance or determining if a grievance exists.
4. The steward has the rights to interview the aggrieved employee, supervisors, and witnesses.
5. Stewards can interview employees of other crafts in the course of a grievance investigation.
6. The steward has the rights to represent an employee during an Inspection Service or the Office of Inspector General (OIG) interrogation, when requested by the employee.
7. When a request by an employee for a steward must be delayed, the supervisor should inform the employee of the reasons for the delay and the time when the steward should be available.
8. If a steward or alternate is not available and time limits become an issue, the Postal Service may grant the grievant an extension of time for the grievance.
9. The steward has the rights to reasonable time on the clock to complete grievance forms and write appeals, including Step 3 appeals and the Union's additions and corrections to Management's Step 2 decision. Reasonable time cannot be measured by a predetermined factor.
10. Requests for additional time to process grievances should be dealt with on an individual basis and may not be unreasonably denied.
11. Management may ask a steward, who is seeking permission to investigate, adjust, or write a grievance, to estimate the length of time that steward anticipates he/she will be away from the work area.
12. While the steward normally determines how much time the grievant needs to be present during the processing of a grievance, the immediate supervisor may set a specified time to begin and end a period of grievance handling activity due to service needs.
13. When a steward requests time to process a grievance or needs additional processing time and the steward is needed on his/her work assignment, the supervisor must inform the steward of the reasons for the delay and when time will be available.
14. Stewards have the right to interview non-postal witnesses during their investigation of a possible grievance. Once it has been determined that a non-postal witness has "relevant information and/or knowledge directly related to the instant dispute under investigation," the steward should be permitted reasonable time on-the-clock to interview that witness.
15. The payment procedures in Article 17 covers time spent by a steward in writing an appeal to Step 3 which is included in the term "grievance handling."

16. Requests for interviews off postal premises must be reasonable and determinations regarding those requests must be made on a case-by-case basis. It is permissible for the supervisor and/or the steward to call the potential witness in advance to assure that the witness is both willing and available to be interviewed and to make arrangements for the interview.
17. When written certification is provided by the Union to the Postal Service's Area Level, a Union steward employed at one post office may be designated as a representative at another post office.
18. A Union steward should not be denied time to perform Union duties based solely on the fact that the steward is in an overtime status.
19. A steward has the right to be represented by another steward.
20. When Management frequently denies the steward time to process grievances, the steward should submit the request in writing. He/she should include specific documentation as to the general nature and the number of grievances which need to be filed.
21. Where Management consistently denies stewards time to process a grievance, the local should file an Unfair Labor Practice with the National Labor Relations Board, (NLRB).
22. Stewards should review his/her regional Joint Contract Application Manual (JCAM) for stronger language on the topic of Union Representation and use the JCAM language to document the grievances when denied Steward's Duty Time.

### **Appropriate Remedy**

- That Management Cease and Desist violating Article 17.3 of the CBA and grant the steward the appropriate number of hours needed to process the grievance,
- That Management take appropriate corrective action to ensure future compliance with Article 17.3 of the CBA, Article 17.3 of the JCIM, and the Questions and Answers listed under Article 17.3 of the JCIM, and
- That the steward be compensated for time spent processing grievances off the clock on the dates cited in the grievance.

## **DISCIPLINE**

The language of the *Collective Bargaining Agreement (CBA), Article 16.1, Principles*, states, “*In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.*”

The language of the *Joint Contract Interpretation Manual (JCIM), Article 16.1, Just Cause Principle*, states, “*The principle that any discipline must be for “just cause” establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the “just cause” provision requires a fair and provable justification for discipline.*

“*Just cause” is defined in the National Agreement in Article 16.1, as follows: “No employee may be disciplined or discharged except for just cause such as, but not limited to insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations.*”

### **Documentation Needed**

- Discipline letter with proof of delivery to the employee;
- Any prior discipline issued to the grievant and cited as past elements in the discipline letter;
- Dates of discussions held, prior to the discipline being issued;
- Copy of the supervisor’s request for discipline or just cause package;
- Pre-Disciplinary Interview, (PDI) documents, if conducted by Management;
- Investigative Interview Documents, if conducted by Management;
- Copy of the Office of Inspector General’s (OIGs) Report of Investigation, if applicable;
- Copy of the Postal Inspection Service Investigative Memorandum, if applicable;
- Grievant’s PS Forms 3971 and 3972 for attendance related discipline;
- The supervisor’s notes of all Investigative Interview(s);
- Copy of the steward’s notes of all Investigative Interview(s);
- A copy of all documents used by Management to support issuing the discipline;

- A copy of the posted or published work rule that was allegedly violated;
- All available documentation to show that other employees/supervisors, with similar infractions, were treated differently;
- Grievant's statement;
- Interview notes or statements by the steward and the grievant of important events that may have occurred in the interview; such as, supervisor's statement "It was not my idea to discipline you;"
- Statement by grievant, if denied a Union representative in the interview;
- Settlement letter(s), of any past disciplinary action, cited as a past element and the status of all disciplinary action which has not been settled;
- Medical documentation, if applicable;
- Clock rings of grievant, witnesses or supervisor; to prove that grievant was present, if there is a dispute on certain date(s);
- If disruption on the workroom floor is charged, witness statements are needed, and
- Steward's statement of the facts and contentions of the case.

### **Tips for the Steward**

1. **Preference Eligible Employees**, who are issued a suspension of more than 14 days or a discharge, must be issued both a Notice of Proposed Removal Letter and a Decision Letter. **THE GRIEVANCE MUST BE FILED ON THE PROPOSED REMOVAL LETTER** within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause.
2. **Once a grievance on a notice of proposed removal is filed, it is not necessary to also file a grievance on the decision letter**;
3. The steward should check the employee's PS Form 50 (Notification of Personnel Action), to determine if he/she has preference eligibility status;
4. Fill out the APWU's **Request for Information** form. Request all official and unofficial correspondence, including any electronic communication relied upon to issue the discipline. Make sure to sign and date the request and require Management to do the same;
5. Along with the grievance papers, always include employee's length of service, military service, and letters of appreciation or letters of accommodation;
6. If the grievant did not receive a **Pre-Disciplinary Interview (PDI)** and/or a discussion, make a notation in the file. Also, include the name of Management's higher level concurrence official.



7. The language of the *(JCIM), Article 16.8, Concurrence*, states, “*It is normally the responsibility of the immediate supervisor to initiate disciplinary action. Before a suspension or removal may be imposed, the discipline must be reviewed and concurred in by a manager who is a higher level than the initiating or issuing supervisor. This act of review and concurrence must take place prior to the discipline being issued.*”

*While there is no contractual requirement that there be a written record of concurrence, as a practical matter, it is best to establish a record of the concurrence (by the concurring official signing/dating the discipline or disciplinary proposal).”*

8. The language of the *(JCIM), Article 16.3, Letters of Information or Letters of Instruction*, states, “*The use of such letters serves no useful purpose as an element for consideration in future actions against an employee, particularly when Article 16.2 places the responsibility on Management to discuss minor offenses with the employee.*”

### **Appropriate Remedy**

- That the employee be returned to duty;
- That the letter of discipline be rescinded and removed from the employee’s records and from all files;
- That the employee be made whole in every way to include, but not limited to; all lost wages and benefits, applicable premiums, missed overtime or holiday opportunities, and applicable interest, and
- That all back pay hours, including those hours paid in a lump sum, be considered work hours for the purposes of eligibility under the Family and Medical Leave Act.

## HOLIDAY SCHEDULING

The language of the *Collective Bargaining Agreement (CBA), Article 11.6.A, Holiday Schedule*, states, “*The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Tuesday preceding the service week in which the holiday falls.*” (See the *CBA Memo Ref: Administration of Overtime, Choice Vacation Periods, and Holiday Work.*).

The language of the *Collective Bargaining Agreement (CBA), Article 11.6.B*, states, “*As many full-time and part-time regular schedule employees as can be spared will be excused from duty on a holiday or day designated as their holiday. Such employees will not be required to work on a holiday or day designated as their holiday unless all PSEs and part-time flexibles (in Level 20 and below post offices) are utilized to the maximum extent possible even if the payment of overtime is required, and unless all full-time and part-time regulars with the needed skills who wish to work on the holiday have been afforded an opportunity to do so.*”

The language of the, *Joint Contract Interpretation Manual (JCIM), Article 11.6, Holiday Schedule*, states, “*The intent of Article 11.6 is to permit the maximum number of full-time and part-time regular employees to be off on the holiday while allowing employees who wish to work the opportunity to volunteer.*”

In addition, the language of the *Local Memorandum of Understanding (LMOU or Local Memo)*, determines the pecking order for scheduling employees for the holiday, designated holiday, or scheduled day off during the holiday period.

### Documentation Needed

- A copy of the LMOU, (Local Memo);
- Seniority list(s);
- Posting soliciting volunteers to work the holiday for each negotiated section;
- Names of volunteers, with Employee Identification Numbers (EINs), who actually worked; along with dates, times, tour/section, and number of hours worked;
- Names of the employees drafted, with EINs, who actually worked; along with dates, times, tour/section, and number of hours worked;
- Clock Ring Reports of employees who worked listing the operation number, clarifying the type of work performed, and the section where the work was performed;
- Mail Volume Reports of the present holiday and of previous holidays;
- A copy of the grievant’s bid posting, listing the skills and qualifications and Principal Assignment Area (PAA), if applicable;

- Work schedules for PTFs and PSEs;
- Copy of the volunteer's or drafted employee's bid assignment, if necessary to prove qualifications or skills;
- Grievant's work schedule, making sure the dates are listed at the top of the schedule;
- PS Forms 3971 and/or 3792 of other employees excused early;
- PS Form 1723 (Assignment Order), of employees detailed to 204b or Executive and Administrative Schedule (EAS) assignments;
- Call-in records, if applicable to prove need to reassign to another holiday section;
- Grievant's statement;
- The steward's notes taken from the interview with the supervisor and all witnesses;
- Copy of Overtime Desired List (OTDL), if employees were added to the schedule after the holiday posting; or if OTDL is part of the negotiated holiday pecking order in the local LMOU, and
- Steward's statement of the facts and contentions of the case.

### **Tips for the Steward**

1. The language of the ***Joint Contract Interpretation Manual (JCIM), Article 11.4, Guarantees***, states, "A full-time employee "called in" to work on a holiday or a day designated as the employee's holiday is guaranteed eight hours of work or pay, in lieu thereof, if there is less than eight hours of work available.

*A full-time employee in a NTFT duty assignment, who works on a holiday or a day designated as the employee's holiday, is guaranteed the number of work hours, or pay in lieu thereof, at the straight time rate, up to the employee's regular schedule for that day. An employee in a NTFT duty assignment normally scheduled for less than 8 hours, will only be required to work beyond their normal schedule in an emergency, and will be compensated with out of schedule premium for such hours up to 8 hours in the day."*

2. When the LMOU does not establish a pecking order the following language of the ***(JCIM), Article 11.6., Holiday Schedule***, should be used to select employees to work on a holiday:
  - "All part-time flexible employees to the maximum extent possible, even if the payment of overtime is required.
  - All full-time and part-time regular employees who possess the necessary skills and have volunteered to work on their holiday or their designated holiday, by seniority."

### **Postal Support Employees (PSEs).**

- “All full-time and part-time regular employees who possess the necessary skills and have volunteered to work on their non-scheduled day, by seniority.
  - Full-time regular employees who do not volunteer on what would otherwise be their non-scheduled day, by inverse seniority.
  - Full-time regular employees who do not volunteer on what would otherwise be their holiday or designated holiday, by inverse seniority.
  - The pecking order must be followed regardless of whether the scheduling will result in an employee(s) receiving penalty pay.”
3. The language of the *(JCIM), Article 11.6, Holiday Scheduling Procedures vs Overtime Desired List*, states, “*The holiday scheduling procedure followed at a particular post office is applicable and is to be utilized on the actual holiday and any other days which may be designated as an employee’s holiday. Thus, depending upon the days off of the employee and the actual day of the holiday, it is possible for the holiday scheduling procedure and not the overtime desired list to be used for one, two or three days.*”

*For full-time employees in NTFT duty assignments, since the designated holiday could potentially fall several days prior to the actual holiday, and/or in the previous schedule week, the actual holiday scheduling, for volunteer purposes, could be expanded by several days, and may require earlier than normal posting of the holiday schedule.”*

4. The language of the *JCIM, Article 11.6, Holiday Posting*, states “*The full-time regular employees can be scheduled to work the hours their skills are required. Those hours do not necessarily have to coincide with the hours of duty associated with their bid assignment. However, if Management works employees outside of the holiday schedule hours, the employees are entitled to be compensated at the rate of one and one-half times their basic hourly straight time rate for hours worked outside the posted schedule.”*
5. The language of the *JCIM, Article 11.6, Untimely Posting*, states, “*If the holiday schedule is not posted by the Tuesday preceding the service week in which the holiday falls, a full-time employee that works his/her holiday or designated holiday will receive holiday scheduling premium for each hour of work, up to eight hours, regardless of whether the employee volunteered to work.*”

*In the event that, subsequent to the Tuesday posting period, an emergency situation attributable to Act(s) of God arises which requires the use of manpower on that holiday in excess of that schedule in the Tuesday posting, full-time regular employees who are required to work or who volunteer to work in this circumstance(s) will not receive holiday scheduling premium [ELM 434.533(b)].*

*When a full-time regular employee replaces another full-time employee who was properly scheduled to work but later calls in sick or is otherwise unable to work, the replacement employee is not eligible for holiday scheduling premium. This is true even if the employee being replaced was on a regular work day (rather than a holiday or designated holiday). However, a full-time employee who is scheduled after the Tuesday deadline to replace a properly scheduled part-time flexible employee who calls in sick or is otherwise unable to work, is eligible for holiday scheduling premium”*

6. The steward should assure that all PSEs and PTFs, in level 20 and below offices, are utilized to the maximum extent possible and that all full-time and part-time regular employees, with the needed skills, who wish to work on the holiday have been afforded an opportunity to do so, prior to drafting employees to work on their holiday.
7. The language of the ***JCIM, Article 11, Holidays, Questions and Answer FTRs Duty in NTFT Duty Assignments, Question #1.*** states “*Employees in NTFT duty assignments scheduled for eight or more hours who work on their holiday or designated holiday will receive straight time pay for any hours worked up to their normal schedule for that day. They will be paid postal overtime for any hours in excess of their normal schedule. Employees in NTFT duty assignments normally scheduled for less than eight hours on the holiday or designated holiday will only be required to work beyond their normal schedule in an emergency and will be compensated with out of schedule premium for such hours up to eight hours in the day. They will be paid postal overtime for any hours in excess of eight hours in the day.*”
8. Employees in NTFT duty assignments who work their holiday or designated holiday may elect to have their annual leave balance credited with up to eight (8) hours of annual leave credit (equal to the number of hours of holiday leave pay received) in lieu of holiday leave pay.
9. Employees in NTFT duty assignments, on the holiday work schedule, will be subject to the LMOU pecking order. Employees in NTFT duty assignments working their holiday or designated holiday will be scheduled for the number of hours they normally work. Employees in NTFT duty assignments working on their off day will be scheduled for 8 hours.

### **Appropriate Remedy**

In accordance with the language of the ***JCIM, Article 11.6, Remedies***, The following applies when Management improperly schedules employees to work on a holiday:

- “Full-time employees and part-time regular employees who file a timely grievance because they were improperly assigned to work their holiday or designated holiday will be compensated at an additional premium of 50 percent of the base hourly straight time rate,”

- “For each full-time or part-time regular employee improperly assigned to work a holiday or designated holiday, the employee who should have worked pursuant to the provisions of Article 11.6 or the LMOU, but was not permitted to do so, will be compensated at the rate of pay the employee would have earned had he/she worked on that holiday.”

