IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

GECKSEN D. PIORKO, Plaintiff, V. AMERICAN POSTAL WORKERS UNION, AFL-CIO, et al., Defendants.	)	CIVIL ACTION NO. 83-786-A

O R D E R

For the reasons stated from the bench, the court being of the opinion that the failure of the union to allow the plaintiff to employ his own counsel at the arbitration proceeding is not, under the circumstances of this case, arbitrary, discriminatory or unfair representation; and that the failure of the union's representative who appeared on the plaintiff's behalf in the arbitrarion proceedings to call the plaintiff's brother and mother as witnesses did not constitute unfair representation by the union, it is hereby

ORDERED that summary judgment is entered in favor of the defendants, American Postal Workers Union, AFL-CIO, and United State Postal Service, against the plaintiff, Gecksen D. Piorko; and this action is dismissed.

United States District Judge

Alexandria, Virginia
March 9th, 1984

INTERPRETIVE AGREEMENT
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

The issue presented to the parties in this instance involves whether a union member actively employed at a post office can be designated as the Union representative for a Step 2 meeting at another post office under the provisions in Article 17, Section 2.d.

The specific language at issue provides:

> "At the option of a Union, representatives not on the employer's payroll shall be identified to perform the functions of a steward or chief steward, provided such representatives are certified in writing to the Employer at the regional level and providing such representatives act in lieu of stewards designated under the provisions of 2A or 2B above." (Underscoring added)

In full settlement of the interpretive dispute presented in this case, the parties mutually agree to the following:

1. A Union member actively employed in a post office may be designated as a Union representative to process a grievance at another post office.

2. Such employee must be certified in writing, to the Employer at the regional level.

3. An employee so certified will not be on the Employer's official time.

4. An employee so certified will act in lieu of the steward designated under Article 17, Section 2.A and 2.B. at the facility where the grievance was initiated.

In witness whereof the parties hereto affix their signatures below this 2nd day of June 1982.

For the
United States Postal Service:

W. E. Henry

William E. Henry, Jr.
Director
Office of Grievance and
Arbitration
Labor Relations Department

For the Union:

William Burrus

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

RECEIVED
MAR 1 1982
OFFICE OF
GENERAL PRESIDENT

February 26, 1982

Mr. Moe Biller
General President
American Postal Workers'
Union, AFL-CIO
817 14th Street, N.W.
Washington, D. C. 20005

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D. C. 20001

Gentlemen:

During our recent Joint Labor/Management Committee meeting certain questions concerning temperature control in postal facilities were raised. You questioned the intent of the heating maximum of 65°F and the cooling minimum of 78°F provided for under the Postal Service's Energy Conservation Program.

For your information, the objective at each postal facility where these temperature guides are relative is to maintain temperatures as close as reasonably practicable to these guides without exceeding the maximum heating or minimum cooling requirements. Obviously, implementaton of these objectives requires a common sense approach. If the temperature in space regularly occupied by employees performing everyday work is significantly out of line, temperature readings can be taken and, when necessary and reasonably possible, adjustments made.

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

July 27, 1988

RECEIVED
AUG 9 1988
OFFICE OF
EXECUTIVE VICE PRESIDENT

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4107

Dear Mr. Burrus:

This is in response to your letter of June 29 regarding the intent of the March 4 memo issued by Darnley M. Howard to the Division Directors of Human Resources with the subject, "Employee's Use of Representatives in FECA Claims."

Specifically, the intent of this memo was to inform our field managers that any representatives, including union representatives, who are assisting employees in matters related to the processing of FECA claims and/or claims filed before the Secretary of Labor must do so in a nonpay status.

The letter was not intended to deny either employees their rights to file grievances, or the union's right to represent employees as specifically provided for in Articles 15 and 17 of the National Agreement.

As a matter of further information, on April 20 Mr. Howard issued a clarifying memo to the Field Directors of Human Resources. In this memorandum, Mr. Howard advised that the March 4 memorandum was not meant nor should be interpreted as infringing upon employee or union rights under Article 17 of the National Agreement. The April 20 clarifying memorandum further advised that the intent of the March 4 memorandum was to inform field managers that when any representatives, including union, assist employees in completing Office of

Workers Compensation Programs claims, or prepare for and attend hearings before that agency they will be in a nonpay status. I have enclosed a copy of this memo to further explain the position of the U.S. Postal Service on this issue.

Should you have any further questions regarding this matter please contact Michael J. Guzzo, Jr., at 268-3843.

Sincerely,

Joseph J. Mahon, Jr.
Assistant Postmaster General

Enclosure

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

June 29, 1988

National Executive Board
Moe Biller, President
William Burrus
Executive Vice President
Douglas C. Holbrook
Secretary-Treasurer
Thomas A. Neill
Industrial Relations Director
Kenneth D. Wilson
...tor, Clerk Division
...hard I. Wevodau
Director, Maintenance Division
Donald A. Ross
Director, MVS Division
George N. McKeithen
Director, SDM Division
Norman L. Steward
Director, Mail Handler Division

Regional Coordinators
Raydell R. Moore
Western Region
James P. Williams
Central Region
Philip C. Flemming, Jr.
Eastern Region
Romualdo "Willie" Sanchez
Northeastern Region
Archie Salisbury
Southern Region

Dear Mr. Mahon:

I am in receipt of a letter dated March 4, 1988 from Darnley M. Howard addressed to all Division Directors of Human Resources. The subject of the letter is "Employee's Use of Representation in FECA Claims". Mr. Howard instructs the directors that Union representatives are not authorized to perform such representation on official time.

