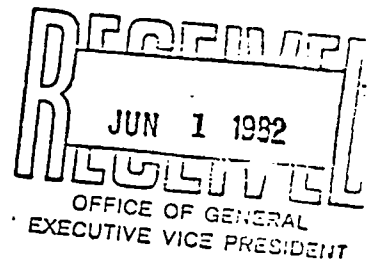
UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260



May 28, 1982

Mr. William Burrus
General Executive Vice President
American Postal Workers Union, AFL-CIO
817 14th Street, N. W.
Washington, D. C. 20005

Dear Mr. Burrus:

This refers to your letter of May 10, concerning the use of "jogging shoes" as acceptable footwear.

Jogging "style" shoes are acceptable footwear or authorized uniform items if they meet the requirements set forth in the Employee and Labor Relations Manual, chapter 583.1. They must have black leather or black poromeric uppers and must be capable of accepting a buff shine. Athletic shoes, jogging shoes (except as specified in the Employee and Labor Relations Manual, chapter 583.1), tennis shoes, or sneakers with canvas, nylon, or similar uppers are not acceptable on the workroom floor or as authorized uniform items.

I trust that this clarification will resolve any misunderstanding. A Postal Bulletin article is being prepared to help clarify this matter for all postal personnel.

Sincerely,

James C. Gildea
Assistant Postmaster General
Labor Relations Department

American Postal Workers Union, AFL-CIO
817 14th STREET, N. W., WASHINGTON, D. C. 20005

May 10, 1982

Mr. Joseph Morris
Senior Assistant Postmaster General
Employee and Labor Relations Group
U.S. Postal Service Headquarters
Washington, D.C. 20260

Dear Mr. Morris:

The Supervisor's Safety Handbook, Personnel Series P-13 at Chapter 5, Sub-chapter 542, F. reads as follows:

> Thong sandals, clogs, platforms, tennis shoes (sneakers), sandals, mules, house slippers and open-toes or high-heeled shoes do not adequately protect the feet from accidental injury and are, therefore, unacceptable for use in postal operations. (Underscoring added.)

Postal Managers are expanding the list of unacceptable footwear to include "jogging shoes" identified in the Employee and Labor Relations Manual as authorized uniform apparel and described as follows:

> Black leather or black poromeric uppers with or without built in safety toes... All leather or poromeric shoes must be capable of accepting a buff shine to obtain a glossy finish.

The American Postal Workers Union interprets Article 19 as requiring the employer to notify the union of all changes to handbooks and manuals. We further interpret the inclusion of jogging shoes with leather or suede uppers as prohibited footwear as constituting a change to an existing handbook and as such requires the exhaustion of procedures identified in Article 19

USPS

of the Collective Bargaining Agreement.

In the event the Postal Service disagrees with the above interpretation please respond in writing. I am available to discuss this matter and may be reached at 842-4250.

Sincerely,

William Burrus,
General Executive Vice President

WB:mc

June 4, 1997

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

RE: Administrative Dispute Resolution Procedure

Dear Bill:

Pursuant to the above referenced MOU and our recent discussions concerning the implementation thereof, the following guidelines are proposed:

1. The parties at the national level have identified the following issues, when unresolved at the local level, to be referred to the Administrative Dispute Resolution Procedure (ADRP):

A. Promotions Pay
B. Lump Sum Payments
C. Article 6/12 Excessing Memorandum
D. FLSA pay disputes

The parties may mutually agree to add or delete issues as needed.

2. Disputes must be initiated at the local level within 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. Disputes initiated at the local level will be discussed between the designated representatives of the local union and local management. If the discussion does not lead to resolution of the issue, the union may forward the dispute to the Area level within 15 days to be discussed between the USPS and union-designated officials. The parties will exchange names and addresses of designees at each level of the procedure.

2

3. If the issue is not resolved at the Area level, the union may forward the dispute to the designated union representative at the national level within 21 days for discussion with the USPS designee.

4. If the issue is unresolved after review by the national parties, the union may appeal to arbitration within 30 days.

5. Either party may withdraw from this procedure by giving the other party 30 day written notice at the national level. In the event that either party should withdraw from this procedure, cases already filed under this agreement will be processed under this procedure.

Please indicate your concurrence with these terms by co-signing this letter.

Sincerely,

Pete Bazylewicz
Manager
Grievance and Arbitration
United States Postal Service

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

ADMINISTRATIVE DISPUTE RESOLUTION PROCEDURE (ADRP)

Pursuant to the provisions of the 1994 national agreement, the parties have finally reached agreement on the establishment of the Administrative Dispute Resolution Procedure (ADRP). The process is designed to expeditiously resolve complex disputes as identified by the parties. This process will consist of a three (3) step procedure; (1) at the local level, (2) at the regional level and (3) at the national level.

1. The local president or designee will initiate an appeal at Step 2 using the standard Step 2 grievance form identifying at "Line #11" that the dispute is under the ADRP process. The ADRP appeal will be filed with the designated local management official (management at the local and regional/level will announce the names of the designated officials). The time limit for discussion and appeal at each step is governed by Article 15 of the national agreement. The local union president or designee and the management designated representative will meet at a mutually agreed to time to discuss all pending disputes identified under the ADRP procedure. The purpose of discussion at the local level is to determine if there is a dispute over the facts or a general misunderstanding of the issue. Locals are advised to designate locally filed grievances under the ADRP procedure with a unique local number to identify them as separate from pending grievances.

2. If the local parties are unable to resolve the issue, the union may appeal to Step 3 using the standard Step 3 appeals form and noting the ADRP violation. ADRP appeals will be discussed at the Area/Regional level by the union and management designated representatives. The APWU Regional Coordinators will designate the union officials who will serve at the Area/Regional level. When logged in at the Regional level, ADRP grievances will be given a designation of "A" noting coverage under the ADRP procedures. The purpose of discussion at the regional/area level is to determine if a specific office or manager is in compliance with the regional/area interpretation of the specific issue. Disputes over the interpretation of issues under the ADRP should be referred to the national level. If unresolved at the Area/Regional level, the dispute will be appealed to the national level.

3. If unresolved at the national level the union will certify the dispute to arbitration at either the regional or national level.

4. Grievances previously filed on subjects under the ADRP procedure will be removed and forwarded to the ADRP at the step where they are identified (Step 1 & 2 to Step 2 - Step 3 to Area/Regional level - Pending arbitration to national level)

The designated APWU officials to discuss ADRP disputes at the national level are:
Tommy Thompson ----- Article 6/12 Memorandum
Phil Tabbita ------ FLSA - Promotion Pay - Lump Sum Payments

William Burrus 6/23/97

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

June 10, 1997

LABOR RELATIONS SPECIALISTS (AREA)

SUBJECT: Administrative Dispute Resolution Procedure (ADRP)

Pursuant to the MOU at page 329 of the USPS-APWU 1994 Agreement regarding Administrative Dispute Resolution Procedures (ADRP), the attached are specific instructions agreed to by the national parties for implementation of this MOU.

Essentially, disputes covered by the ADRP MOU (promotion pay, lump sum payments, Article 6/12 excessing memorandum, and FLSA pay disputes) must be initiated at the local level. If unresolved locally, the union can refer the dispute to the Area level and eventually to the national level. Grievances cannot be filed on these issues. (The underlying rationale for this alternate procedure was to expedite these types of highly technical disputes and avoid bogging down initial level supervisors.)

The areas must ensure that names and addresses of designees are exchanged with the union at the local and area levels. These disputes will be given a grievance number ending in "A," for example, J90C-1J-A. Please provide the name and phone number of the area designees to Rodney Lambson by June 27.

If there are any questions concerning this matter, please contact Rodney at (202) 268-3827.

Pete Bazylewicz
Manager
Grievance and Arbitration

Attachment

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

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

August 31, 1987

RECEIVED
SEP 1 1987
OFFICE OF
EXECUTIVE VICE PRESIDENT

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

Dear Mr. Burrus:

This is in response to your August 6 letter regarding the Postal Service policy on hiring individuals confirmed as having Acquired Immune Deficiency Syndrome (AIDS), the retention of current employees infected since their employment, and the interaction of such employees with noninfected employees.

As you know, the Postal Service guidelines on AIDS follows the recommendations of the Center for Disease Control (CDC). These guidelines were published April 17, 1986, in Postal Bulletin 21562.

With respect to hiring, individuals with AIDS will be treated in the same manner as any other applicant. Specifically, the hiring decision is made by management based on the medical assessment (PS Form 2485, Medical Examination and Assessment) of the applicant's ability to perform the core functions of the position applied for. Testing for AIDS is not done in preemployment examinations.

With respect to current employees, an employee believed to be at risk or unable to perform the job satisfactorily may be given a fitness-for-duty examination which will medically evaluate the employee's ability to perform the core functions of his/her position. As with any other chronic illness, a risk assessment is made based on the results of the medical examination.

With respect to the interaction of AIDS infected employees with noninfected employees, the CDC continues to indicate that transmission of the disease does not result from casual

contact between people. It is known that the transmission of the disease does occur through the exchange of body fluids, i.e., blood, semen, the use of contaminated needles by chronic drug abusers, injection of contaminated blood or blood products, and by transmission of the infection to a baby through the mother's milk, or placental blood. The person-to-person contact that occurs within the workplace does not pose a risk of transmission. Shaking hands, hugging, coughing, sneezing, sharing toilet facilities, or being in the same room has not been identified by the CDC as a means of transmitting the disease.

As was indicated in the previously mentioned Postal Bulletin, all postal employees should educate themselves regarding the known facts about AIDS. Professional postal medical staff are available to managers and employees for consultation and assistance.

Should there be any questions regarding the foregoing, please contact Harvey White at 268-3831.

Sincerely,

for William J. Dowd

Thomas J. Fritsch
Assistant Postmaster General

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Moe Biller, President
(202) 842-4246

May 28, 1999

Ms. Naomi Goldstein
USPS Commission on a Safe
and Secure Workplace
1280 Maryland Ave, SW
Washington, D.C. 20024

Dear Ms. Goldstein:

This is in response to your letter of May 25, 1999 requesting the union's review of the questionnaire to be submitted to 20,000 postal employees, supervisors and managers. We appreciate your submitting a copy of the survey for our review and response.

The official policy of the American Postal Workers Union is to oppose all surveys and involvement of bargaining unit employees for the purpose of soliciting information to arrive at conclusions to be acted upon. As the collective bargaining agent of postal employees, the union is the official voice of the employees represented. We would be pleased to provide responses to the questions raised in the survey but our responses should be dispositive of the inquiry.

Under the very best of circumstances, when surveys of employees are conducted, the purpose is to arrive at a conclusion. Local union meetings and our democratic election process are the forums in which represented employees express their views in support of or in opposition to those officers who speak on their behalf. Interim efforts by organizations outside the union are counterproductive and serve little purpose except to discredit the responses by union officials.

I do not believe that your effort is intended to undercut the authority and opportunity of union officials to represent the bargaining unit, but the consequences of this activity will undoubtedly achieve that end. If you seek specific responses to the questions raised, we would be pleased to provide them with the understanding that our responses are reflective of the employees represented.

Sincerely,

Moe Biller
President

MB:hfa
opeiu #2/afl-cio

National Executive Board
Moe Biller
President

William Burrus
Executive Vice President

Robert L. Tunstall
Secretary-Treasurer

Greg Bell
Industrial Relations Director

C. 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

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

September 19, 1997

Dear Percy:

Pursuant to our telephone conversation, following is the union's interpretation and application of the Memo's of Understanding regarding the right of the union to process a grievance on behalf of a former employee.

National Executive Board

Moe Biller
President

William Burrus
Executive Vice President

Douglas C. Holbrook
Secretary-Treasurer

Greg Bell
Industrial Relations Director

Robert L. Tunstall
Director, Clerk Division

James W. Lingberg
Director, Maintenance Division

Robert C. Pritchard
Director, MVS Division

George N. McKeithen
Director, SDM Division

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Northeast Region

Terry Stapleton
Southern Region

Raydell R. Moore
Western Region

The Memorandums in question (2) appear on pages 334 and 374P of the 1994 National Agreement and on page 88 of the CBR. The initial Memo was negotiated in 1981 as a result of an inquiry that I made protesting postal policy that all grievances on behalf of former employees were being declared moot and the Postal Service representatives refused to consider the merits of the grievances. My position was that grievances became the property of the union after appeal to Step 2 of the procedure and the right of the union to process grievances was unaffected by the employment status of a grievant. I argued that favorable disposition of a grievance would benefit the entire bargaining unit and the union could not be denied the right to process grievances. I alerted the Vice President of the NALC of the discussions and he joined in the signing of the final document.

In 1990 the NALC appealed a grievance [#H7N-5P-C 1132] to the national level involving the interpretation of the 1981 Memo of Understanding. APWU was not notified of the hearing and did not participate in the arbitration. Arbitrator Mittenthal decided the case and provided a narrow interpretation of the Memo of Understanding. On page 7 of his decision he opined as following:

> This Memorandum suggests that the parties recognized the need for a savings clause to prevent an employee's pre-separation grievances from being declared not arbitrable after his separation. The clear implication is that, absent such a clause, pre-separation grievances would not survive a separation. It should be emphasized that this savings feature applies only to separations attributable to "resignation, retirement, or death." A separation due to discharge, the situation in the present case, is not covered. If an employee's

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case in its entirety.

Time limits at Step 4 were extended by mutual consent.

Sincerely,

Daniel P. Magazu
Contract Administration (APWU/NPMHU)
Labor Relations

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

Date: 6-9-98

pre-discharge grievances are to survive his discharge, NALC must look somewhere else in the National Agreement to justify that result.

This narrow reading of the Memorandum was not consistent with the discussions that lead to the document, but because APWU was not a participant in the hearing, we could not offer this background. Notwithstanding our lack of involvement in the hearing, it is my belief that Mittenthal's ruling would survive challenge by APWU. He interpreted the language agreed to and while it may have been helpful for him to understand the range of the discussions, I doubt if an arbitrator will overrule his decision based on additional testimony.

Following receipt of the Mittenthal award, Tom Neil was involved in discussions over the void created by the decision. In 1991 agreement was reached and incorporated into the 1991 National Agreement recognizing the right of the union to process grievances for former employees provided the issue "is not related to the removal action." This Memorandum appears on page 88 of the CBR and page 374P of the 1994 National Agreement.

As a result of the two Memorandums and the national interpretative award, the union has the right to process post-removal grievances if:

1. **The employee resigns from employment**
2. **The employee retires**
3. **The employee dies**
4. **The grievance is unrelated to the employee's removal**

I hope that this clarifies the issue for you. With kind regards, I remain

Yours in union solidarity,

William Burrus
Executive Vice President

Percy Harrison, President
Chicago BMC
7500 West Roosevelt Rd
Forest Park, IL 60130

WB:rb

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

August 25, 1997

Q94C4QC98002394

Dear Pete:

This is to initiate a step 4 over the employer's right to make "inquiries, either orally or in writing, of [an] applicant or of any other person, concerning arrest records, except where the arrest actually resulted in a criminal conviction, or where the charges are still pending".

My letter of June 26, 1997 requested the employer's interpretation of "the provisions cited above as permitting exceptions to the restrictions for obtaining arrest information and if so, what are those exceptions and their authority in published rules."

Your response of August 21, 1997 does not address the interpretative inquiry, but instead focuses on whether or not there was a violation in the case mentioned and continues by pointing out that my letter implies that the grievance involves a current postal employee while Section 313.331 deals with applicants for postal employment. While this observation is immaterial to the issue I raise, I refer you to the quoted section "applicant or of any other person". Perhaps in your haste to avoid the issue, you have overlooked that a current postal employee may be covered by "any other person".

In any event, I await the scheduling of a meeting that we can discuss the interpretive issue involved.

Sincerely,

William Burrus
Executive Vice President

Peter Bazylewicz, Manager
Grievance & Arbitration
475 L'Enfant Plaza, SW
Washington, DC 20260

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

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

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

Re: Q94C-4Q-C 98002394
Class Action
Washington, DC 20260-4140

JUN 1998

Dear Bill:

On May 2, 1998, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance involves arrest records of applicants for postal employment.

During our discussion, we mutually agreed that the current policy of the Postal Service regarding this subject is described in ELM 313.33, which reads as follows:

> 313.331. No inquiries may be made, either orally or in writing, of the applicant or of any other person, concerning arrest records, except where the arrest actually resulted in a criminal conviction, or where the charges are still pending. In addition, when inquiring as to the conviction record of any applicant for employment from any person or agency, including law enforcement agencies, postal officials must state orally, or in writing, that:
>
> It is not the policy of the U.S. Postal Service to inquire into the arrest records of applicants for employment, where the charges arising out of an arrest have been dismissed, there has been an acquittal, the proceedings have otherwise not resulted in a conviction, or where the record of such charges does not contain or reflect an actual criminal conviction of such charges. If possible, please exclude all such charges in the requested conviction record, except those still pending.

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

February 22, 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

C. 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

Dear Mr. Vegliante:

This is to request a USPS listing of Handbooks and Manuals as defined by Article 19 of the national agreement. The parties have agreed to a process wherein the union may contest changes to Handbooks and Manuals and the union is in need of a definitive listing of those documents covered by Article 19. I would assume that those documents not listed are not considered Handbooks and Manuals and are not covered by Article 19.

I also request an explanation of the authority of documents that are not considered Handbooks and Manuals. The parties are often in disagreement over the authority of postal rules or regulations that have not been defined as Handbooks and Manuals. Upon receipt, the union can respond appropriately.

Please provide a listing at your earliest convenience and the requested information.

Sincerely,

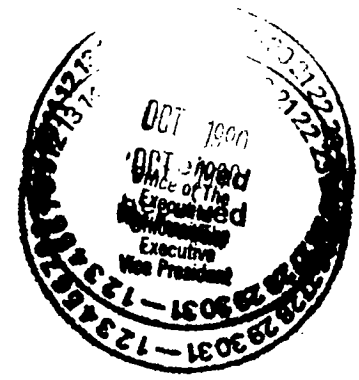
William Burrus
Executive Vice President

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

WB:rb

UNITED STATES POSTAL SERVICE
ROOM 9014
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
TEL (202) 268-3816
FAX (202) 268-3074

JOSEPH J MAHON JR
Assistant Postmaster General
Labor Relations Department



October 16, 1990

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

Dear Mr. Burrus:

This letter is in response to your September 28 correspondence regarding whether postmaster relief employees are authorized to work when the postmasters who they are to replace are also working.

It is the position of the Postal Service that Section 123.4 of the Administrative Support Manual controls the assignment of a postmaster relief.

Additionally, Section 419.141 of the Employee and Labor Relations Manual defines the postmaster relief as "a non-career hourly rate employee who performs as a relief or leave replacement during the absence of a postmaster in an EAS-15 or below office."

Should there be any questions concerning this matter, please contact Stan Urban of my staff at 268-3842.

Sincerely,

for Stephen A. Moe, Acting
Assistant Postmaster General

OFFICIAL OLYMPIC SPONSOR

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

September 28, 1990

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Mahon:

This letter is in further reference to the issue raised in my earlier correspondence of August 21, 1990 to which you responded on September 10, 1990.

It is evident by your response that you did not fully comprehend my inquiry. The question is not one of the authority to employ "Postmaster Relief Employees" for the replacement of absent postmasters, but whether postmaster relief employees are authorized to work when the postmasters who they are to replace are also working.

A review of Section 123.4 of the Administrative Support Manual confirms that such relief employees are intended to replace "absent" postmasters and may not be employed except during such period of a postmaster's absence.

I await your response.

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

Kenneth D. Wilson
Director, Clerk Division

Thomas K. Freeman, Jr.
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

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

WB:rb

UNITED STATES POSTAL SERVICE
ROOM 9014
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
TEL (202) 268-3816
FAX (202) 268-3074

JOSEPH J MAHON JR
Assistant Postmaster General
Labor Relations Department

September 10, 1990

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

Dear Mr. Burrus:

This letter is in response to your correspondence of August 21 regarding the use of postmasters or postmaster relief employees to replace career clerical employees who retire.

We are unaware of any instructions being issued by the Nashville Division to replace bargaining unit employees with either postmasters or postmaster relief employees.

However, as you know, the Postal Service conducts operational reviews to determine the proper clerical workload and authorized employee positions for each associate office. These reviews determine the authorized clerk hours for each office.

It is the position of the Postal Service that Section 123.4 of the Administrative Support Manual controls the assignment of a postmaster relief.

Additionally, the Standard Position Description for postmasters, in all offices without an assigned career clerk, provides for the postmaster to handle window transactions and perform distribution tasks and/or operate the entire postal facility. Therefore, temporary employees may perform bargaining unit work in those instances where the work would otherwise be appropriately performed by nonbargaining unit employees. Specifically, temporary employees shall perform bargaining unit work in those instances where the temporary employee is replacing a nonbargaining unit employee who would otherwise perform the disputed duties.

OFFICIAL OLYMPIC SPONSOR

It should be noted that postmaster replacements have been performing these duties from prior to 1972 up to the present time.

Should there be any questions concerning this matter, please contact Stan Urban of my staff at 268-3842.

Sincerely,

Stephen A. Moe, Acting
Assistant Postmaster General

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

William Burrus
Executive Vice President
(202) 842-4246

August 21, 1990

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
...ctor, Clerk Division
...ard I. Wevodau
Director, Maintenance Division
Donald A. Ross
Director, MVS Division
George N. McKerthen
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 have received information that the Nashville, Tennessee Division has issued instructions that as bargaining unit employees retire in offices with less that 100 employees (Art 1, Sec 6B) their positions are to be replaced with postmaster relief.

Please reply as to whether it is the position of the employer that bargaining unit employees can be replaced with postmasters or postmaster relief employees to perform the same functions.

Sincerely,

William Burrus
Executive Vice President

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

WB:rb

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

MAR 1 5 1984

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

Re: Class Action
El Paso, TX 79910
H1C-3A-C 27026

Dear Mr. Wilson:

On February 7, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question in this grievance is whether management properly assigned an employee in accordance with ELM 546.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case:

1. No former full-time regular shall be reemployed as an unassigned regular where a residual vacancy exists and the employee's physical condition would not prohibit the employee from fulfilling the duties of the residual vacancy in question.

2. A former full-time regular employee reemployed under 546.212 of the Employee and Labor Relations manual as an unassigned regular shall be placed into the first residual vacancy that the employee is physically capable of performing, unless that employee is deemed the successful bidder for another position.

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

Sincerely,

Thomas J. Lang
Labor Relations Department

Kenneth D. Wilson
Assistant Director
Clerk Craft Division
American Postal Workers Union,

JOHN E. POTTER
SENIOR VICE PRESIDENT, LABOR RELATIONS

237

UNITED STATES POSTAL SERVICE

September 1, 1998

VICE PRESIDENTS, AREA OPERATIONS
MANAGER, CAPITAL METRO OPERATIONS

SUBJECT: Employees Wearing Negotiations Buttons/T-Shirts

As we begin negotiations, managers and supervisors are reminded of the guidelines for employees who wear buttons or T-shirts bearing messages relating to the collective bargaining efforts of the Unions.

For USPS employees, the criteria for messages on clothing are similar to those which apply to union officials wearing buttons or T-shirts during local and national elections. Essentially, employees who do NOT deal with the public in the course of their duties may wear buttons, T-shirts or similar apparel which have messages on them. The messages must NOT be insulting or otherwise inappropriate.

Employees, such as letter carriers, window clerks, etc., who deal with the public in the course of their duties, may NOT wear any buttons or other material while in the course of those duties. Please use your best judgment in addressing employees who wear such items of clothing.

Thank you for your assistance and cooperation in addressing this matter. If you have any questions concerning this issue, do not hesitate to contact Peter A. Sgro of my staff at 202-268-7654.

John E. Potter

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
202-268-3813
FAX 202-268-3074

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

Rec. Jan 27, 1986

March 6, 1986

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 - 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This responds to your January 27 letter requesting the Postal Service's interpretation of provisions of the F-10 Handbook and Section 438.134 of the Employee and Labor Relations Manual (ELM).

The provisions of the ELM are the policy provisions that govern travel while the provisions of the F-10 are specific directions that pertain to the responsibilities of the traveler.

Management always approves travel. Frequently, the development of the individual's travel itinerary is delegated to the traveler with final approval reserved by management. In special cases, management could make some or all of the travel arrangements. However, in all cases, the respective traveler and management are expected to communicate in such a manner so each understands the other's requirements and/or needs. Regardless, official business travel should always entail efficient scheduling which meets the needs of the Postal Service and as it relates to the mission of the specific travel.

Sincerely,

Thomas J. Britsch
Assistant Postmaster General
Labor Relations Department

American Postal Workers Union, AFL-CIO

817 14th Street, N.W., Washington, D.C. 20005

William Burrus
Executive Vice President
(202) 842-4246

January 27, 1986

Dear Mr. Fritsch:

This is to request a clarification of an apparent discrepancy between provisions of the Employee and Labor Relations Manual and the M-9 (F-10) Handbook. The ELM provides at Section 438.134 that travel "away from home overnight is to be scheduled by management" while the M-9 Handbook at Section 112 provides that "the traveler must plan itineraries" and "schedule ... departure and arrival."

The union interprets the language of the M-9 Handbook as providing the employee with some control over the scheduling of travel with overall supervision by management.

Please review the cited sections and advise of the employer's interpretation of these travel provisions.

Sincerely,

William Burrus,
Executive Vice President

Thomas J. Fritsch, Assistant Postmaster General
Labor Relations
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

WB:mc

National Executive Board

Moe Biller, President

William Burrus
Executive Vice President

Douglas C. Holbrook
Secretary-Treasurer

Thomas A. Neill
Industrial Relations Director

[illegible] D. Wilson
or, Clerk Division

Richard I. Wevodau
Director, Maintenance Division

Donald A. Ross
Director, MVS Division

Samuel Anderson
Director, SDM Division

Ken Leiner
Director, Mail Handler Division

Regional Coordinators

Raydell R. Moore
Western Region

James P. Williams
Central Region

Philip C. Flemming, Jr.
Eastern Region

Neal Vaccaro
Northeastern Region

Archie Salisbury
Southern Region

U.S. Department of Labor

Employment Standards Administration
Office of Workers' Compensation Programs
Division of Federal Employees' Compensation
400 West Bay Street P.O. Box 35049
Jacksonville FL 32202
904-791-2821

December 13, 1982

General File

Mr. Jo Jo Kelly
Upper Piedmont South Carolina Area Local
A.P.W.U. AFL -CIO
P. O. Box 1425
Greenville, S. C. 29602

Dear Mr. Kelly:

I have reference to your letter dated September 9, 1982, a copy of which is enclosed herewith for your ready reference, and I apologize for the delay in my reply.

The Federal Employees' Compensation Act (5 USC 8101 and following) does not provide that persons chosen by claimants to represent them must be attorneys.

The Federal Employees' Compensation Act (FECA) in Section 8127 addresses the matters of "representation" and "attorneys' fees." Section 8127 provides as follows:

"(a) A claimant may authorize an individual to represent him in any proceeding under this subchapter before the Secretary of Labor.

(b) A claim for legal or other services furnished in respect to a case, claim, or award for compensation under this subchapter is valid only if approved by the secretary."

Enclosed herewith is a copy of the Federal Register dated February 14, 1975 which contains the Regulations which govern the administration of the Federal Employees' Compensation Act. Sections 10.142 through 10.145 pertain to representation of claimants and fees for the services of claimants' representatives.

Section 10.145 (b) (6) means that the Department of Labor must include the matter of the professional qualifications of the representative among other matters in determining the amount of a fee to approve. This would pertain to a union representative if he/she applies to the Department of Labor for approval of a fee for services.

APWU
RECEIVED
DEC 20 1982
R. J. ERSKINE
NAT'L. V.P.

While the matter of representation of a claimant by a union representative is not specifically addressed in the Regulations, I believe that it would be appropriate for the Office of Workers' Compensation Programs in considering an application submitted by a union representative for approval of a fee for services to ascertain the policy of the union in such matter and whether the representative received a salary or wage from the union for such services.

Sincerely,

Robert J. Haeberle

Robert J. Haeberle
Special Claims Examiner

Enclosure

smt

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

JUL 25 1980

Mr. William J. Kaczor
Executive Vice President, Maintenance Craft
American Postal Workers Union, AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

Re: J. Guilda
Gardena, CA
A8-W-0750/W8C5BC8988
APWU - 0750

Dear Mr. Kaczor:

On July 3, 1980, we met on the above-captioned case at the fourth step of the contractual grievance procedure set forth in the 1978 National Agreement.

During our discussion, we concluded that the question in this grievance is whether a postal employee subpoenaed at the request of the defense and not the Postal Service, to testify in a Federal Court concerning his/her official duties, is entitled to compensation under Part 516.4 of the Employee and Labor Relations Manual.

After reviewing the information in the file, we mutually agreed that an employee subpoenaed by proper authority to testify in a Federal court about his official duties as a postal employee, whether the request for subpoena was initiated by the defense or the prosecution, is in a compensable status under Part 516.4 of the Employee and Labor Relations Manual. Proper documentation should be submitted.

Of course, if the Postal employee was called to testify as a "character witness" or for other non-official purposes, he is not entitled to compensation under Part 516.4.

Accordingly, we mutually agreed to remand this grievance back to Step 3 for a determination by the parties at that level of the nature of the grievant's testimony and to dispose of the case.

Please sign the attached copy of this letter as your acknowledgment of the agreed to settlement of this case.

Sincerely,

Robert L. Eugene
Labor Relations Department

William J. Kaczor
Executive Vice President
Maintenance Craft
American Postal Workers Union,
AFL-CIO

KENNETH J. HUNTER
CHIEF POSTAL INSPECTOR

UNITED STATES
POSTAL SERVICE

May 25, 1994

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

Dear Bill:

Thank you for your call today. I appreciate the ongoing dialog and hope we can continue to work toward solutions to the mutual concerns we discussed. This is to confirm, per your request, that as of May 12, 1994, I declared a moratorium on the use of outside confidential informants on future employee narcotics investigations until a more acceptable solution can be worked out.

Sincerely,

K. J. Hunter

K. J. Hunter

MAY 1994
Received
Office of The
Executive
Vice President

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-2100
202-268-4267
FAX 202-268-4563

American Postal Workers Union, AFL-C

817 Fourteenth Street, N.W. Washington, D.C. 20005 • (202) 842-424

WILLIAM BURRUS
Executive Vice President

February 22, 1984

William E. Henry, Jr., Director
Office of Grievance and Arbitration
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Dear Mr. Henry:

This is in further response to your letter of February 17, 1984 informing me that the Postal Service "generally agree with (my) interpretation of the cited provisions." You further state that the Office of Workers' Compensation identifies other circumstances exclusive of the items listed in 545.51.

I request the identification of the other circumstances and whether or not the Postal Service relies upon them to stop payment?

Sincerely,

William Burrus

William Burrus,
Executive Vice President

WB:mc

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MIKE LENNER, Director, Mail Division
JOHN E. RICHARDS, Industrial Relations Director
KEN LENNER, Director, Mail Handler Division

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JAMES P. WILLIAMS, Central Region
PHILIP ...
Eastern ...
NEAL ...
Northeast ...
ALVIN ...
Southeast ...

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

February 17, 1984

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in response to your January 20 letter to Mr. Gildea concerning the provisions of subchapter 545.51 of the Employee and Labor Relations Manual (ELM).

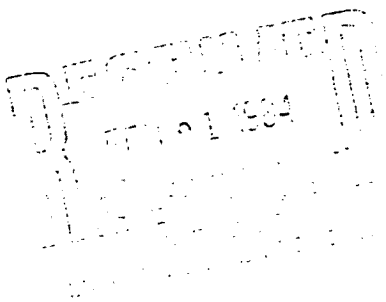
We generally agree with your interpretation of the cited provision. As stated in subchapter 545.52 "pay must be continued if continuation of pay is applicable and applied for unless the claim falls within one of the grounds for termination of pay listed in 545.51." This provision does not allow for expansion beyond the items listed in 545.51.

For your information, however, there are circumstances identified by the Office of Workers' Compensation where termination of COP is proper, exclusive of the items listed in 545.51.

Sincerely,

W. E. Henry

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



3B

American Postal Workers Union, AFL-CIO

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

[illegible]

January 20, 1984

James Gildea
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Dear Mr. Gildea:

The rights of bargaining unit employees under the Injury Compensation Program are incorporated in the National Agreement through provisions of Article 19 of the 1981 National Agreement. These provisions at Subchapter 545.5 define conditions under which the employer may discontinue continuation of pay when controverting a claim. Provisions at Subchapter 545.51 are specific in requiring that in all other cases where controversion is proper pay must be continued if continuation of pay is applicable.

Local officers are repeatedly refusing to place employees in a COP status when the claim is being controverted for reasons other than those listed at 545.51.

This is to determine whether a dispute exists between the union and the employer that continuation of pay cannot be stopped by the employer except for the reasons specifically stated at 545.51 and in all other cases where controversion occurs payment must be continued.

Sincerely,

William Burrus
Executive Vice President

WB:mc

NATIONAL EXECUTIVE BOARD • MOE BILLER, President
WILLIAM BURRUS, Executive Vice President
DOUGLAS HOUSEHOLDER, Secretary-Treasurer
JOHN A. MORGEN, Director, Clerk Division
RICHARD F. WEVODAU, Director, Maintenance Division
[illegible] HAWKINS, Director, MVS Division
MIKE GILDNER, Director, SOM Division
JOHN P. RICHARDS, Industrial Relations Director
KEN LEINER, Director, Mail Handler Division
REGIONAL COORDINATORS
RAYDELL R. MOORE, Western Region
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PHILIP C. FLEMMING, JR., Eastern Region
NEAL VACCARO, Northeastern Region
ARCHIE SALISBURY, Southern Region

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

February 8, 1996

FEB 1996

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

Dear Bill:

This is in reference to the verbal inquiry regarding the January 11 memo from Dr. Reid to Human Resources Managers and Medical Directors concerning the Inspection Service Random Drug Testing Program. The program, which was implemented on January 16, affects Postal Police and Inspection Service employees only.

I hope this satisfactorily addresses your concerns.

Sincerely,

Anthony J. Vegliante
Manager
Contract Administration APWU/NPMHU

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

105

SEE NO. 110

American Postal Workers Union, AFL-CIO

817 14th Street, N.W., Washington, D.C. 20005

William Burrus
Executive Vice President
(202) 842-4246

National Executive Board

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William Burrus
Executive Vice President

Douglas C. Hemmock
Secretary-Treasurer

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Director, Clerk Division

Richard J. Wevodau
Director, Maintenance Division

Donald A. Ross
Director, MVS Division

Samuel Anderson
Director, SDM Division

Ken Lerner
Director, Mailhandler Division

Regional Coordinators

Rachel R. Moore
Western Region

James P. Williams
Central Region

Philip C. Flemming, Jr.
Eastern Region

Neal Vaccaro
Northeastern Region

Archie Sanborn
Southern Region

February 24, 1986

Dear Mr. Fritsch:

At the January 1986 Safety and Health meeting an agenda item submitted by the unions "U.S. Postal Service Urinalysis Drug Testing Program" was discussed. It is my recollection of Dr. Herman's response for the Postal Service that urinalysis testing may be required by postal medical doctors when a fitness for duty examination indicates the need for further testing. He indicated that other managerial employees were not authorized to refer employees for urinalysis screening.

Please review postal policy in this regard and advise me.

Sincerely,

William Burrus

William Burrus,
Executive Vice President

Thomas Fritsch
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

WB:mc

tional Center Director, E&LR. This responsibility cannot be delegated.

.322 Premises. Generally, full-time and part-time medical officer's work must be performed on postal premises or under the direction of the Postal Service.

.323 Work Schedules. As specified in 661.42, ". . . An employee may not engage in outside employment or other activity, which will interfere with the duties and responsibilities of Postal Service employment. . . ." Consequently, work schedule requirements appear below.

a. Full-Time Medical Officer. A medical officer who is employed as a full-time physician is usually scheduled to work a minimum of 8 hours per day, 5 days per week.

b. Part-Time Medical Officer. A medical officer who is employed as a part-time physician is usually scheduled to work a minimum of 20 hours per week. Except for occasional changes in the workload, this minimum should be observed. Consideration should be given by local management to the use of contract physician services if their requirements are generally less than 20 hours per week. Management and the part-time medical officer will establish a mutually agreeable work schedule, normally 4 hours a day, 5 days a week.

.324 Duties. Medical officers perform the following duties:

a. Manage medical units.

b. Provide treatment of employees.

c. Conduct physical examinations and review examinations performed by other physicians outside the Postal Service.

d. Issue standing orders for all the nursing staff in their area of responsibility.

e. Visit all health units in their assigned area at least every 6 months.

f. Establish medical records.

g. Make rounds on the workroom floor at regular intervals; evaluate working conditions to identify and recommend solutions to potential health and safety problems.

h. Monitor the medical status of employees returned to duty through the rehabilitation program at intervals of 2–4 weeks as indicated.

i. Coordinate with PAR office relative to the diagnosis of alcoholism.

j. Maintain a list of approved Drug Rehabilitation Centers. Counsel and refer employees to drug treatment centers as indicated.

k. Review all serious job-related injuries and fatalities to help determine if a medical condition contributed to the injury or fatality. (See ELM 823.11 & 823.21.)

l. Work with the employee relations staff and coordinate medical activity with safety and injury compensation staffs.

m. Participate in management meetings, particularly those related to safety and health activities.

n. Serve as consultant/expert witness in administrative appeal proceedings, as required.