## **IMPROPER OR UNTIMELY REVERSION OF DUTY ASSIGNMENT**

The language of the *Collective Bargaining Agreement, (CBA), Article 37.1.F, Clerk Craft, Definitions*, defines “**Reversion**,” as, “A Management decision to reduce the number of duty assignments in an installation when such duty assignment(s) is/are vacant.”

The language of *CBA, Article 37.3.A.2, Reversion*, states, “When a vacant duty assignment is under consideration for reversion, the local Union President will be given an opportunity for input prior to a decision. The decision to revert or not to revert the duty assignment shall be made not later than 28 days after it becomes vacant and if the vacant assignment is reverted, a notice shall be posted advising of the action taken and the reasons therefor.”

### **Documentation Needed**

- Letter to the Union president from Management advising that the duty assignment is under consideration for reversion and soliciting the Union’s input;
- A copy of the original award notice, identifying the duty assignment under consideration for reversion, listing the employee who vacated the duty assignment;
- Documentation to show the effective date the job, under consideration for reversion, was vacated by the employee awarded the job;
- Statement from the local president, as to whether or not Management sought input on the proposed reversion and allowed time for meaningful input;
- Documentation from the local president, to show why the job should not be reverted;
- A copy of the posted notice of the decision to revert the duty assignment, and
- Steward’s statement of the facts and contentions of the case.

### **Tips for the Steward**

1. Consistent with the language in the *Joint Contract Interpretation Manual (JCIM), Article 37.3.A.2, Question and Answer #68*, when reverting a vacant duty assignment in order to comply with Management must:
  - A. Give the local Union president the opportunity for input prior to making the final decision,
  - B. Make the final decision to revert, and
  - C. Post a notice advising of the reversion and the reasons therefor, within the 28 day period that the duty assignment became vacant, i.e., when the bid holder moves to the new duty assignment, quits, retires, etc. Otherwise, the assignment must be posted for bid.

2. The Union must ensure that the decision notice to revert the duty assignment is posted throughout the entire installation.
3. When Management fails to comply with the “normal remedy” of posting the duty assignment, at the lowest possible level of the grievance procedure, the Union should always seek out-of- schedule pay.
4. When a traditional 40 hours duty assignment is reverted, the goal is to demonstrate that the need for that traditional duty assignment still exists. The Union should also seek a remedy to post a newly created NTFT duty assignment rather than reducing the number of duty assignments in the installation, i.e., reversion.
5. When the reverted duty assignment is in the retail operation, make note of the PSEs versus window clerks’ percentage in accordance with the *PSE Memo in the CBA*, to demonstrate that the duty assignment needs to be posted instead of reverted.
6. When Management uses PSEs, PTFs, unencumbered, or injured employees to work in the section where the reverted duty assignment former existed, the Union should note in the grievance that the decision to revert was “in name only” as well as arbitrary and capricious.

### **Appropriate Remedy**

- That the appropriate full-time duty assignment be immediately posted for bid,
- That the successful bidder be awarded out of schedule pay retroactive to the 29<sup>th</sup> day after the duty assignment was vacated, and
- That the successful bidder be awarded any difference in pay level, if applicable.



## LETTER OF DEMAND

The language of the *Collective Bargaining Agreement (CBA), Article 28. Employer Claims*, states, “*The parties agree that continued public confidence in the Postal Service requires the proper care and handling of the USPS property, postal funds and the mails. In advance of any money demand upon an employee for any reason, the employee must be informed in writing and the demand must include the reasons therefor.*”

The language of the *CBA, Article 28.4, Shortages in Fixed Credits*, states, “*Employees who are assigned fixed credits or vending credits shall be strictly accountable for the amount of the credit. If any shortage occurs, the employee shall be financially liable unless the employee exercises reasonable care in the performance of his duties. In this regard, the Employer agrees to:*

- A. *Continue to provide adequate security for all employees responsible for postal funds;*
- B. *Prohibit an employee from using the fixed credit or other financial accountability of any other employee without permission;*
- C. *Grant the opportunity to an employee to be present whenever that employee’s fixed credit is being audited and if the employee is not available to have a witness of the employee’s choice present;*
- D. *Absolve an employee of any liability for loss from cashing checks if the employee follows established procedures; and*
- E. *Audit each employee’s fixed credit no less frequently than once every four months.”*

### **Documentation Needed**

- The Letter of Demand, which must be signed and dated;
- PS Form 17 (Stamp Requisition/Stamp Return), for the audit period;
- PS Form 571 (Discrepancy of \$100 or More in Financial Responsibility), report sent to OIG for shortage/overage over \$100;
- PS Form 1412 (Daily Financial Report), for the audit period;
- PS Form 3074 (Request for Waiver of Claim for Erroneous Payment of Pay);
- PS Form 1908 (Financial Adjustment Memorandum), the Trust and suspense account adjustments sent from accounting);
- Copies of all invoices and documentation to substantiate the existence of the debt;
- PS Form 3294 (Cash and Stamp Stock Count and Summary). Request count sheets for previous, current, and recount audits;

- PS Form 3368 - P (Accountability Examination Record);
- PS Form 3369 (Consigned Credit Receipt);
- PS Form 3958 (Unit Reserve Stock Stamp Transaction Record), supervisor's record of main stamp stock;
- PS Form 3977 (Duplicate Key, Combination, and Password Envelope);
- Money Orders vouchers, if applicable;
- Work orders for all repairs or replacement of Integrated Retail Terminal (IRT), locks, etc.;
- Records of shortages in the main stock and of shortages of other clerks;
- Security violation reports;
- Most recent financial audits for facility (usually counted by Postal Inspectors);
- Point of Sale System (POS), problems logbook;
- Copy of any security violations previously submitted by employee or co-workers at the finance unit, if applicable;
- Steward's notes from the interview with the supervisor;
- Grievant's statement;
- Witness statement(s), if available, and
- Steward's statement of the facts and contentions of the case.

### **Tips for the Steward**

1. The language of the *JCIM, Article 28.1, Postal Service Responsibility*, requires that, *“With regard to employee accountability under Article 28, the Postal Service is responsible for the following:*
  - *provide adequate security;*
  - *prohibit employees from using the accountability of another employee without permission;*
  - *provide employees with fixed credits the opportunity to be present when their fixed credit is being audited;*
  - *relieve employees of any liability or loss for cashing checks provided established procedures are followed, and*
  - *audit fixed credits at least once every four months.”*

2. The language of the *JCIM, Article 28.1, Training*, states, “*In offices with Segmented Inventory Accountability (SIA), each sales and services associate’s cash retained credit is to be counted randomly at least once a month.*”

*Management cannot claim immunity from its responsibility to provide adequate security solely based on an employee not notifying them in writing when the employee’s equipment does not provide adequate security. The APWU security form is acceptable notification for this purpose.*

*The supervisor is responsible for notifying postal employees of all procedural changes which affect a new method of check acceptance/handling by postal employees. Collection actions can be taken against an employee who accepted a bad check only after efforts to collect the check have been exhausted by the check collection agency.”*

3. The language of the *JCIM, Article 28.1, Training*, states, “*The Postal Service should provide necessary training prior to assigning an employee to duties that require financial or security responsibilities. The Window Clerk Examination should be administered **immediately following completion of the classroom training.** Work related interruptions of trainees and instructors should be avoided. Employees who receive a rating of marginal or better report to their new bid assignment. Such employees are not eligible for out-of-schedule premium while awaiting their test results.”*
4. Assure that the safe/vault combination was changed when persons knowing the combination were separated or transferred to a new position.
5. Check to see if the Duplicate Key, Combination, and Password Envelope has been opened, or if the manager/supervisor or other employees’ keys fit the grievant’s cash drawer or stamp stock compartment(s).
6. Ask the grievant did he/she conduct an independent count along with the supervisor. If the grievant was not present, determine if a designated employee witnessed the count in accordance with the Handbook F-101 (Field Accounting Procedures).
7. Determine if there is a relationship between the grievant’s shortage and the manager/ supervisor or another employee’s overage.
8. Inquire whether or not the audit was conducted by a postmaster, supervisor, or by Postal Inspectors or OIG agents. Another employee should not be allowed to conduct an audit.
9. Review the Letter of Demand to determine if the grievant contractual and appeal rights were cited.
10. Certify that the locks were changed on the grievant’s security containers prior to being assigned to him/her.

11. Check for malfunctions on the IRT/POS Unit. List dates, times and witnesses who can verify that the IRT/POS was not working properly.
12. Obtain copies of any POS help desk requests.
13. To safeguard each clerk stamp credit the supervisor/manager must make an annual exam of all locks and keys with the exception of the Duplicate Key, Combination, and Password Envelope.
14. Check the security of the clerk's cash and stamp drawers when they are locked in the screen line. Can these drawers be opened by pushing down on them? Are locks worn so badly that the drawer can be opened by any key? Is there a common key available to all window clerks to lock their valuables in the screen line?
15. The language of the *JCIM, Article 28.4, Demand Letters*, states, "*Management cannot cash an employee's payroll check to liquidate a debt without the employee's permission and the Inspection Service cannot withhold an employee's salary check when the employee is issued a Letter of Demand. Rather, when collecting a debt from an employee, the Postal Service must adhere to the requirements of Article 28 and Chapter 460 of the Employee & Labor Relations Manual (ELM).*

*All employees must receive written notice (Letter of Demand) of any money demand for any reason. The Letter of Demand, which must be signed by the postmaster or his/her designee, must notify the employee of a Postal Service determination of the existence, nature, and amount of the debt.*

*A Letter of Demand must specify the options available to the employee to repay the debt or to appeal the Postal Service's determination of the debt or the proposed method of repayment. Requirements governing the collection of debts from bargaining unit employees are in ELM, Section 460. If a grievance is filed regarding a demand for payment or a petition is filed pursuant to the Debt Collection Act, such demand is held in abeyance until final disposition of the grievance or petition regardless of the amount of the demand or type of debt.*

*Section 437 of the ELM provides a mechanism for an employee to request a Waiver of Claims for Erroneous Payment of Pay. Section 437 includes the purpose for which a waiver can be filed (Section 437.1), definitions (Section 437.2) and the mechanics for filing a claim (Section 437.3). In addition, a review by the installation head and human resources is provided for in Sections 437.4 and 437.5. Sections 437.6 and 437.7 complete the process."*

### **Appropriate Remedy**

- That the Letter of Demand (LOD) be rescinded and the grievant be relieved of any liability and all monies collected from the grievant be refunded, and
- That any "Accounts Receivable" set-up by Eagan ACS or the OIG be removed from all records. (*See ELM 462.11 Establishment of Accounts Receivable*).

<p style="text-align:center"><b>MAXIMIZATION OF PART-TIME FLEXIBLES TO FULL TIME IN POST OFFICES LEVEL 20 OR BELOW</b></p>
--

The language of the *Collective Bargaining Agreement (CBA), Article 7.3, Employee Complements*, states,

- A. *“The Employer shall staff all postal installations in the regular work force as of the date of this Agreement as follows:*
1. *With respect to the clerk craft, there will no longer be Part-Time Flexible (PTF) employees working above. Part-Time Flexible (PTF) employees may work in Function 4 offices Level 20 and below. Offices, Level 20 and below, remain subject to the Article 7.3.B obligations to maximize the number of full-time employees and minimize the number of part-time flexible employees who have no fixed work schedules. There will no longer be Part-Time Regular (PTR) employees in the clerk craft.*
  2. *With respect to the motor vehicle craft, there will no longer be Part-Time Regular (PTR) and Part-Time Flexible (PTF) employees in the motor vehicle craft. Management may create Flexible Non-Traditional Duty assignments to replace PTR and PTF duty assignments.*
  3. *With respect to all other crafts, installations shall be staffed in accordance with the provisions of this agreement, (See Memos, pages 308-311).*
- B. *The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations; however, nothing in this paragraph B shall detract from the USPS’ ability to use the awarded full-time/part-time ratio as provided for in paragraph 3.A. above.*
- C. *A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six month period will demonstrate the need for converting the assignment to a full-time position.”*

**Documentation Needed**

- Clock rings or time cards for all PTFs, PSEs, loaners, cross-craft, etc. for at least a six (6) month period;
- Charts and graphs of the PTF’s and PSEs work hours for at least a 6 months period to document Full Time (FT) duty assignments from the hours worked;
- PTF’s Seniority List;
- The listing of the current FT duty assignments in the section or office, including position descriptions, off days and hours of work;

- List of unencumbered FT employees in office as well as date he/she became unencumbered;
- Documentation of any continuous and ongoing cross-craft work hours during the period of time covered by the grievance;
- Documentation of any continuous and ongoing bargaining unit work hours by Management officials during the period of time covered by the grievance;
- PS Forms 3971 or weekly analysis reports to show the amount of leave taken;
- Weekly work schedules of FTRs, PTFs, and PSEs;
- Copy of past schedules to show increase or decrease in employee complement;
- Amount of overtime paid during the six month period and Staffing/Flash Reports;
- The steward's notes taken from the interview with the supervisor;
- The steward's notes taken from the interview with all witnesses;
- Copies of letters that document any job reversions and/or abolishments, and
- Steward's statement of the facts and contentions of the case.

### **Tips for the Steward**

1. Consistent with the provisions of the *Collective Bargaining Agreement (CBA), Article 37.3.A.1 Clerk Craft, Posting, Bidding, and Application*, "Every effort will be made to create desirable duty assignments from all available work hours for career employees to bid."
2. The parties agree that for Retail Operations in Level 20 and below offices, Non-Traditional Full-Time, (NTFT) duty assignments may be created when the Union can demonstrate the need for such non-traditional duty assignments and it is economically and operationally advantageous to do so.
3. In Function 1, no more than 50% of all duty assignments in the facility may be NTFT duty assignments of 30-48 hours, unless otherwise agreed to by the parties at the local level.
4. In Function 4, Management may create as many clerk NTFT duty assignments of 30-48 hours in a facility as is operationally necessary.
5. In Level 21 and below offices, PSEs in retail/customer services (Function 4) who work the window will not exceed 20% of the career retail clerks in that installation whose duties include working the window. The rounding up rule of .5 and above applies.
6. When the hours worked by a PSE on the window demonstrates the need for a full-time preferred duty assignment, such assignment will be posted for bid within the section.

7. During the course of a service week, the Employer will make every effort to insure that qualified and available part-time flexible employees are utilized at the straight-time rate prior to assigning such work to PSEs.
8. Conversions required pursuant to the *Full-Time Flexible Memorandum in the CBA* shall be in addition to (but not duplicative of) conversions that may be required pursuant to the *CBA Article 7.3.A.B. and C*.
9. In accordance with the *Full-Time Flexible Memorandum in the CBA* the senior PTF must be converted to FTF when the following requirements are met:
  - The part-time flexible employee works at least thirty-nine hours per week during the previous six months (paid leave hours count as work hours, except where taken to round out to forty hours).
  - The part-time flexible employee worked practically five eight hour days each service week during the six month period (consistent with the above thirty-nine hour requirement).
  - The employee works in an office with 125 or more work years.
  - The part-time flexible employee was not working in a withheld position during the period.
  - The work was performed in the employee's craft, occupational group and Installation.
  - Such employee has a flexible schedule which is established week-to-week and posted on the Wednesday preceding the service week. The schedule may involve varying daily reporting times, varying nonscheduled days and varying reporting locations within the installation depending on operational requirements.
10. Employees converted to full-time flexible status are considered unassigned (unencumbered in the clerk craft) full-time employees who may bid on posted duty assignments or be assigned to residual duty assignments.
11. The steward should file the grievance as a "Class Action," instead of an individual grievance, in case the senior PTF is no longer in the office or no longer a PTF when the grievance is resolved or adjudicated.

