



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

To: Local and State Presidents
National Business Agents
Regional Coordinators
National Advocates
Resident Officers

From: Greg Bell, Director *GB*
Industrial Relations

Date: May 5, 2008

Re: Unfair Labor Practice Charges and Grievances Related to *Weingarten* Violations

This is a follow-up to my memo of April 14, 2008, regarding the NLRB/USPS Settlement relating to *Weingarten* violations. As previously stated we believe that the settlement agreement jeopardizes protections provided to employees under applicable laws and the Collective Bargaining Agreement. Under the settlement agreement whenever the Postal Service commits a *Weingarten* violation it can:

- Avoid an NLRB cease-and-desist order or contempt proceeding;
- Correct its mistakes by conducting a new interview;
- Make reference to the actions taken under the settlement agreement as a defense in the grievance procedure or other proceedings; and
- Retain information it obtains through the unlawful interrogation (the investigatory interview conducted in violation of *Weingarten*) for use in possible criminal matters.

When filing an unfair labor practice charge, two separate charges should be filed, differentiating between those based on interference with the steward and those depriving employees of their *Weingarten* rights. An unfair labor practice charge should be filed when the Postal Service interferes with a steward acting in a representative capacity during an investigatory interview. In addition, a separate charge should be filed by or on behalf of the employee, when the employee is deprived of their *Weingarten* rights. It is likely that the NLRB will combine the charges. However, we believe that this will help us keep better track of the *Weingarten* violations, and enhance our challenge to the NLRB/USPS Settlement Agreement. Here is the wording that we recommend for each charge:

The Local's charge¹: "Since on or about _____, and continuing to date, the Postal Service has interfered with, restrained and coerced employees in the exercise of their right to self-organization, form, join and assist labor organizations, to bargain

¹ This charge should be filed by or on behalf of the steward or union representative.

collectively through representatives of their own choosing, and to engage in other concerted activities for the purposes of collective bargaining, by interfering with shop steward [fill in name]'s right to represent and assist employees during investigatory or pre-disciplinary interviews.”

The individual's charge²: “Since on or about _____, and continuing to date, the Postal Service has interfered with, restrained and coerced employees in the exercise of their right to mutual aid and protection by failing to afford [fill in name] the right to the assistance of fellow employees during interviews which may result in discipline.”

Both charges allege violations of Section 8(a)(1) of the National Labor Relations Act. Section 8 says: “It shall be an unfair labor practice for an employer— (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 ...”

The Supreme Court in *Weingarten* said that employees' right to assistance during investigatory interviews is premised on the “mutual aid and protection” clause of Section 7. The Local's charge is premised on other parts of Section 7. The different parts of Section 7 implicated in each charge are highlighted below.

“Employees shall have the right to **self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining** or other **mutual aid or protection**, and shall also have the right to refrain from any or all of such activities”

As a reminder, we request that local unions contact my office to discuss at what point it is best to file an unfair labor practice charge with the NLRB over a *Weingarten* violation.

Grievances

In addition, an individual grievance should be filed on behalf of the employee whose *Weingarten* Rights were violated, and a separate class action grievance should be filed by the union on behalf of the steward whose rights to participate in an investigatory interview were violated.

Finally, we request that copies of any grievances that involve violations of *Weingarten* rights, or of the rights of stewards to participate in an investigatory interview, be forwarded to my office.

If you have any questions, please contact my office.

² This charge should be filed by or on behalf of the individual employee.