This letter raises a much broader issue regarding the Union's right to "present, investigate and adjust grievances." Such grievances may include the application of terms and conditions of handbooks and manuals that relate to wages, hours and working conditions.

The Injury Compensation Program as applied by the Postal Service is contained in Chapter 540 of the Employee and Labor Relations Manual and changes to these provisions have been successfully arbitrated by the unions. The Union interprets its rights under Article 15 as including disputes, differences, disagreements or complaints of the terms and conditions of all handbooks and manuals that impact wages, hours and conditions of employment. This right would include the provisions of Chapter 540 of the Employee and Labor Relations Manual.

The essence of Mr. Howard's letter is that unless the statue provides for Union representation the Union is denied its rights under Article 15 of the contract.

The Union disputes the limitations imposed on the Union's rights of representation and request a review and response of the Employer's position.

Sincerely,

William Burrus
Executive Vice President

Joseph Mahon
Asst. Postmaster General
U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb

U ITED ST TES POST L SERVICE

Washington, DC 20260

DATE: April 20, 1988

OUR REF: ER250:RBauer:jlj:20260-4232

SUBJECT: Employee's Use of Representatives in FECA Cases

TO: Field Division Director
Human Resources
All Divisions

This is in regard to my memorandum of March 4 concerning the above referenced subject. It has come to my attention that some managers may have misinterpreted the letter as it relates to Article 17 of the National Agreement.

The purpose of this memorandum is to clarify that the March 4 memorandum was not meant nor should be interpreted as infringing upon employee or union rights under Article 17 of the National Agreement. Specifically, the intent of that memorandum was to inform field managers that when any representatives, including union, who assist employees in completing Office of Workers' Compensation Programs claims or prepares for and attends hearings before that agency will be in a nonpay status.

Should you have any questions regarding Federal Employees' Compensation Act (FECA) matters or Article 17 rights, contact Richard Bauer, PEN 268-3678, or Harvey White, PEN 268-3831, respectively.

(signed)

Darnley M. Howard
Director
Office of Safety and Health
Employee Relations Department

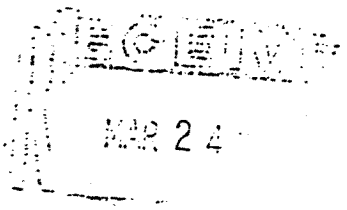
UNITED STATES POSTAL SERVICE

Washington, DC 20260

DATE: March 4, 1988

OUR REF: ER250:JGburzynski:jlj:20260-4232

SUBJECT: Employee's Use of Representatives in FECA Claims



TO: Division Director
Human Resources
All Divisions

It has come to our attention that some divisions are allowing union representatives or others, who represent our employees relative to their workers' compensation claims, to perform this service on the clock. Nothing by contract or by statute allows for such representation to be performed while an employee is in a pay status.

Analysis of the applicable law by the Law Department makes it clear that employees have the right to representation of their own choosing. However, there is nothing in either the statute (5 U.S.C. 8127) or the regulations (20 C.F.R. 10.142) which requires an agency to either supply a representative or to grant official time for such services. Employees who represent other employees in processing workers' compensation claims, in either the initial filing stage or at hearings before the Secretary of Labor, must do so on their own time.

Please make sure that this information is made available to all personnel concerned with this matter.

Darnley M. Howard
Director
Office of Safety and Health
Employee Relations Department

cc: Regional Manager, Employee Relations, All Regions

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

June 22, 1995

Dear Mr. Vegliante:

I am enclosing a copy of a pamphlet distributed by the National Alliance at the Cincinnati BMC. I have highlighted sections that are objectionable and are not in keeping with their rights to solicit membership among postal employees.

I am aware of the litigation after enactment of the Postal Reform Act permitting the National Alliance to solicit members, but this right does not extend to misrepresentation to employees of rights of representation. I request that instructions be issued to the National Alliance that their right to solicit membership does not extend to misrepresentation.

Thank you for your attention to this matter.

Sincerely,

William Burrus
Executive Vice President

National Executive Board
Moe Biller
President
William Burrus
Executive Vice President
Douglas C. Holbrook
Secretary-Treasurer
Thomas A. Neill
Industrial Relations Director
Robert L. Tunstall
Director, Clerk Division
James W. Lingberg
Director, Maintenance Division
Donald A. Ross
Director, MVS Division
George N. McKeithen
Director, SDM Division

Regional Coordinators
James P. Williams
Central Region
Jim Burke
Eastern Region
Elizabeth "Liz" Powell
Northeast Region
Terry Stapleton
Southern Region
Raydell R. Moore
Western Region

Anthony J. Vegliante
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

cc:T Acra

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

July 19, 1995

Mr. James McGee
President
National Alliance of
Postal & Federal Employees
1628 11th Street, N.W.
Washington, DC 20001-5011

Dear Mr. McGee:

Recently, it was brought to our attention that a pamphlet being distributed by the National Alliance at the Cincinnati BMC contains language that may lead postal employees to erroneously believe that the Alliance may represent employees "in grievance procedures" and that Alliance stewards are able to "adjust [grievances] with first-line supervisors."

I trust that when these pamphlets are distributed, employees are being advised that only postal unions recognized and certified at the national level may represent employees in grievance proceedings, and that the Alliance is not one of the unions.

Please let me know if you have any further questions in this matter.