**Special Note: Local presidents now have access to Max Duty Assignment Tool (MDAT), software on the APWU website to assist in developing charts and graphs to "create desirable duty assignments" from work hours.**

### **Appropriate Remedy**

- That the senior PTF be converted to full time status retroactively;
- That the PTF be made whole for all losses resulting from the delay in conversion to full-time;
- That the PTF be relieved of any liability resulting from the conversion;
- That the PTF be compensated for any overtime opportunities misses resulting from the delay in conversion to full time status, and
- That a copy of the PTF's PS Form 50 (Notification of Personnel Action) be provided to the Union to substantiate the conversion to full time status.



## **OVERTIME VIOLATION**

The language in the *Collective Bargaining Agreement (CBA), Article 8.4.B, Overtime Work*, states, in part, “*Overtime shall be paid to employees for work performed only after eight (8) hours on duty in any one service day or forty (40) hours in any one service week.*”

The language in the *CBA, Article 8.4.G, Overtime Work PSEs*, states, “*PSEs shall be paid overtime for work performed in excess of forty (40) work hours in any one service week. Overtime pay for PSEs is to be paid at the rate of one and one-half (1½) times the basic hourly straight-time rate.*

*When an opportunity exists for overtime for qualified and available full-time employees, doing similar work in the work location where the employees regularly work, prior to utilizing a PSE in excess of eight (8) work hours in a service day, such qualified and available full-time employees on the appropriate Overtime Desired List will be selected to perform such work in order of their seniority on a rotating basis.”*

### **Documentation Needed**

- Name(s) and bid assignment(s) for employee(s) who actually worked the overtime;
- Name(s) and bid assignment(s) for employee(s), who should have been assigned to work the overtime;
- Appropriate Seniority List;
- Copy of the Local Memorandum of Understanding (LMOU) or Local Memo provisions;
- Work schedules, if applicable;
- Training Records or documentation to establish qualification of the by-passed employee(s);
- Dispatch schedules;
- Overtime Desired List(s), (OTDL);
- Clock Ring Reports of employees;
- Date, time, the tour and the number of hours worked;
- Operation number and the type of work performed;
- Grievant’s job description;
- Grievant’s statement;
- Witness statement(s), if available;

- The steward's notes taken from the interview with the supervisor;
- The steward's notes taken from the interview with all witnesses, and
- Steward's statement of the facts and contentions of the case.

### **Tips for the Steward**

1. Assure that all employees on the "Overtime Desired List(s)," (OTDL) are utilized 12 hours per day before an employee not on the list works any overtime. The exception occurs when there are time-critical processing needs that cannot be met unless non-list employees are worked.
2. When a question arises as to the proper administration of the OTDL at the local level, an APWU steward may have access to appropriate overtime records.
3. When requesting a remedy for an overtime violation, list the names of the persons to be paid. Request overtime pay if an employee who is not on the OTDL, works in lieu of a person on the OTDL. ***Request an additional 50% premium payment for the employee not on the OTDL who worked. Do not accept a makeup overtime day.***
4. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an OTDL.
5. Excluding December, no full-time regular employee will be required to work overtime on more than four (4) of the employee's five (5) scheduled days in a service week or work over ten (10) hours on a regularly scheduled day, over eight (8) hours on a non-scheduled day, or over six (6) days in a service week.
6. Full-time employees not on the OTDL may be required to work overtime only if all available employees on the OTDL have worked up to twelve (12) hours in a day or sixty (60) hours in a service week.
7. Employees on the OTDL may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week, excluding the month of December.
8. The Employer is not required to utilize employees on the OTDL at the penalty overtime rate if qualified employees on the OTDL who are not yet entitled to penalty overtime are available for the overtime assignment.
9. An acting supervisor (204b) cannot be utilized in lieu of a bargaining unit employee for the purpose of bargaining-unit overtime.
10. The overtime desired list is not used when preparing the holiday schedule posting for holiday coverage. If the need for additional full time coverage is determined after the holiday schedule is posted, then recourse to the overtime desired list would be appropriate.

11. Once a full time employee reaches twenty hours of overtime within a service week the employee is no longer available for any additional overtime work. Paid leave count toward the twelve and sixty work limits. The employee who is sent home on his/her regularly scheduled day before the end of his/her tour due to the 60 hour ceiling and having experienced no temporary change of schedule, must be compensated for the hours he/she lost that day.

### **Overtime Rules For Non-Traditional Full-Time (NTFT) Duty Assignments**

1. Full-time career Clerk Craft and Motor Vehicle Craft employees, who are not on the Overtime Desired List and are in an installation with employees working in NTFT duty assignments in the same functional area cannot be required to work overtime except in an emergency. However, in the MVS Craft, employees may also be required to work overtime in the event of unforeseeable circumstances (e.g., PVS drivers stuck in traffic, weather conditions).
2. Overtime built into a non-traditional full-time assignment (exceeding 40 hours in a week) will be Fair Labor Standards Act (FLSA), overtime and not subject to the *CBA Article 8.5, OTDL, or LMOU* scheduling rules.
3. If an employees working in a NTFT duty assignments normal schedule is longer than eight (8) hours on any day, they will receive postal overtime only when they exceed their normal schedule for that day.
4. For employees in NTFT duty assignments with normal schedules of forty (40) hours or less they will receive postal overtime when in a pay status for more than forty (40) hours in a service week. For employees with normal schedules in excess of forty (40) hours per week they will receive postal overtime when in a pay status for more than the normal weekly scheduled hours.
5. Employees in NTFT duty assignments, scheduled to work overtime, will be guaranteed 8 hours on any non-scheduled day.

### **Appropriate Remedy**

- That employee(s) on the Overtime Desired List, (OTDL), who have the necessary skills, and was available to work, but was improperly passed over when another employee on the list was selected for overtime work out of rotation, be given a similar make-up opportunity within 90 days of the date the error was discovered;
- That should no similar make-up overtime opportunity present itself within 90 days, the employee who was passed over shall be paid for an equal number of hours at the overtime rate for the opportunity missed;
- That employee(s) on the OTDL, who has the necessary skills, was available to work, but was improperly passed over and another employee(s) not on the list is selected for overtime work, the employee(s) who was passed over shall be paid for an equal number of hours at the overtime rate for the opportunity missed;

- That employee(s) not on the OTDL and forced to work overtime, when they should not have been scheduled to work, be paid an additional 50% premium for each hour worked, and
- That full time employee(s) be compensated at an additional premium of 50% of the base hourly straight time rate for those hours worked beyond the twelve or sixty hour limitation.

**Special Note:** *Always list the employee(s) name, identification number(s), rate of pay, and the number of hours to be compensated for at both the overtime and the penalty rate, if applicable.*

### **Overtime Rules For Non List Employees** **When NTFT Assignments are in That Functional Area**

The language of the *Collective Bargaining Agreement (CBA), Non-Traditional Full-time (NTFT) Duty Assignments, Memorandum Of Understanding, (MOU) 2*, states: “Effective 6 months from the signing date of the 2010 National Agreement, full-time career clerk craft and motor vehicle craft employees who are not on the Overtime Desired List and are in an installation with employees working in NTFT duty assignments in the same Functional area, will not be required to work overtime except in an emergency.”

### **Documentation Needed**

- Copy of the NTFT duty assignment(s) in the Functional Area. Note: Functional Area means all tours of each functional area, Example: Mail Processing Function 1, Customer Service Function 4;
- Copy of weekly schedule that shows NTFT duty assignments in that functional area;
- Names and EINs of Non “Overtime Desired List(s),” (OTDL) employees who were mandated to work overtime;
- Copy of the applicable OTDL list;
- Clock rings of OTDL employees who worked overtime during relevant time period;
- Clock rings of non OTDL employees who worked overtime during relevant time period;
- Witness statement(s), and
- The steward’s notes taken from the interview with all witnesses, and
- Steward’s statement of the facts and contentions of the case.

- Include a copy of any Step 2 Appeal Form from prior grievances on the same issue.

### **Tips for the Steward**

1. Include any information necessary to rebut management's claim of an emergency.
2. The definition of an emergency is defined in the ***Joint Contract Interpretation Manual (JCIM), Article 3, Management Rights, Emergency Situations***, and states, *"It is understood that an emergency is defined as an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation that is not expected to be recurring in nature."*
3. Contact your National Business Agent (NBA) to discuss the appropriateness of a 50% premium for a one-time violation versus administrative leave for ongoing and repetitive violations.

***Special Note:*** *This grievance only involves the remedy for non OTDL employees mandated to work overtime in violation of the MOU. When non OTDL and OTDL employees are simultaneously scheduled to work overtime, a separate grievance should be filed on behalf of employees on the OTDL.*

### **Appropriate Remedy**

- That the non OTDL employees be paid an additional 50% premium for all overtime hours worked, and
- That the non OTDL employees be compensated administrative leave for all the overtime hours worked because management has repeatedly scheduled non OTDL employees to work overtime.

<p style="text-align:center"><b>POSTAL SUPPORT EMPLOYEES (PSEs) USED IN LIEU OF PART-TIME FLEXIBLES (PTFs)</b></p>
--

The language of the *Collective Bargaining Agreement (CBA), Article 7.1.B.1, Supplemental Work Force*, states, “The PSE work force shall be comprised of non-career bargaining unit employees.” The language of the *CBA, Article 7.1.B.2*, states, “During the course of the service week, the Employer will make every effort to insure that qualified and available part-time flexible employees are utilized at the straight time rate, prior to assigning such work to PSEs.”

The language of the *Joint Contract Interpretation Manual (JCIM), Article 7.1.B.2, PTF Scheduling*, states, “Part-time flexible employees working at the straight-time rate shall be given priority in scheduling over PSE employees. However, that scheduling obligation must be met during the course of a “service week,” and the part-time flexible employees must be “qualified and available.” (A “service week” begins at 12:01 a.m. Saturday and ends at 12:00 midnight the following Friday).

A violation of *Article 7.1.B.2* may occur when: 1) Management schedules a PSE for work which a part-time flexible employee could have performed instead and, 2) the part-time flexible employee had less than 40 straight-time hours (either work or a combination of work and paid leave) during the service week. For example, if, when scheduling part-time flexible employees, Management consistently and regularly underestimates the work which will remain at the end of the week for part-time flexible employees, and this results in PSEs working at the beginning or the middle of the service week while the part-time flexible employees do not obtain a forty hour week, this practice would constitute a violation of *Article 7.1.B.2*.”

**Documentation Needed**

- PTFs’ and PSEs clock rings or time cards;
- PS Form 50, (Notification of Personnel Action), for PSEs;
- Training records showing qualification, if applicable;
- Work schedules of the PTFs and PSEs;
- PTFs’ 3971s requesting to be excused or on leave;
- Witness statements or interviews;
- The steward’s notes taken from the interviews with the supervisor and all witnesses;
- PTF’s Seniority List;
- Training records or other documentation demonstrating that PTFs were qualified and available to perform the work, and
- Steward’s statement of the facts and contentions of the case.

### **Tips for the Steward**

1. The grievance only has merit if the PTF employee worked less than 40 hours in the service week. A PTF as well as a PSE can be scheduled to work at various locations.
2. Include the Employee Identification Numbers (EINs), of the PTFs as well as the number of hours each PTF should be paid for as a make whole remedy.
3. Ensure that any training offered to PSEs be offered to PTFs. This will aid in rebutting Management's claim of the PTF employee(s) not being qualified.

### **Appropriate Remedy**

- That the listed PTF employee(s) be made whole at the appropriate rate of pay for all hours worked by the PSE employee(s) in lieu of the PTF employee(s),
- That Management cease and desist scheduling PSE employee(s) in lieu of PTF employee(s), and
- That Management provides the appropriate training for PTF employee(s).

## **PSEs WORKING PAST THE 8 HOURS VIOLATION**

The *Collective Bargaining Agreement (CBA), Article 8.4.G, Overtime Work PSEs*, states, “PSEs shall be paid overtime for work performed in excess of forty (40) work hours in any one service week. Overtime pay for PSEs is to be paid at the rate of one and one-half (1½) times the basic hourly straight-time rate.

*When an opportunity exists for overtime for qualified and available full-time employees, doing similar work in the work location where the employees regularly work, prior to utilizing a PSE in excess of eight (8) work hours in a service day, such qualified and available full-time employees on the appropriate Overtime Desired List will be selected to perform such work in order of their seniority on a rotating basis.”*

### **Documentation Needed**

- Copy of Overtime Desired List (OTDL), for the section where the PSE(s) worked past 8 hours in a service day;
- Copy of PSE(s) clock rings or time cards;
- Copy of by-passed senior OTDL employee(s) clock rings or time cards;
- Copy of qualifications of OTDL employee(s), if in dispute or applicable;
- Copy of PSEs qualifications, if in dispute or applicable;
- Grievant’s statement including his/her level and rate of pay;
- Copy of grievant’s duty assignment and/or work schedule to determine his/her designated overtime section;
- Copy of LMOU, ITEM 14, if overtime section is in dispute;
- The steward’s notes taken from the interview with all witnesses;
- The steward’s notes taken from the interview with the supervisor, and
- Steward’s statement of the facts and contentions of the case;

### **Tips for the Steward**

1. A determination as to whether or not a contract **violation** occurs is **not based upon the rate of pay** the PSE is paid (straight time versus overtime). It is based strictly upon the PSE working past 8 hours when a qualified employee, on the OTDL in that section, was available and was by-passed.



### **Appropriate Remedy**

- That the qualified and available OTDL employee(s) be paid at the appropriate overtime rate for all hours worked by the PSE(s) past the eight (8) worked in the service day.

**Special Note:** *Always list the employee(s) name, identification number(s), rate of pay, and the number of hours to be compensated for at both the overtime and the penalty rate, if applicable.*

## **PSEs WORKING ON THE WINDOW DEMONSTRATING THE NEED FOR ADDITIONAL DUTY ASSIGNMENT(S)**

The language of the *Collective Bargaining Agreement, Article 7.B.4, Employee Classification, Postal Support Employees (PSEs)*, states, “When the hours worked by a PSE on the window demonstrates the need for a full-time preferred duty assignment, such assignment shall be posted for bid within the section. PSEs who work on the window may work in relief of those employees holding duty assignments on the window.”

### **Documentation Needed**

- Copy of PSEs clock rings;
- Chart of PSEs work hours to demonstrate the need for the duty assignment;
- Copy of PSEs 1412s (Daily Financial Report);
- Copy of work area(s) and work schedule(s) of PSEs;
- Witness statements;
- The steward’s notes taken from the interview with the supervisor and witnesses;
- Copy of all residual duty assignments with window duties listed on the posting;
- Copy of all awarded duty assignments pending qualification in that unit, and
- Steward’s statement of the facts and contentions of the case.

### **Tips for the Steward**

1. Prior to initiating the grievance, first determine that the PSE(s) are not holding down residual duty assignments or clerks pending qualification on a posted duty assignment. Include the language in the *CBA, Article 37.3.A.1*, “All newly established Clerk Craft duty assignments shall be posted to craft employees eligible to bid within 28 days. All vacant duty assignments, except those positions excluded by the provisions of Article 1, Section 2, shall be posted within 28 days unless such vacant duty assignments are reverted. Every effort will be made to create desirable duty assignments from all available work hours for career employees to bid.”
2. Remember that in order to demonstrate a duty assignment, it is no longer necessary to demonstrate 40 hours in a service week. If PSEs are working in two retail units, NTFT duty assignments as well as relief and pool assignments can be demonstrated and posted for bid to full time employees.

**Special Note:** *Local presidents now have access to Max Duty Assignment Tool (MDAT), software on the APWU website to assist in developing charts and graphs to “create desirable duty assignments” from work hours.*

<p style="text-align: center;"><b>APWU's Position Paper</b> <b>Enforcing PSEs Working on the Window</b></p>
---

**Issue:** Management trains two PSEs for the window in an installation but is only entitled to one PSE working the window.