.33 Contract Physician. A currently licensed physician, under agreement with the USPS, designated to perform specified medical services on a fee basis in areas where there is no coverage by a postal medical officer. The responsibilities while in the performance of postal medical duties are the same as those of a postal medical officer.

.34 Nurses. Nurses are administratively responsible to the head nurse or medical officer in a medical unit. In a health unit, nurses are administratively responsible to the head nurse and Sectional Center Director, E&LR, or Director of Support in a BMC. Functional direction is provided by the area medical officer. The following duties are performed by nurses:

a. Provide professional nursing care to employees.

b. Administer medications at the direction of a physician.

c. Assist medical officer in conducting examinations.

d. Maintain medical records.

e. Counsel and refer employees to drug treatment center and other health-related programs. (See Handbook EL-806, *Health and Medical Service*, for additional functional responsibilities and duties.)

f. Additional duties for head nurse are stated in the job description for occupational health nurses.

864 Physical Examinations

864.1 Preemployment

.11 It is mandatory that all applicants for career, temporary, or casual employment have a medical examination before placement, and for conversion to positions with different physical requirements than their present positions. (See Handbook P-11, part 322, for exceptions and scheduling procedures.)

864.2 Examining Physicians

.21 USPS. Postal medical officers perform the examination at a USPS medical unit within reasonable commuting distance from the applicant's home or at the postal installation where employment is sought.

.22 Other. Use of a private physician by an applicant will be at no expense to USPS. All preemployment medical examinations performed by private physicians are reviewed by a conveniently located USPS medical officer or a contract physician. When neither are available, a USPS nurse may review the examination report for completeness.

.23 Determination of Suitability. See Handbook P–11, 324.

864.3 Fitness for Duty (See Handbook P–11, 343.)

.31 A fitness-for-duty examination is required in determining whether an employee is able to perform the duties of the position because of medical reasons, i.e., disability, occupational/non-occupational injury, or illness.

.32 Management can order fitness-for-duty examinations at any time and repeat, as necessary, to safeguard the employee or co-worker. Specific reasons for the fitness-for-duty should be stated by the referring official.

.33 A specific test or consultation may be required in the judgment of the examining medical officer. The indications will be documented as part of the report.

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

March 14, 1986

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 - 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in reference to your February 24 letter regarding the agenda item submitted by the unions at the January 1986 Safety and Health meeting, "U.S. Postal Service Urinalysis Drug Testing."

Dr. Hermann's position was in accordance with Postal Service policy, as outlined in Section 864 of the Employee and Labor Relations Manual.

For further information regarding the matter, please feel free to contact Harvey White of my staff at 268-3822.

Sincerely,

Thomas J. Fritsch
Assistant Postmaster General
Labor Relations Department

96

Burns - orig
Biller - copy

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

January 28, 1986

RECEIVED
JAN 30 1986
OFFICE OF
PRESIDENT

Mr. Moe Biller
President
American Postal Workers
Union, AFL-CIO
817 - 14th Street, N.W.
Washington, D.C. 20005-3399

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

Gentlemen:

Enclosed, for your information, is a copy of an upcoming Postal Bulletin article entitled "Dual Civil Service Retirement/Social Security Coverage for Former Employees Reemployed After Receiving OWCP Benefits." The notice is intended to clarify retirement coverage for former OWCP recipients reemployed to career positions, and supplements the coverage information previously contained in the 10-18-84 Postal Bulletin 21481.

Should you have any questions regarding this information, Andrea Wilson is available at 268-3842.

Sincerely,

Thomas J. Fritsch

Thomas J. Fritsch
Assistant Postmaster General
Labor Relations Department

Enclosure

Postal Bulletin Notice

Subject: Dual Civil Service Retirement/Social Security Coverage For Former Employees Reemployed After Receiving OWCP Benefits

This article supplements information contained in Postal Bulletin 21481 (10-18-84), page 3, Dual Civil Service Retirement/Social Security Coverage For New Employees. Information provided in this notice and in the above referenced 10-18-84 Postal Bulletin should be retained until further notice.

Paragraph 1B2C of the 10-18-84 Postal Bulletin Notice states that persons reemployed under the Rehabilitation Program who retain Civil Service Retirement (CSR) annuitant status are excluded from full Social Security coverage. The following revises this paragraph to read:

"c. Former employees receiving compensation from the Office of Workers' Compensation (OWCP) who are reemployed to career positions will be covered by the same retirement system they were under at time of transfer to OWCP rolls. In these situations, continuous receipt of compensation from OWCP is not considered a separation from postal employment, but rather a leave of absence.

-Employee Relations Department

96B

III. Verifying Coverage for New Employees

A. New Employee Verification List

1. Description and Use

The Headquarters E&LR Information Center (ELRIC) Branch has produced verification lists which identify all career employees hired from January 1, 1984, through August 31, 1984. (An exhibit of the Verification List appears on page 5 of this Bulletin.) The lists are to be used to verify or correct the RET/FICA code for all career accessions from January 1, 1984, through *August 31, 1984.* The RET/FICA code for accessions processed from September 1, 1984 (pay period 19) and later should be correct based on the guidance provided in TWX message No. 8072, transmitted 09-05-84.

The codes set forth in Part II used in conjunction with Chapter 6 of Handbook P-11 will assist in completing the verification lists.

2. Distribution

The Verification Lists are being transmitted to the Headquarters personnel division and to each regional compensation division for distribution to respective ASFs, MSCs, BMCs, Mailbag Depository and Repair Shops, Area Supply Centers, Mail Equipment Shops, Procurement and Supply offices, Regional Chief Postal Inspectors, as appropriate.

B. Verification Procedures

1. Employing Installation

a. Review

Each installation head, on a priority basis, must review the personnel records of each employee on the verification list and enter the correct RET/FICA code in the space provided. If career employees appointed after December 31, 1983, are on the rolls but their names are not on the list, write in their names, the other identifying information indicated on the list, and write in their correct RET/FICA code. If an employee's name appears on the list but the individual is no longer employed at the installation, write under the name the reason for separation and effective date, if available, for example, *Resigned 9-14-84;* if information is not available, write *separated—reason/date not available.*

b. Justification for RET/FICA Code 1 and 3

(1) When it is established that an employee's correct RET/FICA code is *1* or *3*, denoting CSR coverage only, enter the justification for this determination directly under the employee's name, along the lines of the following examples:

Employed under CSR from 09-18-82, to 10-28-83.

Transfer to USPS 01-21-84: Continuous CSR coverage from 06-27-81, without break-in-service.

No justification is required for RET/FICA code 5 or 6.

(2) As indicated, prior service under CSR or some other Federal civilian retirement system with a break-in-service of less than 366 consecutive days is a reason which justifies RET/FICA code 1 or 3. If official verification of prior service is not available (for example, official personnel folder (OPF) not yet received), ask employee for evidence of prior coverage under CSR (or other Federal retirement system) pending receipt of OPF. Acceptable evidence includes earnings statements, retirement records, Forms 50, official agency letters, etc. Place the employee in RET/FICA code 5 (or 6 as appropriate), pending receipt of official records if temporary evidence is not available to justify RET/FICA Code 1 (or 3).

c. Verification Deadline

In order for the Postal Data Centers to make the required payroll adjustments, issue correct Forms W-2, *Wage and Tax Statements,* for income tax purposes, and report FICA information, it is absolutely essential that all employing installations complete the verification lists and *send them directly to their regional ELRIC as soon as possible but not later than November 1, 1984.*

2. Regional ELRIC

When the verification lists are received, the Regional ELRICs will prepare corrected Forms 50, when necessary. The ELRIC will transmit the required corrections to the appropriate Postal Data Center for payroll purposes not later than November 21, 1984.

3. Postal Data Center

(a) When the corrected retirement/FICA codes are received, the PDCs will process the necessary payroll adjustments. In those instances where additional FICA (or retirement) must be withheld, adjustment will be made from subsequent pay or by direct billing to the employee, as appropriate. *No waivers of overpayment of pay are permitted under these procedures.*

(b) When the employee is due a credit because of improper withholdings, refund will be made in a subsequent pay period.

(c) It is anticipated that all adjustments will be made in one pay period except where accounts receivables (billings) are required. Payroll adjustments will be identified by a message on the employee's earnings statements.

C. Control Procedures (Future Accessions)

Installation heads are to establish controls to assure that the correct RET/FICA code appears in Element 13 of Form 50 in all future accessions. To assist in this effort, effective for all accessions processed in pay period 23 (beginning October 27) and later, justification for RET/FICA Code 1 and 3 must be stated in *Remarks* of Form 50 along the lines in the examples set forth in Part III.B.1.b. of these instructions.

DUAL CIVIL SERVICE RETIREMENT/SOCIAL SECURITY COVERAGE FOR NEW EMPLOYEES

The Deficit Reduction Act of 1984 (P.L. 98-369) enacted July 18, 1984, retroactively changed provisions of the Social Security Amendments of 1983 (P.L. 98-21) pertaining to dual Civil Service Retirement/Social Security (CSR/SS) coverage for certain career Postal/Federal employees hired after December 31, 1983. Therefore, these instructions supersede those in POSTAL BULLETIN 21438, (12-29-83), pages 3-4, and provide procedures for verifying and correcting, if necessary, the Retirement/Social Security (RET/FICA) status of **career employees hired after December 31, 1983.**

I. Mandatory Social Security (FICA) Coverage

A. Before Enactment of P.L. 98-369

The Social Security Amendments of 1983 provided that individuals appointed to postal career positions after December 31, 1983, would be mandatorily covered by the Social Security program, and also the Civil Service Retirement System. However, if they had been previously employed in the Federal Government (under either SS or CSR) within the last 365 days, the career appointment would confer coverage under the CSR program only. This resulted in persons whose only previous Federal (or Postal) employment was in the military service or who were in casual, temporary, substitute rural carrier or other employment not covered by CSR, being placed in CSR only, rather than dual CSR/SS coverage.

B. After Enactment of P.L. 98-369

1. Covered Employees

P.L. 98-369 retroactively amended the Social Security Act to provide that all persons who receive career appointments or who are converted to a career status after *December 31, 1983,* are mandatorily subject to Social Security (as well as the Civil Service Retirement System), except as provided for in Part I.B.2. below. The effect of the change made by P.L. 98-369 will be to preserve Social Security coverage for those individuals whose previous Federal employment was covered by Social Security (e.g., military, casual, temporary, or substitute rural carrier service) rather than CSR.

2. Excluded Employees

Except for reemployed annuitants, the following career employees appointed (or converted to career status) after December 31, 1983, are covered by CSR only and are not subject to dual CSR/SS coverage:

a. Former Postal/Federal employees with a break-in-service of less than 366 consecutive days *the previous employment was before January 1, 1984, and was covered by CSR or some other civilian Federal Retirement System.*

b. Reemployed annuitants. Reemployed annuitants are exempt from Social Security coverage. However, if an individual's Civil Service annuity *terminates* due to reemployment, the individual is not considered a reemployed annuitant. See ELM 323.33 *Reemployment of Retired Annuitants,* for guidance on this.

c. Persons reemployed under the Postal Service's Rehabilitation program who are considered reemployed annuitants. Postal Service policy encourages employees who incur job-related disabilities and who have at least 5 years' creditable civilian service to also apply for Civil Service disability retirement. Many employees in this category who were approved for CSR disability retirement retain annuitant status and in some cases may have their disability annuity reinstated.

d. Persons exercising restoration or reemployment rights to career positions under CSR after active military service (including the National Guard).

II. Retirement/FICA and Nature of Action Codes

A. RET/FICA Codes

The RET/FICA codes to be entered in Element 13 of Form 50, *Notification of Personnel Action,* are as follows:

Code	Coverage	Employee deductions (percent)
1	CSR	7 [1]
2	FICA	6.7 [2]
3*	CSR	7.5 [1]
4	Excluded	0
5	CSR/FICA (Dual)	1.3 + 6.7 [1 + 2]
6*	CSR/FICA (Dual)	1.3 + 6.7 [1 + 2]

* Postal Inspectors (Law Enforcement).
[1] Basic Pay (excluding COLA).
[2] Gross wages up to $37,800 in 1984.

The reverse side of the Employee Copy of Form 50 has been revised (February 1984 edition) to reflect these codes.

B. Nature of Action Codes

The following reflects NOAs and codes used in most accession actions. See Chapter 6 of Handbook, P-11, *Personnel Operations,* for complete list and explanations.

Nature of action (NOA)	NOA code
Career Appointment	100
Transfer Career [1]	130
Reinstatement Career [1]	140
Reemployment Military Service [1]	160
Reemployment EO or OPM Regulation [1]	161
Conversion to Career Appt. (from register)	500
Conversion to Regular Rural Carrier	580

[1] Denotes previous civilian employment.

IV. Employee Notification

Employing installations are responsible for advising those employees who have a change in their RET/FICA code and answering employees' questions. If the employing installation does not have the answers to an employee's questions, the installation should obtain the answers through the MSC if possible, if not the MSC should contact the regional compensation division. When an installation receives the answers, it should respond directly to the employee as soon as possible.

E&LR Information Center Branch I.R.I.S.
Verification of Social Security/Retirement Coverage for New Employees

Social Security No.	Last name		NOA	Effect date	Ret./ FICA code	Correct Ret/FICA code
100000001	AAAAA	M	160	840804	1	
200000002	BBBBB	CH	140	840804	5	
300000003	CCCCC	CM	130	840512	5	
300000004	CCCCC	JZ	100	840414	1	
300000005	DDDDDDDD	BE	100	840121	5	
400000006	GGGGGGGG	SC	501	840303	1	
400000007	HHHHHHH	AE	150	840707	5	
400000008	IIIII	D	130	840204	5	
500000009	KKKKKK	KR	580	840107	1	
500000010	LLL	DA	160	840107	1	

MSC: 210
BALTIMORE
FINNO: 230216
ANNAPOLIS MD 21401

—Employee Relations Dept., 10-18-84.

INTELPOST® SERVICE...
THE FASTEST MAIL ON EARTH.

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

Mr. Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Re: H7C-NA-C 50
H7C-NA-C 62
JBC
Washington, DC 20005

Gentlemen:

Recently, we met in prearbitration discussion of the above-captioned cases.

The issue in these grievances involves changes occurring in Issues 11 and 12 of the Employee & Labor Relations Manual (ELM).

After discussing this matter, we agreed to the following settlement of this dispute:

1. The parties will meet within 90 days to identify and discuss the changes between ELM Issues 10, 11, and 12.

2. Without prejudice to its ability to make future changes pursuant to Article 19, management shall adhere to the provisions of ELM Section 437 as they were published in Issue 10 of the ELM. Any timely grievance alleging a violation of ELM Section 437 shall be processed as if the provisions of ELM Issue 10 were in effect.

3. Article 19 time limits are not a bar to the Union initiating an appeal to arbitration at the national level protesting changes to the ELM, if it is determined that the Postal Service has not complied

with the notice provisions of Article 19. As a matter of clarification, this provision is also applicable to changes initially occurring in Issues 11 and 12 of the ELM.

4. The parties will meet within 14 days to discuss ELM Section 421.531 and ELM Section 568. In the event the parties are unable to resolve possible disputes on either Section, they will be referred to national level arbitration and scheduled on a priority basis.

5. Each Chapter of ELM Issue 13 will be provided to the Unions in advance of publication.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle case numbers H7C-NA-C 50 and H7C-NA-C 62 and remove them from the pending national arbitration listing.

Sincerely,

Stephen W. Furgeson
General Manager
Grievance and Arbitration
Division

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

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

Date 7/13/92

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

April 6, 1988

RECEIVED
APR 8 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 further response to my letter of March 24 regarding an Employee Assistance Program Coordinator testifying in an arbitration proceeding.

It is my understanding that local management investigated this matter extensively. As a result, EAP Coordinators will only testify in adversarial proceedings with regard to the program participant's attendance and progress. Furthermore, I have been assured that the Employee and Labor Relations Manual, Section 870, will be complied with.

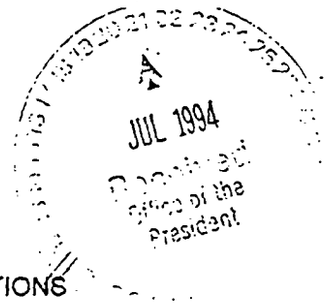
Should you have any further questions regarding this matter, please contact Harvey White at 268-3831.

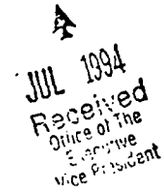
Sincerely,

Joseph J. Mahon, Jr.
Assistant Postmaster General

JOSEPH J. MAHON JR.
VICE PRESIDENT, LABOR RELATIONS

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





July 18, 1994

VICE PRESIDENTS, AREA OPERATIONS

SUBJECT: Employee Participation Committees

We continue to experience difficulties with issues related to the establishment of various types of employee participation committees. The following is offered as guidance in this area.

The National Labor Relations Board (NLRB) has issued two significant decisions concerning the legality under the National Labor Relations Act (NLRA) of employer-initiated employee participation committees.[1] Generally, the NLRB has concluded that such committees may constitute a "labor organization" under the Act and, thus, may "interfere" with the rights of the employees' union to serve as the employees' exclusive representative. The fact that the committees may not be "bargaining" with the employer in the traditional sense is not the test. If the committees are "dealing with" the employer over matters relating to wages, hours and other terms and conditions of employment, the Board will find the committees to be unlawful and order them to be disbanded.

The decisions by the NLRB have greatly narrowed the range of topics that employee participation committees can address under the NLRA. Any such committee established without union consent must avoid discussing wages, hours and other terms and conditions of employment. As a practical matter, it seems that it would be very difficult for such committees to avoid that broad range of issues. Indeed, the very foundation of employee participation programs centers about the notion that employees should be consulted because they have knowledge and experience concerning the work place. At some point, committees, which have been established to take advantage of that knowledge and experience, may have a natural tendency to consider and deal with matters encompassing the scope of wages, hours and other terms and conditions of employment.

While the NLRB decisions leave little room for employee participation committees, they do not rule out their legitimate existence entirely. There are other ways in which interaction can take place without running afoul of federal labor laws. Moe Biller, President, APWU has said that he and his representative are willing to work with the Postal Service on issues of concern to management and employees, such as, improving customer service, reducing postal costs and increasing revenue, provided that it's done jointly through labor-management committee meetings. Therefore, management should pursue these goals through joint labor management committees and not through management initiated committees.

[1] E. I. du Pont de Nemours & Company, 311 NLRB No. 88 (1993); Electromation, Inc., 309 NLRB No. 163 (1992).

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JOHN F. O'DONNELL
(1907-1993)

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New York, N.Y. 10165
(212) 370-5100

M E M O R A N D U M

TO: Malcolm T. Smith,
National Representative-At-Large,
Maintenance Division

FROM: Lee W. Jackson

DATE: July 15, 1994

RE: Legal Effect of Employee's Failure to Sign Hepatitis-B Waiver, Dallas, Texas

You asked me to determine whether or not a Postal Service employee at the Dallas Bulk Mail Center who both refuses to take the voluntary Hepatitis-B injections offered without cost by the Postal Service, and also refuses to sign the Postal Service's "Informed Consent and Declination Form - - Hepatitis-B Vaccination", compromises any rights they may have. Initially, it is my view that to the extent any rights are compromised, or even implicated, that happens because of the refusal to take the Hepatitis-B shots, and not because of the failure to sign the Postal Service's Declination Form.

Initially, I looked into whether or not any of the employees rights under FECA would be compromised by a failure to take the series of Hepatitis-B shots. My examination of the relevant statutes, convinces me that an employee does not compromise his or her FECA rights by refusing to take the Hepatitis-B inoculations.

First of all there seems to be a FECA policy which mitigates against the idea that an employee may waive his or her rights under FECA. For instance FECA regulations at 20 CFR §10.21 state that:

> "No official superior or other person is authorized to require an employee or other claimant to enter into any agreement, either before or after an injury or death, to waive his or her right to claim compensation under the Act. No waiver of compensation rights shall be valid." 20 CFR § 10.21

Additionally, there is no provision in the actual statute which states or implies that the employee who refuses to avail themselves of a voluntary preventative, such as inoculations, would

lose FECA coverage. There are however some specifically delineated conditions under which employees are not entitled to FECA benefits. Thus, Section 5 U.S.C. 8102 states that:

> "(a) The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of duty, unless the injury or death is - -
>
> (1) caused by willful misconduct of the employee;
> (2) caused by the employee's intention to bring about the injury or death of himself or of another;
> (3) proximately caused by the intoxication of the injured employee."

The Hepatitis-B shots are optional, not mandatory, and therefore a refusal to take them could not rationally be defined by the Postal Service as willful misconduct within the meaning of the aforementioned section. Additionally, unless an employee's infection is a result of the employee's intention to injure himself or another, or intoxication, the above sections do not apply.

Finally, an examination of the Federal Personnel Manual (FPM) and the Postal Service ELM convinces me that there is nothing therein which would cause a forfeiture of FECA rights to an employee who refused to take Hepatitis-B shots. In fact, the FPM reenforces my belief that an employee who refused to take the shots would not be deemed to be guilty of "willful misconduct" within the meaning of 5 U.S.C. 8102 (a)(1). Thus, the FPM, with regard to "willful misconduct" states that "simple negligent disregard of such (safety) rules is not sufficient to deprive an employee or beneficiary of entitlement to compensation. Disobedience of such orders may destroy the right to compensation only if the disobedience is deliberate and intentional as distinguished from careless and heedless." FPM chapter 810, Section 3-6. Thus the employee who refuses to take the Hepatitis-B shots would not be considered to be deliberately disobeying safety rules, since he is given the option of refusing to take the shots. The result might be different if the shots were required. In view of all of these factors, I do not believe that an employee who refuses to take the Hepatitis-B shots offered by the Postal Service would compromise his or her rights under FECA.

The next issue which occurred to me is that an employee who refuses to take the Hepatitis-B shots offered by the Postal Service might compromise a possible case under the Federal Torts Claim Act, or common-law tort. After an examination of this issue, it is my conclusion that an employee's ability to recover damages under the Federal Tort Claims Act (FTCA) would not necessarily be precluded, but that the amount of the employees recovery may be reduced.

The FTCA adopts relevant state tort law. Therefore to examine an employee's rights in Dallas we would have to look at the Texas

law of torts. It is my view that actions under the FTCA against the Postal Service would be preempted by Workers Compensation claims. A Postal worker might however be able to sue any private entity, such as a medical laboratory which shipped the blood, if they were infected with Hepatitis-B. In that circumstance Texas tort law will apply once all jurisdictional and venue requirements have been met.

Texas is a "comparative negligence" state. Duncan v. Cessna Aircraft Co., 665 S.W. 2d 414, 27 Tex. Sup. J. 213 (1984). Under the comparative negligence scheme a plaintiff may only collect damages for injuries of which he or she is not the proximate cause. If the employee fails to take shots to prevent Hepatitis-B, that employee would still have the right to pursue a claim, but in Texas the employee's failure to take that precaution may be factored into the comparative causation equation. In that circumstance, a plaintiff's recovery may be reduced by the fact that they affirmatively decided not to take free Hepatitis-B shots. This determination would have to be made on a state by state analysis, and the Texas example would not apply to each state.

I do not believe that an employee's decision not to sign a Postal Service Declination form would have an effect on the employee's right to recover under the FTCA. If an employee did sign the form, it could however prejudice their rights if they brought suit after having been injured. Thus, the Postal Service's form includes the following language:

> "I understand that due to my occupational exposure to blood or other potentially infectious materials I may be at risk of acquiring the Hepatitis-B virus (HBV) infection. ...I understand that by declining this vaccine I continue to be at risk of acquiring Hepatitis-B, a serious disease. ..."

Since a plaintiff's knowledge of danger would be considered by a jury in any personal injury action, the aforementioned language simply admits that the employee knew of the grave danger imposed by contracting Hepatitis-B and declined to take the shots anyway. A plaintiff's failure to sign a form would not however defeat the defendant's attempt to show that the plaintiff had knowledge of the danger, but the plaintiff's signature on the form as it is written today makes the issue of plaintiff's knowledge very much more certain.

In my point of view, Section B of the Postal Service's Declination form only needs to say the following:

> "I have been given the opportunity to be vaccinated with Hepatitis-B vaccine at no charge to myself. However, I decline Hepatitis-B vaccination at this time."

It might be worth the time and trouble to attempt to get the Postal Service to modify their Declination Form to read as suggested above.

I hope that this memo answers any and all questions you may have had with regard to this subject, but if not please do not hesitate to contact me.

LWJ:khl
cc: Moe Biller
Bill Burrus
Tom Neill
Jim Lingberg

Example: A, knowing that B has amassed a fortune through illegal gambling, defrauds B in a real estate deal. Does B's unlawful gambling activity provide A with a defense to fraud? No.

6. Entrapment

Entrapment occurs if the intent to commit the crime originated not with the defendant, but rather with the creative activities of law enforcement officers. If this is the case, it is presumed that the legislative intent was not to cover the conduct and so it is not criminal. The defense of entrapment requires proof by a preponderance of evidence of two elements:

(i) The ***criminal design*** must have ***originated with law enforcement*** officers; and

(ii) The defendant must ***not*** have been in any way ***predisposed*** to commit the crime.

a. Offering Opportunity to Commit Crime Distinguished

It is not entrapment if the police officer merely provides the opportunity for the commission of a crime by one otherwise ready and willing to commit it.

Example: A, an undercover police agent, poses as a narcotics addict in need of a fix. B sells narcotics to A. Does B have the defense of entrapment? No. By posing as an addict, A merely provided an opportunity for B to commit the criminal sale.

b. Inapplicable to Private Inducements

A person cannot be entrapped by a private citizen. Inducement constitutes entrapment only if performed by an officer of the government or one working for him or under his control or direction.

c. Availability If Offense Denied

If a defendant denies her participation in the offense, she has elected not to pursue entrapment and is not entitled to raise the issue, even if the facts would otherwise permit her to do so. Under the modern trend, however, a defendant may raise the defense of entrapment even while denying participation in the offense. The Supreme Court has adopted this rule for federal offenses. [Mathews v. United States (1988)]

d. Practical Difficulties of Entrapment

1) **Putting Predisposition in Issue**
In cases where there is extended inducement by the government, the issue becomes whether the defendant was predisposed to commit the offense or whether the intent to commit it was instilled by the officers. Predisposition must exist prior to the government's initial contact with the defendant. A mere "inclination" to engage in the illegal activity is not adequate proof of predisposition. [Jacobson v. United States (1992)] However, even if predisposition is not proved, the mere introduction by the prosecution of potentially damaging evidence on the issue of the defendant's predisposition may cause a jury to convict on the basis of the extensive evidence of the defendant's culpable state of mind.

2) **Jury Hostility**
Under the general approach, since entrapment is an issue of guilt, it is decided by the jury. Some fear that juries are hostile to the defense and do not adequately evaluate whether it has been established.

e. Minority Rule—Objective Test
The minority rule would replace the rule set out above with a test based entirely upon the nature of the police activity. Under this test, a defendant would be entitled to acquittal if the police activity was such as was reasonably likely to cause an innocent (*i.e.*, unpredisposed) person to commit the crime. The defendant's own innocence or predisposition is irrelevant. Under this approach, the issue is decided by the judge rather than the jury.

f. Provision of Material for Crime by Government Agent Not Entrapment
The Supreme Court has held that under federal law an entrapment defense cannot be based upon the fact that a government agent provided an ingredient for commission of the crime, even if the material provided was contraband. [United States v. Russell (1973); Hampton v. United States (1976)] A few states, however, make the provision of essential material—such as ingredients for drugs or the drugs themselves—entrapment.

Executive Order

Special Leaves of Absence to be Given Disabled Veterans in Need of Medical Treatment

With respect to medical treatment of disabled veterans who are employed in the executive civil service of the United States, it is hereby ordered that, upon the presentation of an official statement from duly constituted medical authority that medical treatment is required, such annual or sick leave as may be permitted by law and such leave without pay as may be necessary shall be granted by the proper supervisory officer to a disabled veteran in order that the veteran may receive such treatment, all without penalty in his efficiency rating.

The granting of such leave is contingent upon the veteran's giving prior notice of definite days and hours of absence required for medical treatment in order that arrangements may be made for carrying on the work during his absence.

HERBERT HOOVER

THE WHITE HOUSE,
July 17, 1930.

[No. 5396]

ELM 514.22

50 A

RECEIVED By
MEMPHIS FIELD OFFICE, USPS
JUN 21 1979

UNITED STATES POSTAL SERVICE
Washington, DC 20260

AREA: AG:mlg

DATE: FEB 2 1979

LABOR LAW DIVISION
LAW DEPT.

SUBJECT: Executive Order 5396

TO: Ed Morgan
Assistant Postmaster General
Government Relations

This responds to the November 17, 1978, request from your office that we determine the applicability to postal employees of Executive Order 5396, which provides that special leaves of absence shall be granted to disabled veterans in need of medical treatment.

Whether the Postal Service is legally bound by an executive order is largely a function of the authority under which the order is issued. In short, if an executive order is issued pursuant to a statute which is not applicable to the Postal Service, it appears that the order is also not applicable. In this regard, we note that although E.O. 5396 does not cite the authority under which it issued, it seems probable that the Order was issued pursuant to the general authority granted the President in personnel matters under title 5, United States Code. As the Postal Service is generally exempt from the provisions of title 5, pursuant to 39 U.S.C. §410(a), it appears, therefore, that E.O. 5396 is not applicable to the Postal Service.

However, determination of the application of E.O. 5396 also requires consideration of 39 C.F.R. §211.4(c), which provides in pertinent part:

> Except as they may be inconsistent with the provisions of the Postal Reorganization Act, with other regulations adopted by the Postal Service, or with a collective bargaining agreement under the Postal Reorganization Act, all regulations of Federal agencies other than the Postal Service or Post Office Department and all laws other than provisions of revised Title 39, United States Code, or provisions of other laws made applicable to the Postal Service by revised Title 39, United States Code, dealing with officers

,,

and employees applicable to postal officers and employees immediately prior to the commencement of operations of the Postal Service, continue in effect as regulations of the Postal Service. [Emphasis supplied.]1/

As subchapter 1-4 of Chapter 630 of the Federal Personnel Manual incorporates E.O. 5396, it could be argued that the Postal Service must comply with that order, as set forth in subchapter 1-4, by virtue of the carryover effect of 39 C.F.R. §211.4(c).

In our view, however, the regulations contained in subchapter 1-4 of Chapter 630 of the Federal Personnel Manual appear to be inconsistent with the leave regulations recently adopted by the Postal Service and incorporated in collective bargaining agreements and, therefore, are no longer applicable to postal employees. In this regard, it is our understanding that Chapter 510, Leave, of the Employee and Labor Relations Manual was intended to supersede all leave regulations formerly applicable to postal employees and, in essence, to "preempt the field" in the area of leave regulations. Accordingly, in our judgment, E.O. 5396 is no longer applicable to the Postal Service by virtue of 39 C.F.R. §211.4(c).

It should be noted, however, that the fact that E.O. 5396 is not applicable to the Postal Service is of little practical consequence. Section 513.32e. of the Postal Service's Employee & Labor Relations Manual provides that a disabled veteran is granted leave - sick leave, annual leave or, if necessary, leave without pay - for medical treatment if the employee submits a statement from medical authority that treatment is required and, when possible, gives prior notice of the definite number of days and hours of absence.

Sherry Cagnoli

Sherry Cagnoli
Supervisory Attorney
Office of Labor Law

1/ See also 39 U.S.C. §1005(f).

SENIOR ASSISTANT POSTMASTER GENERAL
EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

December 6, 1977

Mr. Rickie L. Garmon
Administrative Assistant
Disabled American Veterans
807 Maine Avenue, SW
Washington, DC 20024

Dear Mr. Garmon:

This is in response to your letter of October 18th; we regret the delay, which was unavoidable.

The Postal Service firmly supports Executive Order 5396, and we will carefully investigate and rectify any failure of Postal management to adhere to the Executive Order.

We have investigated the complaint submitted by Mr. Longstreeth, President of the American Postal Workers Union in Pittsfield, MA.

As you know, Section 721.431(d) of the Postal Manual states that leave "...shall be granted to disabled veteran employees so that they may receive treatment." The employee's obligation is to give "...prior notice of definite days and hours of absence required so that arrangements may be made for carrying on the work during his absence." The employee must also present "...an official statement from duly constituted medical authority that medical treatment is required...."

The key issue in this case, as we see it, is that leave is to be granted so as to permit the disabled veteran employee to receive treatment. In the case at hand, the employee wanted sick leave so that he could go home and get some rest prior to his scheduled medical treatment. The Sectional Center Manager/Postmaster of Pittsfield has assured me that if the employee's V.A. appointment had been scheduled during his work tour, then sick leave would have been granted, as is the case with other disabled veterans. Also, if annual leave or leave without pay

had been requested for the rest period, every effort would have been made to comply.

We regret that a more favorable decision cannot be rendered in this case, but the Postal Service has an obligation to deliver the mail with dispatch and at the lowest possible cost to the American public. Many of the employees granted sick leave must be replaced by employees working overtime and by Flexible Schedule employees called in to cover absences. Thus, sick leave cannot be granted lightly and without full justification.

To reiterate, the employee's request for sick leave would have been approved had his V.A. appointment fallen within his scheduled work tour.

Thank you for bringing this complaint to my attention.

Sincerely,

James V. P. Conway

bcc: Mr. Masters
Mr. C. Scialla, Northeast Region
J. C. Gildea, Labor Relations
Regional Directors, E&LR, All Regions

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

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

Re: H7C-NA-C 19033
W. Burrus
Washington, DC 20005

Dear Mr. Burrus:

Recently, you met with Thomas J. Valenti, Labor Relations Specialist, Contract Administration APWU/NPMHU, in a discussion of the above referenced case.

The issue in this grievance concerns the deletion of the statement [For Preemployment Exam Only. Do not Complete for Fitness-For Duty Exam] from Part C of PS Form 2485.

In full and complete settlement of this grievance, the parties agree:

> That during a fitness-for-duty examination, the numeric sections of Part C may be required to be completed based on the judgment of the examining physician, in accordance with the Employee and Labor Relations Manual, Section 864.3.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand case number H7C-NA-C 19033 and remove it from the pending national arbitration listing.

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

Dated: 12-14-93

Anthony J. Negliante
Manager
Grievance and Arbitration
Labor Relations

Dated: 12-14-93

Medical Examination & Assessment

Privacy Act Statement

The collection of this information is authorized by 39 USC 401 and 1001. This information will be used to provide employees with necessary health care and to determine fitness-for-duty. As a routine use, the information may be disclosed to an appropriate government agency, domestic or foreign, for law enforcement purposes, where pertinent, in a legal proceeding to which the USPS is a party or has an interest; to a government agency in order to obtain information relevant to a USPS decision concerning employment, security clearances, contracts, licenses, grants, permits or other benefits; to a government agency upon its request when relevant to its decision concerning employment, security clearances, security or suitability investigations, contracts, licenses, grants or other benefits; to a congressional office at your request; to an expert consultant, or other person under contract with the USPS to fulfill an agency function; to the Federal Records Center for storage; to the Office of Management and Budget for review of private relief legislation; to an independent certified public accountant during an official audit of USPS finances; to an investigator, administrative judge or complaints examiner appointed by the Equal Employment Opportunity Commission for investigation of a formal EEO complaint under 29 CFR 1613; to the Merit Systems Protection Board or Office of Special Counsel for proceedings or investigations involving personnel practices and other matters within their jurisdiction; to a labor organization as required by the National Labor Relations Act; to the Office of Personnel Management in making determinations related to veterans preference, disability retirement and benefit entitlement; to officials of the Office of Workers' Compensation Programs, Retired Military Pay Centers, Veterans Administration, and Social Security Administration in the administration of benefit programs; to an employee's private treating physician and to medical personnel retained by the USPS to provide medical services in connection with an employee's health or physical condition related to employment; and to the Occupational Safety and Health Administration and the National Institute of Occupational Safety and Health when needed by that organization to perform its duties under 29 CFR Part 19. Completion of this form is voluntary. If this information is not provided, the examination may be considered incomplete.

A: Completed by Examinee (Type or Print in Ink)

1. Name (Last, First, Middle)	2. Social Security Number	3. Sex	4. Date of Birth

5. Do you have any medical disorder or physical impairment which could interfere in any way with the full performance of duties of the position for which you are applying? (If your answer is "Yes", explain fully to the physician performing the examination).

☐ Yes ☐ No

I certify that all the information to be given by me in connection with this examination will be correct to the best of my knowledge and belief.

6. Signature	7. Date

B: Completed by Appointing/Referring Official Before Examination

1. Exam Type
   a. ☐ Preemployment b. ☐ Fitness-for-Duty
   c. Reason for Request (complete only if you checked "Fitness-for-Duty")
   - ☐ Inadequate Medical Information
   - ☐ Excessive Absenteeism for Medically Documented Conditions
   - ☐ Behavioral Problem (Performance, Attitude)
   - ☐ Other (Specify):

2. Exam Appointment — Date | Time | Location

3. Position Applied for or Now Holds — a. Title | b. Installation

4. Circle the number preceding each functional requirement and each environment factor essential to the duties of this position. List any additional essential factors in the blank spaces. Also, if the position involves law enforcement, attach the specific medical standards for the information of the examining physician.