Sincerely,

for Anthony J. Vegliante
Manager
Contract Administration (APWU/NPMHU)

cc: William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

March 27, 2000

William Burrus
Executive Vice President
(202) 842-4246

National Executive Board
Moe Biller
President

William Burrus
Executive Vice President

Robert L. Tunstall
Secretary-Treasurer

Greg Bell
Industrial Relations Director

J. "Cliff" Guffey
Director, Clerk Division

James W. Lingberg
Director, Maintenance Division

Robert C. Pritchard
Director, MVS Division

Regional Coordinators
Leo F. Persails
Central Region

Jim Burke
Eastern Region

Elizabeth "Liz" Powell
Northeast Region

Terry Stapleton
Southern Region

Raydell R. Moore
Western Region

Pete,

This is in further response to our exchange of correspondence on the subject of the employer's right to require signatures of a union representative in the REDRESS mediation program. The use of a signature block on the REDRESS settlement form and the instructions issued for its completion (enclosed) contemplates the signature of **a union representative**. The designation of Stewards pursuant to Article 17 of the collective bargaining agreement is for the purpose of "investigating, presenting and adjusting grievances." This is the purpose of their designation and the limit of their authority. Stewards play no role in the resolution of complaints referred to the REDRESS program.

The fact that an individual serves as a union Steward and also represents a specific employee whose complaint is the subject of REDRESS review does not entitle the Steward to act on behalf of the union in the REDRESS process. By letter of June 16, 1999 I notified your office that APWU Stewards are not authorized by the union to serve as Stewards in the REDRESS mediation program, unless specifically authorized in writing by the local president. This is official notice that the signature of an APWU Steward in the REDRESS mediation program who has not been duly authorized as described above does not represent the decision of the American Postal Workers Union.

Sincerely,

William Burrus
Executive Vice President

Mr. Peter Sgro, Manager
Contract Administration
475 L' Enfant Plaza, SW
Washington, DC 20260

WB:rb

American Postal Workers Union, AFL-CIO

817 Fourteenth Street, N.W., Washington, D.C. 20005 • (202) 842-4246

WILLIAM BURRUS
Executive Vice President

April 1, 1985

Dear Brother Jim Williams:

Because of increased requests to permit private counsel to represent grievants in arbitration proceedings it is necessary that we establish uniform procedures to protect the interest of the union and to respond expeditiously to such request.

All future requests made by grievants or advocates must be in writing and signed by the requesting party, identifying the name of the attorney requested to represent. Such written requests will be forwarded to the office of Industrial Relations, accompanied by a copy of the complete file and a recommendation by the Regional Coordinator based on a review of all relevant information.

The Director of Industrial Relations will respond in writing of the final decision to grant or deny the request and in those cases where the request is granted a standardized waiver form will be forwarded for the grievant's signature.

Requests to permit private counsel to assist in the preparation of grievances will not require national approval, however relevant inquiries when appropriate should be directed to the national attorneys.

Please advise the Business Agents under your jurisdiction.

Yours in union solidarity,

William Burrus,
Executive Vice President

Jim Williams, Regional Coordinator
APWU, AFL-CIO
330 So. Wells St., Room 1402
Chicago, Illinois 60606

WB:mc
cc: Moe Biller
Tom Neill

NATIONAL EXECUTIVE BOARD • MOE BILLER, President

WILLIAM BURRUS, Executive Vice President
DOUGLAS HOLBROOK, Secretary-Treasurer
JOHN A. MORGES
RICHARD I. WEVODAU, Director, Maintenance Division
LEON S. HAWKINS, Director, MVS Division
SAMUEL NDEREC
THOMAS A. NEILL, Industrial Relations Director
KEN LEINER, Director, Mail Handler Division
REGIONAL COORDINATORS
RAYDELL R. MOORE, Western Region
JAMES P. WILLIAMS
PHILIP C. FLEMMING, JR., Eastern Region
NEAL VACCARO

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE

AND THE

NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

AND THE

AMERICAN POSTAL WORKERS UNION,
AFL-CIO

The parties hereby agree to the following:

1. By accepting a limited duty assignment, an employee does not waive the opportunity to contest the propriety of that assignment through the grievance procedure, whether the assignment is within or out of his/her craft.

2. An employee whose craft designation is changed as a result of accepting a limited duty assignment and who protests the propriety of the assignment through the grievance procedure shall be represented during the processing of the grievance, including in arbitration, if necessary, by the union that represents his/her original craft.

> For example, if a letter carrier craft employee is given a limited duty assignment in the clerk craft, and grieves that assignment, the employee will be represented by the NALC. If a clerk craft employee is given a limited duty assignment in the letter carrier craft, and grieves that assignment, the employee will be represented by the APWU.

Anthony J. Vegliante
Manager
Grievance and Arbitration
Labor Relations

Date: 2/9/93

Lawrence A Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO

Date: 2/9/93

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Date: 1-29-93

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

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

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

In witness whereof the parties hereto affix their signatures below this 6th day of March 1982.

For the
United States Postal Service:

W. E. Henderson

For the
Union:

United States Government

NATIONAL LABOR RELATIONS BOARD
Region 26
1407 Union Avenue, Suite 800
Memphis, Tn 38104-3627 901-722-2725

August 3, 1995

Dan Cassidy, President
APWU, CAAL
P.O. Box 15684 GMF
Little Rock, AR 72231

Re United States Postal Service
Case 26-CA-16792(P)

Dear Mr. Cassidy:

The above-captioned case, charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, it does not appear that further proceedings on the 8(a)(1) and (3) charge are warranted, inasmuch as the evidence is insufficient to establish that the employer unlawfully required union officials to give depositions regarding threats allegedly made by an employee while filing a grievance.