The senior PSE is assigned as Window PSE, designation code 81-4 and is assigned to window duties. While the other PSE has received window training, their designation code should be a Mail Processing PSE, 81-3 and they cannot work the window.

In order for the second window trained PSE to be assigned window duties, the senior window trained PSE could voluntarily change to Mail Processing PSE, 81-3 to where there are no window duties. Also, management could involuntarily change such PSE to a Mail Processing PSE. In such case, the other PSE could be changed to a Window PSE, 81-4 if intended to work the window.

If management does not change the designation code of the other PSE, they will be in violation of the cap and the appropriate remedy must be paid.

- **Request a copy of the PSE's Form 50, which is the controlling document to determine which PSE(s) is/are allowed to work the window.**
- **Also, request a copy of actual request by the USPS to change the PSE DA code, in accordance with the EL-301 Handbook, in the event the USPS backdates the resulting Form 50.**

<p style="text-align: center;"><b>Appropriate Remedy</b></p>
--

- That Management shall post the duty assignment(s) demonstrated by the PSEs working the window on the next bid posting, and
- That the successful bidder(s) to be paid out of schedule pay for any delay in posting the duty assignment(s).

## **PSEs WORKING ON THE WINDOW EXCEEDING THE NEGOTIATED PERCENTAGES**

The *Collective Bargaining Agreement, Article 7.1.B.6.* states, “ *In Level 22 and above offices, PSEs in retail/ customer services (Function 4) who work the window will not exceed 10% of the career retail clerks in that installation whose duties include working the window. The rounding-up rule of .5 and above applies.*”

*In Level 21 and below offices, PSEs in retail/ customer services (Function 4) who work the window will not exceed 20% of the career retail clerks in that installation whose duties include working the window. The rounding-up rule of .5 and above applies.”*

### **Documentation Needed**

- Copy of work schedule listing qualification or job position (window qualified);
- Copy of all posted duty assignments with window qualifications;
- Copy of PSEs training records;
- List of PSEs working window without training;
- Witness statements;
- Clock Rings for window clerks and PSEs working the window;
- Copy of 1412s for all employees scheduled to work the window at that particular time, and a copy of operation numbers, and
- Steward’s statement of the facts and contentions of the case.

### **Tips for the Steward**

1. There is no violation if more PSEs are trained on the window than the allowed percentage. The D/A code controls the number of PSEs and which PSEs can work the window. The number of PSEs with D/A code 81-4 must not exceed 10% in Level 22 offices or 20% in Level 21 offices, based upon the number of career employees in that installation whose duties include working the window. The USPS and APWU mutually agree that the PSE’s PS Form 50 would identify the allowable window PSEs for the purpose of the window cap.
2. List the employee’s Employee Identification Number and the number of hours he/she worked at the overtime rate and the number of hours he/she worked at the penalty rate, if applicable.

### **Appropriate Remedy**

- That Management ceases and desists from exceeding the percentage of PSEs allowed to work on the window, and pay all qualified window clerks at the appropriate overtime rate for all hours worked by the PSEs on the window.

## **RESTRICTED SICK LEAVE**

The *Joint Contract Application Manual (JCIM), Article 10.5, Restricted Sick Leave*, states, “Management may place an employee in “restricted sick leave” status, requiring medical documentation to support every application for sick leave, if: (a) Management has “evidence indicating that an employee is abusing sick leave privileges”; or (b) if Management reviews the employee’s sick leave usage on an individual basis, first discusses the matter with the employee and otherwise follows the requirements of *ELM, Section 513.391*.”

*The use of “restricted sick leave” at the local office is optional as determined by local Management. When used, restricted sick leave must be administered in accordance with ELM, 513.391.”*

### **Documentation Needed**

- Letter placing the grievant on restricted sick leave;
- The evidence that Management is using to support their claim that the employee was abusing sick leave;
- Grievant’s PS Forms 3971s and 3972;
- Grievant’s medical documentation and nature of the medical problem;
- Grievant’s check stub or a computer printout with the sick leave balance;
- Family and Medical Leave Act (FMLA) documentation, if applicable;
- A notation of attendance related discipline which is still live;
- Date(s) of the supervisor’s discussion(s) with the grievant, pertaining to his/her attendance;
- Notes from the interview with the supervisor;
- Grievant’s statement;
- Witness statement(s), if available, and
- Steward’s statement of the facts and contentions of the case.

### **Tips for the Steward**

1. The steward should verify that the supervisor followed the correct procedures outlined in the *Employee Labor Relations Manual (ELM) 513.391, “Restricted Sick Leave.”*
2. Management must have evidence indicating that an employee is abusing sick leave privileges, before the employee is placed on the Restricted Sick Leave list.

3. In accordance with the ***Employee Labor Relations Manual (ELM) 513.391, Restricted Sick Leave***, “employees may be placed on the restricted sick leave list after their sick leave use has been reviewed on an individual basis and the following actions have been taken:
  - a. *Establishment of an absence file.*
  - b. *Review of the absence file by the immediate supervisor and higher levels of Management.*
  - c. *Review of the absences during the past quarter of LWOP and sick leave used by employees. (No minimum sick leave balance is established below which the employee’s sick leave record is automatically considered unsatisfactory).*
  - d. *Supervisor’s discussion of absence record with the employee.*
  - e. *Review of the subsequent quarterly absences. If the absence logs indicate no improvement, the supervisor is to discuss the matter with the employee to include advice that if there is no improvement during the next quarter, the employee will be placed on restricted sick leave.”*
4. In accordance with the ***ELM 513.392, Notice and Listing***, Supervisors must provide written notice to employees that their names have been added to the restricted sick leave listing. The notice must also explain that, until further notice, the employees must support *all* requests for sick leave by medical documentation or other acceptable evidence.
5. In accordance with the ***ELM 513.393, Recision of Restriction***, Supervisors must review the employee’s PS Form 3972 for each quarter. If there has been a substantial decrease in absences charged to sickness, the employee’s name is removed from the restricted sick leave list. The employee must be notified, in writing by Management, of the removal from the list.

### **Appropriate Remedy**

- Rescind the restricted sick leave notice issued to the employee, and
- Reimburse the employee for all expenses incurred as a result of being forced to provide medical documentation for absences, while on the Restricted Sick Leave list.

## **SUPERVISORS PERFORMING BARGAINING UNIT WORK**

The language of the *Joint Contract Application Manual (JCIM), Article 1.6, Supervisors Performing Bargaining Unit Work*, states, “Supervisors are prohibited from performing bargaining unit work, except for the circumstances outlined in Article 1.6. Bargaining unit employees acting as temporary supervisors (204b) are considered as supervisors for the purposes of Article 1.6. Article 1.6.B provides in offices with less than 100 bargaining unit employees, **postmasters and supervisors** are prohibited from performing bargaining unit work except as enumerated in Article 1.6.A or when the duties are included in the **postmaster’s** or supervisor’s position description.

*In offices, Level 20 and above, with less than 100 bargaining unit employees, postmasters and supervisors may only perform bargaining unit work in accordance with Article 1.6.A.*

*In level 18 offices, the Postmaster is permitted to perform no more than fifteen (15) hours of bargaining unit work per week. There will be no PMR usage in level 18 offices.*

*In level 16 offices, the Postmaster is permitted to perform no more than twenty-five (25) hours of bargaining unit work per week. There will be no PMR usage in level 16 offices.*

*In level 15 offices, the Postmaster is permitted to perform no more than twenty-five (25) hours of bargaining unit work per week. There will be no PMR usage in level 15 offices.”*

### **Documentation Needed**

- A written and signed statement from each witness stating:
  - WHO did WHAT?
  - WHO saw WHAT?
  - WHO said WHAT?
  - WHEN did it happen (date and exact time)?
  - WHERE did it happen?
- The name of the supervisor performing the work and the date(s) on which the work was performed;
- The type of work he/she performed and the length of time he/she performed the work;
- List names of witnesses, who have observed the same supervisor performing work before; include dates and times;

- Clock rings to show which craft employees were available to work;
- Seniority lists and Overtime Desired List, by section, tour, and work area, where the work was performed;
- Position descriptions of the bargaining unit employees working in the area, where the supervisor performed the work;
- The craft designated to perform the work;
- Position descriptions of the postmaster or supervisor, who performed bargaining unit work in Post Offices level 18 and below;
- A copy of the documentation prepared by the postmaster or supervisor to record the operation(s) where the work was performed and the amount of time spent performing bargaining unit work in Post Offices level 18 and below;
- PS Forms 1723 (Assignment Order), if the supervisor is a 204b;
- Supervisor/postmaster sign-in sheet or work records showing he/she was working, and
- The steward's notes taken from the interview with the supervisor.

### **Tips for the Steward**

1. If the supervisor states it was an emergency, find out the nature of the emergency. The ***Collective Bargaining Agreement, Article 3.F, Management Rights***, defines an emergency as, “*an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.*”
2. In the event there is a second supervisor in any of level 18 or below office, only one of the supervisory employees may perform bargaining unit work (either the postmaster or the supervisor).
3. Bargaining unit work performed by Postmasters or supervisors should be consecutive hours to the extent practicable, so as to minimize the necessity for split shifts for clerk craft employees, whenever possible.
4. All time the supervisor or Postmaster spends staffing the window during the day will be counted towards the permissible bargaining unit work limits.
5. In accordance with the M-32 (Management Operating Data System), postmasters or supervisors performing bargaining unit work will record what operation they are performing either by time clock, PS Form 1260, or other appropriate means. A copy of such documentation shall be made available to the Union upon request.
6. Any office that is downgraded in level will remain at the bargaining unit work standard that is in place at the beginning of the Agreement through the life of that contract.



### **Appropriate Remedy**

- That the identified bargaining unit employees be paid at the applicable rate for all hours spent by Management performing bargaining unit work as identified in this grievance, and
- That Management Cease and Desist from performing bargaining unit work in violation of the contract.

## **INTERROGATION BY POSTAL INSPECTORS AND/OR OFFICE OF INSPECTOR GENERAL (OIG) AGENTS**

Postal employees are subject to investigation by either the Office of Inspector General (OIG) and/or Postal Inspection Service for off duty as well as on duty offenses. Generally, off duty non postal offenses, subject to investigation includes, but are not limited to: Serious acts of criminal violence; use of fire arms or dangerous weapons in the commission of a crime; grand larceny, burglary, embezzlement, or robbery, and sale or possession of narcotics or dangerous drugs.

The language of the *Collective Bargaining Agreement (CBA), Article 17.3, Representation Rights of Stewards*, states, “If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted. All polygraph tests will continue to be on a voluntary basis.” The USPS has acknowledged that this requirement applies equally to the Office of Inspector General (OIG).

### **Advice to Give Employees Questioned by Postal Inspectors or OIG Agents**

It is the responsibility of the Union shop steward to advise the employee of his/her rights under the contract and the law. If questioned by a postal inspector or by an agent from the Office of Inspector General (OIG), even if the employee believes that he/she is not guilty of any wrongdoing, instruct the employee to:

- Remain calm;
- Correctly identify himself/herself;
- Request a steward, a Union representative, or an attorney as appropriate;
- Remain silent until they have consulted with a steward or an attorney;
- Don't physically resist arrest or search of their person or property;
- Request to see a search warrant. If a search warrant is not available, inform him/her to not to consent to the search;
- Ask, “**Am I a suspect in a criminal matter?**” If the answer is, “**Yes,**” the employee should exercise his/her right to remain silent until he/she consults with an attorney;
- Do not deny or admit to any allegations without consulting with steward, a Union representative, or an attorney, as appropriate;
- **DO NOT SIGN PS Form 1067, “Warning And Waiver of Rights;”**
- Do not write or sign any typewritten statements or make oral remarks without consulting with steward, a Union representative, or an attorney, as appropriate, and

- Beware of the good guy, bad guy routine; one OIG agent or inspector acts as the bad guy, the other as the good guy and tries to con the employee in believing they are trying to help him/her. Never fall into their trap, always refuse to answer questions unless a steward, a Union representative, or an attorney, is present. **What he/she says will definitely be used against him/her.**

### **Steward's Role during the Interrogation by Postal Inspectors or OIG Agents**

Although the steward or Union representative should not turn the interrogation into an adversarial proceeding and prevent the inspectors and/or OIG agents from questioning the employee, it is important that he/she recognizes both his/her role and the rights of the employee during the interrogation process.

#### **The Steward or Union Representative Should:**

- Interview the employee prior to the interrogation to gather the facts and to explain to him/her their role as a representative;
- Never allow either the Postal Inspection Service or an agent of the OIG to limit his/her participation to that of a passive observer;
- Assist the employee in articulating an explanation to the questions asked;
- Take detailed notes when questioning the employee and during the interrogation, and
- Ask the OIG agents or Inspectors whether the employee is under arrest, and/or is the subject of a criminal investigation, and/or is a suspect in a crime. If the answer is "Yes," request a recess to confer with the employee and advise him/her to seek legal counsel.

### **Tips for the Steward**

1. The language of the *Joint Contract Interpretation Manual (JCIM), Article 17, Questions & Answers, Representation, Question #5*, states,

*"Does an employee have a right to have a steward present during an investigatory interview or an interrogation by the Inspection Service or the Office of Inspector General (OIG)?"*

**Response:** *Yes, in those circumstances in which the employee is involved in an investigatory interview which he/she reasonably believes will result in discipline against him/her, and the employee requests representation, the Postal Service must provide a representative if the interview is to continue. If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service or the Office of Inspector General (OIG), such requests will be granted."*

2. Prior to filing the grievance, it is imperative that the steward sees and hears all available evidence and documents relied upon to issue the proposed suspension or discharge. Therefore, he/she should:
  - ✓ View all video tapes,
  - ✓ Listen to all audio tapes, and
  - ✓ Question all witnesses, including confidential informers, officers in charge, managers, supervisors, postmasters, *and postal inspectors or OIG agents*.
3. Careful attention should be directed to all the evidence gathered and to all procedural errors listed in the advanced notices of disciplinary action. This includes, but is not limited to, conflicting dates, times, or witness statements.
4. If the Management official admits that he/she did not conduct an investigation and relied solely on the Investigative Memorandum furnished by an agent of the Office of Inspector General (OIG) and/or the Postal Inspection Service, to issue the notice of disciplinary action, the shop steward should cite a violation of the *Collective Bargaining Agreement (Memorandum of Understanding), Re: "Role of Inspection Service in Labor Relations Matters."*

**Special Note:** *In situations where a shop steward or Union representative believes an employee may be the subject of a criminal investigation and/or there are legal issues that need to be addressed, he/she should advise the employee to remain silent and not to sign any statements/forms until they have consulted with legal counsel.*

## **WEINGARTEN RIGHTS** **(Employee's Right to Union Representation)**

The right of employees to have Union representation at investigatory interviews was announced by the U.S. Supreme Court in a 1975 case (*NLRB vs. Weingarten, Inc.* 420 U.S. 251, 88 LRRM 2689). These rights have become known as the “*Weingarten Rights.*”

- Employees have “*Weingarten Rights*” only during investigatory interviews, when a supervisor questions the employee to obtain information which could be used as a basis for discipline or asks an employee to defend his/her conduct. If an employee has a reasonable belief that discipline or other adverse consequences may result from what he/she says, the employee has the right to Union representation.
- Management **is not required** to inform the employee of his/her “*Weingarten Rights;*” it is the employee’s responsibility to make the request for representation.

**When the employee requests a shop steward or a Union representative, Management has three options:**

1. Grant the request and wait until the shop steward or a Union representative arrives,
  2. Discontinue the interview, or
  3. Offer the employee the choice of either continuing the interview without a shop steward or Union representative or discontinuing the interview.
- An agent from the Office of Inspector General (OIG) or the Postal Inspection Service will often assert that the only role of a Union representative during an investigatory interview is to observe the discussion. The Supreme Court, however, clearly acknowledges a representative's right to assist and counsel employees during the interview.
  - The Supreme Court has also ruled that during an investigatory interview Management must inform the Union representative of the subject of the interrogation. The representative must be allowed to speak privately with the employee before the interview. During the questioning, the steward can interrupt to clarify a question or to object to confusing or intimidating tactics. He/she cannot tell the employee what to say, but may advise him/her to stop answering questions and consult with an attorney.