Functional Requirements

1. Heavy lifting, up to 70 pounds
2. Moderate lifting, 15-44 pounds
3. Light lifting, under 15 pounds
4. Heavy carrying, 45 pounds and over
5. Moderate carrying, 15-44 pounds
6. Light carrying, under 15 pounds
7. Straight pulling (*hours)*
8. Pulling hand over hand (*hours)*
9. Pushing (*hours)*
10. Reaching above shoulder
11. Use of fingers
12. Both hands required or compensated by the use of acceptable prostheses
13. Walking (*hours)*
14. Standing (*hours)*
15. Crawling (*hours)*
16. Kneeling (*hours)*
17. Repeated bending (*hours)*
18. Climbing, legs only (*hours)*
19. Climbing, use of legs and arms
20. Both legs required
21. Operation of crane, truck, tractor, or motor vehicle
22. Ability for rapid mental and muscular coordination simultaneously
23. Ability to use firearms
24. Near vision correctable at 13" to 16" to Jaeger 1 to 4
25. Far vision correctable in one eye to 20/20 and to 20/40 in the other
26. Far vision correctable in one eye to 20/40 and to 20/100 in the other
27. Specific visual requirement *(specify)*
28. Both eyes required
29. Depth perception
30. Ability to distinguish basic colors
31. Ability to distinguish shades of colors
32. Hearing *(aid permitted) (hear conversational voice 15 feet — one ear)*
33. Hearing without aid
34. Specific hearing requirements *(specify)*
35. Other *(specify)*

Environmental Factors

1. Outside
2. Outside and inside
3. Excessive heat
4. Excessive cold
5. Excessive humidity
6. Excessive dampness or chilling
7. Dry atmospheric conditions
8. Excessive noise, intermittent
9. Constant noise
10. Dust
11. Fumes, smoke, or gases
12. Solvents *(degreasing agents)*
13. Grease and oils
14. Radiant energy
15. Electrical energy
16. Slippery or uneven walking surfaces
17. Working around machinery with moving parts
18. Working around moving objects or vehicles
19. Working on ladders or scaffolding
20. Working below ground
21. Unusual fatigue factors *(specify)*
22. Working with hands in water
23. Explosives
24. Vibration
25. Working closely with others
26. Working alone
27. Protracted or irregular hours of work
28. Other *(specify)*

Medical Examination & Assessment

Privacy Act Statement

The collection of this information is authorized by 39 USC 401 and 1001. This information will be used to provide employees with necessary health care and to determine fitness-for-duty. As a routine use, the information may be disclosed to an appropriate government agency, domestic or foreign, for law enforcement purposes, where pertinent, in a legal proceeding to which the USPS is a party or has an interest; to a government agency in order to obtain information relevant to a USPS decision concerning employment, security clearances, contracts, licenses, grants, permits or other benefits; to a government agency upon its request when relevant to its decision concerning employment, security clearances, security or suitability investigations, contracts, licenses, grants or other benefits; to a congressional office at your request; to an expert consultant, or other person under contract with the USPS to fulfill an agency function; to the Federal Records Center for storage; to the Office of Management and Budget for review of private relief legislation; to an independent certified public accountant during an official audit of USPS finances; to an investigator, administrative judge or complaints examiner appointed by the Equal Employment Opportunity Commission for investigation of a formal EEO complaint under 29 CFR 1613; to the Merit Systems Protection Board or Office of Special Counsel for proceedings or investigations involving personnel practices and other matters within their jurisdiction; to a labor organization as required by the National Labor Relations Act; to the Office of Personnel Management in making determinations related to veterans preference, disability retirement and benefit entitlement; to officials of the Office of Workers' Compensation Programs, Retired Military Pay Centers, Veterans Administration, and Social Security Administration in the administration of benefit programs; to an employee's private treating physician and to medical personnel retained by the USPS to provide medical services in connection with an employee's health or physical condition related to employment; and to the Occupational Safety and Health Administration and the National Institute of Occupational Safety and Health when needed by that organization to perform its duties under 29 CFR Part 19. Completion of this form is voluntary. If this information is not provided, the examination may be considered incomplete.

A: Completed by Examinee (Type or Print in Ink)

1. Name (Last, First, Middle)	2. Social Security Number	3. Sex	4. Date of Birth

5. Do you have any medical disorder or physical impairment which could interfere in any way with the full performance of duties of the position for which you are applying? (If your answer is "Yes", explain fully to the physician performing the examination).

☐ Yes ☐ No

I certify that all the information to be given by me in connection with this examination will be correct to the best of my knowledge and belief.

6. Signature	7. Date

B: Completed by Appointing/Referring Official Before Examination

1. Exam Type
   a. ☐ Preemployment b. ☐ Fitness-for-Duty
   c. Reason for Request (complete only if you checked "Fitness-for-Duty")
   - ☐ Inadequate Medical Information
   - ☐ Excessive Absenteeism for Medically Documented Conditions
   - ☐ Behavioral Problem (Performance, Attitude)
   - ☐ Other (Specify):

2. Exam Appointment — Date | Time; Location

3. Position Applied for or Now Holds — a. Title; b. Installation

4. Circle the number preceding each functional requirement and each environment factor essential to the duties of this position. List any additional essential factors in the blank spaces. Also, if the position involves law enforcement, attach the specific medical standards for the information of the examining physician.

Functional Requirements

1. Heavy lifting, up to 70 pounds
2. Moderate lifting, 15-44 pounds
3. Light lifting, under 15 pounds
4. Heavy carrying, 45 pounds and over
5. Moderate carrying, 15-44 pounds
6. Light carrying, under 15 pounds
7. Straight pulling (*hours)*
8. Pulling hand over hand (*hours)*
9. Pushing (*hours)*
10. Reaching above shoulder
11. Use of fingers
12. Both hands required or compensated by the use of acceptable prostheses
13. Walking (*hours)*
14. Standing (*hours)*
15. Crawling (*hours)*
16. Kneeling (*hours)*
17. Repeated bending (*hours)*
18. Climbing, legs only (*hours)*
19. Climbing, use of legs and arms
20. Both legs required
21. Operation of crane, truck, tractor, or motor vehicle
22. Ability for rapid mental and muscular coordination simultaneously
23. Ability to use firearms
24. Near vision correctable at 13" to 18" to Jaeger 1 to 4
25. Far vision correctable in one eye to 20/20 and to 20/40 in the other
26. Far vision correctable in one eye to 20/40 and to 20/100 in the other
27. Specific visual requirement *(specify)*
28. Both eyes required
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33. Hearing without aid
34. Specific hearing requirements *(specify)*
35. Other *(specify)*

Environmental Factors

1. Outside
2. Outside and inside
3. Excessive heat
4. Excessive cold
5. Excessive humidity
6. Excessive dampness or chilling
7. Dry atmospheric conditions
8. Excessive noise, intermittent
9. Constant noise
10. Dust
11. Fumes, smoke, or gases
12. Solvents *(degreasing agents)*
13. Grease and oils
14. Radiant energy
15. Electrical energy
16. Slippery or uneven walking surfaces
17. Working around machinery with moving parts
18. Working around moving objects or vehicles
19. Working on ladders or scaffolding
20. Working below ground
21. Unusual fatigue factors *(specify)*
22. Working with hands in water
23. Explosives
24. Vibration
25. Working closely with others
26. Working alone
27. Protracted or irregular hours of work
28. Other *(specify)*

Examinee's Name | SSN

C: Medical History

(Completed by Examinee Before Examination)

This section contains questions regarding your medical history and health habits. This information will be used to make a medical assessment of whether you can safely and efficiently perform the duties of the position that you now hold or for which you have applied. Detailed medical information will be handled in a confidential manner. Only information that is directly relevant to determining your ability to function effectively in your work with the Postal Service will be released to the hiring official. It is essential that you answer all questions truthfully and completely. A history of any health problem will not necessarily disqualify you from employment. False or incomplete responses could result in an incomplete examination, or termination if hired.

	Yes	No
1. Have you ever been refused employment or been unable to hold a job because of:		
a. Sensitivity to chemicals, dust, pollen, sunlight, etc.		
b. Inability to perform certain motions		
c. Inability to assume certain positions		
d. Other Medical Reasons		
2. Have you ever required special or restricted job assignment due to illness, injury, or physical impairments? (If "Yes", list accommodations provided).		
3. Have you ever had or have you, at any time, been treated for a psychiatric disorder? (If "Yes", specify date and give details).		
4. Have you ever been treated for any medical condition other than minor illness, or had any operations?		
5. Have you worked for any length of time involving the handling of chemical, toxic, or dangerous materials?		
6. Have you had any known exposure to asbestos or asbestos-related products? (If "Yes" state where and when).		
7. Have you ever worked in a noisy environment? (If "Yes" state where and when).		

	Yes	No
8. Have you ever received compensation or a cash settlement from an employer, insurance company, government or other organization for injury or disease? (If "Yes" explain)		
9. Is there a case pending?		
10. Have you ever had an X-ray or other special examination (e.g., electrocardiogram, CAT scan)? (If "Yes" give date and explain).		
11. Have you served in the military?		
12. Have you ever been rejected for, or discharged from military service because of any physical or mental reasons? (If "Yes" give date and reasons).		
13. Have you ever lived or been employed overseas? (If "Yes" state when and number of months. Include military service.)		
14. Have you ever filed a disability claim or received payment or compensation from the US government? (If "Yes", complete a, b, & c below).		
14a. Your Claim Number		
14b. Percent Rating		
14c. Cause		

Examinee's Name	SSN

C: Medical History (Continued)

(Completed by Examinee Before Examination)

	Yes	No
15. Do you exercise regularly? (If "Yes" describe type, amount, and frequency).		
16. Have you ever used tobacco? (If "Yes" describe type, amount, age started and age stopped if discontinued).		
17. Have you ever used alcoholic beverages? (If "Yes" answer the following questions).		
a. Have you ever been dependent upon, or habitually used, alcoholic beverages?		
b. Have you ever received treatment for, or participated in any program for alcoholism or drinking problems?		
c. Has your use of alcoholic beverages ever affected your work performance, ability to obtain or hold a job or driving privileges, or resulted in arrests or court actions?		

	Yes	No
18. Have you ever used any of the following drugs or controlled substances?		
a. Morphine, Heroin, Methadone, Codeine, Percodan, Percodan, or other narcotic drugs?		
b. Amphetamines, Methamphetamine, Diet Pills, Cocaine, or other stimulant drugs?		
c. Barbiturates, Qualaudes, Doriden, Seconal, or other sedative or hypnotic drugs?		
d. Marijuana, Hashish, Mescaline, LSD, PCP *(angel dust)*, or other hallucinogenic drugs?		
e. Librium, Valium, Elavil, or other tranquilizers or [illegible]		
f. Are you taking any other prescribed medicines? (If "Yes" give dates and explain.)		
19. If you answered "Yes" to any question in Item 18, answer the following questions:		
a. Have you ever been dependent upon, or habitually used, any of the drugs or categories of controlled substances listed in Item 18?		
b. Have you ever been hospitalized or received treatment for use of drugs or other controlled substances?		
c. Have you ever received treatment for any physical or emotional condition caused by, or related to, your use of drugs or other controlled substances?		
d. Has your use of drugs or other controlled substances ever affected your work performance, ability to obtain or hold a job or driving privileges, or resulted in arrests or court actions?		
20. Have you ever failed a "Drug Screen" for any reason? (If "Yes" give date and explain.)		

21. Do You Now or Have You Ever Had Any of the Following Conditions? (Give Dates)

	Yes	No		Yes	No
1. Frequent or Severe Headaches			33. Venereal Disease *(Syphilis or Gonorrhea)*		
2. Disturbance of Vision			34. Hemorrhoids or Rectal Disease		
3. Wear Glasses or Contact Lenses			35. Arthritis *(Rheumatism or Bursitis)*		
4. Eye Injuries or Abnormalities			36. Leg Cramps		
5. Loss of Hearing			37. Painful or Swollen Joint		
6. Ear Abnormalities			38. Foot Trouble — Flat Feet		
7. Chronic Sinus Trouble			39. Bone Fracture		
8. [illegible]			40. [illegible]		
9. [illegible]			41. [illegible]		
10. Enlarged Glands in Neck or Other Area			42. Back Surgery		
11. Stiffness of Neck			43. Back Injury or Abnormality		
12. Chronic Cough *(Check if Blood is Present ☐)*			44. Paralysis		
13. Frequent Colds			45. Cancerous Tumor or Cyst		
14. Wheezing or Asthma			46. Numbness, Weakness, Tremors, or Dizziness		
15. Lung Disease			47. Skin Condition *(e.g., Eczema, Hives, Fungus, or Rash)*		
16. Pain or Pressure in Chest			48. Allergies		
17. Shortness of Breath			49. Pilonidal or Other Cysts		
18. Heart Attack (Where?)			50. Diabetes		
19. [illegible]			51. [illegible]		
20. High Blood Pressure			52. [illegible]		
21. Unexplained Weight Change			54. Epilepsy, Seizures, or Blackouts		
22. Digestive Abnormality			55. Rheumatic Fever		
23. [illegible]			56. [illegible]		
24. [illegible] ☐			57. [illegible]		
25. [illegible]			58. [illegible]		
26. [illegible]			59. [illegible]		
27. [illegible]			60. [illegible]		
28. [illegible]			61. [illegible]		
29. Bloody Urine					
30. Trouble Passing Urine (Pain or Frequency)					
31. Hernia					

D: Medical Findings (For Preemployment and Fitness-for-Duty Exams)

(Completed by Examining Physician)

NOTE TO EXAMINING PHYSICIAN: The person you are about to examine is being considered for a position (or, if a Fitness-for-Duty exam, has a position) which will include the functional requirements and environmental factors circled in Section B., Item 4. In conducting your examination and reporting your findings and conclusions, take these factors into consideration.

1. Examinee's Name	2. SSN	3. Height (Feet, Inches)	4. Weight (Pounds)

5. Eyes

	Snellen (Distant Vision)	Jaeger (Near Vision)
Without Glasses ▶	a. Right 20 _____ Left 20 _____	b. Right _____ in. to _____ in., Left _____ in to _____ in.
With Glasses ▶	c. Right 20 _____ Left 20 _____	d. Right _____ in. to _____ in., Left _____ in to _____ in.

e. Is color vision normal when Ishihara or other color plate test is used? ☐ Yes ☐ No

f. If the answer is "No", can applicant pass lantern or other compatible ☐ Yes ☐ No

6. Ears

a. Ordinary Conversation	b. Audiometer
Right ear @ 15 ft. _____ Left ear @ 15 ft. _____	(Attach Audiogram if indicated)

7. Blood Pressure/Pulse

a. Systolic/Diastolic	b. Two Additional Readings if Elevated	c. Pulse

8. Urinalysis

a. Albumen (Multi-Test Stick)	b. Sugar (Multi-Test Stick)	c. Blood (Multi-Test Stick)	d. Drugs Identified if Test Indicated

9. Physical Examination

NOTE: Routine pelvic examinations are not done by postal medical officers or contract physicians

Clinical Evaluation	Normal	Abnormal	Clinical Evaluation	Normal	Abnormal
a. Head, face, neck, and scalp			l. Anus and rectum (If indicated)		
b. Nose			m. Endocrine system		
c. Mouth and throat			n. Hernia (Any type)		
d. Ears			o. Upper extremities		
e. Eyes			p. Feet		
f. Ophthalmoscopic			q. Lower extremities		
g. Ocular motility			r. Spine		
h. Lungs and Chest (Breasts, if indicated)			s. Identifying body marks, scars		
i. Heart			t. Skin, lymphatics		
j. Vascular system (Varicosities, etc.)			u. Neurologic		
k. Abdomen			v. Mental status		

Examinee's Name	SSN

10: Summary of Medical Findings

(Explain in detail any abnormality noted in history or physical examination)

9a. Physician's Name (Type or Print) ☐ Medical Officer ☐ Contract Physician ☐ Private Physician	b. Address (Include ZIP+4)	
▶ IMPORTANT - Examining Physician: If you are not a Postal Medical Officer, sign and return the entire form, intact, in the preaddressed Restricted/Medical envelope within 5 days of the examination	c. Signature	d. Date

NOTE: Insert carbon from page 1 between parts 1 & 2 of this page before completing.

E. Medical Assessment by Postal Medical Officer/Contract Physician

Examinee's Name (Last, First, MI)	SSN

Complete All Items Below in Lay Terms to Observe Privacy Considerations

1. Medical History:

Based upon review of Section C of this form, Examinee's Medical History, VA records (if applicable), outside medical records, etc., check appropriate box below. Note any significant past medical data that is pertinent to the physical, and medical data that is pertinent to the physical and mental requirements of the essential functions of the position applied.for.

☐ No Significant Finding

☐ Significant Findings as Noted: (Observe privacy considerations)

2. Physical Findings:

Based upon a complete physical examination and mental status examination (if indicated), check appropriate box below.

☐ No Limitations/Restrictions

☐ Limitations/Restrictions as Noted:

☐ Specialist Exam Required with Narrative Report
Note any restrictions (inabilities) and/or limitations (partial inabilities) identified.

Do not complete item 4. below, until specialist's report is reviewed.)

3. Employment History:

Based upon review of examinee's PS Form 2591, Application for Employment (if applicable). Supervisor's Evaluations, prior job descriptions, etc., check appropriate box below. Note any employment data that is pertinent to past or current medical conditions. Note only that employment data which supports the examinee's ability to perform the essential functions of the position for which the examinee has applied.

☐ No Significant Findings

☐ Significant Findings as Noted:

4. Risk Assessment:

NOTE: Do not complete this section until specialist's report (if required) has been reviewed.

Based upon a review of findings as noted in nos. 1-3, above, indicate assessment of applicant's risk of incurring job-related injury or illness, within the next six months, due to existing or past medical conditions.

☐ No Medical Risk/Restriction: Examinee is medically qualified to perform essential functions of the position without accommodation.

☐ Low Risk/Restriction: Examinee is medically qualified to perform essential functions of the position at the time of examination, but periodic medical follow-up is recommended. (See No. 5, below.)

☐ Moderate Risk/Restriction: Examinee would be medically qualified to perform essential function of the position only if below noted limitations/restrictions can be accommodated. (See No. 5 below.)

☐ High Risk/Restriction: Examinee is not medically qualified to perform essential functions of the position. Accommodations will not reduce medical risk or restriction.

5. Suggested Accommodations:

(Job modifications which would allow examinee to perform essential functions of the position effectively and safely)

Signature of Medical Authority	Date	Name and Location (Type or Print)

F. Completed by Appointing/Referring Official (HBK-EL 311,343.5)

Enter Action Taken		Name & Location (Type or Print)	
☐ Selected for Appointment	☐ Fit for Duty		
☐ Not Selected for Appointment	☐ Not Fit for Duty	Signature	Date

Part 1 - Retained by Postal Medical Officer/Contract Physician

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

OCT 17 1988

RE: W. Burrus
Washington, D.C. 20005
H4C-NA-C 79

Dear Mr. Burrus:

On March 17, 1988 we met to discuss the above captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether a postal official other than the installation head may sign Form 2485 ordering an employee to a Fitness for Duty Examination. It is the Union's position that P-11 Handbook, Section 343.3 limits the signature to the installation head only.

During our discussion we mutually agreed to settle this case based on the following understanding:

> Part 343.31 of the P-11 Handbook states, "The appointing officer completes Form 2485, Certificate of Medical Examination, Section B only and the installation head signs it." We agree that the intent of this language is that the installation head will be the postal official authorizing the Fitness for Duty Examination.

This agreement does not preclude management in the future from instituting Article 19 changes, if necessary, to the P-11 Handbook.

Please sign and return a copy of this decision as acknowledgment of your agreement to settle this case.

Sincerely,

Daniel A. Kahn
Grievance and Arbitration
Division

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

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

April 7, 1987

RECEIVED
APR 9 1987
OFFICE OF
EXECUTIVE VICE PRESIDENT

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

Dear Mr. Burrus:

This is in response to your letter of March 24 requesting clarification as to who is responsible for completing Section C of PS Form 2485, Medical Examination and Assessment.

Completion of PS Form 2485 is voluntary as stipulated in the Privacy Act Statement of the form. Part C, Medical History of PS Form 2485 is to be completed by the examinee (employee) before the examination. The information supplied by the employee is used to help make a medical assessment of whether the employee could safely and efficiently perform the duties of his/her position.

As previously stated, the completion of PS Form 2485, as it relates to fitness-for-duty examinations, is voluntary; however, this does not preclude the examining physician from asking those same questions, should it be necessary and relevant for making an appropriate medical finding. Refusal to answer pertinent questions regarding medical history may affect the outcome of the examination under Part E, Medical Assessment by Postal Medical Officer/Contract Physician of PS Form 2485.

As a reminder, PS Form 2485, Parts C and D are considered restricted medical information and limited as per Handbook, EL-806, Health and Medical Service, Section 214.3, Restricted Medical Records.

Should there be any further questions regarding the foregoing, you may contact Harvey White at 268-3831.

Sincerely,

Thomas J. Fritsch
Assistant Postmaster General

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

William Burrus
Executive Vice President
(202) 842-4246

March 24, 1987

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
Director, Clerk Division
I. Wevodau
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. Fritsch:

In an effort to clarify the rights of the parties I have had a number of discussions and exchanges of written positions with Harvey White of your staff on the subject of referrals for Fitness-For-Duty Examinations. The most recent issue of concern is the requirement to complete Form 2485 and responsibilities of the employee. In that the Form (2485) is used for both pre-employment examinations as well as Fitness For Duty Exams local offices are applying varying interpretations to the governing P 11 language.

The specific area of concern is whether or not Section 343 of the P 11 Handbook requires that the employee complete Section C when referred for Fitness-For-Duty Examinations.

The union interprets Section 343.4 of the P 11 Handbook as placing the responsibility of competing Section C on the medical officer.

Please resond as to the Employer's position on this issue.

William Burrus
Executive Vice President

Thomas J. Fritsch
Assistant Postmaster General
Labor Relations Department
U.S. Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

WB:mc
USPS CAN 17

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

December 4, 1986

RECEIVED
DEC 05 1986
OFFICE OF
EXECUTIVE VICE PRESIDENT

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 - 14th Street, N.W.
Washington, DC 20005-3399

Dear Mr. Burrus:

This is a follow-up to my interim response regarding your letter of September 15 concerning the use of PS Form 2485, Medical Examination and Assessment, as it relates to fitness-for-duty examinations and drug testing.

As a matter of uniformity, I will repeat your specific questions and interpretations and then provide you with the Postal Service's position.

1. Is the completion of Form 2485 required in the referral of employees for fitness-for-duty examinations?

   The union interprets Section 343.3 of the P-11 as requiring the completion of Form 2485.

   USPS Position

   Management can order fitness-for-duty examinations at any time (864.32 ELM). The request is made through the appropriate Human Resource function, and that function is then required to complete Section B of the Form 2485.

2. What postal official is authorized to sign Form 2485 requesting an examination by the medical officer?

   The union interprets Section 343.3 of the Personnel Operations Handbook (P-11) as limiting such signature to that of the installation head.

USPS Position

The new Form 2485 dated February 1986 does not have a signature block (P-11, Section 343.3 requires a revision). As previously noted, the specific request for the fitness-for-duty is made by management and the Form 2485 is completed by the appropriate Human Resource function and forwarded to the medical unit along with other relevant information. After the examination, pages 1 and 6 of the Form are returned to the Human Resource function. Detailed medical information is kept in the medical unit. The Human Resource function will notify the appropriate management official who ordered the fitness-for-duty as to the results of the fitness-for-duty and employee limitations.

3. Is the employee who is referred for a fitness-for-duty examination entitled to be advised of the reasons for the examination?

The union interprets the provisions of Form 2485 as requiring the completion of Section B and, upon request, the employee is entitled to a copy of the Form indicating the reason for referral.

USPS Position

The employee is entitled to know the reason(s) for the fitness-for-duty examination.

4. Is the examining medical officer required to indicate in the report reasons why a specific test is required, and if so, is the employee entitled to a copy of the report?

The union believes that the employee is entitled to be advised why a specific test is performed during a fitness-for-duty examination.

USPS Position

The decision to require a specific test is a medical judgment, and therefore prudence on the part of the medical officer will dictate whether the employee/patient should be advised as to the purpose of the test.

5. Is the employee entitled to a copy of any note or memorandum provided the installation head regarding the fitness-for-duty examination?

   The union believes that the employee is entitled to a copy of any memorandum provided the installation head regarding the fitness-for-duty examination.

   USPS Position

   The employee is not entitled to any specific note or memorandum that is provided to management from the examining physician.

On November 13, you supplemented the original list with these additional inquiries.

6. Can an employee refuse examination by the USPS designated physician under circumstances where the employee is willing to furnish the medical officer with the names and addresses of three to five board certified physicians who are willing to perform the examination?

   The union interprets Section 568.31 and .323 of the ELM Handbook as providing employees with the above options.

   USPS Position

   The employee does not have the above option. Failure to report for a fitness-for-duty examination without acceptable reasons is just cause for disciplinary action (P-11, Section 343.34). Fitness-for-duty examinations are always performed by a USPS medical officer or contract physician. If necessary, the medical officer or physician may obtain a consultative specialist opinion from a local source (P-11, Section 343.1). The APWU cited reference applies to management initiated disability retirement procedures only.

7. Is a referred employee entitled to representation to act in the employee's behalf in matters related to a fitness-for-duty examination and to seek information and procedures used to insure that the results are correct?

   The union interprets Section 568.322 of the ELM Handbook as permitting such representation.

USPS Position

The APWU cited reference applies to management initiated disability retirement procedures only. Additionally, refer to USPS position #3 and #4.

Should there be any questions regarding the foregoing, you may contact Harvey White at 268-3822.

Sincerely,

Thomas J. Fritsch
Assistant Postmaster General

American Postal Workers Union, AFL-CIO

817 14th Street, N.W., Washington, D.C. 20005

November 13, 1986

William Burrus
Executive Vice President
(202) 842-4246

National Executive Board

Moe Biller, President

William Burrus
Executive Vice President

Douglas C. Holbrook
Secretary-Treasurer

Thomas A. Nee
Industrial Relations Director

[illegible]
Director, Clerk Division

Richard I. Weydau
Director, Maintenance Division

Donald A. Rost
Director, MVS Division

Samuel Anderson
Director, SDM Division

Ken Leiner
Director, Mail Handler Division

Regional Coordinators

Raydell R. Moore
Western Region

James P. Williams
Central Region

Philip C. Flemming, Jr.
Eastern Region

Neal Vaccaro
Northeastern Region

Archie Salisbury
Southern Region

Dear Mr. White:

This is to supplement my list of inquiries regarding the use of Form 2485 in referrring employees to fitness for duty exams.

6. Can an employee refuse examination by the USPS designated physician under circumstances where the employee is willing to furnish the Medical Officer with the names and addresses of three to five board-certified physicians who are willing to perform the examination?

   The union interprets Section 588.319 and .323 of the P 11 Handbook as providing employees with the above options.

7. Is a referred employee entitled to representation to act in the employee's behalf in matters related to a fitness for duty examination and to seek information why specific tests are required and procedures used to insure that the results are correct?

   The union interprets Section 588.323 of the P 11 Handbook as permitting such representation.

Sincerely,

William Burrus

William Burrus
Executive Vice President

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Sept.15, 1986

Dear Mr. Fritsch:

In an effort to clarify the employer's current policy regarding the use of urinalysis screening for drug use during fitness for duty examinations the union seeks the employer's response to the following:

1. Is the completion of Form 2485 required in the referral of employees for fitness for duty examinations?
The union interprets Section 343.3 of the P-11 as requiring the completion of Form 2485.

2. What postal official is authorized to sign Form 2485 requesting an examination by the medical officer?
The union interprets Section 343.3 of the Personnel Operations Handbook (P-11) as limiting such signature to that of the installation head.

3. Is the employee who is referred for a fitness for duty examination entitled to be advised of the reasons for the examination?
The union interprets the provisions of Form 2485 as requiring the completion of Section B and upon request the employee is entitled to a copy of the form indicating the reason for referral.

4. Is the examining medical officer required to indicate in the report reasons why a specific test is required and if so, is the employee entitled to a copy of the report?
The union believes that the employee is entitled to be advised why a specific test is performed during a fitness for duty examination.

5. **Is the employee entitled to a copy of any note or memorandum provided the installation head regarding the fitness for duty examination? The union believes that the employee is entitled to a copy of any memorandum provided the installation head regarding the fitness for duty examination.**

Please respond at your earliest opportunity.

Sincerely,

William Burrus
Executive Vice President

Thomas Fritsch
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

WB:mc

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 87-5 8 September 1987

TO: All Regional Directors, Officers-in-Charge and Resident Officers

FROM: Rosemary M. Collyer, General Counsel

SUBJECT: Guideline Memorandum Concerning Drug or Alcohol Testing of Employees

In the year since I issued General Counsel Memorandum 86-6 (26 June 1986), directing that all cases involving drug or alcohol testing be submitted to the Division of Advice, major issues presented by such cases have been addressed and resolved administratively. 1/ This guideline memorandum sets forth my position on those issues, and is intended to assist the Regional Offices in the disposition of pending and future cases involving drug testing. 2/

In brief, it is my position that: 1) drug testing for current employees and job applicants is a mandatory subject of bargaining under Section 8(d) of the Act; 2) in general, implementation of a drug testing program is a substantial change in working conditions, even where physical examinations previously have been given, and even if established work rules preclude the use or possession of drugs in the plant; 3) the established Board policy that a union's waiver of its bargaining rights must be clear and unmistakable is to be applied to drug testing; 4) normal Board deferral policies under Dubo and Collyer 3/ will apply to these cases; however, if Section 10(j) relief is otherwise warranted, deferral will not be appropriate.

We anticipate that this memorandum will provide sufficient guidance for the Regions to resolve the merits of most, if not all, of their pending or future drug testing cases.

1/ Such mandatory submissions are no longer required. See General Counsel Memorandum 87-4 (2 July 1987).

2/ The principles concerning "drug testing", as set forth herein, apply equally to alcohol testing programs. Hence, the term "drug testing", as used herein, refers to both.

3/ Dubo Mfg. Corp., 142 NLRB 431 (1963); Collyer Insulated Wire, 192 NLRB 837 (1971). See also United Technologies Corp., 268 NLRB 557 (1984).

Accordingly, with the limited exceptions noted below, future submission of the merits of these cases to Washington will be at the discretion of the Regional Director.

I. Drug Testing as a Section 8(d) Subject of Bargaining

A. Current Unit Employees

As noted above, we have concluded that drug testing of current unit employees is a mandatory subject of bargaining within the meaning of Section 8(d) of the Act. Generally, an employment requirement is a mandatory subject of bargaining under the Act if it is "germane to the 'working environment'" of the employees and if its establishment "is not among those 'managerial decisions [ ] which lie at the core of entrepreneurial control.'" 4/ We conclude that drug testing meets this critical test.

In response to a growing national concern over drug abuse and drugs in the workplace, some employers have decided to implement drug tests for their employees. In many drug testing programs, employees who refuse to submit to a test may be subject to discipline, including discharge, while employees who submit to the test and have positive results may be suspended and/or required to participate in rehabilitation programs, forced to accept a change in job duties, or subjected to discipline up to and including discharge. Thus, mandatory drug testing literally is a "condition of employment." It is a "fitness-for-duty" type requirement that may ultimately affect employment status. In our view, any such obligatory tests, which may reasonably lead to discipline, including discharge, are plainly germane to the employees' working conditions and, therefore, are presumptively mandatory subjects of bargaining within the ambit of Section 8(d) of the Act. In addition to the "fitness-for-duty" implications of testing, the test procedures, including the methods for assuring the security of the test samples and the accuracy of the test, are matters of vital concern to employees and their representatives.

4/ Ford Motor Co. v. NLRB, 441 U.S. 488, 498 (1979), quoting from Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203, 222-23 (1964)(Stewart, J., concurring). Compare First National Maintenance Corp. v. NLRB, 452 U.S. 666 (1981)(employer decision to close part of its business for economic reasons is entrepreneurial and not a mandatory subject of bargaining).

In analogous cases, the Board has found that physical examinations, 5/ polygraph testing, 6/ and safety rules 7/ are mandatory subjects of bargaining. Indeed, with respect to physical examinations and polygraphs, the bargaining obligation extends not only to whether there will be a "testing" requirement but also, if so, to the particulars of any such testing. Thus, an employer is also obligated to bargain over the content of a physical examination, the purpose for which the examination is to be used, and how test results, or the refusal to submit to a test, will affect employment. 8/ And respecting polygraph tests, the Board has held that "[t]he required bargaining . . . does not comprehend merely the magnitude or propriety of the penalty, but, as well, the content and incidents of the rule giving rise to the penalty." 9/ As physical examinations and polygraph tests are

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5/ Lockheed Shipbuilding Co., 273 NLRB 171, 177 (1984); LeRoy Machine Co., 147 NLRB 1431, 1432 (1964).

6/ Medicenter, Mid-South Hospital, 221 NLRB 670, 675 (1975). The Board majority in Medicenter, adopting the ALJ's analysis, noted that "the mandatory across-the-board use of a controversial mechanical device for testing . . . employees . . . [gave] rise to a number of salient considerations and questions (apart from the severity of the punishment for refusing to submit to it) which suggest the 'amenability of such subjects to the collective bargaining process.'" 221 NLRB at 676 (citing Fibreboard, 379 U.S. at 211, footnote omitted).

7/ Gulf Power Co., 156 NLRB 622, 625 (1966), enfd. 384 F.2d 822, 825 (5th Cir. 1967); Boland Marine & Mfg. Co., 225 NLRB 824, 829 (1976), enfd. 562 F.2d 1259 (5th Cir. 1977). Cf. Womac Industries, Inc., 238 NLRB 43 (1978) (absenteeism).

8/ See Lockheed Shipbuilding, 273 NLRB at 171, 177; LeRoy Machine Co., 147 NLRB at 1432, 1438-39.

9/ Medicenter, 221 NLRB at 677-78. The Board majority also adopted the Administrative Law Judge's delineation of other salient questions, such as "the validity and integrity of the testing procedure; the breadth of the test questions; the qualifications of the persons who devise and administer the test; the weight to be attached to 'failing' the test, and the consequences of failure; and the right of union representatives or friends to be present during the administration of a potentially frightening procedure alien to the experience of most employees." Id., at 676 n. 23.

analogous to drug testing, we believe the scope of the bargaining obligation regarding the latter is as extensive as that respecting the former.

We do not believe that drug testing falls within the realm of managerial or entrepreneurial prerogatives excluded from Section 8(d) of the Act. In Gulf Power Co., ante n. 7, the Board considered and flatly rejected this argument with respect to safety regulations. In enforcing the Board's order in that case, the Fifth Circuit concluded that "the Company's contention that . . . safety was a prerogative of management was without merit." 384 F.2d at 825. Even more to the point, the Board majority in Medicenter, ante, n. 6, rejected the employer's argument that instituting a polygraph test fell within its inherent right to conduct its business. To the contrary, the Board concluded,

> [t]he institution of a polygraph test is not entrepreneurial in character, is not fundamental to the basic direction of the enterprise, and does not impinge only indirectly upon employment security. It is, rather, a change in an important facet of the workaday life of employees, a change in personnel policy freighted with potentially serious implications for the employees which in no way touches the discretionary "core of entrepreneurial control." 221 NLRB at 676.

Similarly, drug testing is not a prerogative of management exempt from Section 8(d). 10/

B. Employee Applicants

The issue of whether drug testing of applicants for employment is also a mandatory subject of bargaining is more difficult. However, since the issue is an important one and since a reasonable argument can be made that the subject is mandatory, I have authorized complaints on this issue in order to place the question before the Board. Arguably, a pre-hire drug test not only establishes a condition precedent to employment for job applicants, it also settles a term and condition of

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10/ See also Brotherhood of Locomotive Engineers v. Burlington Northern Railroad Company, 620 F. Supp. 163, 169 (D. Mont. 1985), appeal pending No. 85-4138 (9th Cir.) (employee drug testing under Railway Labor Act not entrepreneurial).

employment of current employees by vitally affecting their working environment. 11/

Regarding the first point, the Board has held that conditions of becoming employed can constitute a mandatory subject. With court affirmance, the Board held that both the agreement to use, and the internal operation of, a hiring hall are mandatory subjects of bargaining. Houston Chapter, Associated General Contractors, 143 NLRB 409, 413 (1963), enfd. 349 F.2d 449 (5th Cir. 1965), cert. denied 382 U.S. 1026 (1966) (agreement to utilize hiring hall). Pattern Makers' Assn. of Detroit (Michigan Pattern Mfrs. Assn.), 233 NLRB 430, 435-36 (1977), enfd. on this point 622 F.2d 267 (6th Cir. 1980) (internal operational processes of hiring hall). The Board in Houston Chapter, A.G.C., 143 NLRB at 412, said that "[i]t can scarcely be denied, since 'employment' connotes the initial act of employing as well as the consequent state of being employed, that the hiring hall relates to the conditions of employment." Most significantly, the Board's 1984 decision in Lockheed Shipbuilding, ante, n. 5, 273 NLRB at 171, specifically dealt with the applicant issue and held that an employer violated Section 8(a)(5) of the Act by unilaterally implementing new medical screening tests "for the purpose of denying employment to new employees" (emphasis added).