This case arises out of the USPS Processing and Distribution Center on McCain Boulevard in North Little Rock, Arkansas. The clerk craft employees at that location are represented by Central Arkansas Area Local-American Postal Workers Union, the charging party herein.

In December of 1994, employee Arthur Banks filed a grievance through the union to protest an absenteeism warning. While he was meeting with union officials on that grievance, Banks is alleged to have made threats that he was "going to have to hurt somebody" and that he was "close to shooting someone." Local union officials later reported these alleged threats to USPS management. Based on that information, Banks was terminated. He thereafter filed a charge against USPS through the Merit Systems Protection Board. In connection with that case, USPS Labor Relations Specialist Shirley A. McIntosh notified several union

officials that they were to give depositions. The union thereafter filed a Motion with MSPB, seeking to quash those Notices of Depositions. The Motion was denied by Administrative Judge Marie A. Malouf in an Order dated May 3, 1995. Local union officials contend that they agreed to give depositions only after they were threatened with unspecified discipline by a Postal Inspector. In connection with the filing of the charge herein, the union sought to enjoin USPS from using the depositions or otherwise compelling them to testify in the MSPB proceeding concerning Banks termination.

The Union argues that this matter is controlled by the Board's decision in Cook Paint and Varnish Co., 258 NLRB 1230 (1981). In that case it was concluded that the employer unlawfully threatened a union steward with discipline for refusing to submit to a pre-arbitration interview or make available notes taken while processing the grievance that was to be arbitrated. While acknowledging that stewards do not enjoy absolute immunity from employer interrogation, in Cook the Board noted that the steward had not been engaged in any misconduct, nor was he an eyewitness to the events underlying the grievance. Rather, the steward's involvement was solely the result of his having acted as a union representative in the processing of the grievance. In contrast to Cook, the union officials in this case were eyewitnesses to the alleged threats by Banks, for which he was terminated. Further, the employer did not seek to depose the union officials regarding the substance of their meetings with Banks concerning his absenteeism discipline grievance. Rather, the employer was seeking confirmation of the alleged threats, which were irrelevant to the grievance being discussed.

Based on the foregoing it does not appear that the USPS, by its demands that local union officials submit to depositions concerning the threats that were allegedly made by Banks at the time that he filed a grievance in December of 1994, sought to intrude on Section 7 rights of those individuals. Accordingly, I am refusing to issue a complaint in this matter.

Pursuant to the National Labor Relations Act, Series 8, as amended, you may obtain a review of this action according to the attached instructions.

Very truly yours,

RK Hooks

Ronald K. Hooks
Acting Regional Director

Encls.
Certified Mail No. P008459947

cc: Lee W. Jackson, Attorney
O'Donnell, Schwartz and Anderson
1300 L. Street, N.W., Suite 1200
Washington, DC 20005

Wm. H. Brown, Jr.
Thomas Pigford, Reg. Labor Counsel
USPS, Office of Labor Law
225 N. Humpreys Blvd.
Memphis, TN 38166-0170

Shirley Macintosh, Labor Relations \
USPS Processing & Distribution Center
4700 E. McCain Blvd.
Little Rock, AR 72231

General Counsel
National Labor Relations Board
Washington, DC 20570

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
PROCEDURES FOR FILING AN APPEAL

Pursuant to the National Labor Relations Board Rules and Regulations you may obtain a review of this action by FILING AN APPEAL WITH THE GENERAL COUNSEL of the National Labor Relations Board, 1099 14th Street, N. W., Washington, D.C. 20570, AND A COPY WITH ME. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D.C. by the close of business on August 17, 1995. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request for extension of time should be submitted to me.

If you file an appeal, please complete the notice forms enclosed with the attached letter and send one copy of the form to each of the other parties whose names and addresses are listed. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity for filing the appeal itself with the General Counsel and a copy of the appeal to me within the time stated above.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

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

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

In witness whereof the parties hereto affix their signatures below this 6 day of April 1982.

For the
United States Postal Service:

W. E. Henderson

For the
Union:

William Burrus

82/7 92

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

DEC 23 1983

Mr. James Conners
Assistant Director
Clerk Division
American Postal Workers Union,
AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: S. Steven
Seattle, WA 98109
H1C-5D-C 13804

Dear Mr. Conners:

On December 8, 1983, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The grievance concerns whether the steward, on learning that local management is maintaining records of productivity of manual distribution clerks, is entitled to review those records pursuant to Article 17, Section 3.

We mutually agreed that the steward certainly is entitled to review records of this nature pursuant to Article 17 and Article 31.

Please sign and return the attached copy of this decision as acknowledgment of agreement to resolve this case.

Sincerely,

Robert L. Eugene
Labor Relations Department

James Conners
Assistant Director
Clerk Division
American Postal Workers Union,
AFL-CIO

93 15- Settlement

93

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

MAY 13 1985

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: APWU - Local
Oxnard, CA 93030
H1C-5G-C 30220

Dear Mr. Connors:

On May 2, 1985, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether an employee, in his/her capacity as a union steward is allowed to sign his/her own request for a temporary schedule change (PS Form 3189).

This grievance is settled based upon the following understanding:

> An employee may sign, in his/her capacity as a union steward, agreement for his/her own request for a temporary schedule change (using PS Form 3189) prior to presentation to the supervisor involved for approval.

The parties at this level further agreed that the steward's signature constitutes notification that the said request is being made by an employee.

Please sign and return the enclosed copy of this letter as your acknowledgment of our agreement to settle this grievance.