**Special Note:** “*Rights Before Postal Inspectors*” cards can be purchased from APWU’s Website at [www.apwu.org](http://www.apwu.org). Go to the top of the page; click on the APWU Store (It’s in black, on the right side). Next, point your cursor on General Merchandise; stroll down to Publications; click on item number 301, proceed to order information; cards cost 75 cents each. For additional product or order information, contact Kelly Press by email at [smelakehiwot@thekellycompanies.com](mailto:smelakehiwot@thekellycompanies.com).

### ***Rights Before Postal Inspectors***

If questioned by a U.S. Postal Inspector, even if you believe you are not guilty of any wrong doing, it is suggested that you:

- Remain calm;
- Correctly identify yourself;
- Do not physically resist an arrest or a search of your person or property;
- Read aloud to the Postal Inspector(s) the statement on the reverse side of this card;
- Remain silent until you have consulted with your APWU representative or attorney, as appropriate.

**This is not complete legal advice. Always consult with a lawyer.**



### ***Statement***

I request the presence of my APWU representative. If I am a suspect in a criminal matter, please so advise me. If so, I wish to contact my attorney.

His/Her name is \_\_\_\_\_

Telephone number \_\_\_\_\_

If I am under arrest, I request you to so advise me and to inform me of the reason or reasons.

I do not consent to a search of my person or property. If you have a search warrant, I request to see it at this time.

I do not waive any of my rights, including my right to remain silent. I will not sign a waiver-of-rights form, nor admit or deny any allegation, nor make any written or oral statement unless my attorney is personally present and so advises me.



APWU-301

## MIRANDA RIGHTS (Your Right to Remain Silent)

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Supreme Court's historic decision, the Court ruled that before a law enforcement officer may question an individual regarding the possible commission of a crime, he/she must read the individual his/her "***Miranda Rights***" and must also make sure that the individual understands these rights. Therefore, law enforcement agencies have created a basic set of simple statements that can be read to accused persons prior to questioning:

- **You have the right to remain silent and refuse to answer questions.** The individual must be informed in clear and unequivocal terms that he/she is not legally required to answer questions or to give a statement.
- **Anything you say may be used against you in a court of law.** The individual must be warned of the consequences of his/her statements.
- **You have the right to consult with an attorney before speaking to us and to have an attorney present during questioning now or in the future.** The right to have an attorney present during the interrogation is a protection of the individual's Fifth Amendment privileges.
- **If you desire to have an attorney present and cannot afford one, an attorney will be appointed to you, free of charge.** Without this additional warning, the individual's right to consult with an attorney would only apply if he/she has the funds to obtain one.
- **Do you understand your rights as I have read them to you?** The individual answers yes or no.
- **Knowing and understanding your rights as I have read them to you, are you willing to answer my questions without an attorney present?** *If the individual says, "No," the questioning must stop. The individual should refuse to answer any questions, until the attorney is present.*
- However, the law enforcement officer is allowed to ask routine questions without reading the individual his/her "***Miranda Rights***," such as: What's your name, address, date of birth, and Social Security number? This information may be necessary to help determine a person's true identity.

## GARRITY RIGHTS/WARNING

The Fifth Amendment to the U.S. Constitution provides that no person shall be compelled in any criminal case to be a witness against himself/herself. This means that a person may not be required or coerced to disclose any information that he/ she reasonably believes may be used (or lead to other evidence that may be used) in a criminal prosecution against him/her.

- If a person is coerced into disclosing information, that information is not admissible in court against him/her.
- In addition to the basic Fifth Amendment rights, Postal Service employees have additional rights under the Fifth Amendment as public sector employees. These workplace rights arise because in the public sector the government acts as both law enforcement agency and employer.
- Developed through a series of United States Supreme Court cases beginning in 1966, these rights are generally known as “*Garrity Rights*,” after the Supreme Court’s decision in *Garrity v. New Jersey*, 385 US 493 (1967).
- In that case, several New Jersey police officers were targeted during an internal investigation of ticket fixing. The officers were told that they must respond to questions during the investigation or face discharge for insubordination. In order to keep their jobs, the officers complied and answered the questions. The statements made by the officers were then used in criminal prosecutions against them.
- In overturning the convictions, the Supreme Court held that threatening the police officers with discharge was coercive -- in violation of the Fifth Amendment.
- This case now stands for the principle that using the threat of discharge or any other substantial economic penalty against public sector employees during an investigation of potentially criminal matters is coercive and that any consequent disclosure is inadmissible in a criminal trial of the employee.



## KALKINES WARNING

“*Garrity Rights/Warning*,” does not, however, mean that government employees may not be asked to give a statement about potentially criminal acts. However, “*Kalkines*,” established an individual has the right:

- To know if information being solicited during an interrogation will be used against them in criminal prosecution. However, if given immunity from prosecution, the employee is required to cooperate in the investigation even if the information solicited could be used for discharging the employee. In *Gardner v. Broderick*, 392 U.S. 273 (1968), the United States Supreme Court held that the government may not discharge a public employee for refusing to waive his/her constitutional rights.
- The Court noted that the government could discipline an employee if it does not force the employee to give up his/her Fifth Amendment rights, such as by giving the employee “**prosecutorial immunity**,” (a guarantee that the information disclosed will not be used against the employee in a criminal prosecution).
- The Supreme Court also found, in *Uniformed Sanitation Men Association v. Commissioner of Sanitation*, 392 U.S. 280, 285 (1968), that public employees “subject themselves to dismissal if they refuse to account for their performance of their public trust, after proper proceedings, which do not involve an attempt to coerce them to relinquish their constitutional rights.”
- In *Kalkines v. United States*, 473 F.2d 1391, 1393 (Ct. Cl. 1973), the U.S. Court of Claims elaborated on the Supreme Court's holdings in finding that an employee can be asked to “answer pertinent questions about the performance of an employee's duties ... when that employee is duly advised of his/her options to answer under the immunity granted or remain silent and face dismissal.” In other words, an employee who is given prosecutorial immunity should not expect to rely on his/her Fifth Amendment rights as a reason not to answer questions, and if he/she does not answer the questions the government may discipline him/her for failing to cooperate with the investigation.
- This rule is based on the Fifth Amendment's prohibition on governmental compulsion to make an individual disclose information that might be used against them in a criminal proceeding. It is counter balanced by the Supreme Court's holdings that the government has the right to have its employees answer questions about the performance of their official duties.
- In getting this information from employees, the Fifth Amendment is not violated so long as the government also grants the employee immunity from criminal prosecution based upon that information. If an employee is given immunity, but nonetheless decides not to answer questions, the government may discipline the employee for not answering the questions.

- Any such discipline would, of course, be subject to the grievance procedure pursuant to the collective bargaining agreement. Therefore, an employee can always decide whether to answer questions or not to answer questions.
- As regards the “*Kalkines Warning*,” for example, if an employee is actually provided immunity from prosecution, the employee nonetheless may choose not to answer questions and instead deal with the consequences of being disciplined.
- It should be noted that the mere assertion by an agent from the Office of Inspector General (OIG), that an employee is being granted “immunity” is not the same as an actual grant of immunity from a prosecutor.
- Questions regarding possible criminal prosecution, custodial vs. non-custodial interrogations, and immunity, are legitimate questions that may best be addressed by legal counsel.
- There is no violation of any Postal Service policy or regulation if an employee, who is being subject to an interrogation by law enforcement agents of the Office of Inspector General (OIG) or the Postal Inspection Service, chooses to remain silent pending consultation with a steward, Union representative and/or an attorney, as appropriate.
- In addition, there is no such violation if an employee chooses not to sign any forms or statements during an interrogation.

## DENIAL OF A STEWARD DURING AN INTERROGATION

If the employee requests a steward or Union representative during an interrogation, and agents from the Office of Inspectors General (OIG) or the Postal Inspection Service fail to permit the presence of a steward or fail to respect the role of the steward, an unfair labor practice charge should be filed with the National Labor Relations Board, (NLRB).

It is recommended that two separate charges be filed. Both the Local Union and the individual employee, who is the subject of the interrogation, can file an unfair labor practice charge with the NLRB.

To file a successful claim, both the employee and the Local Union must make it clear, both during the interrogation and again to the NLRB, that the employee requested the assistance of a Union representative or steward.

***The employee can claim a violation of Section 8(a) (1) of the National Labor Relations Act.***

**The body of such a charge filed by an employee should allege that:**

“On or about insert date, the U.S. Postal Service interfered with, restrained and coerced insert employee’s name, an employee of the USPS, in the exercise of his/her Section 7 rights by, among other things, failing and refusing to permit the presence and/or participation of a Union representative during the course of an interrogation by the Employer in violation of the law.” (See *NLRB v. Weingarten*, 420 U.S. 251 (1975) and *Barnard College*, 340 NLRB No. 934 (2003).

***The Local Union should claim a violation of Section 8(a) (1) and (5) of the National Labor Relations Act, alleging:***

**The body of such a charge filed by the Local Union should allege that:**

“On or about insert date, during the interrogation of insert name of grievant, an employee of the U.S. Postal Service, the Employer refused to permit insert steward’s name, APWU Union’s steward’s, participation in the interview even though the employee requested to have a steward present. This is a direct violation of the Postal Service’s legal and contract obligations.” (See *NLRB v. Weingarten*, 420 U.S. 251 (1975) and *Barnard College*, 340 NLRB No. 934 (2003).

## **STEWARD'S RIGHT TO REFUSE TO DISCLOSE INFORMATION**

A demand by the Postal Service to interrogate Union stewards concerning information communicated to them by employees they represent in their capacity as Union stewards constitutes a violation of the National Labor Relations Act.

In these circumstances, the Local should file an unfair labor practice charge against the Postal Service alleging violations of Section 8(a) (1). Those Locals should also ask for injunctive relief under Section 10(j) of the National Labor Relations Act.

The damage done by such a demand is irreparable because of the ongoing chilling effect that it has both on an employee's willingness to consult stewards, and on the willingness of employees to serve as stewards. Such harm cannot be repaired with an eventual NLRB cease-and-desist order. For this same reason, the charge should not be deferred to arbitration. When contacted by the Board Agent, the Local should cite *Cook Paint and Varnish Co., 258 NLRB 1230 (1981)*.

### **Such a charge should allege as follows:**

“On or about **insert date**, the U.S. Postal Service interfered with, restrained and coerced **insert steward's name**, employees of the USPS, in the exercise of their Section 7 rights by, among other things, demanding under threat of discipline that Union officials submit to interrogations about their Union activities. Injunctive relief under Section 10(j) is requested.”

### **Tips for the Steward**

1. Although APWU stewards enjoy a qualified privilege as stated by the Board in *Cook Paint and Varnish*, as employees of the Postal Service, they also have an obligation to cooperate with employer investigations in judicial proceedings.
2. However, the National Union contends that the “steward's privilege” does apply in the context of investigatory interviews by Postal Inspectors or the Office of the Inspector General (OIG). Therefore, if requested to supply this type of information send the letter on the following page by *certified mail, return receipt requested*.

**Special Note:** *Should a steward be subpoenaed to testify before a grand jury or in court, a steward may well be held in contempt if he/she refuses to testify based upon the NLRB privilege for Union stewards spoken of above.*

**Sample Letter to Office of Inspector General (OIG)**  
**or Postal Inspection Service**  
**Demanding Testimony from Stewards**

Date of Letter:

Name of Inspector or OIG Agent:

Address:

City, State, and Zip Code

Dear **insert the Inspector or OIG agent's name:**

I am writing in response to your request that I provide you a formal statement concerning the actions of **insert the grievant's name**, who is the subject of a removal action by the United States Postal Service.

Because the information you are seeking was obtained by me in the course of the performance of my duties as a Union steward, I consulted a National Officer of the American Postal Workers Union AFL-CIO concerning my responsibilities. I have been advised by APWU and by the National Union's General Counsel's Office that I may not lawfully be asked to disclose information obtained by me in the course of my performance of my duties as a steward.

Under decisions of the National Labor Relations Board, Particularly Cook Paint & Varnish Co., 258 NLRB 1230 (1981), stewards may not lawfully be asked by employers to give testimony against individuals based upon information obtained by stewards in the performance of their duties as stewards.

Accordingly, I respectfully refuse to provide you the evidence you are seeking against the grievant, as it would be inappropriate for me to provide you a statement in this matter.

Sincerely,

Print Steward's Name and Title

Sign Steward's Name

Include Steward's Tour

**Special Note:** *Send this letter by certified mail, return receipt requested. Keep a copy for your file and forward a copy to Tony McKinnon, Sr., Director of Industrial Relations, APWU, AFL-CIO, at 1300 L Street, N.W., Washington, D.C., 20005.*

## PROCESSING GRIEVANCES

There are additional guidelines for shop stewards to follow when processing grievances. The steward should:

- Interview the grievant and keep precise notes of the interview;
- Encourage the grievant to either write the complaint themselves or sign the interview statement written by the shop steward;
- Make a notation if the grievant refuses to sign;
- Fully investigate each complaint and never assure a grievant that his/her case will be arbitrated, appealed, or won;
- Always keep the grievant informed and notify the grievant in writing as significant steps are taken in the grievance process and the reason, if appropriate, for the action taken;
- If a decision is made not to proceed with a case, the Union representative must include a statement citing the reasons. A copy of this statement must be included in the grievance file and a copy should be provided to the grievant, and
- If the case is settled, even though the settlement may be self-evident to the steward, a copy of the settlement letter must be included in the grievance file and a copy should be provided to the grievant.

### **Tips for the Steward**

1. It is essential that the file include documentation that the grievant has been notified of the final disposition of the case.
2. This notification must be made promptly and should be sent by certified mail, return receipt requested, whether the case is settled, decided by an arbitrator, or closed as a result of the Union's decision not to go forward.
3. If the grievant is still working, encourage him/her to sign the decision letter. This will provide documentation that he/she has been advised of the results of the grievance.

***Special Note: If the guidelines above are followed and the Union representative's decision is based on good faith judgments and complete investigations, the Duty of Fair Representation will have been met. We reiterate that the steward and local officers should continue to feel free to withdraw frivolous grievances.***

<p style="text-align: center;"><b>THE PROPER ORDER TO PLACE DOCUMENTS IN THE GRIEVANCE FILE</b></p>
---

The steward should place the grievance file in the following order, prior to sending the file to the National Business Agent's office:

1. Step 3 or Direct Appeal from Step 2 to Arbitration;
2. Additions and Corrections to Management's Step 2 Answer, if written;
3. Management's Step 2 Answer, if provided;
4. Management's PS Form 2609, if provided;
5. Step 2 Grievance Appeal Form;
6. Management's Step 1 Answer, if provided;
7. Management's PS Form 2608, if provided;
8. Step 1 Grievance Appeal Form, if used;
9. Copy of extension documentation(s), if an extension was granted;
10. Notice of Letter of Charges, if a discipline case;
11. A copy of all live discipline in the grievant's file and the disposition of those grievances;
12. A copy of all documents applicable to the contract dispute, if a contract case (i.e., Policy Changes, Reversion; Bid Posting; Overtime Desired List(s), and Clock Rings, etc.;
13. Information Request Form;
14. The steward's notes taken from the interview with the supervisor;
15. The supervisor's notes from the Pre-Disciplinary Interview, (PDI);
16. The steward's notes taken from the interview with the grievant;
17. Steward's statement of the facts and contentions of the case;
18. Witness Statements;
19. Medical Documentation, and/or other records relevant to the grievance, and
20. All Emails and/or FAXs received.