As to the second point, the Board has held that information regarding the race and sex of applicants is presumptively relevant to a union's performance of its representative duties toward current employees, because "'an employer's hiring practices inherently affect terms and conditions of employment.'" White Farm Equipment Co., 242 NLRB 1373, 1375 (1979), enfd. per curiam 650 F.2d 334 (D.C. Cir. 1980), citing Tanner Motor Livery, Ltd., 148 NLRB 1402, 1404 (1964), enforcement denied on other grounds 419 F.2d 216 (9th Cir. 1969). Based on these cases, we have argued that, just as existing unit employees have a legitimate interest in working in a racially and sexually integrated workplace, so too do they have a legitimate interest in the issue of whether steps should be taken to screen out drug users from employment, and what those steps should be.

11/ The Supreme Court has held that a proposal may be a mandatory subject of bargaining even though it relates to parties outside the bargaining unit if it "vitally affects the 'terms and conditions' of . . . employment" of bargaining unit employees. Allied Chemical & Alkali Workers v. Pittsburgh Plate Glass Co., 404 U.S. 157, 179 (1971).

II. Drug Testing As A Substantial Change In Working Conditions.

In cases where an employer has an existing program of mandatory physical examinations for employees or applicants, an issue arises as to whether the addition of drug testing constitutes a substantial change in the employees' terms and conditions of employment. In general, we conclude that it does constitute such a change. When conjoined with discipline, up to and including discharge, for refusing to submit to the test or for testing positive, the addition of a drug test substantially changes the nature and fundamental purpose of the existing physical examination. Generally, a physical examination is designed to test physical fitness to perform the work. A drug test is designed to determine whether an employee or applicant uses drugs, irrespective of whether such usage interferes with ability to perform the work. In addition, it is our view that a drug test is not simply a work rule -- rather, it is a means of policing and enforcing compliance with a rule. There is a critical distinction between a rule against drug usage and the methodology used to determine whether the rule is being broken. Moreover, a drug test is intrinsically different from other means of enforcing legitimate work rules in the degree to which it may be found to intrude into the privacy of the employee being tested 12/ or raise questions of test procedures, confidentiality, laboratory integrity, etc. The implementation of such a test, therefore, is "a material, substantial, and . . . significant change in [an employer's] rules and practices . . . which vitally affect[s] employee tenure and conditions of employment generally." 13/

12/ See, e.g., IBEW Local 1900 v. PEPCO, 121 LRRM 3071, 3072 (D. D.C. 1986) (TRO granted under Section 301 LMRA pending arbitration against extensive drug testing program involving "invasions of privacy which are almost unheard of in a free society. . ."). Cf. O'Brien v. Papa Gino's of America, Inc., 780 F.2d 1067, 1072 (1st Cir. 1986) (use of mandatory polygraph examination to investigate employee off-duty drug use found "highly offensive" and invasion of plaintiff's privacy).

13/ Murphy Diesel Co., 184 NLRB 757, 763 (1970), enfd. 454 F.2d 303 (7th Cir. 1971). See also Miller Brewing Co., 166 NLRB 831, 832 (1967), enfd. 408 F.2d 12, 15 (9th Cir. 1969) (employer obligated to bargain before changing work rules, even though changes allegedly mere codification of past practice, where new rules subject employees to different procedures or impose more serious penalties for their

There can be no quarrel with an employer's desire to ensure a drug-free work force or a drug-free working environment. We simply conclude that, upon request, an employer must bargain in good faith with its employees' Section 9(a) representative about a decision to institute drug testing and the content, procedures and effects of such a program. See generally NLRB v. Katz, 369 U.S. 736 (1962); Womac Industries, Inc., ante, n. 7, 238 NLRB at 43. Thus, assuming that the issue is an open one for bargaining -- e.g., during contract hiatus or during the term of a labor agreement if the agreement does not mention drug testing and if the parties never discussed the issue in contract negotiations 14/ -- the employer would be required to notify the union of its intention to initiate drug testing and, upon request, to bargain to an agreement or a good faith impasse before implementing any such program. The notice must be sufficient to provide the union a meaningful opportunity for bargaining. 15/

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breach). Compare Rust Craft Broadcasting of New York, Inc., 225 NLRB 327 (1976) (change from sign-in sheet to time clock not a substantial change in past practice).

14/ See Jacobs Mfg. Co., 94 NLRB 1214 (1951), enfd. 196 F.2d 680 (2d Cir. 1952). If a current labor contract already contains a specific clause dealing with drug testing that the employer wants to change mid-term, or if the subject was fully explored during contract negotiations or the contract has a "zipper clause," see Jacobs Mfg. Co., 94 NLRB at 1220, n. 13, the union may have a right under Section 8(d) not to bargain over the subject during the term of the agreement. The employer would then be barred from implementing any proposal during the term of the contract even after notice to the union. See C & S Industries, Inc., 158 NLRB 454 (1966); St. Marys Hospital, 260 NLRB 1237, 1245-46 (1982). Cf. GTE Automatic Electric Inc., 261 NLRB 1491, 1492 n. 3 (1982). Such 8(d) contract modification cases should be submitted to Advice.

15/ See, e.g., J.P. Stevens & Co., Inc., 239 NLRB 738, 743 (1978), enfd. on this point 623 F.2d 322 (4th Cir. 1980), cert. denied 449 U.S. 1077 (1981). Accord: ILGWU v. NLRB (McLaughlin Mfg. Corp.), 463 F.2d 907, 919 (D.C. Cir. 1972). Moreover, regular Board policies concerning Section 10(b) and "hidden" violations will apply. See, e.g., Uniglass Industries, A Division of United Merchants & Mfrs., 276 NLRB 345, 349 (1985), enfd. 123 LRRM 2591 (2d Cir. 1986); Don Burgess Construction Corp., 227 NLRB 765, 766 (1977), enfd.

III. Union Waiver of its Bargaining Rights

Union waiver of the right to bargain over drug testing has emerged as an important issue in many of the cases we have considered. We have concluded that regular Board policies regarding waiver should apply to drug testing cases. Thus, any waiver by the union of this statutory right to bargain, either by contract, past practice or by inaction, is not to be lightly inferred and must be "clear and unmistakable". 16/

A. Waiver by Contract or Past Practice

A waiver by contract may be found where the language of the agreement is specific, and/or the history of prior contract negotiations suggests that the subject was discussed and "consciously yielded". 17/ Waiver will not be inferred from the contract's silence on the subject, 18/ from a generally worded management prerogatives clause 19/ or from a "zipper" clause. 20/

596 F.2d 378 (9th Cir. 1979); Russell-Newman Mfg. Co., 167 NLRB 1112, 1115 (1967), enfd. 406 F.2d 1280 (5th Cir. 1969).

16/ Metropolitan Edison Co. v. NLRB, 460 U.S. 693, 708 (1983). See generally Owens-Corning Fiberglas Corp., 282 NLRB No. 85 (5 January 1987); Ciba-Geigy Pharmaceuticals Division, 264 NLRB 1013, 1017 (1982), enfd. 722 F.2d 1120 (3d Cir. 1983) and cases cited therein.

17/ See, e.g., Press Co., Inc., 121 NLRB 976, 977-78 (1958); Proctor Mfg. Corp., 131 NLRB 1166, 1169-70 (1961); NL Industries, Inc., 220 NLRB 41, 43-44 (1975), enfd. 536 F.2d 786 (8th Cir. 1976); Southern Florida Hotel & Motel Assn., 245 NLRB 561, 567-68 (1979).

18/ See, e.g., Elizabethtown Water Co., 234 NLRB 318 (1978); T.T.P. Corp., 190 NLRB 240, 244 (1971).

19/ See, e.g., Ciba-Geigy Pharmaceuticals Division, ante, n. 16, 264 NLRB at 1017; Merillat Industries, Inc., 252 NLRB 784, 785 (1980).

20/ Suffolk Child Development Center, Inc., 277 NLRB No. 158, JD slip op. at 11 (30 December 1985).

Similarly, waiver by past practice must clearly encompass the program at issue. 21/

Applying the above principles, we have concluded that, in the absence of clear bargaining history to the contrary, broad management rights clauses giving an employer the right "to issue, enforce, and change Company rules", or to "make and apply rules and regulations for production, discipline, efficiency and safety," or requiring employees to observe the employer's existing rules and regulations, do not, standing alone, constitute a waiver of the union's right to bargain over drug testing. Such clauses refer only to employer rules and regulations generally and do not refer clearly and specifically to drug testing. And, as previously observed, drug testing is not a "rule or regulation" but, rather, is a unique and distinctive means of enforcing rules regarding drug use.

For essentially the same reasons, we have concluded that a union's acquiesence in a past practice of requiring applicants and/or current employees to submit to physical examinations that did not include drug testing, or in a rule prohibiting the use or possession of drugs on company premises, does not constitute a waiver of the union's right to bargain over drug testing. 22/ This would be true even where such past practices exist in conjunction with the kind of general, non-specific management rights clauses discussed above. 23/ Similarly, acquiesence in drug testing "for cause" does not by itself waive a union's right to bargain over random drug testing because such expansion of an existing drug testing program constitues "a material, substantial, and . . . significant change. . . ." Murphy Diesel Co., supra, 184 NLRB at 763.

21/ Compare Continental Telephone Co., 274 NLRB 1452, 1453 (1985) with Beacon Piece Dyeing & Finishing Co., Inc., 121 NLRB 953, 956-959 (1958).

22/ Murphy Diesel Co., ante, n. 13, 184 NLRB at 763; Owens-Corning Fiberglas, ante, n. 16, 282 NLRB No. 85, slip op. at 3.

23/ Murphy Diesel Co., supra; Ciba-Geigy Pharmaceuticals Division, 264 NLRB at 1016-1017; Lockheed Shipbuilding Co., ante, n. 5, 273 NLRB at 177.

B. Waiver by Union Inaction

Where an employer gives a union advance notice of an intention to change a term or condition of employment, the union must make a reasonably timely request for bargaining over the matter to avoid a finding of waiver or acquiescence. 24/ Further, the union must actually make it reasonably clear it desires to bargain; simply protesting the change may not be enough to preserve the right to bargaining. 25/ However, the employer's notice must be sufficiently in advance of implementation to allow for bargaining and must be more than a mere announcement of a fait accompli. 26/

IV. Remedies to be Sought From the Board

As a remedy for an unlawful, unilateral implementation or modification of a drug testing program, the Regions should seek an order requiring the employer to revoke all aspects of the new policy and to bargain with the union to agreement or to a good faith impasse before again implementing a drug testing program. 27/ In addition, the Regions should seek reinstatement or rescission of discipline, with appropriate backpay, for any employees discharged or disciplined for refusing to submit to the

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24/ See, e.g., Kansas National Education Assn., 275 NLRB 638, 639 (1985); Citizens National Bank of Willmar, 245 NLRB 389, 389-90 (1979), enfd. 106 LRRM 2816 (D.C. Cir. 1981); Meharry Medical College, 236 NLRB 1396 (1978). But see Southern Newspapers, Inc., d/b/a The Baytown Sun, 255 NLRB 154, 161 (1981); Allen W. Bird II; Caravelle Boat Co., 227 NLRB 1355, 1358 (1977).

25/ See American Buslines, Inc., 164 NLRB 1055, 1055-56 (1967).

26/ See, e.g., Ciba-Geigy Pharmaceuticals Division, 264 NLRB at 1018; Intersystems Design & Technology Corp., 278 NLRB No. 111, slip op. at 2-4 (28 February 1986).

27/ If the violation entails a contract modification under Section 8(d), see n. 14, supra, then the remedy would include a prohibition on any implementation for the life of the current agreement without the union's consent. See C & S Industries, Inc., ante, n. 14, 158 NLRB at 461.

drug test. 28/ However, it is not clear that such a remedy would be appropriate for an employee disciplined or discharged for testing positive under a drug test. 29/ The Regions should submit any cases involving the latter issue to the Division of Advice.

V. Interplay Between Deferral to Arbitration and Section 10(j) Injunctive Relief

The Regions should apply the established Board criteria in determining whether to defer cases under Collyer or Dubo. Thus, if a dispute arguably raises issues of contract interpretation cognizable under the grievance provision of the parties' collective-bargaining agreement and subject to binding arbitration, it may be appropriate to defer the case. 30/ However, deferral to arbitration is discretionary under Section 10(a) of the Act. 31/ Since issuance of a complaint is a jurisdictional prerequisite to Section 10(j) injunctive relief, deferral would be inappropriate if Section 10(j) injunctive proceedings are otherwise warranted. Hence, the Section 10(j) issue, if raised, must be considered in deciding whether to defer to the parties' arbitration procedures.

28/ See Murphy Diesel Co., 184 NLRB at 765; Boland Marine & Mfg. Co., ante, n. 7, 225 NLRB at 824-25; Ciba-Geigy Pharmaceuticals Division, 264 NLRB at 1019; Alfred M. Lewis, Inc. v. NLRB, 587 F.2d 403, 412 (9th Cir. 1978).

29/ See Taracorp, Inc., 273 NLRB 221, 222-24 (1984).

30/ See Arbitration Deferral Policy Under Collyer - Revised Guidelines, released 10 May 1973 and GC Memorandum 84-5, "Guideline Memorandum concerning United Technologies Corp., 268 NLRB No. 83," dated 6 March 1984. Thus, for example, deferral would not be appropriate where the employer is unwilling to waive time limits on the filing and processing of a grievance relating to the implementation of the disputed program. See The Detroit Edison Co., 206 NLRB 898 (1973). Deferral is an affirmative defense that must be timely raised by the charged party. Cf. Alameda County Assn., 255 NLRB 603, 605 (1981).

31/ See Collyer Insulated Wire, 192 NLRB at 840. See also Lectromelt Casting & Machinery Co., 269 NLRB 933, 934 (1984); NLRB v. Walt Disney Productions, 146 F.2d 44, 48 (9th Cir. 1945), cert. denied 324 U.S. 877 (1945).

A Section 10(j) order enjoining an employer from subjecting current unit employees to an unlawful, unilaterally implemented drug testing program may be warranted where such implementation is demonstrably undermining the union's ability to function effectively as the employees' bargaining representative. 32/ Accordingly, to evaluate the need for Section 10(j) relief, the Regions should inquire into any actual effect of an unlawfully implemented drug testing program on the union's representational capacity.

Section 10(j) relief may also be indicated where implementation of a drug testing program is unlawfully motivated 33/ or a program is unlawfully, discriminatorily applied -- for example, to union officers or other officials involved in grievance adjustments. 34/

Even in cases where there is no evidence of discriminatory motivation or other irremediable adverse impact on the union, Section 10(j) proceedings may be warranted if a Board order in due course will be unable to undo or provide an effective remedy for employees' compelled submission to unlawful drug testing. Thus, injunctive relief could be appropriate if an employer were to unlawfully implement a highly invasive, random or universal drug testing program under which all or a substantial number of the employer's current employees would be imminently affected. 35/

32/ See, e.g., Morio v. North American Soccer League, 632 F.2d 217 (2d Cir. 1980).

33/ Cf. Arcamuzi v. Continental Airlines, Inc., 819 F.2d 935 (9th Cir. 15 June 1987).

34/ Cf. Gottfried v. Samuel Frankel, 818 F.2d 485 (6th Cir. 1 May 1987).

35/ Conversely, if the program involved only testing "for cause" or on some other limited basis, or if few or no current employees were at risk of being tested, Section 10(j) relief would probably not be warranted. Similarly, even where the program is extensive, Section 10(j) proceedings may be unwarranted, and deferral to arbitration appropriate, if the employer is willing to suspend the program pending arbitration or if the arbitration process can be quickly completed. Thus, in evaluating this aspect of a case, the Regions should inquire into 1) the current impact on unit employees, i.e., how many employees have been or are likely

If the Charging Party has not requested Section 10(j) relief, and the Region concludes that Section 10(j) relief is not warranted under the criteria set forth above, and the case is otherwise deferrable, the Region should defer under Dubo and/or Collyer, and apply regular post-arbitral Board policies. 36/ If Section 10(j) relief has been requested and appears warranted, or the Region sua sponte concludes that Section 10(j) relief may be warranted, the Region should stay its action on the charge and submit the matter to Advice on the Section 10(j) issue, regardless of whether the case otherwise would be deferrable. 37/

VI. Future Submissions to the Division of Advice

As stated in General Counsel Memorandum 87-4 (2 July 1987) the Regions are no longer required to submit all cases involving drug testing to the Division of Advice. Henceforth, cases should only be submitted in the following circumstances:

1. The case presents novel or complex legal issues that are not resolved by this memorandum (see, e.g., ns. 14 and 29, supra, and accompanying text).

2. The Charging Party requests Section 10(j) relief, the investigation reveals prima facie merit to the charge, and the Region believes that Section 10(j) is warranted. However, if the Regional Director believes that 10(j) relief is clearly unwarranted, a meritorious case need not be submitted to Advice; rather, the Region may obtain telephonic clearance to deny the Charging Party's request from the Division of Operations-

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to be tested imminently; and 2) whether arbitration will expeditiously resolve the dispute.

36/ See Olin Corp., 268 NLRB 573 (1984); Armour & Co., 280 NLRB No. 96 (24 June 1986). Compare Badger Meter, Inc., 272 NLRB 824 (1984) with Alfred M. Lewis, Inc., 229 NLRB 757 (1977), enfd. 587 F.2d 403 (9th Cir. 1978).

37/ Of course, a Region must fully investigate the case and evaluate the merits of the charge before submitting a drug testing case to Advice with its 10(j) recommendation. The clarity of the violation is an element in evaluating the appropriateness of Section 10(j) proceedings.

Management. 38/ Where there is a close question as to the warrant for 10(j) relief, the case should be submitted to Advice.

3. A meritorious case presents circumstances posing the danger of irreparable injury, and the Region accordingly recommends sua sponte Section 10(j) relief.

Rosemary M. Collyer
General Counsel

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38/ Casehandling Manual (ULP) Section 10310.1, paragraph 2. Of course, a non-meritorious case even with a 10(j) request does not have to be submitted to Advice. Id., at paragraph 5.

SENIOR ASSISTANT POSTMASTER GENERAL
Human Resources Group
Washington, DC 20260-4000

August 6, 1986

ARTICLE 19
SECTION ELM
SUBJECT
URINALYSIS

MEMORANDUM FOR FIELD DIVISION GENERAL MANAGERS/POSTMASTERS

Subject: Urinalysis Testing

Recently, it has come to our attention that drug testing is being used in the field as part of the initial issuance and renewal of the SF-46, Operator's Identification Card, and in Accident Repeater Programs.

Across-the-board drug testing and/or random drug testing of present employees is prohibited under any circumstances. However, on a case-by-case basis, during fitness-for-duty examinations, drug tests may be administered, depending on the specific reasons for the examination as stated by the referring official and/or in the judgment of the examining medical official (see Attachment A). Additionally, drug testing in conjunction with medical assessments and evaluations as part of the Employee Assistance Program is within established procedures (see Attachment B). Furthermore, we will be issuing a policy statement on drug screening of applicants for employment in the near future.

If you have further questions regarding this matter, you may contact either Harvey White of the Labor Relations Department at 268-3822 or Stephen A. Moe of the Employee Relations Department at 268-3793.

David H. Charters
(Acting)

Attachments

cc: Regional Postmasters General
Mr. Fritsch

MEDICAL EXAMINATION AND ASSESSMENT

Privacy Act Statement

collection of this information is authorized by 39USC 401. This information will be used to provide employees with necessary health care and to determine fitness for duty. As a routine use, this information may be disclosed to the Office of Personnel Management, and other Federal agencies responsible for Federal benefits programs, to an appropriate law office enforcement agency for investigation of prosecutive purposes, to a Congressional office at your request, to the Office of Management and Budget for review of private relief legislation, to any agency where relevant to hiring, contracting, or licensing, to a labor organization as required by the NLRA, and where pertinent, in a legal proceeding to which the Postal Service is a party. Completion of this form is voluntary, however, if this information is not provided, the individual may not receive the requested benefits or employment.

A: Completed by Examinee *(Type or Print in Ink)*

1. Name *(Last, First, Middle)*	2. Social Security Number	3. Sex ☐ Male ☐ Female	4. Date of Birth
5. Do you have any medical disorder or physical impairment which could interfere in any way with the full performance of duties of the position for which you are applying? *(If your answer is "Yes", explain fully to the physician performing the examination).* ☐ Yes ☐ No	I certify that all the information to be given by me in connection with this examination will be correct to the best of my knowledge and belief.		
	6. Signature		7. Date

B: Completed by Appointing or Referring Office Before Examination

1a. Exam Type ☐ Preemployment ☐ Fitness-for-Duty	2. Exam Appointment	Date	Time
b. Reason for Request ☐ Inadequate Medical Information ☐ Excessive Absenteeism for Medically Documented Conditions ☐ Behavioral *(Performance, Attitude)* ☐ Other *(Specify)*:		Location	
	3. Position Applied for or Now Holds	a. Title	
		b. Installation	

4. Circle the number preceding each functional requirement and each environmental factor essential to the duties of this position. List any additional essential factors in the blank spaces. Also, if the position involves law enforcement, attach the specific medical standards for the information of the examining physician.

Functional Requirements

1. Heavy lifting, up to 70 pounds
2. Moderate lifting, 15-44 pounds
3. Light lifting, under 15 pounds
4. Heavy carrying, 45 pounds and over
5. Moderate carrying, 15-44 pounds
6. Light carrying, under 15 pounds
7. Straight pulling *(hours)*
8. Pulling hand over hand *(hours)*
9. Pushing *(hours)*
10. Reaching above shoulder
11. Use of fingers
12. Both hands required or compensated by the use of acceptable prostheses
13. Walking *(hours)*
14. Standing *(hours)*
15. Crawling *(hours)*
16. Kneeling *(hours)*
17. Repeated bending *(hours)*
18. Climbing, legs only *(hours)*
19. Climbing, use of legs and arms
20. Both legs required
21. Operation of crane, truck, tractor, or motor vehicle
22. Ability for rapid mental and muscular coordination simultaneously
23. Ability to use firearms
24. Near vision correctable at 13" to 16" to Jaeger 1 to 4
25. Far vision correctable in one eye to 20/20 and to 20/40 in the other
26. Far vision correctable in one eye to 20/40 and to 20/100 in the other
27. Specific visual requirement *(specify)*
28. Both eyes required
29. Depth perception
30. Ability to distinguish basic colors
31. Ability to distinguish shades of colors
32. Hearing *(aid permitted) (hear conversational voice 15 feet – one ear)*
33. Hearing without aid
34. Specific hearing requirements *(specify)*
35. Other *(specify)*

Environmental Factors

1. Outside
2. Outside and inside
3. Excessive heat
4. Excessive cold
5. Excessive humidity
6. Excessive dampness or chilling
7. Dry atmospheric conditions
8. Excessive noise, intermittent
9. Constant noise
10. Dust
11. Silica, asbestos, etc.
12. Fumes, smoke, or gases
13. Solvents *(degreasing agents)*
14. Grease and oils
15. Radiant energy
16. Electrical energy
17. Slippery or uneven walking surfaces
18. Working around machinery with moving parts
19. Working around moving objects or vehicles
20. Working on ladders or scaffolding
21. Working below ground
22. Unusual fatigue factors *(specify)*
23. Working with hands in water
24. Explosives
25. Vibration
26. Working closely with others
27. Working alone
28. Protracted or irregular hours of work
29. Other *(specify)*

343.3 Obtaining Fitness for Duty Examination Appointments

.31 Form 2485. The appointing officer completes Form 2485, *Certificate of Medical Examination*, Section B only and the installation head signs it. Form 2485 is sent to the examining physician.

.32 Other Information

.321 The supervisor should attach enough information concerning the employee's duties and working environment to enable the medical officer to make a well informed decision. This information must include physicial requirements of the job.

.322 Any statements made by employees concerning their condition should be attached.

.33 Notification

The medical officer will advise the installation head as to the date and time of examination. This information is provided to the employee.

.34 Failure to Report. Failure to report for a fitness for duty examination without acceptable reasons is just cause for disciplinary action. Repeated refusal is grounds for separation.

343.4 Medical Officer's Statement

.41 Upon examination, the medical officer completes Form 2485 and returns Part 1 to the installation head. Any comments on the form will not contain detailed medical information, but rather will discuss limitations on performance.

.42 In highly unusual cases, as deemed necessary by the medical officer, limited medical information may be provided in the form of a note or memorandum (in addition to Part 1 of Form 2485).

343.5 Management Decision

.51 Temporary Action. The installation head establishes work return dates and job assignments based upon the medical statement. Determinations are not limited to the employee's regular duties, but must be based on whether the employing installation has any temporary alternative work available which is not medically contraindicated.

.52 Permanent Action. If the fitness-for-duty examination corroborates that an employee who has less than the 5 years service requirement for disability retirement is unable to perform the duties of the positions, the employee may be separated, consistent with procedures contained in collective bargaining agreements, OWCP and EEO regulations.

.53 OWCP Case. If a claim has been filed with the Office of Worker's Compensation Program (OWCP), refer to the Injury Compensation Instructions in ELM 540.

344 Disability Retirement

In installations where there is a postal medical officer or contract physician, that person should be consulted on all requests for disability retirement to determine if there is a position in the local facility in which the employee can be placed, based on the duties the employee is currently capable of performing. If no such placement occurs, apropriate records are forwarded through usual channels to the area or regional Office of Personnel Management medical officer for adjudication.

Employee and Labor Relations Manual
864 Physical Examinations

864.32 Management can order fitness-for-duty examinations at any time and repeat, as necessary, to safeguard the employee and coworker. Specific reasons for the fitness-for-duty should be stated by the referring official.

864.33 A specific test or consultation may be required in the judgment of the examining medical officer. The indications will be documented as part of the report.

Employee and Labor Relations Manual
870 Employee Assistance Program (EAP)

872.41 . . . . In drug abuse cases, EAP personnel will further refer employees to the postal medical officer or contract physician for an initial medical assessment and evaluation.

ATTACHMENT B

SETTLEMENT AGREEMENT

Case No. B4N-NA-C-90

In full and complete settlement of the above-referenced arbitration case brought pursuant to the 1987 National Agreement between the parties, the United States Postal Service (USPS), the National Association of Letter Carriers, AFL-CIO (NALC), and the American Postal Workers Union, AFL-CIO (APWU), hereby agree as follows:

1. When the USPS provides the Union(s) with proposed changes in handbooks, manuals or published regulations, the USPS will furnish to the Union(s), if available, the final draft and/or summary of changes which show the changes being made from the existing handbook, manual or published regulation. In those instances where a final draft or summary is unavailable, the USPS will so advise the Union(s) in its letter of notice.

2. If no final draft or summary is available, which shows proposed changes, the Postal Service will, at the request of the Union(s), promptly make available appropriate officials to meet with representatives of the Union(s) to identify and discuss the changes made in the proposed handbook, manual or published regulation from those contained in existing documents.

3. The 60 day period during which the Union may appeal to arbitration may be extended to accommodate ongoing discussion of the proposed change(s) with the USPS in paragraph 2, above. However, in no instance may the Union(s) appeal the matter to arbitration more than 14 calendar days from the close of those extended discussions. The USPS may also publish the proposed change(s) at anytime after the 60 day notice period under Article 19.

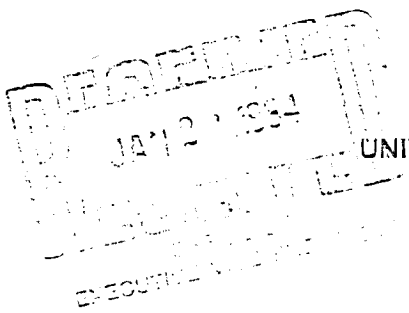
4. Where the USPS has affirmatively expressed that there are no changes which directly relate to wages, hours, or working conditions pursuant to Article 19, time limits for Article 19 will not be used by the Postal Service as a procedural argument if the Union(s) signatory to this settlement agreement determine(s) afterwards that there has been a change to wages, hours, or working conditions.

William J. Downes
Director
Office of Contract
Administration
Labor Relations Department

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

Thomas A. Neill
Industrial Relations Director
American Postal Workers
Union, AFL-CIO

DATE March 11, 1988



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

January 24, 1984

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in response to your January 17 letter regarding a recent decision by the Equal Employment Opportunity Commission in case 01820528 (Turner and Dunn v. USPS).

This case is currently under review by our legal department. It is not our intent to modify the current policy on converting severely handicapped casual employees into the regular work force.

Sincerely,

W. E. Henry, Jr.

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

cc: Mr. Gildea

6A

American Postal Workers Union, AFL-CIO

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

WILLIAM BURRUS
Executive Vice President

January 17, 1984

James Gildea
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Dear Mr. Gildea:

A recent decision by the Equal Employment Opportunity Commission in case no. 01820528 (Turner and Dunn v. USPS) found that the Postal Service "discriminated against the appellants when it failed to convert appeallants to probationary part-time flexible clerks upon completion of the first three (3) LSM lessons."

This finding is contrary to current Postal Service policy and practice and may impact other employees in similar circumstances.

The union wishes to determine if it is your intent to modify current policy to conform to this decision.

Sincerely,

William Burrus,
Executive Vice President

WB:mc

NATIONAL EXECUTIVE BOARD • MOE BILLER, President

WILLIAM BURRUS, Executive Vice President
DOUGLAS HOLBROOK, Secretary-Treasurer
JOHN A. MORGEN, Director, Clerk Division
RICHARD F. WEVODAU, Director, Maintenance Division
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JOHN P. RICHARDS, Industrial Relations Director
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JAMES P. WILLIAMS, Central Region
PHILIP C. FLEMMING, JR., Eastern Region
NEAL VACCARO, Northeastern Region
ARCHIE SALISBURY, Southern Region

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

Shirley E. Turner, and Thomas Dunn, Appellants	)	
v.	)	Appeal No. 01820528
United States Postal Service Agency.	)	

DECISION

INTRODUCTION

On January 20, 1982, Shirley E. Turner and Thomas Dunn (hereinafter referred to as appellants) initiated appeals from final agency decisions of the United States Postal Service dated December 30, 1981. The appeals were initiated under Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 et seq. The appeals were timely filed and accepted in accordance with the provisions of EEOC Order 960, as amended.

BACKGROUND

On March 20, 1980, appellants were hired as Letter Sorting Machine (LSM) trainees through the agency's program for the severely handicapped. Appellants were two of several deaf individuals hired from a separately established register of applicants for employment. The register was not compiled through the usual process of ranking applicants according to performance on a competitive examination.

Applicants hired from the competitively established register were initially hired as casual employees ($4.76 per hour) and required to complete the first three (3) lessons within eighteen (18) hours. Upon successful completion of the first three (3) lessons, the

competitively appointed trainees were converted to part-time flexible employees at a rate of $8.10 per hour.

Upon hiring, appellants were informed that the casual appointment was in lieu of the competitive process leading to appointment. Appellants were informed that they: (1) must successfully complete the first three (3) lessons in keying the LSM within eighteen (18) hours of training in order to remain as trainees; (2) would be paid at a rate of $4.76 per hour; (3) would be given eighty-nine (89) days to demonstrate proficiency.

After eighteen (18) hours of training, one deaf employee was terminated for failure to successfully complete the first three (3) lessons. Appellants successfully completed the lessons and continued employment at the rate of $4.76 per hour. Appellants and the competitively appointed trainees were assigned the same duties during the period immediately following completion of the first three (3) lessons.

Appellant's initiated the complaints in this matter after the agency refused to convert them to part-time flexible clerks upon successful completion of the first three lessons. On June 14, 1980, the appellants were converted to part-time flexible probationary employees after successful pursuit of a grievance. Appellant's contended that the agency's refusal to convert was based on their handicap.

The agency found that the failure to convert was not unlawful employment discrimination because (1) appellants were hired from a separately established register; (2) appellants were advised of the conditions of their employment; and (3) its actions were in conformity with its regulations.

ANALYSIS AND FINDINGS

The sole issue before this Commission is whether the agency's failure to convert appellant's to part-time flexible employees after successful completion of the first three (3) lessons within eighteen (18) hours of entry on duty violated the Rehabilitation Act of 1973, as amended.

The basic facts of this appeal are not in dispute. The agency found that it treated the appellant's differently because of their handicap (deafness). It justified the treatment on the grounds that appellants were appointed from a separate and non-competitively established register. The 89-day casual appointment served to by-pass normal

competitive screening. Once appellants were appointed they and all appointees were held to the same performance expectations.

The Commission's regulations on the employment of handicapped individuals prohibit discrimination against qualified handicapped persons. See 29 C.F.R. § 1613.701 et seq. In addition, the regulations set forth the intent of the Federal government to become a model employer of handicapped individuals. 29 C.F.R. § 1613.703. The former Civil Service Commission and the Office of Personnel Management authorized a federal selective placement effort so that the Federal government could attain its goal.

Briefly, excepted service appointments of handicapped individuals were authorized; handicapped appointees could be converted from temporary trial appointments to regular appointments if abilities to perform the duties of the positions were demonstrated within twelve (12) months immediately preceding the recommendations for conversion. Alternatively, an agency may accept a certification from either the Veterans Administration or a State vocational rehabilitation agency familiar with the duties of the position that the individual is likely to succeed in the performance of the duties. See FPM Chapter 306-11 (4-2c).

Here the agency elected the 89-day casual appointment in lieu of the competitive screening process prior to appointment. The agency defended the use of the 89-day appointment on the grounds that it gave the agency the opportunity to assess the individual's affinity for the type of work and capability to perform in the position prior to career probationary appointment.

The agency's justification of its failure to convert appellants to part-time flexible clerks fails when compared with actual treatment. Appellants were, in effect, given a trial appointment of eighteen (18) hours. Failure to successfully complete the first three (3) lessons within that period resulted in termination for both competitively and specially appointed employees. If successful, employees in both groups progressed to the next level of performance. However, the handicapped employees were compensated at a substantially lower rate of pay. Thus, the issue before this Commission is whether the disparate treatment in terms of pay and other benefits is justified.

The agency's response addresses the issue of the appellants' appointment. It does not address the issue of compensating appellants at a lower rate than competitively appointed employees nor does it address the denial of other benefits such as seniority.

Ordinarily, the Commission would defer to an agency's evaluation of the appropriate standard to use in determining whether an employee is "qualified" to perform the duties of a position. Qualifications however, are not at issue in this particular matter. Appellants have demonstrated proficiency on the job and have performed in a manner similar to competitively appointed employees. The application of identical performance standards during the training period and appellants' successful completion over-come any inference that might be drawn in favor of the agency.

The Commission is concerned with the reasonableness of the clear discrimination based on handicap. Section 501 of the Rehabilitation Act prohibits discrimination on the basis of handicap "when unrelated to the individual's qualification's or any other substantial governmental justification." Shirey v. Devine, 670 F.2d 1188, 27 FEP Cases 1148, 1162 (D.C. Cir. 1982). Appellants' qualifications are established. The agency has failed to identify any "substantial governmental justification" for denying appellants pay equal that of non-handicapped employees and appointment to probationary part-time flexible clerks at the time of successful completion of the first three (3) lessons.

CONCLUSION

The Commission finds that the agency unlawfully discriminated against the appellants when it failed to convert appellants to probationary part-time flexible clerks upon completion of the first three (3) LSM lessons. The agency is directed to retroactively establish appellants' conversion date to part-time flexible clerks in the same manner as that established for non-handicapped employees successfully completing the first three (3) LSM lessons within eighteen (18) hours. The agency shall award appellants appropriate backpay, seniority, and other benefits.

NOTICE OF RIGHT TO FILE A CIVIL ACTION

Pursuant to 29 C.F.R. § 1613.282, the appellant is hereby notified that this decision is final and that s/he has the right to file a civil action on the Rehabilitation Act claim in the appropriate U.S. District Court within thirty (30) days of the date of receipt of this decision.

IMPLEMENTATION OF THE COMMISSION DECISION

Under EEOC Regulations, compliance with the Commission's corrective action is mandatory. The agency must report to the Commission within thirty (30) calendar days of receipt of the decision, that corrective action has been taken. The agency report should be forwarded to: Compliance Officer, Office of Review and Appeals, EEOC, 2401 E Street, N.W., Washington, D.C. 20507. A copy of the report should be sent to the appellant.

NOTICE OF RIGHT TO REQUEST REOPENING

The appellant and the agency are hereby notified that the Commissioners may, in their discretion, reopen and reconsider any previous decision when the party requesting reopening submits written argument or evidence which tends to establish that:

1. New and material evidence is available that was not readily available when the previous decision was issued;

2. The previous decision involves an erroneous interpretation of law or regulations or misapplication of established policy; or

3. The previous decision is of precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

This notice is in accord with 29 C.F.R. § 1613.235. As provided therein, agency requests to reopen must be filed within thirty (30) days from the date of receipt of this decision.

FOR THE COMMISSION:

Date 12/19/83

Executive Secretary
to the Commission

6C

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Moe Biller, President
(202) 842-4246

March 25, 1987

Dear Mr. Fritsch:

By copy of my correspondence of January 17, 1984 I inquired as to the Postal Services intent to adjust its regulations consistent with the findings in EEO decision Turner and Dunn v USPS No. Ø1820528. William Henry of your staff responded on January 24, 1984 advising that "it is not our intent to modify current policy on converting severely handicapped casual employees into the regular work force."

The EEO Commission has reaffirmed the Turner decision in the Postal Service's efforts to reopen and reconsider and on January 12, 1987 ordered implementation of the Turner decision.

This is once again to inquire as to the intent of the Postal Service to modify its regulations to eliminate the need for affected employees to seek EEO relief from current policy.