Sincerely,

Muriel Aikens
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

This is the law on Superseniority

The Developing Labor Law

The Board, the Courts, and the National Labor Relations Act

Third Edition

Volume I

Editor in Chief
Patrick Hardin
Professor of Law
The University of Tennessee
Knoxville

Editors

James R. LaVaute
Attorney at Law
Syracuse, NY

Timothy P. O'Reilly
Attorney at Law
Philadelphia, PA

Editor in Chief, First and Second Editions
Charles J. Morris
Committee on the Development of the Law
Under the National Labor Relations Act

Section of Labor and Employment Law
American Bar Association

The Bureau of National Affairs, Inc., Washington, D.C.

list and instead negotiated a list on which employees of the more recently organized facility were "endtailed". The Board reasoned that the employees at the more recently organized facility were endtailed solely because the employees at the other facility had been union members longer and the union's action thus penalized the endtailed employees because they had exercised their section 7 right to refrain from union activity.[438]

In companion cases, *Teamsters Local 869 (Anheuser-Busch, Inc.)*[439] and *Teamsters Local 896 (Miller Brewing Co.)*,[440] the Board addressed the legality under sections 8(b)(1)(A) and (2) of a bumping-rights provision of a collective bargaining agreement that gave so-called permanent employees, bumped by other employers in the industry who were also signatory to contracts with the same union, a preferential seniority right to work over so-called temporary employees. The provision was developed in the context of multi-employer bargaining and its application continued even after the dissolution of the multi-employer unit. Initially, the Board noted that the provision was not unlawful on its face and that there had been no evidence presented that it actually resulted in any discrimination against an employee on the basis of nonunion status. The Board concluded that the preferential provision was arguably skill-based, designed to furnish the industry with a pool of experienced workers, and susceptible of a nondiscriminatory interpretation. Absent evidence of actual discrimination, the Board found the contract clause to be lawful.[441]

A second area of concern relating to seniority involves agreements calling for "superseniority" for employees who hold union office. In *Dairylea Cooperative*,[442] the Board held that while contractual provisions granting superseniority to union stewards with respect to layoff and recall were lawful, more expansive clauses granting superseniority to stewards for all purposes,

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[438] *See also* Papcin v. Dichello Distribs., 697 FSupp 73 (D Conn), *aff'd*, 862 F2d 304 (CA 2, 1988) (union did not breach duty of fair representation when two units, each represented by separate local unions, were merged into one facility and employees of one unit were "endtailed" behind others).

[439] 296 NLRB No. 132, 132 LRRM 1212 (1989).

[440] 296 NLRB No. 133, 132 LRRM 1217 (1989).

[441] *But see* Mine Workers Dist. 23 (Peabody Coal Co.), 293 NLRB 77, 130 LRRM 1393 (1989) (union violated §8(b)(2) by maintaining and enforcing contract provision that did not credit employees with seniority, for recall purposes, with time worked for nonunion companies).

[442] 219 NLRB 656, 89 LRRM 1737 (1975), *enforced sub nom.* NLRB v. Teamsters Local 338, 531 F2d 1162, 91 LRRM 2929 (CA 2, 1976).

including job-bidding preference, were a violation of section 8(b)(2).[443] Superseniority clauses are thus to be permitted only to the extent that they are necessary to the collective bargaining process.

Where superseniority for stewards is limited to layoffs, the Board has sustained the provision, finding a legitimate purpose in the retention of an official to process grievances. That purpose was held sufficient to outweigh the obvious tendency of such provisions to encourage union membership, that is, to encourage one to become an "active" union member in order to achieve a steward's position and its superseniority emoluments. Originally the Board limited its approval of superseniority only to stewards, and only with respect to layoffs and recall. Later, however, it approved the extension of superseniority for purposes of layoff and recall to union officials other than stewards.[444] Indeed, this occurred even where the written description of the officer's duties appeared to have little or no relationship to the collective bargaining process; the Board reasoned that it did not desire to "second guess" the union regarding which officers were actually necessary "in effectively representing the unit."[445]

In *Gulton Electro-Voice*,[446] the Board modified and again narrowed the standards under which it will allow a grant of superseniority to union officials in layoff and recall situations. In *Gulton*, the Board found that section 8(b)(2) had been violated by the union's application of a superseniority clause to certain union officials (the union's recording secretary and its financial secretary-treasurer) who were not involved in grievance process-

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[443] A seniority clause giving a union the right to veto the discharge of a union steward is presumptively illegal. Perma-Line Corp. v. Painters Local 230, 639 F2d 890, 106 LRRM 2483 (CA 2, 1981). However, an arbitrator's award upholding a contract provision giving a bonus to a union steward may be affirmed where the bonus is to offset losses the steward might incur by missing his hourly job duties to attend union activities. General Battery Int'l v. Union de Servicios, 678 FSupp. 33, 127 LRRM 2715 (D PR, 1988).

[444] Industrial Workers (AIW) Local 148 (Allen Group, Inc.), 236 NLRB 1368, 98 LRRM 1574 (1978); American Can Co., 235 NLRB 704, 98 LRRM 1012 (1978). Superseniority could also be given to employees who performed several functions that further the collective bargaining interests of the bargaining unit. Electrical Workers (UE) Local 623 (Limpco Mfg.), 230 NLRB 406, 95 LRRM 1343 (1977), *enforced sub nom.* D'Amico v. NLRB, 582 F2d 820, 99 LRRM 2350 (CA 3, 1978). "[C]redible proof that the individual in question was officially assigned duties which helped to implement the collective bargaining agreement in a meaningful way" is required. *Id.*, 582 F2d at 825.