## Tips for the Steward

1. Number all the pages in the file.
2. Include a sheet listing all documents enclosed in the file and the document's page number.
3. Utilize the American Postal Worker Union's **Extending Time Limits Request Form** to have a written record of extensions. A copy of the form is included in this manual;
4. The **Extending Time Limits Request Form** should be signed and dated by both the Management official and the Union Representative.
5. Determine whether or not there is live discipline in the employee's record. If so, provide the disposition of the grievance(s) to the NBA when appealing the grievance.



**AMERICAN POSTAL WORKERS UNION, AFL-CIO  
GRIEVANCE CHRONOLOGY SHEET**

*This Sheet will assist the steward in keeping track of the grievance to ensure that the grievance is filed in a timely manner at all steps of the grievance procedure.*

	Date of incident (Discipline/Contract Violation, receipt of letter of charges or others reason for the grievance.
	Deadline to file Step 1 Grievance (Within 14 days of incident)
	Date of Extension, if applicable
	Actual Date Step 1 meeting was held (Within 14 days of incident), if extension not granted
	Deadline for Step 1 oral decision from USPS (Within 5 days of Step 1 meeting)
	Actual Date USPS gave oral decision at Step 1 (Within 5 days of meeting)
	USPS initials on Step 2 Grievance form (Within 5 days after Step 1 decision)
	Deadline to file Step 2 Appeal to USPS's Step 2 designee (Within 10 days of Step 1 decision)
	Date of Extension, if applicable
	Actual Date of Step 2 Appeal to USPS Step 2 designee (Within 10 days of Step 1 decision), if extension not granted.
	Deadline for Step 2 Appeal Meeting with USPS Step 2 Designee (Within 7 days after receipts of step 2 appeal)
	Actual Date of Step 2 Appeal Meeting with USPS Step 2 Designee (Within 7 days after receipt of step 2 Appeal)
	Deadline for USPS's Step 2 decision, in writing, to Union (Within 10days of Step 2 meeting)
	Actual date of Employer's Step 2 decision, in writing, to Union (Within 10 days of Step 2 meeting)
	Date of written statement by Union to USPS, listing any Corrections and/or Additions omitted in the USPS Step 2 decision (Within 10 days of receipt of Step 2 decision)
	Deadline for Step 3 Appeal (Within 15 days after receipt of USPS's Step 2 decision)
	Actual Date of Step 3 Appeal (Within 15 days after receipt of Employer's Step 2 decision)
	Deadline for <b>Direct Appeal from Step 2 to Arbitration</b> (Within 30 days of receipt of USPS's Step 2 decision)
	<i>In accordance with Article 15.4.B and C, of the Collective Bargaining Agreement (CBA), the Union must move the grievance to the next step, within the prescribed time limits even if the USPS fails to schedule a meeting or render a decision.</i>

## TIME LIMITS FOR STEP 1 GRIEVANCES

It is imperative for the steward to file grievances within the time limits outlined in the *Collective Bargaining Agreement, (CBA), Article 15.2, Grievance Procedure, Step 1*. If the representative fails to meet the time limits in accordance with the *CBA Article 15.4.B, Grievance Procedure - General*, the Union waives the grievance.

- A grievance must be discussed with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned of the infraction;
- The employee, at his/her option, may be represented by a Union representative;
- The supervisor and the Union representative shall have authority to settle the grievance in whole or in part, or withdraw the grievance;
- If the grievance is not resolved at the Step 1 meeting, the supervisor shall render an oral decision within (5) days, stating the reasons for the denial of the grievance;
- The two parties may agree to extend the time limits;
- Within five (5) days after the supervisor's decision, the Union representative should request that the supervisor, initial the standard Step 2 Grievance Form confirming the date the decision was rendered, and
- Within ten (10) days of the supervisor's decision denying the Step 1 grievance, the Union must appeal the grievance to Step 2 of the grievance procedure or the grievance may be challenged as untimely appealed.

***Special Note: If needed, copy and use the APWU's Extending the Time Limits Request Form, Information Request Form, and Grievant or Witness Statement Form located on the next three pages.***

**EXTENDING TIME LIMITS REQUEST FORM**

**Use this form, when an extension is needed, to process a grievance.**

**Type of Violation:**

**Date Violation Occurred:**

**Place Where Violation Occurred:**

**Grievant's Name:**

**Grievant's Work Location:**

**Step of the Grievance Procedure:**

**Print Steward's Name:**

**Print USPS Representative's Name:**

We the undersigned parties mutually agree to extend the time limits on this grievance through \_\_\_\_\_ (Insert the Date). Extension of the time limits will bar either party from citing this grievance as being untimely.

\_\_\_\_\_  
**USPS Representative's Signature & Date**

\_\_\_\_\_  
**APWU Steward's Signature & Date**



CLASSACTION OR PERSON (Last Name First)	NATURE OF ALLEGATION
<div style="text-align: right; margin-bottom: 10px;">_____ DATE OF REQUEST _____</div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">TO: _____</div> <div style="width: 45%;">TITLE: _____</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;">FROM: _____</div> <div style="width: 45%;">TITLE: _____</div> </div> <p style="margin-top: 20px;">SUBJECT: REQUEST FOR INFORMATION AND DOCUMENTATION RELATIVE TO PROCESSING A GRIEVANCE</p>	

We request that the following documents and/or witnesses be made available to us in order to properly identify whether or not a grievance does exist and, if so, their relevancy to the grievance:

Information provided ?	YES	NO
	()	()
	()	()
	()	()
	()	()
	()	()
	()	()
	()	()
	()	()
	()	()
	()	()
	()	()
	()	()
	()	()

Article 17, Section 3 requires the Employer to provide for review all documents, files, and other records necessary in processing a grievance. Article 31, Section 3, requires that the Employer make available for inspection by the Unions all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement. Under 8 a (5) of the National Labor Relations Act it is an Unfair Labor Practice for the Employer to fail to supply relevant information for the purpose of collective bargaining. Grievance processing is an extension of the collective bargaining process.

REQUEST APPROVED

REQUEST DENIED

SIGNED \_\_\_\_\_

DATE:- \_\_\_\_\_

**GRIEVANT or WITNESS STATEMENT FORM**

**From:**

\_\_\_\_\_

**Address:**

\_\_\_\_\_

**Phone No.**

\_\_\_\_\_

**Email:**

\_\_\_\_\_

**Tour/Reporting Time:**

\_\_\_\_\_

**Facility:**

(  
)  
(  
)  
(  
)  
(  
)  
(  
)  
(

**To: American Postal Workers Union,  
AFL-CIO**

**Local Union:**

**Re:** Regarding an incident/violation that occurred on  
or about Date: \_\_\_\_\_

Issue: \_\_\_\_\_

1. I \_\_\_\_\_ do hereby render this statement on the above issue(s). [State only the Facts ]

2.

3.

4.

5.

6.

7.

8.

9.

10.

11.

12.

13.

14.

15. What remedy are you seeking?

16.

[ ] Attach addition sheets as needed **YOU MUST SIGN THIS FORM** Signed:

Date:



## **CHECKLIST FOR FILING STEP 1 GRIEVANCES**

Prior to filing the Step 1 Meeting, the steward should ensure that the six questions listed below are answered. Who, What, Where, When, Why, and How.

- ✓ **Who** was involved?
- ✓ **What** happened?
- ✓ **Where** did the incident or violation occur?
- ✓ **When** did the incident or violation occur?
- ✓ **Why** is it a violation of the contract (article violated)?
- ✓ **How** can the grievance be resolved (remedy)?

### **Using the Correct Approach When Discussing Grievances**

It is most important that the shop steward conduct himself/herself in a professional manner when processing a grievance. He/she should avoid using the incorrect approach while discussing a grievance with Management.

### **Tips for the Steward**

1. Interview the grievant.
2. Question all witnesses.
3. Review notes and examined all related data.
4. Outline the grievance presentation.
5. Check the appropriate contract provision violated.
6. Perform a complete investigation.
7. Make copies of all supporting documentation.
8. Request documentation or evidence from the supervisor to support his/her contentions.
9. **Do Not** let the 14 day time limits expire while awaiting requested documentation.
10. Approach Management with frankness, sincerity, and without hostility.
11. If necessary, request an extension of the Step 1 time limits.
12. If the extension is not granted, present the grievance to the Step 1 supervisor, and make the argument during that discussion and as part of the grievance itself, that the requested information was not provided **prior** to the Step 1 meeting.
13. Avoid heated arguments and shouting matches.

14. Take careful notes during the grievance discussion, so that you will have a record of Management's responses and comments.
15. Request a clear and concise remedy.
16. If a favorable decision is rendered at Step 1, request a copy of the settlement letter, give a copy to the grievant.
17. Give the supervisor/manager a copy of the **Settlement Implementation Form**, which follows, to insure that the decision is implemented in a timely manner.

***Special Note:** When filing the Step 1 grievance, utilize the standard Step 1 Grievance Outline Worksheet, available on the APWU website at [www.apwu.org](http://www.apwu.org). Go to Departments and Divisions; click on Industrial Relations, look on the left side on the page under Shortcuts, click on Grievance Forms and copy the appropriate APWU 'Fillable' Grievance Form(s) as needed.*



## COMPLETING THE STEP 1 GRIEVANCE OUTLINE WORKSHEET

The Step 1 Grievance Outline Worksheet is one of the most important documents in the grievance process. It is here that the steward gives an account of the facts involved in the grievance from its initial occurrence. It is important that each line be completed carefully. The necessary information is as follows:

**Line 1** - Write the grievant's name or the Union's name (if it is a class action grievance), the address; city, state, zip code, and telephone number. *The grievant's last name should be listed first.*

**Line 2** - Include the grievant's Employee Identification Number; the grievant's Craft; Level, and Step. Also, include the grievant's status; (i.e. Full Time Regular (FTR), Part Time Flexible (PTF), or Postal Support Employee (PSE)); the grievant work hours, and off days, and the grievant's Email address.

**Line 3** - List grievant's job number; the pay location where the grievant works; the name, city, state, and zip code of installation where the incident occurred, and the Postal Installation Level. Also, include the grievant's Service Seniority Date, (Date the grievant was hired by the USPS) and answer yes if the grievant is classified as a Preference Eligible Veteran or no if he/she is not.

**Line 4** - Cite the type of discipline, (i.e., Letter of Warning, Suspension, Removal), or type of contract violation, (i.e., Improper Assignment of Overtime, AWOL, Denial of Annual Leave Request). List the date the violation occurred; and the local Union's grievance number. It is not necessary to list the USPS Grievance Number at this step.

**Line 5** - List the place where the violation occurred; the date and time the Step 1 grievance was discussed; the name of the supervisor the steward held the Step 1 grievance meeting with, and the names of the grievant and shop steward.

**Line 6** - Include the name and title of the USPS supervisor, manager, or representative who gave the Step 1 decision, and the date and time the Step 1 decision was rendered. Request that the supervisor, rendering the Step 1 decision, place his/her initials in the space provided, to verify the date of the decision.

**Background:** Give an extensive overview of the steward's investigation. Outline what the steward discovered, the supervisor's and/or witnesses response to questions, and the grievant's account of the situation. *Include documents to help support the Union's case.*

**Corrective Action:** List what is required to resolve the grievance. In a discipline case always include the statement that **"the grievant be made whole,"** and that the proposed action (i.e. Letter of Warning, Letter of Removal, Suspension Letter), be removed from all records and files.

**Management Response:** State whether the grievance was sustained, denied, or modified. *If the Management representative either sustains or modifies the grievance, the steward should get the agreement in writing with the Management representative's signature and the date the grievance was resolved.*



# American Postal Workers Union, AFL-CIO

STEP 1 GRIEVANCE  
 OUTLINE WORKSHEET  
 HQ Revised 04/24/12

1  
2  
3  
4  
5  
6

GRIEVANT/PERSON OR UNION (Last Name First)		ADDRESS		CITY	STATE	ZIP	PHONE NO.
EIN	CRAFT	STATUS	LEVEL	STEP	DUTY HOURS	OFF DAYS	E-MAIL
JOB NO../PAY LOCATION (UNIT/SEC/CR/STA/OFC)		POSTAL INSTALLATION LEVEL	WORK LOCATION CITY AND ZIP CODE			SENIORITY	PREF. ELIGIBLE <input type="checkbox"/> YES <input type="checkbox"/> NO
DISCIPLINE	CONTRACT	DATE			LOCAL GRIEVANCE NO.		
UNIT/SEC/BR/STA/OFC			INCIDENT DATE/TIME	USPS REP - SUPR		GRIEVANT AND/OR STEWARD	
STEP 1 DECISION BY (NAME AND TITLE)					DATE/TIME		INITIALS <small>(ONLY VERIFIES DATE OF DECISION)</small>

**SETTLEMENT IMPLEMENTATION FORM**

**DATE:** \_\_\_\_\_

**TO:** \_\_\_\_\_

The attached is a favorable decision in behalf of the Union concerning the following appeal:

**GRIEVANT:** \_\_\_\_\_

**NATURE OF APPEAL:** \_\_\_\_\_

**APPEAL CASE NUMBER** \_\_\_\_\_

The decision was rendered at the \_\_\_\_\_ level of the grievance procedure provided for in accordance with Article 15.

Would you kindly advise me of the date the decision is implemented within your office and kindly advise if the following supervisor(s), who have denied the appeal before this favorable decision, have been notified about the results:

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

Your written reply will be appreciated. Thank you.

**NAME: (Please Print)** \_\_\_\_\_

**TITLE: (Please Print)** \_\_\_\_\_

**SIGNATURE:** \_\_\_\_\_

## **TIME LIMITS TO APPEAL A DENIED GRIEVANCE TO STEP 2**

Once a grievance has been denied at Step 1, it is imperative for the steward to file the grievance within the time limits outlined in the *Collective Bargaining Agreement, CBA, Article 15.2, Grievance Procedure, Step 2*. If the representative fails to meet the time limits in accordance with the *CBA Article 15.4.B, Grievance Procedure - General*, the Union waives the grievance

## **CHECKLIST FOR FILING STEP 2 GRIEVANCES**

Prior to filing the grievance at Step 2, the steward should:

- ✓ Analyze the Step 1 supervisor's response;
- ✓ Check appropriate provisions of the contract, handbooks, manuals, that are applicable;
- ✓ Review Step 1 contentions and examine all related data;
- ✓ Determine if additional contentions and data are required;
- ✓ Outline the Step 2 presentation;
- ✓ Make copies of all support documentation;
- ✓ Consider an approach to the Step 2 USPS representative;
- ✓ Contemplate Management's Step 2 arguments, and
- ✓ Express a clear and concise remedy.

### **Tips for the Steward**

1. Appeal an adverse Step 1 decision to Step 2 of the grievance procedure within ten (10) days after receipt of the supervisor's decision.
2. The standard Step 2 Grievance Form, appealing to Step 2, shall be filed with the installation head or his/her designee.
3. In any associate post office of twenty (20) or less employees, the Employer shall designate an official outside of the installation as the Step 2 official, and shall so notify the Union Step 1 representative.
4. Prior to the actual Step 2 hearing, the Union representative must determine whether to present additional arguments and documents. In preparation for the presentation of the Step 2 grievance, he/she must review all information, documentation and evidence included in the grievance at Step 1.

5. The following information must be included:

- Grievant's name and contact information;
- Detailed statement of facts;
- Contentions of the grievant;
- Particular contractual provisions involved, and
- Remedy sought.