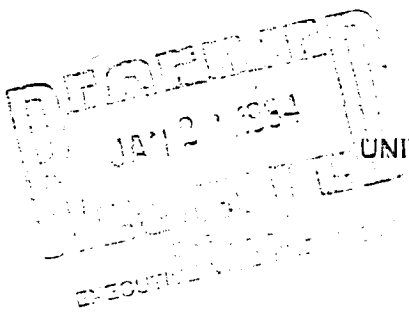
William Burrus
Executive Vice President

Thomas J. Fritsch
Assistant Postmaster General
Labor Relations Department
U.S. Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260Ø

WB:mc

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
Clerk Division
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



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

January 24, 1984

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in response to your January 17 letter regarding a recent decision by the Equal Employment Opportunity Commission in case 01820528 (Turner and Dunn v. USPS).

This case is currently under review by our legal department. It is not our intent to modify the current policy on converting severely handicapped casual employees into the regular work force.

Sincerely,

W. E. Henry, Jr.

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

cc: Mr. Gildea

6A

American Postal Workers Union, AFL-CIO

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

WILLIAM BURRUS
Executive Vice President

January 17, 1984

James Gildea
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Dear Mr. Gildea:

A recent decision by the Equal Employment Opportunity Commission in case no. 01820528 (Turner and Dunn v. USPS) found that the Postal Service "discriminated against the appellants when it failed to convert appeallants to probationary part-time flexible clerks upon completion of the first three (3) LSM lessons."

This finding is contrary to current Postal Service policy and practice and may impact other employees in similar circumstances.

The union wishes to determine if it is your intent to modify current policy to conform to this decision.

Sincerely,

William Burrus,
Executive Vice President

WB:mc

NATIONAL EXECUTIVE BOARD • MOE BILLER, President

WILLIAM BURRUS, Executive Vice President
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NEAL VACCARO, Northeastern Region
ARCHIE SALISBURY, Southern Region

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

Shirley E. Turner, and Thomas Dunn, Appellants	)	
v.	)	Appeal No. 01820528
United States Postal Service Agency.	)	

DECISION

INTRODUCTION

On January 20, 1982, Shirley E. Turner and Thomas Dunn (hereinafter referred to as appellants) initiated appeals from final agency decisions of the United States Postal Service dated December 30, 1981. The appeals were initiated under Section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 791 et seq. The appeals were timely filed and accepted in accordance with the provisions of EEOC Order 960, as amended.

BACKGROUND

On March 20, 1980, appellants were hired as Letter Sorting Machine (LSM) trainees through the agency's program for the severely handicapped. Appellants were two of several deaf individuals hired from a separately established register of applicants for employment. The register was not compiled through the usual process of ranking applicants according to performance on a competitive examination.

Applicants hired from the competitively established register were initially hired as casual employees ($4.76 per hour) and required to complete the first three (3) lessons within eighteen (18) hours. Upon successful completion of the first three (3) lessons, the

competitively appointed trainees were converted to part-time flexible employees at a rate of $8.10 per hour.

Upon hiring, appellants were informed that the casual appointment was in lieu of the competitive process leading to appointment. Appellants were informed that they: (1) must successfully complete the first three (3) lessons in keying the LSM within eighteen (18) hours of training in order to remain as trainees; (2) would be paid at a rate of $4.76 per hour; (3) would be given eighty-nine (89) days to demonstrate proficiency.

After eighteen (18) hours of training, one deaf employee was terminated for failure to successfully complete the first three (3) lessons. Appellants successfully completed the lessons and continued employment at the rate of $4.76 per hour. Appellants and the competitively appointed trainees were assigned the same duties during the period immediately following completion of the first three (3) lessons.

Appellant's initiated the complaints in this matter after the agency refused to convert them to part-time flexible clerks upon successful completion of the first three lessons. On June 14, 1980, the appellants were converted to part-time flexible probationary employees after successful pursuit of a grievance. Appellant's contended that the agency's refusal to convert was based on their handicap.

The agency found that the failure to convert was not unlawful employment discrimination because (1) appellants were hired from a separately established register; (2) appellants were advised of the conditions of their employment; and (3) its actions were in conformity with its regulations.

ANALYSIS AND FINDINGS

The sole issue before this Commission is whether the agency's failure to convert appellant's to part-time flexible employees after successful completion of the first three (3) lessons within eighteen (18) hours of entry on duty violated the Rehabilitation Act of 1973, as amended.

The basic facts of this appeal are not in dispute. The agency found that it treated the appellant's differently because of their handicap (deafness). It justified the treatment on the grounds that appellants were appointed from a separate and non-competitively established register. The 89-day casual appointment served to by-pass normal

competitive screening. Once appellants were appointed they and all appointees were held to the same performance expectations.

The Commission's regulations on the employment of handicapped individuals prohibit discrimination against qualified handicapped persons. See 29 C.F.R. § 1613.701 et seq. In addition, the regulations set forth the intent of the Federal government to become a model employer of handicapped individuals. 29 C.F.R. § 1613.703. The former Civil Service Commission and the Office of Personnel Management authorized a federal selective placement effort so that the Federal government could attain its goal.

Briefly, excepted service appointments of handicapped individuals were authorized; handicapped appointees could be converted from temporary trial appointments to regular appointments if abilities to perform the duties of the positions were demonstrated within twelve (12) months immediately preceding the recommendations for conversion. Alternatively, an agency may accept a certification from either the Veterans Administration or a State vocational rehabilitation agency familiar with the duties of the position that the individual is likely to succeed in the performance of the duties. See FPM Chapter 306-11 (4-2c).

Here the agency elected the 89-day casual appointment in lieu of the competitive screening process prior to appointment. The agency defended the use of the 89-day appointment on the grounds that it gave the agency the opportunity to assess the individual's affinity for the type of work and capability to perform in the position prior to career probationary appointment.

The agency's justification of its failure to convert appellants to part-time flexible clerks fails when compared with actual treatment. Appellants were, in effect, given a trial appointment of eighteen (18) hours. Failure to successfully complete the first three (3) lessons within that period resulted in termination for both competitively and specially appointed employees. If successful, employees in both groups progressed to the next level of performance. However, the handicapped employees were compensated at a substantially lower rate of pay. Thus, the issue before this Commission is whether the disparate treatment in terms of pay and other benefits is justified.

The agency's response addresses the issue of the appellants' appointment. It does not address the issue of compensating appellants at a lower rate than competitively appointed employees nor does it address the denial of other benefits such as seniority.

Ordinarily, the Commission would defer to an agency's evaluation of the appropriate standard to use in determining whether an employee is "qualified" to perform the duties of a position. Qualifications however, are not at issue in this particular matter. Appellants have demonstrated proficiency on the job and have performed in a manner similar to competitively appointed employees. The application of identical performance standards during the training period and appellants' successful completion over-come any inference that might be drawn in favor of the agency.

The Commission is concerned with the reasonableness of the clear discrimination based on handicap. Section 501 of the Rehabilitation Act prohibits discrimination on the basis of handicap "when unrelated to the individual's qualification's or any other substantial governmental justification." Shirey v. Devine, 670 F.2d 1188, 27 FEP Cases 1148, 1162 (D.C. Cir. 1982). Appellants' qualifications are established. The agency has failed to identify any "substantial governmental justification" for denying appellants pay equal that of non-handicapped employees and appointment to probationary part-time flexible clerks at the time of successful completion of the first three (3) lessons.

CONCLUSION

The Commission finds that the agency unlawfully discriminated against the appellants when it failed to convert appellants to probationary part-time flexible clerks upon completion of the first three (3) LSM lessons. The agency is directed to retroactively establish appellants' conversion date to part-time flexible clerks in the same manner as that established for non-handicapped employees successfully completing the first three (3) LSM lessons within eighteen (18) hours. The agency shall award appellants appropriate backpay, seniority, and other benefits.

NOTICE OF RIGHT TO FILE A CIVIL ACTION

Pursuant to 29 C.F.R. § 1613.282, the appellant is hereby notified that this decision is final and that s/he has the right to file a civil action on the Rehabilitation Act claim in the appropriate U.S. District Court within thirty (30) days of the date of receipt of this decision.

IMPLEMENTATION OF THE COMMISSION DECISION

Under EEOC Regulations, compliance with the Commission's corrective action is mandatory. The agency must report to the Commission within thirty (30) calendar days of receipt of the decision, that corrective action has been taken. The agency report should be forwarded to: Compliance Officer, Office of Review and Appeals, EEOC, 2401 E Street, N.W., Washington, D.C. 20507. A copy of the report should be sent to the appellant.

NOTICE OF RIGHT TO REQUEST REOPENING

The appellant and the agency are hereby notified that the Commissioners may, in their discretion, reopen and reconsider any previous decision when the party requesting reopening submits written argument or evidence which tends to establish that:

1. New and material evidence is available that was not readily available when the previous decision was issued;

2. The previous decision involves an erroneous interpretation of law or regulations or misapplication of established policy; or

3. The previous decision is of precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

This notice is in accord with 29 C.F.R. § 1613.235. As provided therein, agency requests to reopen must be filed within thirty (30) days from the date of receipt of this decision.

FOR THE COMMISSION:

Date 12/19/83

Executive Secretary
to the Commission

6C

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Moe Biller, President
(202) 842-4246

March 25, 1987

Dear Mr. Fritsch:

By copy of my correspondence of January 17, 1984 I inquired as to the Postal Services intent to adjust its regulations consistent with the findings in EEO decision Turner and Dunn v USPS No. Ø1820528. William Henry of your staff responded on January 24, 1984 advising that "it is not our intent to modify current policy on converting severely handicapped casual employees into the regular work force."

The EEO Commission has reaffirmed the Turner decision in the Postal Service's efforts to reopen and reconsider and on January 12, 1987 ordered implementation of the Turner decision.

This is once again to inquire as to the intent of the Postal Service to modify its regulations to eliminate the need for affected employees to seek EEO relief from current policy.

William Burrus
Executive Vice President

Thomas J. Fritsch
Assistant Postmaster General
Labor Relations Department
U.S. Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260Ø

WB:mc

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
Clerk Division
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

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

December 18, 1997

Dear Mr Mahon:

This is to notify you that the American Postal Workers Union, AFL-CIO hereby withdraws my letter of October 20, 1997 discontinuing participation in the NLRB Dispute Resolution Process. The disputes giving rise to the letter of withdrawal have been satisfied and the union will continue participation in the process.

Sincerely,

William Burrus
Executive Vice President

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

Joseph J. Mahon Jr
Vice President
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

cc: A Hajjar
G Bell
W Gould

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

December 23, 1997

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

Dear Bill:

As we discussed on Monday, December 22, 1997, the attached memo dated December 18, 1997, subject July 15, 1997 APWU/USPS Alternative Dispute Resolution Agreement Relating to the National Labor Relations Board Unfair Labor Practice Charges, is forwarded for your information.

If additional information is needed please call (202) 268-3802.

Sincerely,

Pete Bazylewicz
Manager, Grievance & Arbitration

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

December 18, 1997

MANAGERS, HUMAN RESOURCES (AREA)
LABOR RELATIONS SPECIALISTS (AREA)

SUBJECT: July 15, 1997 APWU/USPS Alternative Dispute Resolution Agreement Relating to the National Labor Relations Board Unfair Labor Practice Changes

Recently, several questions have arisen concerning implementation of the new NLRB Dispute Resolution Process MOU and our earlier memo dated July 30. For ease of reference, attached are copies of the MOU and the earlier memo, along with a letter from Joseph J. Mahon Jr., Vice President of Labor Relations, concerning information requests.

To avoid any potential confusion, please be aware of the following points:

- Distribution of the earlier memo was to include all supervisors who may be receiving information requests from the APWU. Please ensure that this distribution is accomplished.

- The attached Joseph J. Mahon Jr. letter has not been rescinded by the MOU that created this process.

- Information requests for employee time records, employee leave records, employee prior discipline records, employee staffing records and employee work schedule records are generally regarded as relevant with respect to the APWU's determination whether or not to file a grievance concerning those matters. For these routine requests, no specific basis for relevancy is required on the APWU's request form. Requests for other types of information require the union to show the basis of the information's relevancy.

- Requests for non-bargaining unit employee records and medical records must be reviewed with care to ensure that individual privacy rights are not violated. The law has developed special rules for union requests for information relating to nonbargaining unit members and employee medical information. Information regarding nonbargaining unit members should be provided if it is reasonably probable that the information is relevant to an issue between the parties and would be of use to the union in carrying out its statutory duties and responsibilities. With respect to medical records, copies should be provided;

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

however, where there is legitimate and substantial employee confidentiality interest that would be compromised by disclosure of the records, there is an obligation to bargain with the union in order to seek an accommodation concerning the information requested.

- Local agreements that were in effect prior to the execution of this MOU which provided for a quicker response time shall continue to be honored

- If local management does not comply with the APWU's information request, management will forward such denial to the next higher level for review as contemplated in the MOU.

Hopefully, this clarification has been helpful.

Pete Bazylewicz
Manager
Grievance and Arbitration

Attachments

JOSEPH J. MAHON JR.
VICE PRESIDENT, LABOR RELATIONS

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

December 2, 1993

MEMORANDUM FOR AREA MANAGERS, CUSTOMER SERVICES
AREA MANAGERS, PROCESSING AND DISTRIBUTION
DISTRICT MANAGERS, CUSTOMER SERVICES
PLANT MANAGERS, PROCESSING AND DISTRIBUTION
MANAGERS, HUMAN RESOURCES (ALL AREAS)

SUBJECT: Local Union Information Requests

The National Labor Relations Board has informed me that some information requests made by union officials are being denied by local management representatives on the technical ground that the local union official has no authority to make an information request. It is not the Postal Service's intention to deny an information request on this technical ground and I would appreciate that this fact be communicated to all individuals responsible for responding to local union information requests.

In addition, I would like to take this opportunity to reaffirm the general principle that the unions are entitled to all relevant and necessary information to perform their obligations as the representative of bargaining unit employees. Therefore, if the requested information has some bearing on an issue between the parties, it should be disclosed to the unions. If an information request is unclear, management should attempt to clarify the request, rather than denying the request on a technicality.

Finally, information requests should be timely answered and delays should be avoided. The fact that the information may not reside in the local unit is not sufficient to deny an information request, if management is aware that the information is accessible by alternative means.

If an information request is to be denied or a response cannot be timely answered, please have the individual handling the request advise the local union official explaining the basis for the delay or denial.

202-268-3819

Also attached is a copy of a Board notice which has been posted in two geographic locations as a result of an informal settlement the Postal Service has reached with the Board.

Please share this memorandum with all personnel responsible for responding to union information requests.

Joseph J. Mahon, Jr.

Attachments

cc: Mr. Jacobson
Mr. Green

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

July 30, 1997

MANAGERS, HUMAN RESOURCES (AREA)
LABOR RELATIONS SPECIALISTS (AREA)

SUBJECT: July 15, 1997 APWU/USPS Alternative Dispute Resolution Agreement Relating to National Labor Relations Board Unfair Labor Practice Charges

During 1994 collective bargaining negotiations the APWU and the Postal Service, at the urging of the General Counsel of the National Labor Relations Board, committed themselves to negotiating an Alternative Dispute Resolution process to handle the large number of APWU unfair labor practice charges filed with the NLRB relating to information requests. On July 15, 1997, the parties agreed to a process, a copy of which is attached for your review. The document is self-explanatory. The ADR process requires management to promptly respond to information requests or provide the union with a reason for denial of the information request, or alternatively a date when the information will be provided. At the same time, the union is obligated to provide a form to management delineating the nature of the information request and basis for the request so management can be assured that the union is not engaged in a fishing expedition. The ADR process only applies to **APWU information requests** and does not affect other alleged violations of the National Labor Relations Act which could conceivably be the basis for the filing of an unfair labor practice charge with the NLRB.

The crux of the agreement is that management will promptly respond to union information requests, while the APWU will instruct its locals that the NLRB will no longer accept unfair labor practice charges filed by the union without first exhausting the ADR process. On a parallel front, the National Labor Relations Board will inform its Regional Directors across the United States not to accept APWU unfair labor practice charges relating to information requests.

Please review the ADR agreement with care and transmit it to all individuals who normally are the recipients of information requests from APWU stewards or officers.

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

While the agreement is for the most part self-explanatory, a few notes about the responsibility for administering this process are in order. Initial information requests should continue to be handled by the appropriate individuals within the installation, with advice from District Labor Relations as may be needed. The "District Management" part of the procedures should be handled by the District Senior Labor Relations Specialist or designee(s). The "Area Management" part of the procedures should be the responsibility of the Area Senior Labor Relations Specialist or designee(s). The "Postal Service Headquarters" part of the procedures will be handled by the Manager, Grievance and Arbitration, or designee(s).

The ADR process does not eliminate the necessity for the union information request to be relevant and necessary. However, as history has shown, this standard is met by most union information requests. At the same time, care should be expended in reviewing union information requests when the request is for information relating to nonbargaining unit members or for employee medical information. Finally, nothing in the agreement changes the obligation of the union to pay appropriate administrative and copying costs for information requests.

If anyone has any questions concerning the application of NLRB case law to specific information requests, please contact either the Field Labor Counsel or labor paralegals in a Postal Service Field Law Department Office for assistance. Questions concerns other aspects of this procedure may be directed to Labor Relations.

Pete Bazylewicz
Manager
Grievance & Arbitration

Attachment

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

UNITED STATES POSTAL SERVICE

AND THE

AMERICAN POSTAL WORKERS UNION, AFL-CIO

NLRB Dispute Resolution Process

The United States Postal Service and the American Postal Workers Union, AFL-CIO, in continuation of their commitment made during the collective bargaining process to the effect that the parties would explore alternative procedures to reduce the number of unfair labor practice charges with the National Labor Relations Board, agree to the following procedure for the handling of Union information requests:

1. With respect to requests for information under Articles 17.3 and 31.3 of the National Agreement, the Union may request and shall obtain access through the Postal Service to files and other records relevant and necessary for collective bargaining or the enforcement, administration or interpretation of the National Agreement. In this regard, the parties reaffirm their commitment to the principles set forth in the December 2, 1993 memorandum of Vice President Joseph J. Mahon, Jr., which is appended as an attachment hereto: the Union is entitled to all relevant and necessary information to perform its bargaining obligations as the representative of bargaining unit employees, and if the requested information has some bearing on an issue between the parties, it should be disclosed to the Union. Information requests for employee time records, employee leave records, employee prior discipline records, employee staffing records and employee work schedule records are generally regarded as relevant with respect to the Union's determination whether or not to file a grievance concerning those matters. If the request is unclear as to what information is being requested, Management should seek clarification from the Union and the Union will provide in a timely fashion a more precise statement of what is being requested. The fact that the information does not reside in the local unit is not sufficient by itself to deny an information request if the information is accessible by alternative means. The Union will provide Management with a completed "APWU Request For Information Form," which is appended as an attachment.

2. Management shall provide the requested information, a date on which the information will be forwarded or a written statement explaining why the information will not be provided to the Union within seven (7) days of the request. The parties may agree to mutually extend the time limits set forth in this dispute resolution process.

3. If the request is denied, the request shall be forwarded to District Management along with copies of the related correspondence and documents. The District Management representative will review the request as expeditiously as possible, and shall provide the requested information, a date on which the information will be forwarded or a written statement explaining why the information will not be provided within ten (10) days following receipt of the referral.

4. If Management does not provide the requested information at the District level, the request shall be referred to the parties' Area representatives. After review of the request by the Area Management representative, the Union shall provide a statement of position if requested by the Area Management representative, which shall be included in the file along with a statement of position by Management and any other related correspondence and documentation. Either party may supplement the file, if deemed necessary. The parties' Area representatives shall discuss the matter within twelve (12) days following referral of the Union's request for information.

5. If Management does not provide the requested information at the Area level, the entire file, which should include both parties' position statements and any other supporting documentation, shall be sent to the Union and Postal Service Headquarters. Either party may supplement the file, if deemed necessary. The Vice President of Labor Relations or his designee and the President of the Union or his designee shall discuss the matter within twelve (12) days following referral of the Union's request for information and, where possible, issue at least a verbal decision. The parties envision few disputes reaching the Headquarters level as it is the desire of all concerned that any disputes about the propriety of an information request be settled at the lowest possible level in the parties' respective organizations.

6. With respect to information requests originating at the Headquarters level, if such a request is denied by Management, the parties agree to meet and discuss the matter at the Headquarters level no later than the end of the month following the denial of the information request, and to exchange written statements of position and copies of related correspondence and documents prior to the meeting.

7. Pending exhaustion of these dispute resolution steps, no unfair labor practice charge asserting improper denial of an information request will be filed

with the Board. If the information request dispute is not resolved by the parties within fourteen (14) days of the Headquarters level meeting, it is envisioned that the Union may file an unfair labor practice charge with the General Counsel of the National Labor Relations Board in Washington, D.C., pursuant to Section 102.33(a) of the Board's Rules and Regulations. Upon such filing, the parties agree to provide to the Board's Division of Enforcement a copy of the parties' written statements of position and other correspondence and documents set forth above, and agree to meet with representatives of the Division of Enforcement for the purpose of settling the case. If the case cannot be settled, and the charge is deemed meritorious, it is the parties' intent that in appropriate cases the matter be submitted to the Board through motion for summary judgment.

8. The process set forth in this agreement is prospective only and has no applicability to any case currently pending before the Board.

9. The parties understand that the process set forth above is experimental in nature, that it will continue for one year, and that immediately prior to the expiration of that time period the parties and the Board will meet to discuss continuation of the program. Any party or the Board may, with sixty (60) days advance notice, discontinue participation in the program described above.

10. The process set forth in this agreement is entered into without precedent or prejudice to any party's position in any matter, and may not be cited in any forum for any purpose except to enforce its terms.

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

Joseph J. Mahon, Jr., Vice President
United States Postal Service

7/15/92

A:post2.doc

Bill Burns

As discussed.

DRAFT

This should be TT.

Doc

202/268-3833

MANAGERS, HUMAN RESOURCES (AREA)
LABOR RELATIONS SPECIALISTS (AREA)

SUBJECT: July 15, 1997 APWU/USPS Alternative Dispute Resolution Agreement Relating to the National Labor Relations Board Unfair Labor Practice Changes

Recently, several questions have arisen concerning implementation of the new NLRB Dispute Resolution Process MOU and our earlier memo dated July 30. For ease of reference, attached are copies of the MOU and the earlier memo, along with a letter from Joseph J. Mahon Jr., Vice President of Labor Relations, concerning information requests.

To avoid any potential confusion, please be aware of the following points:

- Distribution of the earlier memo was to include all supervisors who may be receiving information requests from the APWU. Please ensure that this distribution is accomplished.

- The attached Joseph J. Mahon Jr. letter has not been rescinded by the MOU that created this process.

- Information requests for employee time records, employee leave records, employee prior discipline records, employee staffing records and employee work schedule records are generally regarded as relevant with respect to the APWU's determination whether or not to file a grievance concerning those matters. For these routine requests, no specific basis for relevancy is required on the APWU's request form. Requests for other types of information require the union to show the basis of the information's relevancy.

- Requests for non-bargaining unit employee records and medical records must be reviewed with care to ensure that individual privacy rights are not violated. The law has developed special rules for union requests for information relating to nonbargaining unit members and employee medical information. Information regarding nonbargaining unit members should be provided if it is reasonably probable that the information is relevant to an issue between the parties and would be of use to the union in carrying out its statutory duties and responsibilities. With respect to medical records, copies may be provided;

DRAFT

however, where there is legitimate and substantial employee confidentiality interest that would be compromised by disclosure of the records, there is an obligation to bargain with the union in order to seek an accommodation concerning the information requested.

- Local agreements that were in effect prior to the execution of this MOU which provided for a quicker response time shall continue to be honored

- If local management denies the APWU's information request, management will forward such denial to the next higher level for review as contemplated in the MOU.

Hopefully, this clarification has been helpful.

Pete Bazylewicz
Manager
Grievance and Arbitration

Attachments

Bill Burrus

In order to avoid any arguments over what obligations there exist to provide information, the following can be substituted for the sentence in the second paragraph on page two of the instructions that reads: "At the same time, care should be extended in reviewing union information requests when the request is for information relating to nonbargaining unit members or for employee medical information."

> The law has developed special rules for union requests for information relating to nonbargaining unit members and employee medical information. Information regarding nonbargaining unit members should be provided if it is reasonably probable that the information is relevant to an issue between the parties and would be of use to the union in carrying out its statutory duties and responsibilities. With respect to medical records, where there is legitimate and substantial employee confidentiality interest that would be compromised by disclosure of the records, there is an obligation to bargain with the union in order to seek an accommodation concerning the information requested.

What are your thoughts on this?

Doc

202/268-3833

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

December 4, 1997

Dear Mr. Dockins:

I have received the suggested responses to the issues raised regarding the instructions on the information request Memorandum. You have adequately responded to my concerns in all areas, except the reference to non-bargaining and medical records. The instructions must reflect the current status of the law on a unions entitlement to information on non-bargaining unit employee records and medical records. If you have copies of Board decisions that restrict the union's access to this information I am willing to consider the modification of my position but my present understanding is that the union is only required to establish the relevancy of the request to its responsibility to file or consider the filing of a grievance. I cannot agree to language that places a greater burden on the union in requesting such information.

The paragraph pertaining to "copies" of information misses the point that the employer is required by Article 17 to provide the union access to information and violation of the Article 17 right is subject to the grievance arbitration procedure rather than the special process. This obligation to provide access should be contained in the instructions.

Thank you for your attention to this matter.

Sincerely,

William Burrus
Executive Vice President

John Dockins
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

National Executive Board

Moe Biller
President

William Burrus
Executive Vice President

Douglas C. Holbrook
Secretary-Treasurer

Greg Bell
Industrial Relations Director

Robert L. Tunstall
Director, Clerk Division

James W. Lingberg
Director, Maintenance Division

Robert C. Pritchard
Director, MVS Division

George N. McKeithen
Director, SDM 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

DRAFT

DRAFT

MANAGERS, HUMAN RESOURCES (AREA)
LABOR RELATIONS SPECIALISTS (AREA)

SUBJECT: July 15, 1997 APWU/USPS Alternative Dispute Resolution Agreement Relating to the National Labor Relations Board Unfair Labor Practice Changes

Recently, several questions have arisen concerning implementation of the new NLRB Dispute Resolution Process MOU and our earlier memo dated July 30. For ease of reference, attached are copies of the MOU and the earlier memo, along with a letter from Joseph J. Mahon Jr., Vice President of Labor Relations, concerning information requests.

To avoid any potential confusion, please be aware of the following points:

- Distribution of the earlier memo was to include all supervisors who may be receiving information requests from the APWU. Please ensure that this distribution is accomplished.

- The attached Joseph J. Mahon Jr. letter has not been rescinded by the MOU that created this process.

- The NLRB Dispute Resolution Process applies to all information requests from the APWU, not just to requests for copies of information.

- Information requests for employee time records, employee leave records, employee prior discipline records, employee staffing records and employee work schedule records are generally regarded as relevant with respect to the APWU's determination whether or not to file a grievance concerning those matters. For these routine requests, no specific basis for relevancy is required on the APWU's request form. Requests for other types of information require the union to show the basis of the information's relevancy. Requests for non-bargaining unit employee records and medical records must be reviewed with care to ensure that individual privacy rights are not violated.

- Local agreements that were in effect prior to the execution of this MOU which provided for a quicker response time shall continue to be honored

DEC. 4.1997 5:00PM USPS LR-GA NO.352 P.2/3

does not Provide

- If local management denies the APWU's information request, management will forward such denial to the next higher level for review as contemplated in the MOU.

Hopefully, this clarification has been helpful.

Pete Bazylewicz
Manager
Grievance and Arbitration

DRAFT

Attachments

DEC. 4. 1997 5:00PM USPS LR-GH NO. 352 P. 3/3

UNITED STATES POSTAL SERVICE

FACSIMILE COVER LETTER

NOV 1997
Received
Office of

Labor Relations
Grievance and Arbitration
475 L'Enfant Plaza, SW, Room 9300
Washington, DC 20260-4140

PLEASE DELIVER THE FOLLOWING PAGES

TO: Bill Burrus
Executive Vice President
APWU
202/842-4250
FAX: 202/842-4297

FROM: Pete Bazylewicz
Manager, Grievance & Arbitration
Labor Relations
202/268-3802
FAX: 202/268-5126

DATE: NOVEMBER 24, 1997
NUMBER OF PAGES (INCLUDING COVER): 6

COMMENTS:. Attached is a copy of our instructions that you wanted as indicated last Friday. If you need additional information, please call me.

Thanks,

Peter B.

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

November 26, 1997

Dear Mr Bazylewicz:

I have reviewed the management instructions regarding the Memorandum of Agreement on information requests and understand why local managers did not comply with the national parties intent. Following are my concerns with the initial instructions that I would expect to be corrected if we continue the process:

1. The instructions were not directed to the supervisors or managers who are involved at Step 1 and Step 2 of the process. The instructions did not even require that those officials be informed, thus requiring their compliance. Provisions contained in the third paragraph to "Please review the ADR agreement with care and transmit it to all individuals who normally are the recipients of information requests from APWU stewards or officers" falls short of instructing them to comply.

2. The instructions made no reference to the employer's contractual obligation to provide "access through the appropriate supervisor to review ...documents, files and other records necessary for processing a grievance or determining if a grievance exists" as required by Article 17.3 of the National Agreement. Your instructions implied that the union's request for information is limited to "copies" and the managers decision is based on whether or not such copies will be provided. In addition, the requirement to provide access does not entitle management to charge the union for such reviews.

3. As we discussed, the instructions did not address the obligation of management to forward the request to the next level when the request for information is not provided or is denied.

4. You included in the instructions that "care should be expended in reviewing union information requests when the request is for information relating to nonbargaining unit members or for employee medical information." The law does

National Executive Board
Moe Biller
President

William Burrus
Executive Vice President

Douglas C. Holbrook
Secretary-Treasurer

Greg Bell
Industrial Relations Director

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Director, Clerk Division

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Central Region

Jim Burke
Eastern Region

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Northeast Region

Terry Stapleton
Southern Region

Raydell R. Moore
Western Region

not place a higher relevancy standard on this information. The standard is that if it is relevant, it must be provided. By focusing on these areas, a higher standard is implied and such request are routinely denied or unnecessarily delayed.

5. The instructions provide that "the union is obligated to provide a form to management delineating the nature of the information request and basis for the request so management can be assured that the union is not engaged in a fishing expedition." The Memorandum specifically includes four categories of information that are presumptively relevant thus not requiring the establishment of a "basis" for the request.

6. A few offices had previously reached agreement on a time period for providing requested information. It was not my intent to disturb such local agreements and the instructions should require compliance.

In general, the instructions issued are incomplete and misleading, resulting in managers denying legitimate requests for information. I informed the USPS representatives involved in the negotiations leading to the Memorandum that I had no interest in a "process". My interest is in the union's access to information and any procedure that I endorse must have as its basis the employer's willingness to provide access and/or copies of the requested information. This can be accomplished via detailed instructions that are forwarded to the supervisors and managers who serve as recipients of information requests and these instructions must be signed by an official who has the authority to enforce its provisions.

Thank you for your attention to this matter.

Sincerely,

William Burrus
Executive Vice President

Pete Bazylewicz
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

October 20, 1997

Dear Mr. Mahon:

Pursuant to the Memorandum of Understanding dated July 15, 1997 regarding the NLRB Dispute Resolution Process, this is notice that the American Postal Workers Union hereby informs you of its intent to discontinue participation in the program effective December 20, 1997.

Sincerely,

William Burrus
Executive Vice President

National Executive Board
Moe Biller
President
William Burrus
Executive Vice President
Douglas C. Holbrook
Secretary-Treasurer
Greg Bell
Industrial Relations Director
Robert L. Tunstall
Director, Clerk Division
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Director, Maintenance Division
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Northeast Region
Terry Stapleton
Southern Region
Raydell R. Moore
Western Region

Joseph J. Mahon
Vice President
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

cc: A Hajjar
G Bell
W Gould

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Grievant/Union	Nature of Allegation

Date of Request

To: _____ Title: _____

From: _____ Title: _____

Subject: **REQUEST FOR INFORMATION & DOCUMENTS RELATIVE TO PROCESSING A GRIEVANCE**

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:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

NOTE: 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 8a(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**

_____ _____

(date) (signed)

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

December 18, 1997

Dear Mr Mahon:

This is to notify you that the American Postal Workers Union, AFL-CIO hereby withdraws my letter of October 20, 1997 discontinuing participation in the NLRB Dispute Resolution Process. The disputes giving rise to the letter of withdrawal have been satisfied and the union will continue participation in the process.

Sincerely,

William Burrus
Executive Vice President

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

Joseph J. Mahon Jr
Vice President
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

cc: A Hajjar
G Bell
W Gould

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

December 23, 1997

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

Dear Bill:

As we discussed on Monday, December 22, 1997, the attached memo dated December 18, 1997, subject July 15, 1997 APWU/USPS Alternative Dispute Resolution Agreement Relating to the National Labor Relations Board Unfair Labor Practice Charges, is forwarded for your information.

If additional information is needed please call (202) 268-3802.

Sincerely,

Pete Bazylewicz
Manager, Grievance & Arbitration

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

December 18, 1997

MANAGERS, HUMAN RESOURCES (AREA)
LABOR RELATIONS SPECIALISTS (AREA)

SUBJECT: July 15, 1997 APWU/USPS Alternative Dispute Resolution Agreement Relating to the National Labor Relations Board Unfair Labor Practice Changes

Recently, several questions have arisen concerning implementation of the new NLRB Dispute Resolution Process MOU and our earlier memo dated July 30. For ease of reference, attached are copies of the MOU and the earlier memo, along with a letter from Joseph J. Mahon Jr., Vice President of Labor Relations, concerning information requests.

To avoid any potential confusion, please be aware of the following points:

- Distribution of the earlier memo was to include all supervisors who may be receiving information requests from the APWU. Please ensure that this distribution is accomplished.

- The attached Joseph J. Mahon Jr. letter has not been rescinded by the MOU that created this process.

- Information requests for employee time records, employee leave records, employee prior discipline records, employee staffing records and employee work schedule records are generally regarded as relevant with respect to the APWU's determination whether or not to file a grievance concerning those matters. For these routine requests, no specific basis for relevancy is required on the APWU's request form. Requests for other types of information require the union to show the basis of the information's relevancy.

- Requests for non-bargaining unit employee records and medical records must be reviewed with care to ensure that individual privacy rights are not violated. The law has developed special rules for union requests for information relating to nonbargaining unit members and employee medical information. Information regarding nonbargaining unit members should be provided if it is reasonably probable that the information is relevant to an issue between the parties and would be of use to the union in carrying out its statutory duties and responsibilities. With respect to medical records, copies should be provided;

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

however, where there is legitimate and substantial employee confidentiality interest that would be compromised by disclosure of the records, there is an obligation to bargain with the union in order to seek an accommodation concerning the information requested.

- Local agreements that were in effect prior to the execution of this MOU which provided for a quicker response time shall continue to be honored

- If local management does not comply with the APWU's information request, management will forward such denial to the next higher level for review as contemplated in the MOU.

Hopefully, this clarification has been helpful.

Pete Bazylewicz
Manager
Grievance and Arbitration

Attachments

JOSEPH J. MAHON JR.
VICE PRESIDENT, LABOR RELATIONS

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

December 2, 1993

MEMORANDUM FOR AREA MANAGERS, CUSTOMER SERVICES
AREA MANAGERS, PROCESSING AND DISTRIBUTION
DISTRICT MANAGERS, CUSTOMER SERVICES
PLANT MANAGERS, PROCESSING AND DISTRIBUTION
MANAGERS, HUMAN RESOURCES (ALL AREAS)

SUBJECT: Local Union Information Requests

The National Labor Relations Board has informed me that some information requests made by union officials are being denied by local management representatives on the technical ground that the local union official has no authority to make an information request. It is not the Postal Service's intention to deny an information request on this technical ground and I would appreciate that this fact be communicated to all individuals responsible for responding to local union information requests.

In addition, I would like to take this opportunity to reaffirm the general principle that the unions are entitled to all relevant and necessary information to perform their obligations as the representative of bargaining unit employees. Therefore, if the requested information has some bearing on an issue between the parties, it should be disclosed to the unions. If an information request is unclear, management should attempt to clarify the request, rather than denying the request on a technicality.

Finally, information requests should be timely answered and delays should be avoided. The fact that the information may not reside in the local unit is not sufficient to deny an information request, if management is aware that the information is accessible by alternative means.

If an information request is to be denied or a response cannot be timely answered, please have the individual handling the request advise the local union official explaining the basis for the delay or denial.

202-268-3819

Also attached is a copy of a Board notice which has been posted in two geographic locations as a result of an informal settlement the Postal Service has reached with the Board.

Please share this memorandum with all personnel responsible for responding to union information requests.

Joseph J. Mahon, Jr.

Attachments

cc: Mr. Jacobson
Mr. Green

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

July 30, 1997

MANAGERS, HUMAN RESOURCES (AREA)
LABOR RELATIONS SPECIALISTS (AREA)

SUBJECT: July 15, 1997 APWU/USPS Alternative Dispute Resolution Agreement Relating to National Labor Relations Board Unfair Labor Practice Charges

During 1994 collective bargaining negotiations the APWU and the Postal Service, at the urging of the General Counsel of the National Labor Relations Board, committed themselves to negotiating an Alternative Dispute Resolution process to handle the large number of APWU unfair labor practice charges filed with the NLRB relating to information requests. On July 15, 1997, the parties agreed to a process, a copy of which is attached for your review. The document is self-explanatory. The ADR process requires management to promptly respond to information requests or provide the union with a reason for denial of the information request, or alternatively a date when the information will be provided. At the same time, the union is obligated to provide a form to management delineating the nature of the information request and basis for the request so management can be assured that the union is not engaged in a fishing expedition. The ADR process only applies to **APWU information requests** and does not affect other alleged violations of the National Labor Relations Act which could conceivably be the basis for the filing of an unfair labor practice charge with the NLRB.