[445] American Can Co., *supra* note 444, at 704–5. The Third Circuit would place the burden on the union to demonstrate the need for superseniority for a union official other than a steward. D'Amico v. NLRB, 582 F2d 820, 99 LRRM 2350 (CA 3, 1978).

[446] 266 NLRB 406, 112 LRRM 1361 (1983), *enforced sub nom.* Electrical Workers (IUE) Local 900 v. NLRB, 727 F2d 1184, 115 LRRM 2760 (CA DC, 1984).

ing or other on-the-job bargaining-agreement administration duties. Applying the *Gulton* rule, the Board and the courts have found section 8(b)(2) violations in cases where unions have maintained and enforced contract provisions that grant superseniority to union officials who are not involved in the administration of the collective bargaining agreement or grievance handling.[447]

Even though the rule in *Dairylea* makes superseniority clauses extending benefits beyond layoff and recall preference presumptively invalid, it does not purport to make them invalid per se. The legality of the parties' inclusion of such a clause in the contract depends upon the existence of an adequate justification at the time of execution.[448] Since the line of cases culminating in *Gulton*, however, the Board has taken a restrictive view of what may constitute adequate justification. In finding a section 8(b)(2) violation in *Complete Auto Transit*,[449] the Board rejected the assertion that greater access to employees by a steward justified the use of superseniority to deny a bid position to a more senior employee. Likewise, the maintenance and enforcement of a contract provision that protected a steward against any bumping was found to violate sections 8(b)(1) and (2) when such protection was not needed to keep the steward on the job in his area of representation.[450] Explicitly overruling a contrary decision,[451] the Board reasoned that a steward may be

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[447] *See, e.g.*, United States Steel Corp., 288 NLRB 1074, 130 LRRM 1280 (1988) (recording secretary, financial secretary, and treasurer); Goodyear Tire & Rubber Co., 278 NLRB 650, 122 LRRM 1238 (1986) (treasurer, executive board members); NLRB v. Auto Workers Locals 1131 & 1161 (Houdaille Indus.), 777 F2d 1131, 121 LRRM 2080 (CA 6, 1985), *enforcing* 268 NLRB 1468, 115 LRRM 1248 and 271 NLRB 1411, 117 LRRM 1373 (1984) (financial secretary); NLRB v. Harvey Hubble, Inc., Ensign Elec. Div., 767 F2d 1100, 119 LRRM 3460 (CA 4, 1985), *cert. denied*, 479 US 984, 123 LRRM 3128 (1986), *enforcing* 268 NLRB 620, 115 LRRM 1090 (1984) (treasurer and recording secretary); Auto Workers Local 1384 v. NLRB (Ex-Cell-O Corp.), 756 F2d 482, 118 LRRM 2753 (CA 7, 1985), *enforcing* 267 NLRB 1303, 114 LRRM 1198 (1983) (recording secretary and financial secretary-treasurer); NLRB v. Niagara Mach. & Tool Works, 746 F2d 143, 117 LRRM 2689 (CA 2, 1984), *enforcing* 267 NLRB 661, 114 LRRM 1076 (1983) (executive board members); Cooper Indus., Wiss Div., 271 NLRB 810, 117 LRRM 1188 (1984) (executive board members); Ford Motor Co., 269 NLRB 250, 115 LRRM 1229 (1984) (financial secretary and treasurer); Inmont Corp., 268 NLRB 1442, 116 LRRM 1009 (1984) (union trustees and sergeant-at-arms); United States Steel Corp., 268 NLRB 1187, 115 LRRM 1275 (1984) (financial secretary-treasurer, recording secretary, guide, sergeant-at-arms, and trustees). *See also* NLRB v. Wayne Corp., Wayne Transp. Div., 776 F2d 745, 120 LRRM 3321 (CA 7, 1985), *enforcing* 270 NLRB 162, 116 LRRM 1049 (1984) (grant of superseniority to recording secretary unlawful even though officer occasionally handled grievances for absent steward).

[448] NLRB v. Auto Warehousers, 571 F2d 860, 98 LRRM 2238 (CA 5, 1978).

[449] 257 NLRB 630, 107 LRRM 1549 (1981).

[450] Mechanics Local 56 (Revere Copper Prods.), 287 NLRB 935, 127 LRRM 1163 (1987).

[451] Parker-Hannifin Corp., 231 NLRB 884, 96 LRRM 1130 (1977).

afforded superseniority to keep a job, but not necessarily his or her job, in the steward's area of representation.[452] On the other hand, the Board found no violation in a union's enforcement of a provision which allowed employees to leave the bargaining unit to take full-time union jobs and then return to their jobs with the same seniority they had been holding when they left.[453] The Board stressed the fact that union officials were not given any advantage over other employees because a former union official returned to his old job no better off than when he left. As a result, the Board concluded that the provision did not create any incentive to engage in union activity.

In contrast, the Board held unlawful a contractual provision that permitted employees who have been transferred or promoted to nonbargaining-unit positions to return to the unit with full seniority provided they obtained a withdrawal card from the union or maintained their membership in the union.[454] The Board determined that this seniority provision treated employees returning to the unit differently depending on their fulfillment of union obligations and, consequently, the provision encouraged employees to participate in union activities in which they otherwise would not be inclined or required to engage.[455] The disparate effect of the provision was not justified because the provision in no way furthered the effective administration of the collective bargaining agreement.[456] The Board distinguished *Radio & Television Broadcast Engineers Local 1212 (WPIX)*[457] on the ground that the union-leave provision in that case did not encourage union participation but simply removed a condition (the inability to accrue seniority) that would have discouraged employees from taking part in those activities.