6. In addition, he/she should:

- Review the arguments and contentions made by the Step 1 steward to assure that they are correct and cover all aspects of the violation;
- Determine if witnesses, including the grievant, will be necessary during the presentation of the grievance;
- Anticipate and be prepared to refute Management's arguments during the Step 2 hearing;
- Share every document supporting the Union's case with Management at Step 2. If the documents are not provided, don't be surprised if an arbitrator refuses to consider them;
- Utilize the American Postal Workers Union's **Receipt of Documents Form** to keep a record of all documents which are received or exchanged. A copy of the form is included in this manual;
- Always request copies of all Management documents;
- If information is denied, either at step 2 or in the investigatory stages of the grievance, it should be documented in the file. Also, note in writing, that the Union was denied due process, and
- Discuss the case with other stewards and officers for possible alternatives to explore. Try to resolve as many cases as possible at the lowest level.

***Special Note: The Step 2 appeal should be made utilizing the standard Step 2 Grievance Appeal Form, available on the APWU website at [www.apwu.org](http://www.apwu.org). Go to Departments and Divisions; click on Industrial Relations, look on the left side on the page under Shortcuts, click on Grievance Forms and copy the appropriate New APWU 'Fillable' Grievance Form(s) as needed.***

## COMPLETING THE STEP 2 GRIEVANCE APPEAL FORM

The Step 2 Grievance Appeal Form is an important document in the grievance process and must be filled out carefully and completely. Complete each line as follows:

**Line 1** - Write the grievant's name or the Union's name (if it is a class action grievance), the address; city, state, zip code, and a telephone number where the grievant can be reached. *The grievant's last name should be listed first.*

**Line 2** - Include the grievant's Employee Identification Number; the grievant's Craft; Level; Step; the grievant's work hours; off days, and the grievant's Email address.

**Line 3** - List grievant's job number; the pay location where the grievant works; the name, city, state, and zip code of installation where the incident occurred, Also, include the grievant's Service Seniority Date, (Date the grievant was hired by the USPS), and answer yes, if the grievant is classified as a Preference Eligible Veteran, or no if he/she is not.

**Line 4** - Name and title of the APWU representative authorized to discuss Step 2 Grievances and the Union's telephone numbers and Union's Email address, where the APWU representative can be reached.

**Line 5** - Name of local Union president, the Union's office telephone numbers, and the Union's Email address where he/she can be reached.

**Line 6** - Installation where Step 1 was heard; the Postal Installation Level; the date/time the discussion took place, and the name of the supervisor who discussed the grievance at Step 1. Request that the supervisor, rendering the Step 1 decision, place his/her initials in the space provided, to verify the date of the decision.

**Line 7** - Name of the supervisor who gave the Step 1 decision; date/time decision was made, and the name of grievant and/or steward present at the discussion.

**Line 8** - Cite the type of discipline, (i.e., Letter of Warning, Suspension, Removal), or type of contract violation, (i.e., Improper Assignment of Overtime, AWOL, Denial of Annual Leave Request). List the date the violation occurred; and the Local Union's Grievance Number.

**Line 9** - Name and title of the USPS official to whom the Step 2 appeal was made. List the name and telephone number of the installation. Also, list the USPS Grievance Number.

**Line 10** - Local Union's name, business address, city, state, and zip code.

**Line 11** - Cite all applicable articles of the Collective Bargaining Agreement (CBA), Joint Contract Interpretation Manual (JCIM), memorandums, handbooks, directives, manuals, and policies which were violated.

**Line 12** - Give a detail explanation of what happened. Make sure that the six questions- Who, What, Where, When, Why, and How are answered. Under list of attached papers as identified, write (**See Attached Sheet for Exhibits**). Write the word **Exhibit**, at the bottom of each exhibit page, along with a number. List the **Exhibit** and its corresponding number on the **Exhibit Sheet, (A copy of an Exhibit Sheet is listed below)**. **Attach this Exhibit Sheet to the Step 2 Grievance Appeal Form.**

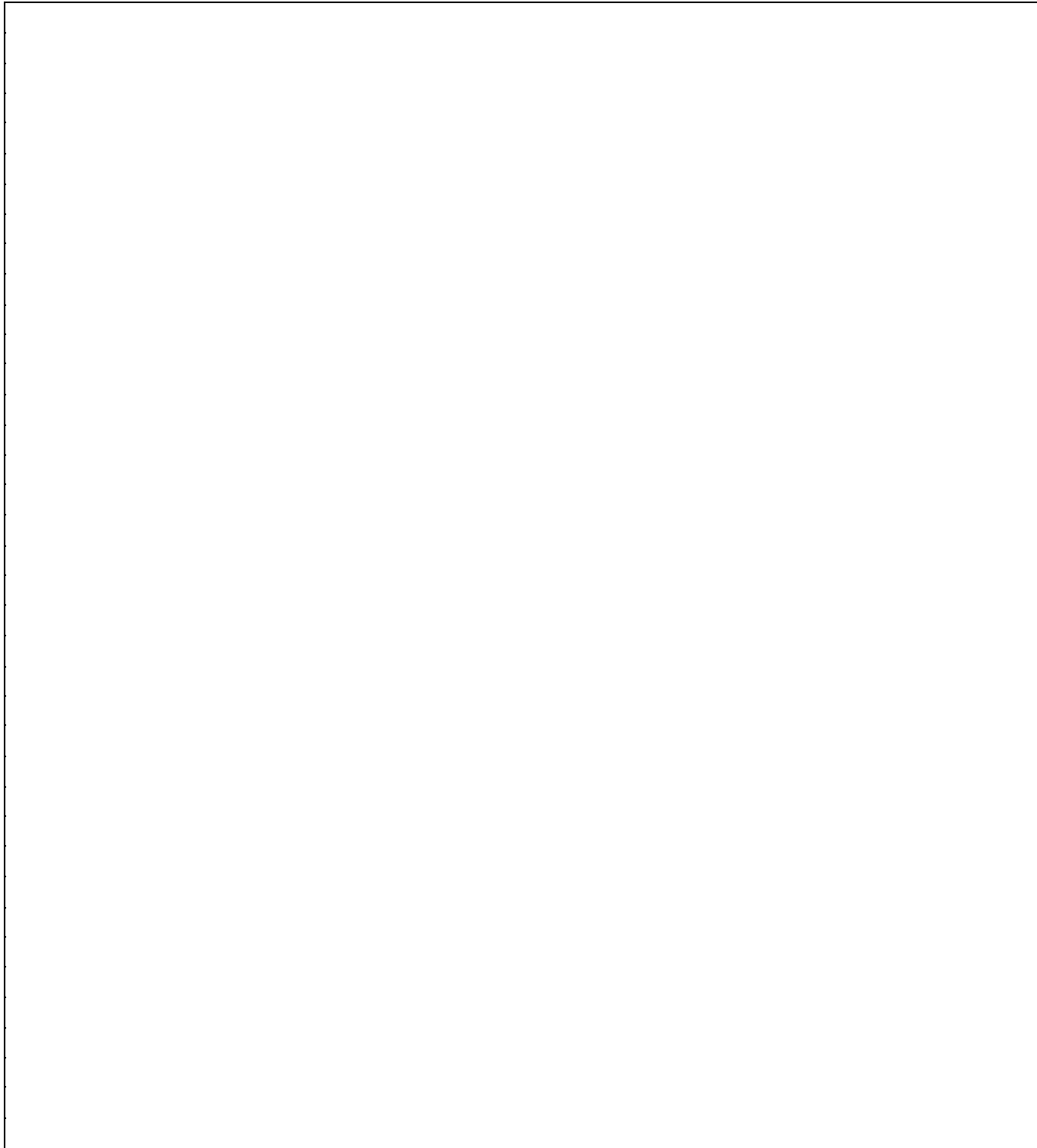
**Line 13** - List what is required to resolve the grievance. In a discipline case always include the statement that **“the grievant be made whole,”** and that the proposed action (i.e. Letter of Warning, Letter of Removal, Suspension Letter), be removed from all records and files.

**Special Note:** *You qualify as a preference eligible employee if you have served at least 180 consecutive days during a congressionally authorized war, or a campaign or expedition for which a campaign badge has been authorized. This includes service within Operation Desert Storm, Grenada, and Operation Iraqi Freedom. Disabled veterans and those who were discharged or released from service under honorable conditions also qualify. Additionally, spouses, widows, widowers, or mothers of qualified veterans are considered preference eligible employees. Please reference Handbook EL-312-Employment and Placement, Section 483 for more details on eligibility.*



1	CLASS ACTION or GRIEVANT NAME (Last Name First)		ADDRESS		CITY	STATE	ZIP	PHONE NO.
2	EIN	CRAFT	LEVEL	STEP	DUTY HOURS	OFF DAYS	E-MAIL	
3	JOB NO../PAY LOCATION (UNIT/SEC/CR/STA/OFC)				WORK LOCATION CITY AND ZIP CODE		SENIORITY DATE	PREF. ELIGIBLE <input type="checkbox"/> YES <input type="checkbox"/> NO
4	STEP 2 AUTHORIZED UNION REP (NAME AND TITLE)				AREA CODE PHONE (OFFICE)		E-MAIL	
5	LOCAL UNION PRESIDENT (NAME)				AREA CODE PHONE (OFFICE)		E-MAIL	
<b>STEP 1 MEETING AND DECISION</b>								
6	UNIT/SEC/BR/STA/OFC	POSTAL INSTALLATION LEVEL		DATE/TIME	USPS REP - SUPR		INITIALS <small>(ONLY VERIFIES DATE OF DECISION)</small>	
7	STEP 1 DECISION BY (NAME AND TITLE)				DATE/TIME		GRIEVANT AND/OR STEWARD	
8	DISCIPLINE		CONTRACT			LOCAL GRIEVANCE NO.		
9	TO: USPS STEP 2 DESIGNEE (NAME AND TITLE)	INSTALLATION/ SEC. CEN/ NDC		PHONE NO.		USPS GRIEVANCE NO.		
10	FROM: LOCAL UNION (NAME OF)		ADDRESS		CITY	STATE	ZIP	
11	Pursuant to Article 15 of the National Agreement we hereby appeal to Step 2 the following Grievance alleging a Violation of (but not limited to) the following: NATIONAL, (Art./Sec.) LOCAL MEMO (ART/SEC) OTHER MANUALS, POLICIES, L/M MINUTES, ETC.							
12	DETAILED STATEMENT OF FACTS/CONTENTIONS OF THE GRIEVANT							
<i>List of attached papers as identified</i>								
13	CORRECTIVE ACTION REQUESTED							





**EXHIBIT SHEET**

**Mark and Number all Exhibits in the file. List the Exhibits on this sheet.  
Attach this sheet to the Step 2 Grievance Form.**

**Grievant:**

**Issue:**

**Local Grievance Number:**

**Exhibit 1**

**Exhibit 2**

**Exhibit 3**

**Exhibit 4**

**Exhibit 5**

**Exhibit 6**

**Exhibit 7**

**Exhibit 8**

**Exhibit 9**

**Exhibit 10**

**Exhibit 11**

**Exhibit 12**

**Exhibit 13**

**Exhibit 14**

**Exhibit 15**

**Exhibit 16**

**Exhibit 17**

**Exhibit 18**

**Exhibit 19**

**Exhibit 20**

**Comments:**

**Steward's Name:**

**Steward's Signature:**

**Date Appealed (Use Step 2 Appeal Date):**

## THE STEP 2 MEETING

The Step 2 Meeting affords the Union representative the last opportunity to fully develop all relevant facts and contentions in regards to the grievance. The grievant shall be represented at Step 2 by a steward or a Union representative. The Union representative should have authority to settle or withdraw the grievance.

- At the Step 2 meeting, the Union and employer representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought and may furnish written statements from witnesses or other individuals;
- The parties' representatives shall exchange copies of all relevant papers or documents and may mutually agree to jointly interview witnesses to assure full development of all facts and contentions;
- The Union representative should ask that all Requests for Information, not yet provided to the Union, be presented at the Step 2 meeting;
- Step 2 settlements or withdrawals shall be in writing;
- In cases involving discharge, either party shall have the right to present no more than two witnesses. Additional witnesses may be interviewed, if agreed to by the parties;
- Where agreement is not reached the Employer's decision shall be furnished to the Union representative in writing, within ten (10) days after the Step 2 meeting. However, the parties may mutually agree to extend the time period;
- The Employer's decision letter should include a full statement of the Employer's understanding of (1) all relevant facts, (2) the contractual provisions involved, and (3) the detailed reasons for denial of the grievance;
- If the Union representative believes that the facts or contentions set forth in the decision letter are incomplete or inaccurate, he/she may file corrections or additions, within ten (10) days of receipt of the Step 2 decision. Corrections or additions must be included in the grievance file. The filing of such corrections or additions shall not affect the time limits for appeal to Step 3 or arbitration, and
- Within fifteen (15) days after receipt of the Employer's decision, the Union representative may appeal an adverse Step 2 decision to Step 3, unless the parties' agree to extend the time for appeal.

***Special Note: If additional facts, and/or evidence are obtained by the Union after the Union's Step 2 Grievance Appeal Form has been submitted to Management, the Union representative should submit the American Postal Workers Union's Addition Facts, Evidence, and/or Contentions Form to Management at the Step 2 Meeting, including the additional facts, and/or evidence. A copy of the form is on the following two pages.***



**AMERICAN POSTAL WORKERS UNION, AFL-CIO**

**Additional Facts, Evidence, and/or Contentions Form  
(Submit this form at the Step 2 Meeting)**

Page 2

In addition to the Union’s Step 2 Grievance Appeal Form previously submitted to the USPS, the Union submits the following contentions and evidence in support of the instant grievance. Please add this information to the file.

Grievant’s Name:

Grievant’s Employee Identification Number:

Grievance Number:

Office Where Grievant Works:

Office Where Step 2 Meeting Held:

**Additional Facts/Contentions**


**Additional Evidence**


Union Representative’s Printed Name:

Union Representative’s Signature

Date

**AMERICAN POSTAL WORKERS UNION, AFL-CIO**  
**Receipt of Documents Form**

The documents listed below were received as a result of an official exchange of information under Article 15 of the Collective Bargaining Agreement.

<b>Date</b>	<b>Documents Exchanged</b>
	1.
	2.
	3.
	4.
	5.
	6.
	7.
	8.
	9.
	10.
	11.
	12.
	13.
	14.
	15.
	16.
	17.
	18.
	19.
	20.
	21.
	22.
	23.
	24.
	25.

Print USPS Representative's Name and Title:

USPS Representative's Signature:

Print APWU Representative's Name and Title:

APWU Representative's Signature:

## CORRECTIONS AND/OR ADDITIONS

One of the most powerful rights the Union has, to rebut Management's Step 2 decision denial letter, is through the usage of **corrections or additions** as outlined in the *Collective Bargaining Agreement, (CBA), Article 15.2, Grievance Procedure Step 2.(g)*, which states, *"If the Union representative believes that the facts or contentions set forth in the decision are incomplete or inaccurate, such representative should, within ten (10) days of receipt of the Step 2 decision, transmit to the Employer's representative a written statement setting forth corrections or additions deemed necessary by the Union. Any such statement must be included in the file as part of the grievance record in the case. The filing of such corrections or additions shall not affect the time limits for appeal to Step 3 or arbitration."*

### **Tips for the Steward**

1. The most important rule for processing a grievance beyond Step 2 is to file corrections and/or additions when the denial does not accurately reflect the contentions made by the Union or is incomplete.
2. Corrections and/or additions should be factual, brief, and to the point.
3. When pointing out inaccuracies in the Step 2 denial, do so by referencing facts. It is difficult to prove something false without facts and evidence.
4. List all documents shared at Step 2, in the corrections or additions.
5. The Management official may fail to report facts and arguments raised by the Union representative at the Step 2 Meeting. It is imperative that the steward submit corrections and/or additions to clarify facts, raised by the Union, which were either not mentioned or misstated in the Management's Step 2 Decision Letter.
6. Remember to include the corrections and/or additions with either the appeal to Step 3, within 15 days, or the direct appeal to arbitration, within 30 days after the Employer's Step 2 decision.
7. Under the Direct Appeal from Step 2 to arbitration, the corrections and/or additions become the final written record of the grievance prior to the arbitration hearing.
8. Stewards are encouraged to make copies and use the **Statement of Corrections and/or Additions Form** located on the pages that follow.