The crux of the agreement is that management will promptly respond to union information requests, while the APWU will instruct its locals that the NLRB will no longer accept unfair labor practice charges filed by the union without first exhausting the ADR process. On a parallel front, the National Labor Relations Board will inform its Regional Directors across the United States not to accept APWU unfair labor practice charges relating to information requests.

Please review the ADR agreement with care and transmit it to all individuals who normally are the recipients of information requests from APWU stewards or officers.

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

While the agreement is for the most part self-explanatory, a few notes about the responsibility for administering this process are in order. Initial information requests should continue to be handled by the appropriate individuals within the installation, with advice from District Labor Relations as may be needed. The "District Management" part of the procedures should be handled by the District Senior Labor Relations Specialist or designee(s). The "Area Management" part of the procedures should be the responsibility of the Area Senior Labor Relations Specialist or designee(s). The "Postal Service Headquarters" part of the procedures will be handled by the Manager, Grievance and Arbitration, or designee(s).

The ADR process does not eliminate the necessity for the union information request to be relevant and necessary. However, as history has shown, this standard is met by most union information requests. At the same time, care should be expended in reviewing union information requests when the request is for information relating to nonbargaining unit members or for employee medical information. Finally, nothing in the agreement changes the obligation of the union to pay appropriate administrative and copying costs for information requests.

If anyone has any questions concerning the application of NLRB case law to specific information requests, please contact either the Field Labor Counsel or labor paralegals in a Postal Service Field Law Department Office for assistance. Questions concerns other aspects of this procedure may be directed to Labor Relations.

Pete Bazylewicz
Manager
Grievance & Arbitration

Attachment

MEMORANDUM OF UNDERSTANDING

BETWEEN THE

UNITED STATES POSTAL SERVICE

AND THE

AMERICAN POSTAL WORKERS UNION, AFL-CIO

NLRB Dispute Resolution Process

The United States Postal Service and the American Postal Workers Union, AFL-CIO, in continuation of their commitment made during the collective bargaining process to the effect that the parties would explore alternative procedures to reduce the number of unfair labor practice charges with the National Labor Relations Board, agree to the following procedure for the handling of Union information requests:

1. With respect to requests for information under Articles 17.3 and 31.3 of the National Agreement, the Union may request and shall obtain access through the Postal Service to files and other records relevant and necessary for collective bargaining or the enforcement, administration or interpretation of the National Agreement. In this regard, the parties reaffirm their commitment to the principles set forth in the December 2, 1993 memorandum of Vice President Joseph J. Mahon, Jr., which is appended as an attachment hereto: the Union is entitled to all relevant and necessary information to perform its bargaining obligations as the representative of bargaining unit employees, and if the requested information has some bearing on an issue between the parties, it should be disclosed to the Union. Information requests for employee time records, employee leave records, employee prior discipline records, employee staffing records and employee work schedule records are generally regarded as relevant with respect to the Union's determination whether or not to file a grievance concerning those matters. If the request is unclear as to what information is being requested, Management should seek clarification from the Union and the Union will provide in a timely fashion a more precise statement of what is being requested. The fact that the information does not reside in the local unit is not sufficient by itself to deny an information request if the information is accessible by alternative means. The Union will provide Management with a completed "APWU Request For Information Form," which is appended as an attachment.

2. Management shall provide the requested information, a date on which the information will be forwarded or a written statement explaining why the information will not be provided to the Union within seven (7) days of the request. The parties may agree to mutually extend the time limits set forth in this dispute resolution process.

3. If the request is denied, the request shall be forwarded to District Management along with copies of the related correspondence and documents. The District Management representative will review the request as expeditiously as possible, and shall provide the requested information, a date on which the information will be forwarded or a written statement explaining why the information will not be provided within ten (10) days following receipt of the referral.

4. If Management does not provide the requested information at the District level, the request shall be referred to the parties' Area representatives. After review of the request by the Area Management representative, the Union shall provide a statement of position if requested by the Area Management representative, which shall be included in the file along with a statement of position by Management and any other related correspondence and documentation. Either party may supplement the file, if deemed necessary. The parties' Area representatives shall discuss the matter within twelve (12) days following referral of the Union's request for information.

5. If Management does not provide the requested information at the Area level, the entire file, which should include both parties' position statements and any other supporting documentation, shall be sent to the Union and Postal Service Headquarters. Either party may supplement the file, if deemed necessary. The Vice President of Labor Relations or his designee and the President of the Union or his designee shall discuss the matter within twelve (12) days following referral of the Union's request for information and, where possible, issue at least a verbal decision. The parties envision few disputes reaching the Headquarters level as it is the desire of all concerned that any disputes about the propriety of an information request be settled at the lowest possible level in the parties' respective organizations.

6. With respect to information requests originating at the Headquarters level, if such a request is denied by Management, the parties agree to meet and discuss the matter at the Headquarters level no later than the end of the month following the denial of the information request, and to exchange written statements of position and copies of related correspondence and documents prior to the meeting.

7. Pending exhaustion of these dispute resolution steps, no unfair labor practice charge asserting improper denial of an information request will be filed

with the Board. If the information request dispute is not resolved by the parties within fourteen (14) days of the Headquarters level meeting, it is envisioned that the Union may file an unfair labor practice charge with the General Counsel of the National Labor Relations Board in Washington, D.C., pursuant to Section 102.33(a) of the Board's Rules and Regulations. Upon such filing, the parties agree to provide to the Board's Division of Enforcement a copy of the parties' written statements of position and other correspondence and documents set forth above, and agree to meet with representatives of the Division of Enforcement for the purpose of settling the case. If the case cannot be settled, and the charge is deemed meritorious, it is the parties' intent that in appropriate cases the matter be submitted to the Board through motion for summary judgment.

8. The process set forth in this agreement is prospective only and has no applicability to any case currently pending before the Board.

9. The parties understand that the process set forth above is experimental in nature, that it will continue for one year, and that immediately prior to the expiration of that time period the parties and the Board will meet to discuss continuation of the program. Any party or the Board may, with sixty (60) days advance notice, discontinue participation in the program described above.

10. The process set forth in this agreement is entered into without precedent or prejudice to any party's position in any matter, and may not be cited in any forum for any purpose except to enforce its terms.

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

Joseph J. Mahon, Jr., Vice President
United States Postal Service

7/15/92

A:post2.doc

Bill Burns

As discussed.

DRAFT

This should be TT.

Doc

202/268-3833

MANAGERS, HUMAN RESOURCES (AREA)
LABOR RELATIONS SPECIALISTS (AREA)

SUBJECT: July 15, 1997 APWU/USPS Alternative Dispute Resolution Agreement Relating to the National Labor Relations Board Unfair Labor Practice Changes

Recently, several questions have arisen concerning implementation of the new NLRB Dispute Resolution Process MOU and our earlier memo dated July 30. For ease of reference, attached are copies of the MOU and the earlier memo, along with a letter from Joseph J. Mahon Jr., Vice President of Labor Relations, concerning information requests.

To avoid any potential confusion, please be aware of the following points:

- Distribution of the earlier memo was to include all supervisors who may be receiving information requests from the APWU. Please ensure that this distribution is accomplished.

- The attached Joseph J. Mahon Jr. letter has not been rescinded by the MOU that created this process.

- Information requests for employee time records, employee leave records, employee prior discipline records, employee staffing records and employee work schedule records are generally regarded as relevant with respect to the APWU's determination whether or not to file a grievance concerning those matters. For these routine requests, no specific basis for relevancy is required on the APWU's request form. Requests for other types of information require the union to show the basis of the information's relevancy.

- Requests for non-bargaining unit employee records and medical records must be reviewed with care to ensure that individual privacy rights are not violated. The law has developed special rules for union requests for information relating to nonbargaining unit members and employee medical information. Information regarding nonbargaining unit members should be provided if it is reasonably probable that the information is relevant to an issue between the parties and would be of use to the union in carrying out its statutory duties and responsibilities. With respect to medical records, copies may be provided;

DRAFT

however, where there is legitimate and substantial employee confidentiality interest that would be compromised by disclosure of the records, there is an obligation to bargain with the union in order to seek an accommodation concerning the information requested.

- Local agreements that were in effect prior to the execution of this MOU which provided for a quicker response time shall continue to be honored

- If local management denies the APWU's information request, management will forward such denial to the next higher level for review as contemplated in the MOU.

Hopefully, this clarification has been helpful.

Pete Bazylewicz
Manager
Grievance and Arbitration

Attachments

Bill Burrus

In order to avoid any arguments over what obligations there exist to provide information, the following can be substituted for the sentence in the second paragraph on page two of the instructions that reads: "At the same time, care should be extended in reviewing union information requests when the request is for information relating to nonbargaining unit members or for employee medical information."

> The law has developed special rules for union requests for information relating to nonbargaining unit members and employee medical information. Information regarding nonbargaining unit members should be provided if it is reasonably probable that the information is relevant to an issue between the parties and would be of use to the union in carrying out its statutory duties and responsibilities. With respect to medical records, where there is legitimate and substantial employee confidentiality interest that would be compromised by disclosure of the records, there is an obligation to bargain with the union in order to seek an accommodation concerning the information requested.

What are your thoughts on this?

Doc

202/268-3833

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

December 4, 1997

Dear Mr. Dockins:

I have received the suggested responses to the issues raised regarding the instructions on the information request Memorandum. You have adequately responded to my concerns in all areas, except the reference to non-bargaining and medical records. The instructions must reflect the current status of the law on a unions entitlement to information on non-bargaining unit employee records and medical records. If you have copies of Board decisions that restrict the union's access to this information I am willing to consider the modification of my position but my present understanding is that the union is only required to establish the relevancy of the request to its responsibility to file or consider the filing of a grievance. I cannot agree to language that places a greater burden on the union in requesting such information.

The paragraph pertaining to "copies" of information misses the point that the employer is required by Article 17 to provide the union access to information and violation of the Article 17 right is subject to the grievance arbitration procedure rather than the special process. This obligation to provide access should be contained in the instructions.

Thank you for your attention to this matter.

Sincerely,

William Burrus
Executive Vice President

John Dockins
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

National Executive Board

Moe Biller
President

William Burrus
Executive Vice President

Douglas C. Holbrook
Secretary-Treasurer

Greg Bell
Industrial Relations Director

Robert L. Tunstall
Director, Clerk Division

James W. Lingberg
Director, Maintenance Division

Robert C. Pritchard
Director, MVS Division

George N. McKeithen
Director, SDM 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

DRAFT

DRAFT

MANAGERS, HUMAN RESOURCES (AREA)
LABOR RELATIONS SPECIALISTS (AREA)

SUBJECT: July 15, 1997 APWU/USPS Alternative Dispute Resolution Agreement Relating to the National Labor Relations Board Unfair Labor Practice Changes

Recently, several questions have arisen concerning implementation of the new NLRB Dispute Resolution Process MOU and our earlier memo dated July 30. For ease of reference, attached are copies of the MOU and the earlier memo, along with a letter from Joseph J. Mahon Jr., Vice President of Labor Relations, concerning information requests.

To avoid any potential confusion, please be aware of the following points:

- Distribution of the earlier memo was to include all supervisors who may be receiving information requests from the APWU. Please ensure that this distribution is accomplished.

- The attached Joseph J. Mahon Jr. letter has not been rescinded by the MOU that created this process.

- The NLRB Dispute Resolution Process applies to all information requests from the APWU, not just to requests for copies of information.

- Information requests for employee time records, employee leave records, employee prior discipline records, employee staffing records and employee work schedule records are generally regarded as relevant with respect to the APWU's determination whether or not to file a grievance concerning those matters. For these routine requests, no specific basis for relevancy is required on the APWU's request form. Requests for other types of information require the union to show the basis of the information's relevancy. Requests for non-bargaining unit employee records and medical records must be reviewed with care to ensure that individual privacy rights are not violated.

- Local agreements that were in effect prior to the execution of this MOU which provided for a quicker response time shall continue to be honored

DEC. 4.1997 5:00PM USPS LR-GA NO.352 P.2/3

does not Provide

- If local management denies the APWU's information request, management will forward such denial to the next higher level for review as contemplated in the MOU.

Hopefully, this clarification has been helpful.

Pete Bazylewicz
Manager
Grievance and Arbitration

DRAFT

Attachments

DEC. 4. 1997 5:00PM USPS LR-GH NO. 352 P. 3/3

UNITED STATES POSTAL SERVICE

FACSIMILE COVER LETTER

NOV 1997
Received
Office of

Labor Relations
Grievance and Arbitration
475 L'Enfant Plaza, SW, Room 9300
Washington, DC 20260-4140

PLEASE DELIVER THE FOLLOWING PAGES

TO: Bill Burrus
Executive Vice President
APWU
202/842-4250
FAX: 202/842-4297

FROM: Pete Bazylewicz
Manager, Grievance & Arbitration
Labor Relations
202/268-3802
FAX: 202/268-5126

DATE: NOVEMBER 24, 1997
NUMBER OF PAGES (INCLUDING COVER): 6

COMMENTS:. Attached is a copy of our instructions that you wanted as indicated last Friday. If you need additional information, please call me.

Thanks,

Peter B.

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

November 26, 1997

Dear Mr Bazylewicz:

I have reviewed the management instructions regarding the Memorandum of Agreement on information requests and understand why local managers did not comply with the national parties intent. Following are my concerns with the initial instructions that I would expect to be corrected if we continue the process:

1. The instructions were not directed to the supervisors or managers who are involved at Step 1 and Step 2 of the process. The instructions did not even require that those officials be informed, thus requiring their compliance. Provisions contained in the third paragraph to "Please review the ADR agreement with care and transmit it to all individuals who normally are the recipients of information requests from APWU stewards or officers" falls short of instructing them to comply.

2. The instructions made no reference to the employer's contractual obligation to provide "access through the appropriate supervisor to review ...documents, files and other records necessary for processing a grievance or determining if a grievance exists" as required by Article 17.3 of the National Agreement. Your instructions implied that the union's request for information is limited to "copies" and the managers decision is based on whether or not such copies will be provided. In addition, the requirement to provide access does not entitle management to charge the union for such reviews.

3. As we discussed, the instructions did not address the obligation of management to forward the request to the next level when the request for information is not provided or is denied.

4. You included in the instructions that "care should be expended in reviewing union information requests when the request is for information relating to nonbargaining unit members or for employee medical information." The law does

National Executive Board
Moe Biller
President

William Burrus
Executive Vice President

Douglas C. Holbrook
Secretary-Treasurer

Greg Bell
Industrial Relations Director

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Eastern Region

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Northeast Region

Terry Stapleton
Southern Region

Raydell R. Moore
Western Region

not place a higher relevancy standard on this information. The standard is that if it is relevant, it must be provided. By focusing on these areas, a higher standard is implied and such request are routinely denied or unnecessarily delayed.

5. The instructions provide that "the union is obligated to provide a form to management delineating the nature of the information request and basis for the request so management can be assured that the union is not engaged in a fishing expedition." The Memorandum specifically includes four categories of information that are presumptively relevant thus not requiring the establishment of a "basis" for the request.

6. A few offices had previously reached agreement on a time period for providing requested information. It was not my intent to disturb such local agreements and the instructions should require compliance.

In general, the instructions issued are incomplete and misleading, resulting in managers denying legitimate requests for information. I informed the USPS representatives involved in the negotiations leading to the Memorandum that I had no interest in a "process". My interest is in the union's access to information and any procedure that I endorse must have as its basis the employer's willingness to provide access and/or copies of the requested information. This can be accomplished via detailed instructions that are forwarded to the supervisors and managers who serve as recipients of information requests and these instructions must be signed by an official who has the authority to enforce its provisions.

Thank you for your attention to this matter.

Sincerely,

William Burrus
Executive Vice President

Pete Bazylewicz
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

October 20, 1997

Dear Mr. Mahon:

Pursuant to the Memorandum of Understanding dated July 15, 1997 regarding the NLRB Dispute Resolution Process, this is notice that the American Postal Workers Union hereby informs you of its intent to discontinue participation in the program effective December 20, 1997.

Sincerely,

William Burrus
Executive Vice President

National Executive Board
Moe Biller
President
William Burrus
Executive Vice President
Douglas C. Holbrook
Secretary-Treasurer
Greg Bell
Industrial Relations Director
Robert L. Tunstall
Director, Clerk Division
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Northeast Region
Terry Stapleton
Southern Region
Raydell R. Moore
Western Region

Joseph J. Mahon
Vice President
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

cc: A Hajjar
G Bell
W Gould

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Grievant/Union	Nature of Allegation

Date of Request

To: _____ Title: _____

From: _____ Title: _____

Subject: **REQUEST FOR INFORMATION & DOCUMENTS RELATIVE TO PROCESSING A GRIEVANCE**

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:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

NOTE: 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 8a(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**

_____ _____

(date) (signed)

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

Case Nos. S1N-3U-D
27273 through 27291

SUPPLEMENTARY DECISION

On 18 May 1983, the undersigned arbitrator issued his decision in the above matter, holding that the discharges of Jerry Warren, Derwin Ray Beasley, Roger Davis, P. A. Smith, Angeline E. Law, J. P. Vargas, Adan Mata, Ralph Chavez, L. F. Herrera, Mary H. Salinas, V. Ramos, Jr., C. J. Lazard, Melvin L. Clarence, and W. E. Walker, Jr. were without just cause, and ordering that all of them be reinstated with full back pay and seniority.

The arbitrator also retained jurisdiction over the Union's request for interest on the back pay due each of the above-named grievants until he decided Case No. H1N-5-FD-2560 between United States Postal Service and NALC and American Postal Workers Union.

On 19 December 1984, the undersigned arbitrator ruled in Case No. H1N-5-FD-2560 that an arbitrator is authorized by the National Agreement between the above-named parties, in

his discretion, to award interest as part of a back-pay award when sustaining a disciplinary grievance.

In his opinion in Case Nos. S1N-3U-D 27273-27291, the arbitrator found, among other things, that the discharges of the above-named grievances constituted excessive and unwarranted punishment, and that the procedures followed by the Postal Service in determining that the grievants should be discharged denied them due process. As explained in his opinion in Case No. H1N- 5-FD-2560, those circumstances justify a discretionary award to each of the above-named grievants of interest on the back pay to which each of them is entitled.

In the absence of a pre-determined interest rate in the National Agreement, the arbitrator adopts as appropriate the "adjusted prime rate" used by the United States Internal Revenue Service in calculating interest on the underpayment or overpayment of taxes. This is the standard used by the National Labor Relations Board (see Florida Steel Corp., 231 N.L.R.B. 651 (1977)). For the period 1 January to 30 June 1984, the adjusted prime rate was 11 percent. Accordingly, the arbitrator makes the following

SUPPLEMENTARY AWARD

Postal Service shall pay to each of the above-named grievants interest on their respective back-pay awards in the amount of 11 percent. Interest shall be computed from the date of discharge to the date when back pay was actually paid to the individual grievants.

Benjamin Aaron
Arbitrator

Los Angeles, California
19 December 1984

SENIOR LABOR RELATIONS SPECIALIST
VAN NUYS CUSTOMER SERVICE AND SALES DISTRICT

191

UNITED STATES POSTAL SERVICE

MAR 1995
Received
Office of The
Executive
Vice President

March 15, 1995

MEMORANDUM FOR: *Postmasters & Plant Managers*

SUBJECT: ***English "Only" Speaking Policy***

Attached please find a decision from the Office of Federal Operations (OFO) pertaining to an "English Only" speaking policy involving an appeal in Su-Chin Yee v. U.S. Postal Service, Appeal No. 01942185, dated January 27, 1995. Ms. Yee had indicated her supervisor gave her instructions that she could not speak in any other language except English in the office. It has been determined by the Commission that such a "speak-English-only" rule violated Title VII,.and such a rule is looked at very closely.

It is understood official instructions are to be given to our employees in the English language. However, due to the diverse cultural workforce within many of our offices, we should continue to respect the rights of our employees to converse with one another in their language of choice during their breaks, lunches, or in conversations of a personal nature.

If you have further questions regarding this decision, please contact me (805) 981-3322.

Mary Abbett
Senior Labor Relations Specialist

Attachment

cc: Managers, Post Office Operations
Manager, Human Resources
Labor Relation Specialists

	ACTION	INFO
MDO OG		
MDO INC		
MDO AUTO		
MDO BBM		
MGR IPS		
MGR T/N		
MGR QI		
MGR MAINT		
APWU		
NPMHU		
Ltr	Original	

Make sure all Managers & Supervisors Comply.

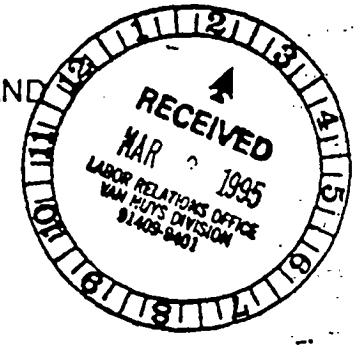
1961 NORTH C STREET
OXNARD, CA 93030-9441
(805) 981-3322
FAX: (805) 981-8993

VAN NUYS
HUMAN RESOURCES
MAR 01 1995

	Action	Info
Pers Van Nuys		
HR SB Pasa Ox		
Labor Relations		✓
Safety		
Injury Comp		
Training		
Read		

UNITED STATES POSTAL SERVICE

FEB 2 8 1995



MEMORANDUM FOR: MANAGERS, HUMAN RESOURCES AND EEO PROFESSIONALS, PACIFIC AND WESTERN AREA

SUBJECT: "English - Only" Speaking Policy

We recently received a decision from the Office of Federal Operations (OFO) regarding an "English-Only" speaking policy. Su-Chin Yee v. U.S.P.S., Appeal No. 01942185 (1/27/95).

In this case, the appellant testified that her Supervisor told her, "[t]his is an office environment and you cannot speak in any other language except English in this office." in response to this policy, OFO stated that, "The Commission has long taken the position that such a blanket requirement has a burdensome effect on the employee's terms and conditions of employment.... The Commission presumes that such a speak-English-only rule violates Title VII, and gives such a rule close scrutiny."

The Commission further noted that the record established that the District had issued a policy statement almost two years earlier regarding the rights of employees to speak in languages other than English. This policy held, in part:

> While it is important that you insure that all official instructions are in English, the... Division does have a large multi-cultural workforce and we will continue to respect the right of our employees to converse with one another in other than the English language during breaks, lunches or in conversations of a personal nature.

Hence, the Commission found that the Supervisor's instruction was counter to the principles set out in its guidelines, and found that the impropriety of the instruction was even more glaring in view of the agency policy that had been in place for almost two years by the time of the incident.

If you are interested in reading the full decision, please contact the EEO Compliance and Appeals Section at (415) 794-6274.

Sincerely,

Thomas M. Perrault
Appeals Review Specialist
850 Cherry Avenue
San Bruno CA 94099-4402

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

RECEIVED
MAR 0 9 1984
OFFICE OF
PRESIDENT

March 5, 1984

Mr. Moe Biller
President
American Postal Workers Union,
AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Biller:

This is in response to your February 23 letter regarding the award of Arbitrator J. Earl Williams in two cases from the Cocoa, Florida, Post Office (cases S8C-3W-C-35032 and S8C-3W-C-35033).

We agree with your interpretation of Arbitrator Williams' award. Appropriate measures are being taken to correct the instructions issued in the February 2 letter by the MSC Manager/Postmaster.

Sincerely,

James C. Gildea
Assistant Postmaster General
Labor Relations Department

American Postal Workers Union, AFL-CIO
817 Fourteenth Street, N.W. Washington, D.C. 20005 • (202) 842-4250

MOE BILLER
President

February 23, 1984

James Gildea
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Dear Mr. Gildea:

Arbitrator J. Earl Williams of the APWU-USPS Regional Arbitration Panel rendered an award in Case No. S8C-3W-C-35032 and 35033. By letter of February 2, 1984 Robert J. Sheehan, MSC Manager/Postmaster, issued instructions that the Postal Service does not intend to honor this award as applicable in other cases.

The union interprets cited provisions of Arbitrator Williams' award as being applied properly in the two cases.

In accordance with provisions of Article 15 of the National Agreement the union requests whether or not Postmaster Sheehan accurately reflects the Postal Service's position and if the response is affirmative the employer's interpretation of provisions governing payment for travel within the local commuting area.

Sincerely,

Moe Biller,
President

MB:WB:mc

NATIONAL EXECUTIVE BOARD • MOE BILLER, President
WILLIAM BURRUS
RICHARD T. LEVY DAD
JOHN F. RICHARDS
REGIONAL COORDINATORS
RAYDELL R. MOORE
JAMES F. WILLIAMS
PHILIP C. FLEMMING
NEAL VACCARO
ARCHIE SALUBRI

UNITED STATES POST OFFICE

ORLANDO, FLORIDA 32802

DATE: February 2, 1984

E:RAR:cb:9994

SUBJECT: Arbitration Award from J. Earl Williams
Cocoa, FL; Southern Region Nos. S8C-3W-C 35032 and 35033

TO: Miles F. Keene
Postmaster
Cocoa, FL 32922-9998

Attached is a copy of an arbitration award in the above two cases at your post office. Please make necessary arrangements to have the two grievants in these cases appropriately paid.

We have questioned Arbitrator Williams' authority in this matter and have been advised by Southern Region that his decision is considered to be in conflict and inconsistent with National Agreement provisions and that he has exceeded his authority. We do not intend to honor this award as applicable in any other case. If employees are scheduled to report to Orlando from Cocoa similar to circumstances in these cases, the employees should be notified that we do not intend to pay for their travel time.

Please advise your local union president of our position in this matter (verbally) immediately and mail him a copy of this letter, certified, return receipt requested.

If you have any questions concerning this matter, please telephone our Labor Relations Representative.

Robert J. Sheehan
MSC Manager/Postmaster

cc: APWU Local President
SCD, Finance
File

REGIONAL ARBITRATION PANEL

1978 CONTRACT

Arbitration between

UNITED STATES POSTAL SERVICE Cocoa, Florida and AMERICAN POSTAL WORKERS UNION	Opinion and Award pertaining to S8C-3W-C-35032 S. Blythe S8C-3W-C-35033 R. Capogreca Pay for Travel Time

Arbitrator: J. Earl Williams.

The hearing of the subject matter in arbitration was held at the Post Office in Cocoa, Florida, on July 22, 1983.

Appearances

For the Employer: Richard A. Rutherford
Labor Relations Representative
Employee & Labor Relations
United States Postal Service
Orlando, Florida 32802

For the Union: Charles Redd
Local President
American Postal Workers Union
1822 Baylor Court
Cocoa, Florida 32922

Background

The E&LR Manual, dated 4-1-78, contained Section 438, Pay During Travel or Training. Paragraph 438.131 read as follows:

> One-Day Assignment Outside the Local Commuting Area. When employees are required to travel from home to work away from the local community and return home in the same day, all such time, less normal commuting time, is considered worktime whether within or without of the regular work schedule.

With this as the primary background, the parties stipulated that Management at Cocoa, Florida, had paid employees for travel to training classes during a period running from approximately March 1978 until about the end of July 1981. However, there were several changes in the E&LR Manual, dated 8-29-80, in the section on Pay During Travel or Training. For example, the following was added:

> 438.112 Local Commuting Area is the suburban area immediately surrounding the employee's official duty station and within a radius of 50 miles.
>
> .12 Commuting to and from Work
>
> .121 Commuting time before or after the regular work day between one's home and official duty station, or any other location within the local commuting area, is a normal incident of employment and is not compensable. It is not compensable regardless of whether the employee works at the same location all day or commutes home after the work day from a location different from the one where the work day started.

Also Paragraph 438.133 was changed to read as follows:

> One Day Assignment Outside the Local Commuting Area
>
> a. Rule. Except as stated in the next sentence, time spent at any time during a single service day by an eligible employee in travel on Postal Service business to one or more locations outside of the local commuting area and back to the home community is compensable. Time spent commuting in either direction between home and an airport, bus terminal, or railroad station within the local commuting area, if it occurs outside of established hours of

service on a scheduled work day, and the usual meal time, must be deducted from compensable travel time.

b. Eligibility. This type of travel time is compensable for all employees during their established hours of service on a scheduled work day. At all other times, this type of travel time is compensable only for employees entitled to receive overtime pay or compensatory time.

The two grievants were assigned to the Sectional Center Facility at Orlando, Florida, for three days each during July 1981. They applied for travel pay, and their request was turned down. A grievance was filed. However, Management denied the grievance, apparently because the employees' official duty station was within a radius of fifty miles of the training site. There being no resolution of the issue, it led to the subject arbitration.

Issue

Immediately prior to the start of the hearing, the parties agreed to the following statement of the issue:

> Was Management's action proper, when it disallowed travel time pay for employees, who traveled from Cocoa to Orlando and back for training purposes? If not, what is the appropriate remedy?

Other Language Referenced by the Parties

TIME AND ATTENDANCE
Fiscal Handbook F-21

260 TRAVEL TIME

261 Travel

* * *

.13 Travel time performed by eligible employees will be considered work hours.

* * *

.141 Travel within a city or between facilities from job site to job site on a service day.

Time spent by an eligible employee in travel on Postal Service business within a local commuting area or between facilities from job site to job site within a local commuting area where the employee is performing official duties during a service day is considered hours worked. However, if an employee is instructed to report directly from home to a job site other than the official duty station or is authorized to go home directly from a job site instead of returning to the official duty station, such travel is ordinary home to work commuting and is not compensable work hours.

.142 Travel to another city and back within one service day.

Except as provided below, time spent by an eligible employee who travels away from the local community and returns within one service day is considered hours worked. Time spent commuting to and from an airport, bus terminal, or railroad station, however, and the usual meal time, if it occurs during the period of travel, must be deducted from compensable travel time.

* * *

.16 Employees who commute from home before their regular workday and return to their homes at the end of the regular work schedule are engaged in ordinary home to work travel which is a normal incident of employment. As such, it is not compensable work time whether the work is performed at a fixed location or at different job sites within the local community. . . .

Contentions of the Union

The Union contends that the F-21 and the E&LR Manual, as supported by the National Agreement, require that travel time be paid in the subject cases. It contends that it is incorrect for Management not to pay some employees for traveling to Orlando for training purposes based upon a different definition or an additional definition of a computing time in the 1980 E&LR.

"Management alleges that if you are within or travel within a radius of 50 miles, travel time can be disallowed. The union believes the definition was written to accommodate travel within a city. The term 'Local Commuting Area' is used twice in part 261.141 of the F-21 (Travel within a city). It is not used once in 261.142 (Travel to another city and back).

"The union believes that two criteria must be met when using the definition for 'Local Commuting Area.' 1. You must be traveling to a suburban area immediately surrounding the employee's official duty station. (Orlando is not a suburb of Cocoa and is not a suburban area.) The word 'and' not 'or' joins the first criteria with the second criteria which is---you must be within a radius of 50 miles." (Union Opening Statement, pp. 2-3)

Thus, the Union concludes that Management is utilizing only the radius of fifty miles and is ignoring entirely the suburban area requirement. Finally, the Union contends that, even with the policy change on the part of Management, it is inconsistent in the administration and application of that policy. This is so, it says, because some employees, who travel away from Cocoa, are paid for travel time and others are not.

Contentions of Management

It is the position of the Postal Service that travel time to and from a given work site within the local commuting area is not compensable. Further, it states that the local commuting area is defined by regulation as the area surrounding an employee's official station within a radius of fifty miles. Next, it points out that the portal-to-portal distance between the Cocoa,

Florida Post Office and the training site at Orlando, Florida Post Office is 42.5 miles. Further, Management contends that, since these employees reported for training by commuting directly from their homes to the Orlando training site and returned to their homes from the training site, their time spent in such commuting is not compensable. In terms of the fifty mile radius, Management contends that the parties must have meant a fifty mile radius from the city, for few cities in America could contain suburbs as far away as fifty miles. Finally, Management contends that all employees are treated alike and that there are contractual reasons for those who might have been paid when they traveled away from the Cocoa, Florida station.

Discussion

The parties start with a different interpretation of Local Commuting Area which is in E&LR 438.112 and build their cases around those differing definitions. Thus, the Union contends that, for the work in question to be defined as within a local commuting area and perhaps not subject to travel pay, it must be travel to a suburban area immediately surrounding the employee's official duty station and the travel must be within a radius of fifty miles. Management, on the other hand, contends that any work assignment within a 50-mile radius of an employee's official work station is suburban and would not be considered as work for which travel pay is required. These differing definitions and the additional relevant language referenced by the parties must be analyzed before arriving at a logical solution to the issue.

1. E&LR 438.112

It is rather clear that a local commuting area is the suburban area immediately surrounding the employee's "official" duty station. While suburban is not defined, it is clear that it must be immediately surrounding the "official" duty station of the employee. In the subject case, this would be Cocoa. In such cases, the normal usage of words is what arbitrators go by. The Union, in its grievance, gave dictionary definitions of suburban. It was correct, in that the normal definition of suburban is "an outlying part of a city" or "a smaller place adjacent to a city." Not by any stretch of the imagination can it be considered that Orlando is a suburb of Cocoa. It is not even clear that the reverse is true, for Cocoa is separated from Orlando by many miles of open spaces, and there is no normal commuting pattern between Cocoa and Orlando. Thus, under the normal definition of suburban, Orlando cannot be considered to be an outlying part of Cocoa or a smaller place adjacent to Cocoa.

Further, the Union is right, in that the language indicates that the "50 mile radius" is a second condition, for it must be a suburban area and "within a radius of 50 miles." Management attempts to utilize this 50-mile radius as a definition of suburb as opposed to a second condition. Thus, it insists that, since Orlando is approximately 42.5 miles from the Post Office in Cocoa, it must be considered as within the local commuting area. In fact, it states that very few cities could have suburbs as far away as fifty miles, so the parties must have included all fifty miles within a radius of the employee's official duty station as suburban. The Arbitrator must conclude that Management misses the point again. It has been concluded that the work must be in a

suburban area, which normally relates to the city where the employee's "official" duty station is located. The parties doubtless knew that only a few cities such as New York, Chicago, Los Angeles and Houston could possibly have suburbs fifty miles away. Consequently, in order to cover all cities, it is apparent that this outer limit of fifty miles was established. It says, in effect, that if the work site is outside the 50-mile radius, it could not be in the local commuting area. However, it appears to include all possible suburbs of any city in the United States. Thus, it does not mean that all miles with a 50-mile radius of an employee's "official" duty station are within a normal commuting area. Rather, it means that, given the normal definition of suburb, all miles within that suburb, up to a radius of fifty miles, would be included in the Local Commuting Area.

2. E&LR 438.121

It is true this section indicates that commuting time may not be compensable, even if it is from a location different from the one where the work day started. However, the commuting time must be between one's home and official duty station or another location within the local commuting area. It does not follow from the analysis of 438.112 that the subject issue would be included as "commuting to and from work."

3. E&LR 438.133

If there was any doubt as to the meaning of "local commuting area," the language here adds clarity. The fact that it refers to time spent outside the local commuting area and "back to the home community" indicates that a

commuting area is tied to the home community. In the subject case, it is clear that the home community is Cocoa.

4. F-21 Handbook, 260.141 and .142

Management places a heavy reliance upon Section .141. This section makes clear that travel on Postal Service business within a local commuting area or from job site to job site within a local commuting area "is considered hours worked." However, reporting to a job site other than the official station or returning from that site directly home is considered ordinary home-to-home commuting and is not compensable. Then, based upon its erroneous interpretation of local commuting area, Management concludes that the travel to Orlando is not compensable, since the employees in question went from their homes to Orlando and returned to their homes. However, based upon the analysis of local commuting area above, it is clear that the main Post Office in most cities has its own local commuting area. In the subject case, this could not include Orlando as within the Cocoa commuting area. Thus, the change in job site must be a change in job sites, which normally relate to the official duty station and are contained within the local commuting area. Orlando is not a job site within the local commuting area of Cocoa. Further, there is nothing in the contract or related documents which suggests that, whenever an employee is sent to a job site which does not normally relate to the employee's official duty station, it automatically becomes his "official duty station." Such a definition could be utilized to prevent virtually all travel pay. Clearly, there was no such intent by the parties.

Section .142 contains the final point of clarity. It is clear that the grievants traveled away from their home community and returned within one service day. This clearly is compensable travel time. If mealtime was involved, it would be deducted. Even Section 260.16, which was cited by Management, does not change this requirement. The exception related to commuting to and from home is tied strictly to "the local community." Orlando is not a part of the Cocoa "local community."

5. Administration of Travel Pay

It was noted in the background that Management had paid travel pay for attendance at all training classes up to the end of July 1981. Then, it began to use the "50 mile radius" definition and Section .141 not to pay travel, when the travel was from "home to home." When employees reported to the post office and returned to the post office in Cocoa, even when not instructed to do so, they still were paid travel. More significantly, the evidence indicated that, whenever an employee was guaranteed eight hours' pay and his training was less than eight hours, he would be instructed to report to the post office and return to the post office in Cocoa. Thus, he received pay for travel to an from training. Surely, this was not the intent of the language. If it is legitimate travel time for an employee, who needs the time to make up his guarantee of eight hours, to go to a training class, it is legitimate travel time for those who may be on overtime as a result of counting the travel. In other words, legitimate travel time is legitimate travel time under all similar circumstances, unless restricted by the contract or related documents. In the subject

case, the Arbitrator already has concluded that the use of the "home to home" limitation of Section .142 clearly was erroneous, for it was not from job site to job site within the local commuting area. Thus, it appears that Management was using the "home to home" or "Post Office to Post Office" approach, depending upon whether it needed to guarantee eight hours' pay or to avoid the payment of overtime. Even if the subject travel had been within the local commuting area, and it was not, this could not have been the intent of the parties when they agreed upon the language in question.