The Board also has refused to permit the extension of superseniority of union officials for purposes other than layoff or recall, absent a showing of business necessity for such extension.

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[452]Mechanics Local 56 (Revere Copper Prods.), *supra* note 450.

[453]Theatrical Stage Employees Local 695 (Twentieth Century Fox), 261 NLRB 590, 110 LRRM 1078 (1982). *See also* Radio & Television Broadcast Eng'rs Local 1212 (WPIX), 288 NLRB 374, 128 LRRM 1219 (1988), *review denied*, 870 F2d 858, 131 LRRM 2075 (CA 2, 1989).

[454]Manitowoc Eng'g Co., 291 NLRB 915, 130 LRRM 1072 (1988).

[455]*Id.*, 130 LRRM at 1075–76.

[456]*Id.* at 1076. The Board expressly overruled its decision in Brown & Williamson Tobacco Co., 227 NLRB 2005, 94 LRRM 1337 (1977), which held that such seniority provisions were lawful.

[457]*Supra* note 453.

In *Laborers Local 380 (Mantz & Oren)*,[458] the Board found presumptively unlawful a clause granting superseniority to union stewards for weekend and holiday work. Because the union failed to show a legitimate business purpose for the extension of superseniority to weekend and holiday work, the clause was held unlawful.

C. Violations Relating to Union-Security Provisions

Although the Board presumes that a union's attempt to cause an employer to discharge an employee is unlawful, this presumption may be rebutted by evidence demonstrating that the union's conduct was based on permissible considerations.[459] Under section 8(b)(2), a union may lawfully cause the discharge of an employee working under a union- or agency-shop agreement pursuant to the union-shop proviso to section 8(a)(3) for failing, in the language of the Act, "to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."[460]

In *NLRB v. General Motors*[461] the Supreme Court held that the term "membership" as used in the proviso to section 8(a)(3) embodies only a financial obligation limited to the payment of fees and dues. Thus, a union violates section 8(b)(2) of the Act if it causes the discharge of former members for failing to rescind their resignation because section 8(a)(3) does not permit a union to compel active membership.[462] Similarly, a union violates sec-

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[458]275 NLRB 1049, 120 LRRM 1023 (1985). *See also* Gulton Electro-Voice, 266 NLRB 406, 112 LRRM 1361 (1983), *enforced sub nom.* Electrical Workers (IUE) Local 900 v. NLRB, 727 F2d 1184, 115 LRRM 2760 (CA DC, 1984) (job-specific protection against bumping not warranted); Cronin v. Oscar Mayer Corp., 633 FSupp 159 (ED Pa, 1986) (superseniority not applicable in permanent force reduction).

[459]Teamsters Local 170 (Consolidated Beverages), 282 NLRB 812, 125 LRRM 1007 (1987); Glaziers Local 558 (PPG Indus.), 271 NLRB 583, 116 LRRM 1489 (1984), *enforcement denied*, 787 F2d 1406, 122 LRRM 2008 (CA 10, 1986).

[460]For a detailed consideration of the requirements for and applications of lawful union-security arrangements, *see generally* Chapter 27, "Union Security." *See also* Beck v. Communications Workers, 487 US 735, 128 LRRM 2729 (1988); Electrical Workers (IUE) Local 441 (Phelps Dodge Indus., Phelps Dodge Copper Prods. Co. Div.), 281 NLRB 1008, 123 LRRM 1204 (1986); Pattern Makers League v. NLRB (Rockford-Beloit Pattern Jobbers), 473 US 95, 119 LRRM 2928, 2933 n.16 (1985); Machinists Local Lodge 1414 (Neufeld Porsche-Audi), 270 NLRB 1330, 1333 n.15, 116 LRRM 1257, 1260 n.15 (1984).

[461]373 US 734, 53 LRRM 2313 (1963).

[462]Hershey Foods Corp., 207 NLRB 897, 85 LRRM 1004 (1973), *enforced*, 513 F2d 1083, 89 LRRM 2126 (CA 9, 1975). *Accord* Service Employees Local 680 (Leland Stanford, Jr. Univ.), 232 NLRB 326, 97 LRRM 1186 (1977), *enforced*, 601 F2d 980, 101 LRRM 2212 (CA 9, 1979); Communications Workers Locals 1101 & 1104 (New York Tel. Co.), 211 NLRB 114, 87 LRRM 1253 (1974), *enforced*, 520 F2d 411, 89 LRRM 3028 (CA 2, 1975), *cert. denied*, 423 US 1051, 91 LRRM 2099 (1976).

exercised their section 7 rights by working behind the picket line with a nonunion company aiding their original employer during a strike called by the union.