**AMERICAN POSTAL WORKERS UNION, AFL-CIO**  
**Statement of Corrections and/or Additions Form**

Page 1

In accordance with the CBA, Article 15.2.(g), the Union issues this statement of **corrections and/or additions**:

Date:

USPS Grievance Number:

Local Grievance Number:

To: USPS Step Two Designee:

Installation:

Print Union Representative's Name and Title:

Signature:



**AMERICAN POSTAL WORKERS UNION, AFL-CIO**  
**Statement of Corrections and/or Additions Form**

Page 2

Print Union Representative's Name and Title:

Signature:

**AMERICAN POSTAL WORKERS UNION, AFL-CIO**  
**Statement of Corrections and/or Additions Form**

Page 3

Print Union Representative's Name and Title:

Signature:

**DIRECT APPEAL TO ARBITRATION FROM STEP 2**

The Union may appeal an adverse Step 2 decision directly to arbitration for disciplinary grievances or contract grievances which involve the interpretation, application of, or compliance with the provisions of any local Memorandum of Understanding not in conflict with this Agreement, and those issues the parties have agreed are appealed to Expedited Arbitration.

- The grievances listed below can be appealed directly to arbitration from Step 2 within thirty (30) days after the receipt of the Employer’s Step 2 decision,
- The grievances must be appealed to the appropriate Grievance/Arbitration Processing Center;
- The following information must be included with the appeal:
  - The standard Step 2 Appeal to Arbitration Grievance Form,
  - The Employer’s written Step 2 decision, and
  - The Union corrections or additions to the Step 2 decision, if filed.

**Expedited Arbitration Issues to Be Appealed From Step 2 Directly to Arbitration**

- Individual Overtime Grievances;
- Withholding of Step Increases’ Grievances;
- Individual Leave Request;
- Annual Leave;
- Sick Leave;
- Leave Without Pay;
- Court Leave;
- Restricted Sick Leave;
- Requests for Medical Certification;
- Letters of Warning
- AWOL;
- Individual Holiday Scheduling Grievances;
- Suspensions (Except Emergency Suspensions);
- Article 25, Higher Level Assignments;
- Employee Claims (article 27);
- Letters of Demand of Less Than \$2,000;
- Individual Clerk Craft Seniority Disputes, and
- Such Other Matters as are Mutually Agreeable at the Area/Regional Level.

**Regular Contract Grievances to Be Appealed  
From Step 2 Directly to Arbitration**

- Contract grievances which involve the interpretation, application of, or compliance with the provisions of any Local Memorandum of Understanding, (LMOU) not in conflict with the Collective Bargaining Agreement.

**Tips for the Steward**

1. The *Collective Bargaining Agreement (CBA), Memorandum of Understanding between the USPS and APWU, Ref: Timeliness Regarding Step 2(h) Appeals*, states, “When the Union incorrectly appeals a grievance under Article 15.2 Step 2(h) to Step 3 rather than to arbitration, and can show the appeal was made timely, Management will not consider timeliness as a waiver of the grievance. If no timely appeal to Step 3 can be established by the Union then Management retains the right to raise the timeliness issue.”

***Special Note: The Direct Appeal to arbitration from Step 2 should be made utilizing the standard Step 2 Appeal to Arbitration Grievance Form, available on the APWU website at [www.apwu.org](http://www.apwu.org). Go to Departments and Divisions; click on Industrial Relations, look on the left side on the page under Shortcuts, click on Grievance Forms and copy the appropriate New APWU ‘Fillable’ Grievance Form(s) as needed.***



GRIEVANT/PERSON OR UNION (Last Name First)		WORK LOCATION CITY AND ZIP CODE (FROM LINE 10)		LOCAL GRIEVANCE NO.
DISCIPLINE (NATURE OF) OR CONTRACT (ISSUE)			CRAFT	DATE OF STEP 2
USPS GRIEVANCE NO.				

TO:  **Labor Relations Appeals  
U. S. Postal Service  
P.O. Box 25398  
Tampa, FL 33622-5398**

DATE: \_\_\_\_\_

Check one:

Mail       Fax       E-Mail

Please be advised that pursuant to Article 15, Section 2, Step 2 (h) of the Collective Bargaining Agreement, the Union hereby is appealing the above-referenced grievance to arbitration. The appeal includes a copy of the Step 2 appeal form, the employer's written Step 2 decision and the union's corrections and additions to the Step 2 decision if submitted.

Check if Applicable  
The Postal Service refused or failed to schedule a Step 2 meeting or render a written Step 2 decision within the prescribed time limits and to provide union a full statement of the Employer's understanding of (1) all relevant facts, (2) the contractual provisions involved, and (3) the detailed reasons for denial of the grievance.

LOCAL UNION (NAME OF)	ADDRESS	CITY	STATE	ZIP
-----------------------	---------	------	-------	-----

COPY - LOCAL FILE  
COPY - USPS STEP 2 DESIGNEE  
COPY - APWU COORDINATOR

SUBMIT UNION'S REGIONAL COPY WITH FILE TO : (or as instructed)

**NATIONAL BUSINESS AGENT**

Sincerely,

\_\_\_\_\_  
Authorized Local Union Representative

Please  check the Expedited or Regular Arbitration Panel box based on type of grievances listed below that may be appealed from Step 2, to arbitration pursuant to Step 2 (h) of the National Agreement. Note: Safety and Health grievances appealed to Step 2, pursuant to Art. 14.2, may also be appealed to arbitration using this form.

Expedited Arbitration Panel Issues:

- AWOL
- Letters of Warning
- Suspensions of 14 Days or Less
- Letter of Demand of Less Than \$2,000
- Withholding of Step Increases
- Article 25-Higher Level Assignments
- Individual Grievances for: Overtime, Annual Leave, Sick Leave, Leave Without Pay, Court Leave, Restricted Sick Leave, Requests for Medical Certification, Holiday Scheduling, Clerk Seniority Disputes

Regular Arbitration Panel Issues:

- Suspensions of More Than 14 Days for Discharge
- Indefinite Suspension Crime Situation
- Emergency Procedure
- LMOU Disputes - Grievances where the primary article(s) or disputes(s) being grieved is over the interpretation, application of, or compliance with the Local Memorandum of Understanding
- Safety and Health

## **CHECKLIST FOR FILING STEP 3 GRIEVANCES**

Appeals to Step 3 should be made only when all efforts for resolution at Step 2 have been exhausted. This could include extension of time limits, if appropriate, presentation of new facts, if available, and settlement, in part, after consultation with the grievant or local Union officers. If the appeal is made to Step 3, the case file sent to the appropriate National Field Officer should be complete.

### **The Grievance File Should Include Copies of:**

- ✓ Step 1 discussion notes, if any;
- ✓ Standard Step 2 Grievance Appeal Form;
- ✓ Step 2 meeting discussion notes;
- ✓ Documents of Step 1 & 2 presentation;
- ✓ Copy of Step 2 written decision;
- ✓ Copy of additions/corrections at Step 2, if any, and
- ✓ Copy of appeal to Step 3 Grievance Appeal Form.

### **Tips for the Steward**

1. The ***Collective Bargaining Agreement (CBA), Article 15.2, Step 3(a)*** states, “Any appeal from an adverse decision in Step 2 shall be in writing to the appropriate Management official at the Grievance/Arbitration Processing Center, with a copy to the Employer’s Step 2 representative, and shall specify the reasons for the appeal.”
2. The following information must be included:
  - Grievant’s name and contact information;
  - Detailed statement of facts;
  - Contentions of the grievant;
  - Particular contractual provisions involved, and
  - Remedy sought.

***Special Note: The Step 3 appeal should be made utilizing the standard Step 3 Grievance Appeal Form, available on the APWU website at [www.apwu.org](http://www.apwu.org). Go to Departments and Divisions; click on Industrial Relations, look on the left side on the page under Shortcuts, click on Grievance Forms and copy the appropriate New APWU ‘Fillable’ Grievance Form(s) as needed.***



CLASS ACTION OR PERSON (Last Name First)	WORK LOCATION CITY AND ZIP CODE (FROM LINE 10)		LOCAL GRIEVANCE NO.
DISCIPLINE (NATURE OF) OR CONTRACT (ISSUE)	CRAFT	DATE OF STEP 2	USPS GRIEVANCE NO.

THE ABOVE GRIEVANCE IS BEING APPEALED TO STEP 3 - PROVIDE DATE: \_\_\_\_\_

**LABOR RELATIONS APPEALS**

**U.S. Postal Service**

**P.O. Box 25398**

**TAMPA FL 33622-5398**

Please Check the "Sent By" Box

Mail

Fax

Email

Any appeal from an adverse decision in Step 2 shall be in writing to Appeals /Employee Labor Relations Center, with a copy to the Employer's Step 2 Representative, and shall specify the reasons for the appeal. (Within fifteen (15) days).

"This Appeal is in accordance with Article 15, Sec. 2, Step 2 (h) and Step 3 (a) for the following reasons:"

and we have attached the Step 2 appeal grievance form, the employers written Step 2 decision and our corrections and additions to the Step 2 decision if we submitted same to employer's Step 2 representative.

FROM - LOCAL UNION (NAME OF)	ADDRESS	CITY	STATE	ZIP
------------------------------	---------	------	-------	-----

COPY - LOCAL FILE  
COPY - USPS STEP 2 DESIGNEE  
SUBMIT UNION'S REGIONAL COPY WITH FILE TO :

**NATIONAL BUSINESS AGENT**

Sincerely,

Authorized Local Union Representative

## **ESTABLISHING A GRIEVANCE COMMITTEE**

A grievance committee should be established to review and discuss grievances. To appeal or not to appeal a grievance should be a joint decision made by the committee. The committee should record written minutes, stating the reasons why the grievance is not being appealed. The Grievance Committee should:

- Consist of officers or stewards representing each craft;
- Meet at least once each month or more frequently, if needed;
- Make sure that officers and stewards are not just automatically appealing every case regardless of its merit;
- Include in the grievance file, the written decision stating the reason why the committee chose not to precede with the grievance;
- Retain closed files, for a minimum of three (3) years, in storage with an adequate retrieval system, and
- If needed, the local should seek advice from the national Union or an attorney.

### **Tips for the Steward**

1. The Union is not required to be right in every case or situation. However, the Union representative may be required to prove that his/her decision was not careless or perfunctory and that the handling of the specific case is consistent with the handling of similar cases.
2. To appeal merely to “pass the buck” only clog the grievance system and takes that much longer for the fair settlement of meritorious grievances.



## TEST FOR JUST CAUSE

The *Joint Contract Interpretation Manual (JCIM), Article 16.1, Just Cause Principle, states*, “The principle that any discipline must be for “just cause” establishes a standard that must apply to any discipline or discharge of an employee.” “Just cause” is defined in the National Agreement in Article 16.1, as follows: “No employee may be disciplined or discharged except for just cause such as, but not limited to insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations.”

These criteria are the basic considerations that the supervisor must use before initiating disciplinary action against an employee:

1. **Is There a Rule?** If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule? It is not enough to say, “Well, everybody knows that rule,” or, “The rule was posted ten years ago.”
2. **Is the Rule a Reasonable Rule?** Work rules should be reasonable, based on the overall objective of safe and efficient work performance. Management’s rules should be reasonably related to business efficiency, safe operation of our business, and the performance expected of the employee.
3. **Is the Rule Consistently and Equitably Enforced?** A rule must be applied fairly and without discrimination. Consistent and equitable enforcement is a critical factor, and claiming failure in this regard is one of the Union’s most successful defenses.
4. **Was a Thorough Investigation Completed?** Before administering the discipline, Management should conduct an investigation to determine whether the employee committed the offense. The investigation should be thorough and objective. The employee should know with reasonable detail what the charges are and should be given a reasonable opportunity to defend themselves before the discipline is initiated.
5. **Was the Severity of the Discipline Reasonably Related to the Infraction Itself and in Line with that Usually Administered, as Well as to the Seriousness of the Employee’s Past Record?** There is no precise definition of what establishes a good, fair, or bad record. Reasonable judgment must be used. An employee’s record of previous offenses may never be used to establish guilt in a case you presently have under consideration, but it may be used to determine the appropriate disciplinary penalty.
6. **Was the Disciplinary Action Taken in a Timely Manner?** Disciplinary actions should be taken as promptly as possible after the offense has been committed.

## STANDARDS DETERMINING PAST PRACTICES

It is difficult to identify standards by which arbitrators determine if a practice exists and how much weight it should be given insofar as their decision and award is concerned. However, there are some very definite ingredients, when the question of past practice is taken under consideration by the arbitrator:

**Consistent** - The practice has been granted or applied consistently, uniformly, regularly and without break.

**Clearly stated** - The practice has been observed by the parties and is followed without protest or objection from one party or the other.

**Duration** - The policy has existed and been followed over a reasonably long period of time. In this regard a “bridge effect” may be of significance to some arbitrators. The bridge effect results from a practice under one agreement and continuing unchanged and not protested into a renewed agreement, as a result it bridges one collective bargaining agreement with another between the parties without having been changed or discontinued.

**Jointly accepted and acted upon** - Both parties, through their line representatives, have operated as though the practice, in fact, existed and was a guiding rule.

### **Tips for the Steward**

1. An important factor that should be noted is that the frequency of the practice may not be as important as the mutual observance. In other words, a practice which occurs only three times a year and which, on each occasion, is executed may have more weight on an arbitrator's decision than another practice which occurs 15 times a year but is not consistently administered from one time to another.
2. Proof of past practice requires documentation and evidence. It is essential that when a past practice exists and is grieved, all possible documentation and facts be submitted along with the allegation of a violation of the past practice.
3. In order to be binding, past practice should have one or all of the aforementioned elements.
4. See the *Joint Contract Interpretation Manual (JCIM), Article 5, Prohibition of Unilateral, Past Practice, Defining Past Practice.*

## **WAYS TO REDUCE STEWARDS STRESS**

The job of a shop steward is one of the most stressful positions in the Union. To help alleviate stress the steward should:

- Know the contract, his/her rights and what is going on in the Union,
- Network with the Union members and be responsive to their problems, and
- Learn what resources are available and where to find the answers to questions.

### **Solicit Support from Officers**

- Attend steward's meetings regularly, discuss problems and grievances;
- Learn to ask for help; assist other stewards and officers;
- Develop a communication network and telephone sick members;
- Train an alternate to assist with grievance handling, and
- Attend workshops and learn more efficient ways to perform his/her job.

### **Develop a Base with the Members**

- Interact with the members. Try to resolve problems before they escalate;
- Be personally concerned. Take up a collection for members who are hospitalized or recovering from a serious illness or accidents;
- Encourage members to attend meetings, seminars, and Union activities;
- Identify the problem areas where the majority of complaint occur, and
- When out on Union business, explain your duties to the members.

### **Involve Your Family in the Union**

- Don't just complain about the Union, tell your family why the Union is important,
- Tell Union stories and discuss labor history, and
- Let them know you appreciate their support and bring them to Union activities.

### **Be Proud of Being a Steward**

- Remember why you are a steward, know your responsibilities to the members and learn the History of Labor, and
- Wear something that shows you are "Proud to be Union" such as a button, jacket, or cap.

## **Take Care of Yourself**

- Learn relaxation techniques and practice exercising and meditation;
- Eat properly and get enough rest;
- Learn your stress signals and listen to them;
- Learn to say “NO” when you have to;
- Schedule family and social time;
- Don’t offer to do things that you really don’t have time to do, and
- Utilize an alternate steward to perform minor tasks (i.e. Researching information or making copies).