Summary

Based upon the analysis of relevant language, it was concluded that Management's definition of "local commuting area" was erroneous and its use of "home to home" limitations was not proper. Clearly, the grievants in the subject case were covered by E&LR 438.133, for the training class each day was a "one day assignment outside the local commuting area."

Award

Management's action, when it disallowed travel time pay for employees, who traveled from Cocoa to Orlando and back for training purposes, was not proper. The grievants will be made whole for travel time. The rate will be the same as normally would be paid when the travel is on overtime. In the future, the standard for making this determination and for similar training in Orlando will be E&LR 438.133.

J. Earl Williams

J. Earl Williams, Arbitrator

Atlanta, Georgia
January 5, 1984

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

William Burrus
Executive Vice President
(202) 842-4246

March 1, 1994

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

Philip C. Flemming, Jr.
Eastern Region

Elizabeth "Liz" Powell
Northeast Region

Archie Salisbury
Southern Region

Raydell R. Moore
Western Region

Dear Mr. Magazu:

Pursuant to the discussions at our meeting to discuss the closing of the Medical and Health Units, a commitment was made for the retention of a listing of health units. This is to request written confirmation that the Postal Service is committed to retain health units staffed by nurses through August, 1995 as per the attached listing.

Sincerely,

William Burrus

William Burrus
Executive Vice President

Daniel Magazu
Labor Relations
United States Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

UNITED STATES POSTAL SERVICE

April 8, 1994

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

Dear Mr. Bill Burrus:

This is in response to your March 1 correspondence regarding Medical and Health Units.

As we discussed at our recent meeting, the Postal Service fully intends to comply with its commitment to maintain the currently staffed health units in the 51 locations identified in Attachment 1 of the U.S. Postal Service/National Postal Professional Nurses (NPPN) Interest Arbitration Award, dated May 21, 1993, for the duration of the test period. The test period ends with the expiration of the USPS/NPPN Agreement on August 18, 1995.

In the interim, the only conceivable modification to Attachment 1 that I could envision would be the product of mutual agreement between the NPPN and the Postal Service, and no such discussions are currently pending.

I trust that this reflects the essence of my oral statement to you during our recent meeting.

Sincerely,

D. Richard Froelke
Manager
Negotiations Planning and Support
Labor Relations

475 L'Enfant Plaza SW
Washington DC 20260

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

September 22, 1993

William Burrus
Executive Vice President
(202) 842-4246

National Executive Board

Moe Biller
President

William Burrus
Executive Vice President

Douglas C. Holbrook
Secretary-Treasurer

Thomas A. Neill
ustrial Relations Director

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Eastern Region

Elizabeth "Liz" Powell
Northeast Region

Archie Salisbury
Southern Region

Raydell R. Moore
Western Region

Dear Mr. Mahon:

We have previously exchanged letters dated February 17, 1993 and March 9, 1993 on the subject of eliminating or modifying medical/health units in postal facilities. It was your position that the contracting out of health services "does not implicate Articles 19 and 32 of the USPS-APWU National Agreement". You further advised that, if a decision is made to reduce health services and such decision results in "changes in postal handbooks, manuals and/or published regulations that directly relate to the wages, hours and working conditions of APWU-represented employees, the procedures of Article 19, as required, will be followed.

Information has been received by the Union that staffing changes have been made to postal health units including the total elimination of health personnel in postal facilities. It is the Union's position that such changes do affect wages, hours and workings conditions and require discussions with the union pursuant to contractual provisions whether or not specific handbook changes have been initiated. In addition, the previous staffing of medical units has established a mutually recognized practice between the parties.

This is to raise these issues pursuant to the provisions of Article 15 of the National Agreement to determine if there is an interpretive dispute between the parties. Please respond informing the Union of your interpretation on these issues.

Thank you for your attention to this matter.

Sincerely,

William Burrus
Executive Vice President

Joseph J. Mahon
Vice President
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

May 5, 1994

Dear Mr. Magazu:

As per our discussions of May 4, 1994, the union is not clear regarding the employer's commitment to staff health units as per USPS correspondence of April 8, 1994. This letter may be interpreted to read that the employment of one nurse in each of the listed units would satisfy the commitment to staff.

As further clarification, the union requests whether or not it is the employer's intention to staff the listed health units consistent with the staffing on the date of the agreement.

Thank you for your attention to this matter.

Sincerely,

William Burrus

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

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Director, SDM Division

Regional Coordinators

James P. Williams
Central Region

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Northeast Region

Archie Salisbury
Southern Region

Raydell R. Moore
Western Region

Daniel Magazu, Specialist
Labor Relations
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

April 10, 1986

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in reference to your March 12 letter and our earlier correspondence relative to a Merit Systems Protection Board (MSPB) Opinion and Order directing that the Postal Service compensate a Mr. Frank F. Black, Jr. and other Postal Service employees who testified at the MSPB hearing in the appeal of the removal of Alfred D. Maisto.

As we indicated in our recent correspondence pertaining to this matter, Mr. Black and the other Postal Service employees who appeared as witnesses at the above-mentioned hearing were compensated in compliance with the MSPB Order. With respect to your question as to whether the Postal Service intends to compensate employees in future MSPB cases as was done in connection with the Maisto case, please be advised that guidance to the field is being developed. Once developed you will be provided with a copy.

Sincerely,

William J. Downes
Director
Office of Contract Administration
Labor Relations Department

American Postal Workers Union, AFL-CIO
817 14th Street, N.W., Washington, D.C. 20005

William Burrus
Executive Vice President
(202) 842-4246

National Executive Board
Moe Biller, President
William Burrus
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Douglas C. Holbrook
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Thomas A. Neil
Industrial Relations Director
Kenneth O. Wilson
Director, Clerk Division
Richard I. Wevodau
Director, Maintenance Division
Donald A. Ross
Director, MVS Division
Samuel Anderson
Director, SDM Division
Ken Lerner
Director, Mail Handler Division

Regional Coordinators
Rayden R. Moore
Western Region
James P. Williams
Central Region
Philip C. Flemming, Jr.
Eastern Region
Neal Vaccaro
Northeastern Region
Archie Salisbury
Southern Region

March 12, 1986

Dear Mr. Downes:

This is in further regard to our exchange of correspondence on the subject of payment for expenses in MSPB cases.

Your response of March 11, 1986 does not address the principle issue of USPS policy and whether or not it is the intent of the Postal Service to pay the covered expenses in future MSPB cases.

The wording of your letter of March 11, 1986 suggests that the employer intends to comply with the Board's decision only as it applies to the "Maisto" Case.

Please respond and advise me whether or not the Postal Service intends to modify postal policy and/or regulations where necessary to assure compliance with the Board decision.

Sincerely,

William Burrus,
Executive Vice President

William J. Downes
Director
Office of Contract Administration
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

WB:mc

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

March 11, 1986

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in reference to your letter of February 24 concerning a Merit Systems Protection Board (MSPB) directive. In the letter, you asked to be advised as to whether the Postal Service intended to comply with the directive from the MSPB as it relates to reimbursement for witnesses appearing at an MSPB hearing.

We have looked into this matter. There was an Opinion and Order issued by the MSPB on August 6, 1985, in the case of Frank F. Black, Jr., a Postal Service employee who testified at the hearing in the appeal of the removal of Alfred D. Maisto, an employee of the Santa Ana, California, Post Office. Information received as a result of our inquiries into this matter disclosed that Mr. Black and other witnesses involved in that case have been compensated in accordance with the MSPB Order.

Sincerely,

William J. Downes

William J. Downes
Director
Office of Contract Administration
Labor Relations Department

RECEIVED
MAR 1986
OFFICE OF
EXECUTIVE VICE PRESIDENT

1070

American Postal Workers Union, AFL-CIO

817 14th Street, N.W., Washington, D.C. 20005

William Burrus
Executive Vice President
(202) 842-4246

February 24, 1986

Dear Mr. Fritsch:

The Postal Service has recently received a directive from the regional director of the Merit Systems Protection Board regarding reimbursement for witnesses appearing at MSPB hearings. The director ordered compliance in the following areas:

1. Witnesses must be reimbursed for time spent testifying.
2. Witnesses must be paid for travel time and expenses incurred by the actual transportation.
3. Witnesses testifying during non-duty hours are entitled to overtime he/she would have received had he/she worked in their regular position that day.
4. Witnesses must be compensated for time spent waiting to testify..

Please advise of USPS intent to comply with this directive.

Sincerely,

William Burrus,
Executive Vice President

National Executive Board
[illegible] President
William Burrus
Executive Vice President
Douglas C. [illegible]
Secretary-Treasurer
Thomas A. [illegible]
Industrial Relations Director
Kenneth D. [illegible]
[illegible] Clerk Division
[illegible]
Director, Maintenance Division
Donald A. Ross
Director, MVS Division
Samuel Anderson
Director, SDM Division
Ken Leiner
Director, Mail Handler Division

Regional Coordinators
Ruddell R. Moore
Western Region
James P. [illegible]
Central Region
Philip C. [illegible] Jr.
Eastern Region
Neil Vaccaro
Northeastern Region
[illegible] Salisbury
Southern Region

Thomas Fritsch
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

WB:mc

vouchers; threatening reprisal; and violating the provisions of a policy letter by allowing employees to disconnect hot line clamps from an energized circuit without permission.

The presiding official held that the agency had not proven by a preponderance of the evidence that the appellant submitted a false travel voucher or that he threatened reprisal and retaliation. He held that the remaining charges were proven and sustained the removal, holding that the penalty was not beyond the bounds of reasonableness for the sustained charges.

However, the Board found, under the circumstances of this case, that the penalty of removal was beyond the bounds of reasonableness for the sustained charges. The Board found that the appellant proved circumstances which substantially abated the potential seriousness of the sustained charges. The Board also noted that the appellant had no prior record and performed his duties satisfactorily and dependably. Thus, the Board found the appellant to demonstrate considerable potential for rehabilitation. Accordingly, the Board found a 60-day suspension to be the maximum reasonable penalty, and so ordered.

In re Alfred D. Maisto
SF07528411054COMP
August 6, 1985

This case arose from a claim by a witness who testified in *Maisto* v. *United States Postal Service*, MSPB Docket No. SF07528411054, that the agency had not properly reimbursed him for appearing.

The presiding official, citing 5 C.F.R. § 1201.34, ordered the agency to ensure that all the witnesses who testified at the hearing were in official duty status at the time, and that they were properly compensated for the period of time beginning when they left the agency to travel to the hearing, and ending when they arrived at their place of employment after being excused from the hearing by the presiding official. In response, the agency argued that it interpreted this regulation to apply only to the actual time spent testifying, not the time spent traveling and waiting to testify. The agency informed the Board that it "respectfully declines to comply with your Order, unless or until you cite appropriate authorities in support of your interpretation of the aforesaid CFR section."

The regional director responded with an order citing statutes and the Federal Personnel Manual which supported the presiding official's order, found the agency to be in noncompliance and ordered compliance within seven days. When the agency responded 22 days later, it said that its practice was to pay testifying employees as though they were in a duty status only when the testimony took place during the employee's tour of duty. It argued that this witness had already completed his tour of duty for the day in question.

In its analysis, the Board noted that since the agency agreed that it must reimburse the witness for time he spent testifying, the issue was narrowed to whether he must be paid for the other time.

As the regional directed noted, 5 U.S.C. § 1205(b)(3) requires that witnesses subpoenaed to Board hearings be compensated in the same manner as those subpoenaed to United States courts. That manner is set out at 28 U.S.C. § 1821(b) which states that witnesses are to be paid for travel time time as well as "... *any time during such attendance.*" (emphasis added).

However, the agency's main argument was that the Board lacked jurisdiction, since the agency argued that it was not covered by the Civil Service Reform Act of 1978 and that the Board only has jurisdiction over preference eligibles with a year of continuous service.

The Board found the agency's reasoning erroneous, stating that its jurisdiction over the appeal was undisputed and the assertion of that jurisdiction included authority to conduct a hearing and to govern the presentation of witness testimony where it is required for proper adjudication. 5 U.S.C. § 1205(a)(1). It went on to say that 5 U.S.C. § 1205(a)(2) was meant to confer on the Board a broad grant of enforcement power. *Kerr* v. *National Endowment for the Arts*, 726 F.2d 730, 733 (Fed. Cir. 1984). Moreover, the Board has the authority to prescribe regulations necessary for the performance of its functions. Consequently, the Board said it had the authority to prescribe regulations concerning witness fees and to enforce the Postal Service's compliance with an order or decision regarding witness fees.

The Board said that where, as here, an employee of a federal agency, including an employee of the Postal Service, is a witness at a Board hearing during his non-duty hours, he is entitled to overtime pay he would have received had he worked in his regular position that day.

The Board ordered the agency to place the witness in official duty status for the travel time to and from the hearing, any time spent waiting to testify, and to compensate him for such time as well as expenses incurred by the actual transportation.

courts of the United States shall be paid "for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of such attendance or *at any time during such attendance.*" (Emphasis added)

The Board's Jurisdiction

The agency's main argument, however, is that the Board lacks jurisdiction in this matter. The Postal Service, it argues, is not covered by the Civil Service Reform Act (CSRA), and the Board only has jurisdiction over preference eligibles with a year of continuous service. The Postal Reorganization Act (PRA), 39 U.S.C. § 101 *et seq.*, exempted the Postal Service from coverage of all federal laws except as specifically noted at section 410(b) of Title 39, the agency argues. As a result, the agency asserts, neither 5 U.S.C. § 6322, 5 U.S.C. § 2105(a), nor the Federal Personnel Manual apply to the Postal Service, and the Board has no jurisdiction to impose these witness fee laws and regulations on the Postal Service. In support of this argument, the agency cites *Hall v. U.S. Postal Service*, [MSPB DA07528210720 (01/25/85), 85 FMSR 5049], where the Board held, *inter alia*, that pursuant to the PRA, federal labor laws are not applicable to the Postal Service absent a specific provision in the PRA or other statute.

This reasoning is erroneous. The Board also stated in *Hall* that Postal Service employees who are preference eligibles as defined at 5 U.S.C. § 2108(3) and who have completed one year of current, continuous service in the same or similar positions, *see* 5 U.S.C. § 7511, are entitled by statute and regulation to appeal to the Merit Systems Protection Board. Mr. Black was a witness at the hearing of an appeal filed by Mr. Maisto, a preference eligible Postal Service employee. The Board's jurisdiction over that appeal is undisputed, and the assertion of that jurisdiction includes the authority to conduct a hearing and to govern the presentation of witness testimony where it is required for proper adjudication. 5 U.S.C. § 1205(a)(1). The Board, therefore, clearly retains jurisdiction over matters which arise during the processing of an appeal over which the Board has jurisdiction.

In this case, the witness compensation issue arose during the processing of such an appeal. As such, it is a matter which the Board has the authority to hear and adjudicate pursuant to 5 U.S.C. § 1205(a)(1). As a result, the Board has the authority to order any federal employee or agency to comply with any order or decision issued in accordance with section 1205(a)(1) and to enforce compliance with such an order. 5 U.S.C. § 1205(a)(2). Section 1205(a)(2) is meant to confer upon the Board a broad grant of enforcement power. *Kerr v. National Endowment for the Arts*, 726 F.2d 730, 733 (Fed. Cir. 1984) [84 FMSR 7001]. Moreover, the Board has the authority to prescribe such regulations as may be necessary for the performance of its functions. 5 U.S.C. § 1205(g); 5 U.S.C. § 7701(j). Consequently, the Board has the authority to prescribe regulations concerning witness fees and to enforce the Postal Service's compliance with an order or decision regarding witness fees.

While the Postal Service is correct that 5 U.S.C. § 6322 and the FPM sections governing its implementation are not applicable to the Postal Service, it is not correct in its contention that it is complying with the Board's regulation, 5 C.F.R. § 1201.33. We interpret our regulation as other federal agencies have interpreted it, to require that agency employees who testify at Board hearings be properly compensated for the time necessarily occupied in going to and from the place of attendance. Where, as here, an employee of a federal agency, including an employee of the Postal Service, is a witness at a Board hearing during his nonduty hours, he is entitled to overtime pay he would have received had he rendered service in his regular position with the agency on that day. This interpretation is consistent with the purpose of 5 U.S.C. §§ 1205(g) and 7701(j) and with the Office of Personnel Management's instructions to other federal agencies whose employees testify in Board proceedings. *Cf.* FPM, Ch. 630, subch. 10-3. The Board's interpretation of its own regulations is entitled to great deference. *Udall v. Tallman*, 380 U.S. 1, 16 (1965).

Accordingly, the agency is hereby ORDERED to place Mr. Black in official duty status for the time spent in transit to and from the hearing, and any time spent waiting to testify, and to compensate him for such time as well as for expenses incurred by the actual transportation to and from the hearing. Satisfactory evidence of compliance with this order shall be submitted to the Office of the Clerk of the Board within ten days of the date its issuance. If evidence of compliance is not submitted, the agency shall submit the names of the officials responsible for its continued noncompliance and show cause why sanctions pursuant to 5 U.S.C. § 1205(a)(2) and (d)(2) and 5 C.F.R. § 1201.184 should not be imposed against them.[4]

---

[1] Originally captioned *Maisto v. United States Postal Service*, MSPB Docket No. SF07528411054, [85 FMSR 1563] this case arises from a claim by a witness from the Postal Service in Mr. Maisto's appeal that the agency had not properly reimbursed him for appearing as a witness at Mr. Maisto's hearing.

[2] The presiding official apparently intended to cite 5 C.F.R. § 1201.33, which provides:

> Every federal agency shall make its employees available to furnish sworn statements or to appear as witnesses at the hearing when requested by the presiding official. When providing such statements or testimony, witnesses shall be in official duty status.

[3] The actual reimbursement for the time Mr. Black spent testifying is a matter of some dispute. Mr. Black maintains that he has not been paid anything. The agency, in a later submission, states that it offered Mr. Black the opportunity to file a claim for reimbursement for mileage and the time he spent testifying only, but that he declined. Mr. Black has submitted evidence that he filed for reimbursement for those expenses plus his time spent traveling to and from the hearing and waiting to testify, and that his claim had been denied. It seems that no actual payment has been made, but that the agency agrees that at least some compensation is in order.

[4] 5 U.S.C. § 1205(a)(2) provides that the Board has the authority to order any Federal agency or employee to comply

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

DEC 23 1983

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

ARTICLE 19
SECTION
SUBJECT M-15
on the fly

Re: Local
Colorado Springs, CO 80901
H1C-5F-C 15964

Dear Mr. Wilson:

On November 15, 1983, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The dispute concerning "on-the-fly" relief was arbitrated before Arbitrator Mittenthal (H1C-NA-C 49) and a decision has been rendered.

While the arbitrator concluded that the M-15 revision with respect to "on-the-fly" rotation was not in violation of the National Agreement, the relieving operator is allowed to make necessary console lamp adjustments in the angle intensity of the light. The relieving operator is also allowed to make necessary chair adjustments.

Accordingly, we further agreed to remand this case to Step 3 for possible application of the award.

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

Sincerely,

R. L. E.

Robert L. Eugene
Labor Relations Department

Kenneth D. Wilson

Kenneth D. Wilson
Assistant Director
Clerk Division
American Postal Workers Union,
AFL-CIO

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

RECEIVED
APR 30 1986
OFFICE OF
EXECUTIVE VICE PRESIDENT

APR 29 1986

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: M. Biller
Washington, D.C. 20005
H1C-NA-C 106

Dear Mr. Burrus:

On April 15, 1986, and again on April 24, 1986, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management can properly terminate Continuation of Pay (COP) when controverting a claim beyond the circumstances of Part 545.51 of the Employee and Labor Relations Manual (ELM).

During our discussion, we mutually agreed that the following constitutes full and final settlement of this case:

> Controversion with termination of pay shall only be effected based upon the conditions listed in Part 545.51 of the ELM.

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

Time limits were extended by mutual consent.

Sincerely,

Muriel A. Aikens
Labor Relations Department

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

b. If the recurrence is within 6 months of the date the employee first returned to work following the initial period of disability. If the recurrence occurs more than 6 months after the employee returned to work following the initial disability, regular pay may not be continued, even if some portion of the 45 days remains unused. In this case, the employee is entitled only to sick or annual leave and to OWCP compensation.

545.3 Time Limit

The control office/control point submits:

a. Completed Form CA-1 or CA-2 to the appropriate OWCP district office within 2 working days after it is received from the employee.

b. Any other information or documents bearing on the claim.

545.4 Exceptions

.41 Form CA-1 or CA-2 is completed in every injury case. However, completed forms are not sent to OWCP if:

a. The injury does not cause incapacity for work beyond the day or shift it occurred, and

b. It appears that the injury will not result in prolonged treatment, permanent disability, or serious disfigurement of the head, face, or neck, and

c. The injury has not resulted, or apparently will not result, in a charge for medical or other related expenses.

.42 If all 3 of the above conditions are met, the CA-1 or CA-2 must be filed in the injured employee's official personnel folder, instead of being sent to OWCP.

545.5 Controversion

.51 With Termination of Pay

On the basis of information submitted by the employee or secured through an independent investigation, the USPS may controvert a claim for compensation. In traumatic injury cases, an employee's continuation of pay should be terminated only if:

a. The disability is the result of an occupational disease or illness, as defined in 541.2. (The employee may apply for compensation, or take annual or sick leave, but is not entitled to continuation of regular pay for an occupational disease or illness under FECA.)

b. The injury occurred off USPS premises when the employee was not engaged in official duties.

c. The injury was caused by:

(*1*) The employee's willful misconduct; or

(*2*) The employee's intent to bring about injury or death to self or another person; or

(*3*) The employee's intoxication which was the proximate cause of the injury.

d. The first absence caused by the injury occurred 6 months or more after the injury.

e. The employee failed to make an initial report of the injury until after employment was terminated.

f. The injury was not reported on Form CA-1 within 30 days following the injury.

.52 Without Termination of Pay. In all other cases where controversion is proper, the control office/control point will controvert the claim. However, pay must be continued if continuation of pay is applicable and applied for unless the claim falls within one of the grounds for termination of pay listed in 545.51.

.53 Control Office Procedures. When a claim is controverted, the control office/control point will ensure that the CA-1 is properly completed and that the controversion package is adequately documented. Each case will be tailored to the facts. Form letters and repetitive formats will be avoided. All controversion packages will be transmitted to the OWCP district office by a cover letter with detailed information on the reasons for the controversion.

.54 Form CA-1 Instructions

.541 Before the controversion package is submitted, the CA-1 should be carefully reviewed for completeness and accuracy. Item 42 on the CA-1 should be clearly marked and a full explanation for the basis of the controversion provided.

.542 If additional information in support of the controversion is to be sent at a later date under a separate cover, this must be stated in the cover letter and in Item 42 on the CA-1 before the package is submitted to the OWCP district office.

.543 Form CA-1 must not be delayed pending the collection of data to support a controversion. The Form CA-1 is promptly sent to the OWCP office, with a notation on the CA-1 and a cover letter advising that the claim is being controverted and that information to support the controversion is forthcoming.

.544 Proper identification of controverted claims is essential to permit the OWCP offices to give these claims priority in processing and to avoid the possibility of substantial, erroneous payments of regular pay which would have to be recovered from the employee.

.55 Controversion Denied by OWCP. If a controversion is denied by OWCP, the control point may submit a copy of the CA-1 and all other relevant documents to the MSC E&LR director or counterpart, for review and any necessary resubmission, if warranted. Cases that are not resolved, to the satisfaction of field management, may be forwarded to the Regional Injury Compensation Program Administrator, with a recommendation for further action.

.56 45-Day Continuation of Pay. The employee's regular pay is continued for up to 45 calendar days unless:

a. The controversion has been upheld by OWCP and the installation head has been notified; or

b. The treating physician notifies the control office that the employee is no longer disabled.

97B

American Postal Workers Union, AFL-CIO

817 Fourteenth Street, N.W. Washington, D.C. 20005 • (202) 842-4250

MOE BILLER
President

April 18, 1984

James Gildea
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Dear Mr. Gildea:

In accordance with provisions of Article 15 the Union submits the following issue at Step 4 as an interpretive dispute.

The Employer's letter of April 11, 1984 included responses from the Office of Workers' Compensation (OWCP) dated September 28, 1978 and February 22, 1983. The union does not interpret Sections 545.56 and 545.62 or other provisions of the ELM as incorporating the cited letters from OWCP.

The union interprets Subchapter 545.51 as controlling in the Employer's right to terminate pay.

Sincerely,

Moe Biller

Moe Biller
President

MB:WB:mc

NATIONAL EXECUTIVE BOARD • MOE BILLER, President

WILLIAM BURRUS
Executive Vice President
DOUGLAS HOLBROOK
Secretary Treasurer
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Director, Clerk Division

RICHARD J. WEVODAU
Director, Maintenance Division
LEON S. HAWKINS
Director, MVS Division
SAMUEL ANDERSON
Director, SDM Division

THOMAS A. NEILL
Industrial Relations Director
KEN LEINER
Director, Mail Handler Division

REGIONAL COORDINATORS
RAYDELL R. MOORE
Western Region
JAMES P. WILLIAMS
[illegible]

PHILIP C. FLEMMING, JR.
Eastern Region
NEAL VACCARO
Northeastern Region
ARCHIE SALISBURY
Southern Region

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

RECEIVED
APR 16 1984
OFFICE OF
EXECUTIVE VICE PRESIDENT

April 11, 1984

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in response to your February 22 letter requesting the identification of circumstances in which the Postal Service may terminate Continuation of Pay (COP) benefits exclusive of subchapter 545.51 of the Employee and Labor Relations Manual (ELM).

In response to specific inquiries, the Office of Workers Compensation (OWCP) on two occasions (September 28, 1978, and February 22, 1983) provided the Postal Service with policy interpretations. These letters are enclosed for your review. We believe these situations, while not addressed in ELM 545.51, are incorporated in ELM 545.56 and 545.62.

Also, on February 5, 1979, the OWCP stated that it would not be unreasonable for the Postal Service to require a medical report to determine if an employee should be placed in a COP status. Such a medical report would be necessary to substantiate a job caused traumatic injury and disability in instances where there are unwitnessed or highly questionable alleged job-related injuries.

We trust this satisfactorily answers your inquiry.

Sincerely,

W. E. Henry Jr.

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

Enclosures

97D

American Postal Workers Union, AFL-CIO

[illegible] Louisiana Ave. N.W. Washington, D.C. 20001 • (202) 842-4250

[illegible]
Executive Vice President

February 22, 1984

William E. Henry, Jr., Director
Office of Grievance and Arbitration
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Dear Mr. Henry:

This is in further response to your letter of February 17, 1984 informing me that the Postal Service "generally agree(s) with (my) interpretation of the cited provisions." You further state that the Office of Workers' Compensation identifies other circumstances exclusive of the items listed in 545.51.

I request the identification of the other circumstances and whether or not the Postal Service relies upon them to stop payment?

Sincerely,

William Burrus,
Executive Vice President

WB:mc

NATIONAL EXECUTIVE BOARD • MOE BILLER President

[illegible] RICHARDS

REGIONAL COORDINATORS

PHILIP C. FLEMMING JR
Eastern Region
NEAL S. MCLEOD
Northeastern Region
ARCHIE SALISBURY
Southern Region

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

February 17, 1984

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in response to your January 20 letter to Mr. Gildea concerning the provisions of subchapter 545.51 of the Employee and Labor Relations Manual (ELM).

We generally agree with your interpretation of the cited provision. As stated in subchapter 545.52 "pay must be continued if continuation of pay is applicable and applied for unless the claim falls within one of the grounds for termination of pay listed in 545.51." This provision does not allow for expansion beyond the items listed in 545.51.

For your information, however, there are circumstances identified by the Office of Workers' Compensation where termination of COP is proper, exclusive of the items listed in 545.51.

Sincerely,

W. E. Henry

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

97F

American Postal Workers Union, AFL-CIO

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

Executive Vice President

January 20, 1984

James Gildea
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Dear Mr. Gildea:

The rights of bargaining unit employees under the Injury Compensation Program are incorporated in the National Agreement through provisions of Article 19 of the 1981 National Agreement. These provisions at Subchapter 545.5 define conditions under which the employer may discontinue continuation of pay when controverting a claim. Provisions at Subchapter 545.51 are specific in requiring that in all other cases where controversion is proper pay must be continued if continuation of pay is applicable.

Local officers are repeatedly refusing to place employees in a COP status when the claim is being controverted for reasons other than those listed at 545.51.

This is to determine whether a dispute exists between the union and the employer that continuation of pay cannot be stopped by the employer except for the reasons specifically stated at 545.51 and in all other cases where controversion occurs payment must be continued.

Sincerely,

William Burrus

William Burrus
Executive Vice President

WB:mc

NATIONAL EXECUTIVE BOARD • MOE BILLER, President
WILLIAM BURRUS, Executive Vice President
DOUGLAS HOLBROOK, Secretary Treasurer
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JAMES P. WILLIAMS, Central Region
PHILIP C. FLEMMING, JR., Eastern Region
NEAL VACCARO, Northeastern Region
ARCHIE SALISBURY, Southern Region

UNITED STATES POSTAL SERVICE

Washington,

DATE: October 15, 1993

OUR REF: LR120:DStanton:br:20260-4140

SUBJECT: Mittenthal Award on Compensability of Travel Time

TO: Area Managers, Customer Services
Area Managers, Processing and Distribution
Managers, Human Resources, All Areas
Managers, Human Resources, All Districts

National Arbitrator Richard Mittenthal issued an award in Case No's H7T-3W-C 12454, et al. on April 12, 1993, which addressed the question of how time spent in travel away from home overnight should be treated for pay purposes. Mittenthal's decision was based on his interpretation of the proper reading of ELM Sections 438 and 444. Grievances held pending resolution of the National Level travel cases can be resolved by providing lump sum payments in accordance with the attached Memorandum of Understanding.

On a prospective basis the Award, which provides difficult reading, should be applied in the following fashion:

1. Travel time spent by an eligible Postal Service employee in travel on Postal Service business to and from a postal facility or other work or training site which is outside the local commuting area and at which the employee remains overnight is compensable as work time if it coincides with the normal work hours for a bargaining-unit employee's regular bid job, whether on a scheduled or non-scheduled day, and regardless of his or her schedule while away from the home installation, subject to the limitations of ELM 438.141 and 438.142. This is consistent with past postal practice and policy.

2. Travel time spent by an eligible Postal Service employee in travel on Postal Service business to and from a postal facility or other work or training site which is outside the local commuting area and at which the employee remains overnight is not compensable as work time if it occurs outside the normal work hours for a bargaining-unit employee's regular bid job, whether on a scheduled or non-scheduled day, and

regardless of his or her schedule while away from the home installation. This much again is consistent with past practice and policy. As a result of the Mittenthal award however, such travel time must be considered "actual work" for purposes of determining entitlement to overtime pursuant to the Fair Labor Standards Act (FLSA).

3. FLSA overtime is provided for all hours of actual work in excess of 40 hours in any FLSA workweek. As stated in his award:

> [T]he treatment of travel time outside 'normal work hours' as 'actual work' under 444.22a will have certain pay consequences, other hours being paid at FLSA overtime rather than straight time. This does not mean, however, that such travel time has itself become compensable. Opinion, at 11-12.

As a consequence, this award does not require that time spent in travel away from home overnight outside of an employee's normal work schedule be compensated as work hours. It does require, however, that the time spent in such travel status be counted towards determining whether or not an employee worked more than forty hours for purposes of determining eligibility for FLSA overtime. The fact that an employee has such noncompensable travel hours could result in a FLSA overtime payment. This type of payment is required when such travel hours, when added to the employee's work hours, exceed forty work hours in a FLSA workweek.

By November 3, 1993, please provide the names and Social Security Numbers of all employees who are entitled to a lump sum payment under the MOU to: EMMA HOM, ACCOUNTING, ROOM 8831, 475 L'ENFANT PLAZA, SW, WASHINGTON, DC 20260-5242.

Timely filed grievances which have either not been previously settled, or are not settled by the attached MOU will be resolved under the terms of the Mittenthal Award. Therefore, it will be necessary to manually track non-compensable travel time by bargaining unit employees occurring since April 12, 1993.

The payroll/time and attendance systems will be modified to record and process non-compensable travel time as a separate hours code. Additional information will be provided for

processing pay adjustments for the retroactive timeframe as well as recording such data into the time and attendance systems for prospective weeks.

Please ensure this decision is carefully applied to ensure proper compensation is provided in travel situations. If you need further information, please contact Dave Stanton of my staff at (202) 268-5125.

Anthony J. Vegliante
Manager
Grievance and Arbitration
Labor Relations

attachment

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

Re: Application of Arbitrator Mittenthal's
Award in Case Nos. H7T-3W-C 12454 et al.

In order to resolve outstanding grievances that were held pending possible application of Case Nos. H7T-3W-C 12454 et al. the parties have agreed to the following:

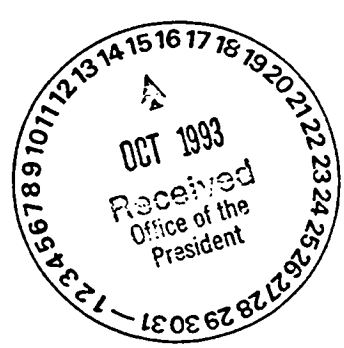
Any timely-filed grievance which can be resolved by application of Mittenthal's decision in Case No. H7T-3W-C 12454 et al. which has not been settled as of the signing of this Memorandum shall be settled by paying the grievant(s) who travelled outside of their schedule a lump sum payment of $150.00 for each round trip.

Class action grievances shall be settled by paying each member of the class who travelled outside of their schedule, a lump sum payment of $150.00 for each round trip.

This settlement does not prejudice either parties position concerning the application of the Mittenthal award.

Anthony J. Vegliante
Manager
Grievance and Arbitration
Labor Relations

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



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260-0001

81/9

RECEIVED
AUG 15 1985
AFWU
CLERK DIVISION

AUG 14 1985

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

Re: L. Hammond
Columbus, MS 39701
H1C-3Q-C 39681

Dear Mr. Connors:

This letter supersedes my letter of March 14, 1985.

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

The question in this grievance is whether the grievant was properly required to travel between two locations on his own time.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case:

> As the employees had not been relieved from duty for a period of at least 1 hour (F-21, 260.153), management shall compensate the employees named in the grievance at the applicable rate for the amount of time requested by the union in the "corrective action" contained on the Step 2 appeal form.

In determining the total hours to be paid, management will figure from 14 days prior to the filing of the grievance at Step 1.

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

The time limits were extended by mutual consent.

Sincerely,

Barbara J. Lerch
Labor Relations Department

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

1ST CASE of Level 1 printed in FULL format.

JANICE R. LACHANCE, ACTING DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT, PETITIONER v. LESTER E. ERICKSON, JR., ET AL.

No. 96-1395

SUPREME COURT OF THE UNITED STATES

118 S. Ct. 753; 1998 U.S. LEXIS 636; 139 L. Ed. 2d 695; 66 U.S.L.W. 4073; 13 BNA IER CAS 1015; 98 Cal. Daily Op. Service 508; 98 Daily Journal DAR 695; 11 Fla. Law W. Fed. S 473

December 2, 1997, Argued

January 21, 1998 *, Decided

* Together with LaChance, Acting Director, Office of Personnel Management v. McManus et al., also *on certiorari* to the same court.

NOTICE: [*1]

The LEXIS pagination of this document is subject to change pending release of the final published version.

PRIOR HISTORY: ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT.

DISPOSITION: *89 F.3d 1575* (first judgment), and *92 F.3d 1208* (second judgment), reversed.

SYLLABUS:

Respondents, federal employees subject to adverse actions by their agencies, each made false statements to agency investigators with respect to the misconduct with which they were charged. In each case, the agency additionally charged the false statement as a ground for adverse action, and the action taken against the employee was based in part on the added charge. The Merit Systems Protection Board (Board) upheld that portion of each penalty that was based on the underlying charge, but overturned the false statement portion, ruling, inter alia, that the claimed statement could [*2] not be considered in setting the appropriate punishment. In separate appeals, the Federal Circuit agreed with the Board that no penalty could be based on a false denial of the underlying claim.