In *Teamsters Local 293 (R.L. Lipton Distributing Co.)*,[128] a superseniority clause providing that shop stewards were to be paid a 45¢ per hour premium in addition to their regular pay rate was held presumptively unlawful under *Dairylea Cooperative*[129] and in violation of section 8(b)(1)(A) and 8(b)(2). Application of superseniority provisions to overtime equalization rules and preferences provided to union committeepersons was found not to violate section 8(b)(1)(A) or 8(b)(2) in *Auto Workers Local 235, (General Motors Corp.)*.[130]

C. Violations Relating to Union-Security Provisions

In *Electronic Workers (IUE) Local 444 (Paramax Systems Corp.)*,[131] the Board reexamined a union's obligations to employees under section 8(b)(1)(A) and 8(b)(2) when enforcing a union-security clause requiring employees to be "members in good standing." Distinguishing between "membership" and "membership in good standing," the Board found that a provision mandating the latter is ambiguous because it might be understood to require more than the payment of dues and initiation fees.[132] Thus, under a union-security clause requiring employees to have membership in good standing, the Board held that the union had a fiduciary duty to inform employees of their need to satisfy only the payment of financial obligations and by failing to do so had represented the employees in "bad faith," thereby breaching its duty of fair representation and violating section 8(b)(1)(A) of the Act.[133] However, the District of Columbia Circuit found no factual basis for the Board's finding the union acted in bad faith simply by concluding and maintaining a union-security agreement that had been lawful under long-settled standards.[134] On that ground alone, the court

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[128] 311 NLRB 538, 143 LRRM 1237 (1993).

[129] 219 NLRB 656, 89 LRRM 1737 (1975), *enforced sub nom.* NLRB v. Teamsters Local 338, 531 F2d 1162, 91 LRRM 2929 (CA 2, 1976).

[130] *Supra* note 112. *See also* Chapter 27, "Union Security."

[131] 311 NLRB 1031, 143 LRRM 1161 (1993), *enforcement denied sub nom.* Electronic Workers (IUE) v. NLRB, 148 LRRM 2070 (CA DC, 1994).

[132] *Id.* at 1037.

[133] *Id.* at 1040.

[134] *Id.*, 148 LRRM at 2072. *See also* Bloom v. NLRB, 30 F3d 1001, 146 LRRM 2986 (CA 8, 1994); Friedman, *The NLRB Suffers Institutional Amnesia: The* Paramax *Decision*, 44 LAB. L.J. 651 (1993).

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

October 23, 1992

William Burrus
Executive Vice President
(202) 842-4246

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

Subject: Court of Appeals Ruling

National Executive Board

Moe Biller
President

William Burrus
Executive Vice President

Douglas C. Hoffman
Secretary-Treasurer

Thomas A. Neff
Industrial Relations Director

Kenneth O. Wilson
Director, Clerk Division

Thomas J. Freeman
Director, Maintenance Division

Donald A. Ross
Director, MVS Division

George N. McKeithen
Director, SDM Division

Norman L. Steward
Director, Mail Handler Division

Regional Coordinators

James P. Williams
Central Region

Philip C. Flemming, Jr.
Eastern Region

Elizabeth "Liz" Powell
Northeast Region

Archie Salisbury
Southern Region

Raydell R. Moore
Western Region

Dear Steve:

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

1. It is apparent that you have deliberately omitted the Inspection Service from the officers to which the instructions are directed. As the objectionable policy emanated from the Inspection Service it is imperative that they be included as recipients of USPS policy change.

2. The most recent draft continues the reference to employees' responsibilities and I continue my objection that such reference is beyond the Board's Order.

3. Repeated reference to footnote 5 does not include it as a part of the Board's Order. In addition, you have been selective in your citation of footnote 5 which observes that "[t]hese considerations were not aired before the Board,". I object to the inclusion of any reference to the obligations of union stewards as beyond the Order of the Board.

4. Your Memorandum does not specifically provide for the inclusion of a copy of the Board's order.

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

October 21, 1992

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

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

Dear Mr. Burrus:

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

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

Please let me know if you have any further questions.

Sincerely,

Stephen W. Furgeson

Stephen W. Furgeson
General Manager
Grievance and Arbitration
Division

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

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

SUBJECT: Court of Appeals Ruling

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

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

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

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

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

Sherry A. Cagnoli

American Postal Workers Union, AFL-CIO
1300 L Street, NW, Washington, DC 20005

October 5, 1992

William Burrus
Executive Vice President
(202) 842-4246

National Executive Board
Moe Biller
President
William Burrus
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Douglas C. Holbrook
Secretary-Treasurer
Thomas A. Neill
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Elizabeth "Liz" Powell
Northeast Region
Archie Salisbury
Southern Region
Raydell R. Moore
Western Region

Dear Mr. Ferguson:

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

My comments are as follows:

1. I believe it to be appropriate to include a copy of the Board's Order as reference for the instructions.

2. All references to "Clymax Molybdenum" should be deleted as the court did not rule that it was in agreement with that decision. As you know, the Tenth Circuit denied enforcement in that decision.

3. The paragraph addressing employees' responsibility to cooperate is beyond the Board's Order and the reference to obligations of shop stewards is contrary to Board law. A blanket threat to discipline shop stewards for counselling non-cooperation would be in violation of the Bell decision and the Act.

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

Sincerely,

William Burrus
Executive Vice President

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

WB:rb
opeiu#2
afl-cio

UNITED STATES POSTAL SERVICE
475 L ENFANT PLAZA SW
WASHINGTON DC 20260-4100

LABOR RELATIONS DEPARTMENT

September 18, 1992

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

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

Dear Mr. Burrus:

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

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

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

Sincerely,

Stephen W. Furgeson
General Manager
Grievance and Arbitration
Division

Enclosure

OFFICIAL OLYMPIC SPONSOR
36 USC 380

UNITED STATES POSTAL SERVICE
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SHERRY A CAGNOLI
ASSISTANT POSTMASTER GENERAL
LABOR RELATIONS DEPARTMENT

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

SUBJECT: Court of Appeals Ruling

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

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

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

OFFICIAL OLYMPIC SPONSOR
36 USC 380

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

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

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

Sherry A. Cagnoli