Held: Neither the Fifth Amendment's Due Process Clause nor the Civil Service Reform Act, *5 U.S.C. § 1101* et seq., precludes a federal agency from sanctioning an employee for making false statements to the agency regarding his alleged employment-related misconduct. It is impossible to square the result reached below with the holding in, e.g., *Bryson v. United States, 396 U.S. 64, 72, 24 L. Ed. 2d 264, 90 S. Ct. 355,* that a citizen may decline to answer a Government question, or answer it honestly, but cannot with impunity knowingly and willfully answer it with a falsehood. There is no hint of a right to falsely deny charged conduct in § 7513(a), which authorizes an agency to impose the sort of penalties involved here "for such cause as will promote the efficiency of the service," and then accords the employee four carefully delineated procedural rights -- advance written notice of the charges, a reasonable time to answer, legal representation, and a specific written decision. Nor can such a right be found [*3] in due process, the core of which is the right to notice and a meaningful opportunity to be heard. Even assuming that respondents had a protected property interest in their employment, this Court rejects, both on the basis of precedent and principle, the Federal Circuit's view that a "meaningful opportunity to be heard" includes a right to make false statements with respect to the charged conduct. It is well established that a criminal defendant's right to testify does not include the right to commit perjury, e.g., *Nix v. Whiteside, 475 U.S. 157, 173, 89 L. Ed. 2d 123, 106 S. Ct. 988,* and that punishments may constitutionally be imposed, e.g., *United States v. Wong, 431 U.S. 174, 178, 52 L. Ed. 2d 231, 97 S. Ct. 1823,* or enhanced, e.g., *United States v. Dunnigan, 507 U.S. 87, 97, 122 L. Ed. 2d 445, 113 S. Ct. 1111,* because of perjury or the filing of a false affidavit re-

quired by statute, e.g., *Dennis v. United States, 384 U.S. 855, 16 L. Ed. 2d 973, 86 S. Ct. 1840.* The fact that respondents were not under oath is irrelevant, since they were not charged with perjury, but with making false statements during an agency investigation, a charge that does not require sworn statements. Moreover, any claim that employees not allowed to make false statements might be coerced into admitting misconduct, [*4] whether they believe that they are guilty or not, in order to avoid the more severe penalty of removal for falsification is entirely frivolous. *United States v. Grayson, 438 U.S. 41, 55, 57 L. Ed 2d 582, 98 S. Ct. 2610.* If answering an agency's investigatory question could expose an employee to a criminal prosecution, he may exercise his Fifth Amendment right to remain silent. See, e.g., *Hale v. Henkel, 201 U.S. 43, 67, 50 L. Ed. 652, 26 S. Ct. 370.* An agency, in ascertaining the truth or falsity of the charge, might take that failure to respond into consideration, see *Baxter v. Palmigiano, 425 U.S. 308, 318, 47 L. Ed. 2d 810, 96 S. Ct. 1551,* but there is nothing inherently irrational about such an investigative posture, see *Konigsberg v. State Bar of Cal., 366 U.S. 36. Pp. 2-5, 6 L. Ed. 2d 105, 81 S. Ct. 997.*

89 F.3d 1575 (first judgment), and *92 F.3d 1208* (second judgment), reversed.

COUNSEL: Seth P. Waxman argued the cause for petitioner.

Paul E. Marth argued the cause for respondents.

JUDGES: REHNQUIST, C. J., delivered the opinion for a unanimous Court.

OPINIONBY: REHNQUIST

OPINION: CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

The question presented by this case is whether either the Due Process Clause or the Civil Service Reform Act (CSRA), *5 U.S.C. § 1101* et seq., precludes a federal agency from sanctioning an employee for making false statements to the agency [*5] regarding alleged employment-related misconduct on the part of the employee. We hold that they do not.

Respondents Walsh, Erickson, Kye, Barrett, Roberts, and McManus are government employees who were the subject of adverse actions by the various agencies for which they worked. Each employee made false statements to agency investigators with respect to the misconduct with which they were charged. In each case, the agency additionally charged the false statement as a ground for adverse action, and the action taken in each was based in part on the added charge. The employees separately appealed the actions taken against them to the Merit Systems Protection Board (Board). The Board upheld that portion of the penalty based on the underlying charge in each case, but overturned the false statement charge. The Board further held that an employee's false statements could not be used for purposes of impeaching the employee's credibility, nor could they be considered in setting the appropriate punishment for the employee's underlying misconduct. Finally, the Board held that an agency may not charge an employee with failure to report an act of fraud when reporting such fraud would tend to implicate [*6] the employee in employment-related misconduct.

The Director of the Office of Personnel Management appealed each of these decisions by the Board to the Court of Appeals for the Federal Circuit. In a consolidated appeal involving the cases of Walsh, Erickson, Kye, Barrett, and Roberts, that court agreed with the Board that no penalty could be based on a false denial of the underlying claim. *King v. Erickson, 89 F.3d 1575 (1996).* Citing the Fifth Amendment's Due Process Clause, the court held that "an agency may not charge an employee with falsification or a similar charge on the ground of the employee's denial of another charge or of underlying facts relating to that other charge," nor may "denials of charges and related facts . . . be considered in determining a penalty." *Id., at 1585.* In a separate unpublished decision, the Court of Appeals affirmed the Board's reversal of the false statement charge against McManus as well as the Board's conclusion that an employee's "false statements . . . may not be considered" even for purposes of impeachment. *McManus v. Department of Justice, 66 M.S.P.R. 564, 568 (1995).*

We granted certiorari in both cases, 521 U.S. (1997), [*7] and now reverse. In *Bryson v. United States, 396 U.S. 64, 24 L. Ed. 2d 264, 90 S. Ct. 355 (1969),* we said: "Our legal system provides methods for challenging the Government's right to ask questions – lying is not one of them. A citizen may decline to answer the question, or answer it honestly, but he cannot with impunity knowingly and willfully answer with a falsehood." *Id., at 72* (footnote omitted). We find it impossible to square the result reached by the Court of Appeals in the present case with our holding in Bryson and in other cases of similar import.

Title *5 U.S.C. § 7513*(a) provides that an agency may impose the sort of penalties involved here "for such cause as will promote the efficiency of the service." It then sets forth four procedural rights accorded to the employee against whom adverse action is proposed. The agency

must:

(1) give the employee "at least 30 days' advance written notice"; (2) allow the employee "a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish . . . evidence in support of the answer"; (3) permit the employee to "be represented by an attorney or other representative"; and (4) provide the employee with "a written decision and [*8] the specific reasons therefor." *5 U.S.C. § 7513*(b).

In these carefully delineated rights there is no hint of any right to "put the government to its proof" by falsely denying the charged conduct. Such a right, then, if it exists at all, must come from the Fifth Amendment of the United States Constitution.

The Fifth Amendment provides that "no person shall . . . be deprived of life, liberty, or property, without due process of law . . . ." U.S. Const., Amdt. V. The Court of Appeals stated that "it is undisputed that the government employees here had a protected property interest in their employment," *89 F.3d at 1581*, and we assume that to be the case for purposes of our decision.

The core of due process is the right to notice and a meaningful opportunity to be heard. *Cleveland Bd. of Ed. v. Loudermill, 470 U.S. 532, 542, 84 L. Ed. 2d 494, 105 S. Ct. 1487 (1985)*. But we reject, on the basis of both precedent and principle, the view expressed by the Court of Appeals in this case that a "meaningful opportunity to be heard" includes a right to make false statements with respect to the charged conduct.

It is well established that a criminal defendant's right to testify does not include the right to commit perjury. [*9] *Nix v. Whiteside, 475 U.S. 157, 173, 89 L. Ed. 2d 123, 106 S. Ct. 988 (1986); United States v. Havens, 446 U.S. 620, 626, 64 L. Ed. 2d 559, 100 S. Ct. 1912 (1980); United States v. Grayson, 438 U.S. 41, 54, 57 L. Ed. 2d 582, 98 S. Ct. 2610 (1978)*. Indeed, in *United States v. Dunnigan, 507 U.S. 87, 97, 122 L. Ed. 2d 445, 113 S. Ct. 1111 (1993)*, we held that a court could, consistent with the Constitution, enhance a criminal defendant's sentence based on a finding that he perjured himself at trial.

Witnesses appearing before a grand jury under oath are likewise required to testify truthfully, on pain of being prosecuted for perjury. *United States v. Wong, 431 U.S. 174, 52 L. Ed. 2d 231, 97 S. Ct. 1823 (1977)*. There we said that "the predicament of being forced to choose between incriminatory truth and falsehood . . . does not justify perjury." *Id., at 178*. Similarly, one who files a false affidavit required by statute may be fined and imprisoned. *Dennis v. United States, 384 U.S. 855, 16 L. Ed. 2d 973, 86 S. Ct. 1840 (1966)*.

The Court of Appeals sought to distinguish these cases on the ground that the defendants in them had been under oath, while here the respondents were not. The fact that respondents were not under oath, of course, negates a charge of perjury, but that is not the charge brought against them. They were charged with [*10] making false statements during the course of an agency investigation, a charge that does not require that the statements be made under oath. While the Court of Appeals would apparently permit the imposition of punishment for the former but not the latter, we fail to see how the presence or absence of an oath is material to the due process inquiry.

The Court of Appeals also relied on its fear that if employees were not allowed to make false statements, they might "be coerced into admitting the misconduct, whether they believe that they are guilty or not, in order to avoid the more severe penalty of removal possibly resulting from a falsification charge." App. to Pet. for Cert. 16a-17a. But we rejected a similar claim in *United States v. Grayson, 438 U.S. 41, 57 L. Ed. 2d 582, 98 S. Ct. 2610 (1978)*. There a sentencing judge took into consideration his belief that the defendant had testified falsely at his trial. The defendant argued before us that such a practice would inhibit the exercise of the right to testify truthfully in the proceeding. We described that contention as "entirely frivolous." *Id., at 55*.

If answering an agency's investigatory question could expose an employee to a criminal prosecution, [*11] he may exercise his Fifth Amendment right to remain silent. See *Hale v. Henkel, 201 U.S. 43, 67, 50 L. Ed. 652, 26 S. Ct. 370 (1906); United States v. Ward, 448 U.S. 242, 248, 65 L. Ed. 2d 742, 100 S. Ct. 2636 (1980)*. It may well be that an agency, in ascertaining the truth or falsity of the charge, would take into consideration the failure of the employee to respond. See *Baxter v. Palmigiano, 425 U.S. 308, 318, 47 L. Ed. 2d 810, 96 S. Ct. 1551 (1976)* (discussing the "prevailing rule that the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify"). But there is nothing inherently irrational about such an investigative posture. See *Konigsberg v. State Bar of Cal., 366 U.S. 36, 6 L. Ed. 2d 105, 81 S. Ct. 997 (1961)*.

For these reasons, we hold that a government agency may take adverse action against an employee because the employee made false statements in response to an underlying charge of misconduct. The judgments of the Court of Appeals are therefore

Reversed.

JOHN E. POTTER
VICE PRESIDENT, LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

April 21, 1998

VICE PRESIDENTS, AREA OPERATIONS

SUBJECT: Informational Picketing

The American Postal Workers' Union (APWU) has disclosed plans to conduct a nationwide picket on May 27, 1998, to protest the Postal Service's decision to subcontract priority mail processing. In anticipation of this activity, Headquarters Labor Relations with input from the General Counsel and the Inspection Service, has outlined some issues that you should be aware of when faced with picketing at your facilities.

- It is lawful for Postal Service employees to engage in peaceful informational picketing on public property.

- Picketing may take place on public sidewalks outside the Postal Service facility. Picketing cannot take place in the interior of Postal Service buildings such as the lobby area.

- Pickets may not block public entrances or exits, or be situated in such a way as to prevent individuals from using the Postal Facility.

- Picketing should be peaceful. If there is violence on the picket line, local police should be called to handle any disturbance. If individuals responsible for violent or disruptive activity are identified as Postal Service employees, they may be subject to disciplinary action as well as any criminal activity instituted by municipal authorities.

- Employees participating in informational picketing may not be disciplined for wearing their postal uniform while picketing.

- While Postal Service employees may engage in lawful informational picketing, it cannot be "on-the-clock." Rather, postal employees must use annual leave or off-duty hours to engage in picketing. The determination whether to grant an individual annual leave should be guided by the same principles that managers use in granting normal annual leave requests. The fact that the employee indicates he or she needs annual leave to picket should not influence a manager's decision to grant or deny an annual leave request.

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
202-268-3819
FAX: 202-268-3074

- Postal Service management should not attempt to engage picketing employees in a debate as to the merits of the unions' actions. Similarly, Postal Service management should not discuss the merits of the unions' activities with employees who choose not to engage in informational picketing. Postal Service management should avoid any activity which may be perceived as harassment of picketing employees or any other activity which could conceivably have the possibility of interfering with the lawful picketing.

- Inasmuch as informational picketing is lawful, Postal Service management should not engage in any actions subsequent to the unions' picketing activity which could be interpreted as retribution against those employees who chose to engage in informational picketing activities who were nonscheduled, off-the-clock or on approved annual or approved leave without pay status. Similarly, management should not "reward" those employees who chose not to engage in informational picketing activities. Violation of this guidance could result in unfair labor practice charges being filed against the Postal Service.

- Postal Service management should not engage in surveillance activities as they relate to lawful informational picketing.

If you have any further questions concerning specific picketing issues, please contact your labor relations or local field counsel representative for further guidance.

John E. Potter

cc: Mr. Coughlin
Mr. Henderson
Ms. Elcano
Mr. Hunter
Mr. Kappler
Mr. Barranca
Mr. Kelly
Mr. Pajunas
Managing Counsels, Field Legal Office
Managers, Human Resources (Area)
Managers, Human Resources (District)

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

Re: In-House Pilot Priority Mail Processing Center

In accordance with the 1998 APWU collective bargaining negotiations, the parties agreed in a Memorandum of Understanding (MOU) to establish an in-house pilot Priority Mail Processing Center (PMPC). . The establishment of a postal PMPC is for the purpose of determining whether or not a Postal Service site will be competitive, in terms of cost and maintaining service standards equal to or greater than those established and maintained by Emery Worldwide, Inc.'s current operations.

The provisions set forth in this agreement apply solely to the Pilot PMPC site. They will continue in effect as long as the Pilot PMPC is operating, unless subsequently modified in writing by agreement of the parties. The pilot postal PMPC will be established in Phoenix, Arizona, to process Priority Mail products only.

The pilot PMPC will be "ramped-up" over a reasonable period of time not to exceed four months or 120 days in order to establish operations and staffing. The pilot test will run for two years after the ramp-up period. At that time, the Postal Service and the union will meet to discuss the results of the pilot based on the purpose of the pilot as described in the first paragraph of this agreement. After meeting, the Postal Service will decide whether or not to continue the pilot or take other appropriate action.

Unless specifically referenced in this agreement, provisions of the national agreement will apply to the pilot PMPC.

The following understanding is the written agreement that provides specific modifications to provisions of the national collective bargaining agreement for application in the Pilot PMPC:

A. The pilot PMPC installation APWU complement will be staffed with no less than 80 percent career employees and no more than 20 percent non-career employees (casuals), except during the Christmas period (APs 3 and 4).

B. The career workforce will consist of at least 80 percent full-time employees and 20 percent part-time employees. Contractual maximization rules will not apply to any part-time flexible employees in the pilot PMPC for the duration of the pilot test.

C. Non-career employees (casuals) may be employed up to 359 days per year.

D. The staffing and use of casual employees will not be considered supplemental for purposes of this agreement, and they shall be governed solely by the provisions of this Memorandum. The agreed-to percentage of 20 percent may be maintained and will not count towards the restrictions of Article 7 of the national agreement.

E. Craft complement and duty assignments will be established as determined by the application of the principles of R-I399. Any disputes that arise from this process will be resolved expeditiously through the grievance/arbitration procedures. A dedicated arbitrator will be selected prior to opening the postal PMPC to resolve all jurisdictional disputes arising in the postal PMPC.

F. Local parties will form a tri-partite labor/management committee consisting of representatives from the Postal Service, American Postal Workers Union (APWU), AFL-CIO, and National Postal Mail Handlers Union (NPMHU), AFL-CIO. This tri-partite committee will meet no less than once each accounting period after the pilot PMPC is established to discuss staffing, productivity, processing and accuracy.

G. The pilot PMPC will be an independent installation for all purposes. However, prior to the opening of PMPC, the local parties will discuss and resolve the procedures that will be employed to assign existing career full-time and part-time employees from other installations and any options/rights to return to their former installation and conversion opportunities for part-time flexible employees.

H. This agreement and any other agreements made locally at the pilot PMPC are made solely for the specific purpose described above and will not be used in any other forum for any purpose except for disputes arising concerning the application of these agreed-upon provisions.

Anthony J. Vegliante
Vice President
Labor Relations
U.S. Postal Service

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

Date: 4/4/00

APWU REGIONAL COORDINATORS
APWU NATIONAL BUSINESS AGENTS
AREA HUMAN RESOURCES MANAGERS
AREA LABOR RELATIONS MANAGERS

SUBJECT: "Fargo" - related grievances

Recently, we met to discuss the subject of grievances that have been held pending resolution of the national level appeal in Case H7C-4S-C 3749.

Arbitrator Mittenthal addressed the disputed issues in his August 4, 1998, decision, which he subsequently clarified in his July 12, 2000, award, when he stated that "[t]he clarification sought by the parties is set forth in items 1 through 5 of the foregoing opinion."

Accordingly, we agree that each grievance being held pending resolution of Case H7C-4S-C 3739 should be reviewed by the parties, at the level where the grievance is held, to determine whether the grievance contains those items identified in the aforementioned award. If they contain these items they should be settled in accordance with Arbitrator Mittenthal's decision or scheduled for arbitration, as appropriate.

Peter A. Sgro
Manager
Contract Administration

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

January 10, 2001

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

Re: Postal Priority Mail Processing Centers

In full and complete settlement of all issues and grievances related to the Postal Service's decision to subcontract the processing of Priority Mail in a separate network of facilities, including the American Postal Workers Union's (APWU) National-level grievance in Case No. Q94C-4Q-C 97078759, the APWU and Postal Service agree to the following:

The Postal Service agrees that the work currently performed by subcontractors at the ten Priority Mail Processing Centers (PMPC) will be transitioned to the Postal Service and be staffed by Postal Service employees according to the terms of this Memorandum of Understanding (MOU).

The parties agree to modify the provisions of the National Agreement for application in transitioning the ten subcontracted Priority Mail Processing Center sites to Postal Service operations. The provisions set forth in this agreement apply solely to accomplishing this transition and the subsequent Postal Service operation of those existing PMPC subcontracted operations.

The parties also agree that it is in their best interest to jointly work together to improve Priority Mail service, efficiencies, and cost effectiveness.

Unless specifically referenced in this MOU, all provisions of the National Agreement will apply to Postal Priority Mail Processing Center (PPMPC) sites. The provisions contained in this MOU will continue in effect as prescribed in this MOU.

The Postal Service may, at its discretion, move the operations of the transitioned PPMPCs to other locations, provided the total number of sites governed by this MOU shall not exceed ten Postal PMPC independent sites. If the Postal Service decides to move Postal PMPC operations to a different location or locations to process this Priority Mail or add a delivery operation to a PPMPC, the provisions of this MOU will continue to apply in those installation(s), provided the operations are not moved to any of the following Postal Installations: Processing and Distribution Center, Bulk Mail Center, Air Mail Center or Facility, or any other existing postal facility at which APWU represented employees are currently employed.

Each PPMPC will be an independent installation for all purposes. For purposes of this transition, there will be a transition period from the date the Postal Service terminates the existing contract with Emery until January 1, 2002, at which time the Postal Service will have completed staffing the installations in accordance with the below provisions.

The following provisions concerning wages, hours, and working conditions will apply in the ten Postal PMPCs covered by this MOU:

1. **Staffing** - The future staffing of the PPMPC will consist of two categories of employees, career and casual, with the following conditions:

A. The PPMPC installation APWU complement will be staffed with no less than 75 percent full-time career employees and no more than 25 percent non-career (casuals) in mail processing, except during Accounting Periods (APs) 2, 3, & 4.

B. During the transition period, full-time career employees in the district commuting area who are eligible and qualified will be offered the opportunity to transfer to the PPMPC and vacancies may be withheld pursuant to Article 12 to accommodate excessed employees. Selections to duty assignments will be made by seniority.

C. PPMPC casual employees may be employed up to 359 days per calendar year. The staffing and use of casual employees will not be considered supplemental for purposes of this agreement and shall be governed solely by the provisions of this MOU. The agreed to percentage of 25 percent casuals may be maintained and will not count towards, or be subject to, any of the restrictions of Article 7 of the National Agreement.

2. **Transition Period** – During the transition period, the Postal Service may staff the PPMPC installations, as it deems necessary to continue to reach operational goals and maintain service. At the end of the transition period (January 1, 2002), the Postal Service will be in compliance with the staffing mix as described in Section 1.

3. **Duty Assignments** – Craft complement and duty assignments will be established as determined by the application of the principles of RI-399. Any disputes that arise from this process will be resolved expeditiously through the RI-399 dispute resolution procedures. A dedicated arbitrator will be selected before the end of the transition period to resolve all jurisdictional disputes arising in the PPMPCs. Jurisdictional decisions by the arbitrator will not be cited by either the unions or management for any purpose not directly related to the PPMPCs.

4. **Seniority** – Seniority of employees will be established as total craft seniority applying seniority tiebreakers as provided for in the National Agreement.

5. **Local Labor/Management Performance Committee** – In addition to the Labor/Management meetings required by Article 17 of the National Agreement, the local parties will form a tri-partite labor/management performance improvement committee consisting of representatives from the Postal Service, American Postal Workers Union (APWU) AFL-CIO, and National Postal Mail Handlers Union (NPMHU) AFL-CIO. This tri-partite committee will meet no less than once each accounting period after the PPMPC is established to discuss staffing, productivity, processing, and accuracy.

6. **Overtime** – The parties agree that the penalty overtime provisions contained in Article 8 shall not apply to APWU clerk craft employees in the Postal PMPC sites. However, there will be work hour limits of 12 hours per day and 60 hours in a service week. The selection of employees to perform work on overtime shall be in the following order: 1. Full-Time Career Volunteers, 2. Casuals, 3. Non-Volunteers.

7. **Transportation** – During the transition period, the Postal Service may establish ground transportation as it deems necessary to reach operational goals and maintain service. During the transition period, the Postal Service will meet with the APWU and discuss the appropriate future transportation needs, including the use of postal motor vehicle employees. At the end of the transition period, transportation for the PPMPCs will be established in accordance with the current contractual procedures and awarded to Postal Vehicle Service (PVS), where appropriate.

8. **Maintenance** – The parties agree that current arrangements for building maintenance and custodial functions will continue for the transition period. At the end of the transition period, the Postal Service will follow the appropriate procedures in the National Agreement with regard to staffing the building maintenance and custodial functions. For equipment maintenance, the Postal Service will make the necessary adjustments and staff with Postal maintenance as soon as practicable, but no later than the end of the transition period.

9. The terms and conditions of this Memorandum of Understanding and any other agreements made locally at a PPMPC site are made solely for the specific purpose described above and shall not be raised in any other forum for any purpose except to resolve disputes arising from the application of such agreed upon provisions.

Anthony J. Vegliante
Vice President
Labor Relations
U.S. Postal Service

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

Date: 12/30/00

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

Re: In-House Pilot Priority Mail Processing Center

In accordance with the 1998 APWU collective bargaining negotiations, the parties agreed in a Memorandum of Understanding (MOU) to establish an in-house pilot Priority Mail Processing Center (PMPC). The establishment of a postal PMPC is for the purpose of determining whether or not a Postal Service site will be competitive, in terms of cost and maintaining service standards equal to or greater than those established and maintained by Emery Worldwide, Inc.'s current operations.

The provisions set forth in this agreement apply solely to the Pilot PMPC site. They will continue in effect as long as the Pilot PMPC is operating, unless subsequently modified in writing by agreement of the parties. The pilot postal PMPC will be established in Phoenix, Arizona, to process Priority Mail products only.

The pilot PMPC will be "ramped-up" over a reasonable period of time not to exceed four months or 120 days in order to establish operations and staffing. The pilot test will run for two years after the ramp-up period. At that time, the Postal Service and the union will meet to discuss the results of the pilot based on the purpose of the pilot as described in the first paragraph of this agreement. After meeting, the Postal Service will decide whether or not to continue the pilot or take other appropriate action.

Unless specifically referenced in this agreement, provisions of the national agreement will apply to the pilot PMPC.

The following understanding is the written agreement that provides specific modifications to provisions of the national collective bargaining agreement for application in the Pilot PMPC:

A. The pilot PMPC installation APWU complement will be staffed with no less than 80 percent career employees and no more than 20 percent non-career employees (casuals), except during the Christmas period (APs 3 and 4).

B. The career workforce will consist of at least 80 percent full-time employees and 20 percent part-time employees. Contractual maximization rules will not apply to any part-time flexible employees in the pilot PMPC for the duration of the pilot test.

C. Non-career employees (casuals) may be employed up to 359 days per year.

D. The staffing and use of casual employees will not be considered supplemental for purposes of this agreement, and they shall be governed solely by the provisions of this Memorandum. The agreed-to percentage of 20 percent may be maintained and will not count towards the restrictions of Article 7 of the national agreement.

E. Craft complement and duty assignments will be established as determined by the application of the principles of R-I399. Any disputes that arise from this process will be resolved expeditiously through the grievance/arbitration procedures. A dedicated arbitrator will be selected prior to opening the postal PMPC to resolve all jurisdictional disputes arising in the postal PMPC.

F. Local parties will form a tri-partite labor/management committee consisting of representatives from the Postal Service, American Postal Workers Union (APWU), AFL-CIO, and National Postal Mail Handlers Union (NPMHU), AFL-CIO. This tri-partite committee will meet no less than once each accounting period after the pilot PMPC is established to discuss staffing, productivity, processing and accuracy.

G. The pilot PMPC will be an independent installation for all purposes. However, prior to the opening of PMPC, the local parties will discuss and resolve the procedures that will be employed to assign existing career full-time and part-time employees from other installations and any options/rights to return to their former installation and conversion opportunities for part-time flexible employees.

H. This agreement and any other agreements made locally at the pilot PMPC are made solely for the specific purpose described above and will not be used in any other forum for any purpose except for disputes arising concerning the application of these agreed-upon provisions.

Anthony J. Vegliante
Vice President
Labor Relations
U.S. Postal Service

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

Date: 4/4/00

Certified Mail Number
7000 0600 0020 9737 2032

January 26, 2001

APWU REGIONAL COORDINATORS
MANAGERS, HUMAN RESOURCES (AREA)
MANAGERS, LABOR RELATIONS (AREA)

SUBJECT: Postal Priority Mail Processing Center Implementation Process

There are several provisions of the December 30, 2000, Postal Priority Mail Processing Center (PPMPC) Memorandum of Understanding (MOU) that must be implemented by local management and union officials. The parties at the national level encourage the local parties to engage in open and ongoing communication to promote a productive and positive labor/management relationship in the PPMPC sites.

The purpose of this joint letter is to provide guidelines to the local parties regarding those provisions of the December 30, 2000, MOU that requires local implementation.

LOCAL LABOR/MANAGEMENT MEETING

The PPMPC Manager or designated Postal Service representative should schedule an initial local labor/management meeting with the appropriately designated local union officials for the week of January 29, 2001, at which a mutually agreed to date for a tour of the facility will be discussed.

DUTY ASSIGNMENTS

The parties at the national level will work together to establish craft jurisdictional determination for specific operations no later than March 1, 2001. Until these jurisdictional determinations are made at the national level, and/or the Postal Service hires or begins accepting transfers of career employees into the PPMPCs, jurisdictional issues, specific staffing, or duty assignments will not be the subject of local grievances.

LOCAL IMPLEMENTATION/NEGOTIATIONS

In accordance with Article 30, Section E, of the 1998 National Agreement, the local parties will meet to negotiate a local memorandum of understanding when the Postal Service establishes a new installation. The following procedure will apply when negotiating local memoranda of understanding at PPMPCs, the following will be the procedure:

There shall be a 30-consecutive day period of local implementation which shall occur within a period of 60 days commencing April 9, 2001, on the 22 specific items enumerated in Article 30, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the 1998 National Agreement."

The local parties may, by mutual agreement, delay negotiating any one or more of the 22 items until a future date they deem more appropriate (e.g., after more information is known about specific duty assignment staffing, completion of the district transfer solicitation, or the completion of the transition period). The dispute resolution procedures of Article 30 will apply, including extended negotiations mutually agreed to by the parties.

STAFFING

As required in the MOU, during the transition period, "full-time career employees in the district commuting area who are eligible and qualified will be offered the opportunity to transfer to the PPMPC and vacancies may be withheld pursuant to Article 12 to accommodate excessed employees. Selections to duty assignments will be made by seniority." Local discussions on specific staffing or duty assignments shall be deferred until such time as these guidelines are established at the national level.

LOCAL LABOR/MANAGEMENT PERFORMANCE COMMITTEE

As required in the PPMPC MOU, a local tri-partite labor/management committee will be established with management and both the APWU and NPMHU local union officials. This committee is created for the purpose of encouraging ongoing dialogue between local management and the unions regarding the operation of the PPMPC and to discuss any ideas the unions have to improve the performance (staffing, productivity, processing, and accuracy) of the PPMPC.

The establishment of this committee should be a subject of discussion at a future local labor/management meeting. The three parties should mutually agree when this committee should be established and meet each accounting period, sometime after the local implementation period or when career employees are transferred in or hired into the PPMPC.

TRANSPORTATION & MAINTENANCE

In the December 30, 2000, MOU, there are provisions concerning issues related to transitioning maintenance and transportation, where appropriate. The parties will meet at the national level to discuss these provisions and, if necessary, provide guidance to the local parties regarding their responsibilities at an appropriate future time.

Nothing in this joint communication is intended to change any of the provisions of the December 30, 2000, PPMPC MOU, or diminish any of the rights of either party contained therein.

If you have any questions, or need further guidance, please do not hesitate to contact your appropriate Headquarters official.

Anthony J. Vegliante
Vice President
Labor Relations
U.S. Postal Service

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

Date: 1/26/01

March 10, 1995

LETTER NO. 95-05

PERSONAL ATTENTION

Deputy Chief Inspectors
Inspectors in Charge
Headquarters Group Managers
ISOSG Managers
All Inspectors

REPORTING RESULTS OF POLYGRAPH TESTING WITHIN AN INVESTIGATIVE MEMORANDUM

Polygraph examinations are voluntary and consensual interviews; therefore, the results can be included in the report to postal management. However, the fact that an individual has refused to submit to a polygraph examination must not be cited in the report as this information may be prejudicial to an employee's employment rights. Management must also understand the polygraph results, or a refusal to submit to the examination, are not, in and of themselves, sufficient to prove or disprove employee misconduct.

The disclosure of polygraph examination results is not, per se, a violation of the Privacy Act, 5 U.S.C. §552(a).

Polygraph examination results are admissible in MSPB proceedings. (Meier v. Dept. of Interior, 3 MSPB 341 (1980))

Based on the above, Section 223.4(n) of the ISM is revised to read: "Any reference to an employee's refusal to take a polygraph examination."

/s/

K. J. Hunter

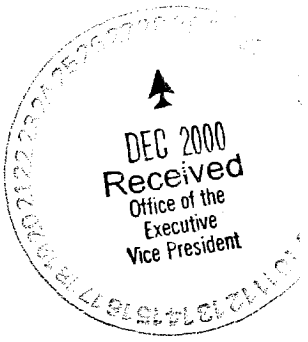
THIS LETTER WILL REMAIN IN EFFECT UNTIL INCORPORATED IN THE ISM.

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

Re: Certain Post-November 20, 2000 Contract Applications

The parties have agreed that in the absence of a successor National Agreement, certain contractual provisions will apply as herein described.

- Article 12.3.A – The bid count for five (5) successful bids during the term of the next Agreement(s) is to begin effective November 21, 2000.
- Article 10.4 – Choice vacation selections shall proceed as provided in the 1998 National Agreements and/or local Memoranda of Understanding.
- Article 37.3.A.4 – Reposting of occupied duty assignments due to cumulative changes to starting times—Changes in starting times that occurred during the 1998 National Agreement will not accrue beyond November 20, 2000.



Peter A. Sgro
Manager
Contract Administration

William Burrus
Executive Vice President
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December 18, 2000

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MEMORANDUM

TO: Bill Burrus

FROM: Art Luby AL

DATE: March 24, 1999

RE: Privacy Act Claim

It is my understanding that officers of the Washington state organization requested and received the Form 3971s of several ex-officers. Those ex-officers have, in turn, threatened to sue the supervisor who provided this information for violation of their rights under the Privacy Act. For reasons set forth below, I do not believe that either the request for information, or the supervisor's act in honoring the request, violated the Privacy Act.

The Postal Service's obligations under the Privacy Act in this sort of situation were reviewed by the Court in NLRB v. U.S. Postal Service, 841 F.2d 141 (6th Cir. 1988):

> The Privacy Act prohibits certain "agencies" from disclosing "records" from a "system of records" without prior consent of the individuals to whom the records pertain. 5 U.S.C. § 552a(b). The definition of "agency" includes "any Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government ... or any independent regulatory agency." 5 U.S.C. § 552(e). The Postal Service is an "independent establishment of the executive branch," 39 U.S.C. § 201, and as such is an "agency" subject to the strictures of the Privacy Act. Therefore, unless the records sought fall within an exception to the Privacy Act, the Postal Service justifiably refused to release them since it is clear that the union did not have the involved individuals' consent. The failure to provide information falling within an exception to the Privacy Act clearly can violate §

> 8(a)(1) and (5) of the National Labor Relations Act. *Goodyear Atomic Corp.*, 266 N.L.R.B. 890, *enforced*, 738 F.2d 155 (6th Cir. 1984) (per curiam). The relevant Privacy Act exception, the "routine use" exception, provides that nonconsensual disclosure is permissible "for a routine use as defined in subsection (a)(7) of this section and described under subsection (e)(4)(D) of this section." 5 U.S.C. § 552a(b)(3). The Postal Service is obligated to annually publish in the Federal Register routine uses of its records pursuant to 5 U.S.C. § 552a(e)(4). In 1982, the Postal Service published a notice in the Federal Register describing the following "routine use": "Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization upon its request when needed by the organization to perform properly its duties as a collective bargaining representative of postal employees in an appropriate bargaining unit." 47 Fed. Reg. 1,199 (1982). Therefore, it is clear that if the National Labor Relations Act requires the Postal Service to supply the desired information, the unconsented-to disclosure of such would fall within the "routine use" exception to the Privacy Act.

Id., at 144-145.

In this case, the information was needed by the Washington state organization to properly perform its duties as a collective bargaining representative for several reasons. The request for the 3971s was made to investigate allegations of "double dipping," i.e., an allegation that the officer in question was actually working for the USPS when he or she was being paid by the union. The union has a statutory obligation under 29 U.S.C. § 501 (Landrum-Griffin) to investigate and prevent such conduct. If it fails to do so, it can potentially lose its autonomy and status as a collective bargaining representative.

Further, officers who become aware of such conduct are held responsible by the DOL for failing to protect the assets of the Union and are potentially criminally liable for failing to act — a matter which, in turn, could impact their employment status with the USPS. All of the above, in my view, is sufficiently tied to the Union's role as a collective bargaining representative to place the request within the "routine use" exception.

AML:pad
O:\TDAML\COR\BURRUS MEM

INTRODUCTION

The instant arbitration arose as a result of a grievance filed by the American Postal Workers Union (the "Union") on behalf of William Henn (the "Grievant") alleging that the United States Postal Service (the "Service" or "Management") violated Article 19 of the National Agreement, 1994-98, (the "Agreement"), by failing to properly retain restricted medical information in accordance with the Postal regulations, thereby allowing the information to be disseminated to unauthorized personnel. When the parties were unable to resolve the matter, it was submitted to Arbitration pursuant to Article 15.

BACKGROUND

The Grievant is a full-time regular label expediter on Tour 2 at the Pittsburgh GMF. On July 1, 1997, the Grievant requested, from the GMF medical facility, a copy of his Family Medical Leave Act ("FMLA") documentation, which he had submitted in support of a leave request. He was informed that his supervisor had the documentation. His supervisor in turn relayed that the documentation was maintained by Supervisor Dugas, in the Attendance, Time and Leave ("ATAL") Department. The documentation allegedly contained the Grievant's prognosis and diagnosis, as well as other restricted medical information.

The Union filed a grievance alleging that the medical information kept in the ATAL is an improper and illegal record system, in violation of the Handbooks and Manuals and the Privacy Act. The Union alleges that this failure to properly maintain restricted medical information resulted in the information being disseminated to unauthorized personnel and requests that Management cease and desist from keeping such medical records at the ATAL and return the medical information to the medical unit. It also request damages for the unauthorized access to

the information.

ISSUE

Is the Postal Service in violation of the parties' collective bargaining agreement by having supervisors maintain a system of records consisting of employees' Family Medical Leave Act medical certification? If so, what shall the remedy be?

PERTINENT CONTRACT AND HANDBOOK PROVISIONS

ARTICLE 19
HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

ADMINISTRATIVE SUPPORT MANUAL 11
MARCH 1996

351 **Records**

351.11 **Definition**

Records are recorded information, regardless of media or physical characteristics, developed or received by the Postal Service during the transaction of its business and retained in its custody.

351.131 **Custodian**

For purposes of this section, the records custodian is the head of a postal facility such as an area, district, post office, or other postal installation that maintains Postal Service records and information. . . . . Senior medical personnel are the custodians of restricted medical records maintained within postal facilities. . . .
Custodians are responsible for seeing that records within their

facilities or organizations are managed according to Postal Service policies.

353 **Privacy Act**

353.11 **Requirements**

353.111 **Scope**

This part includes instructions for applying the Privacy Act of 1974 and the Postal Service regulations that implement it. These regulations are parts 266 and 268 of title 39, CFR. If there is a conflict between these instructions and the Act or regulations, the latter govern.

353.112 **Postal Service Requirements**

Under the Privacy Act of 1974, the Postal Service must:

a. Publish in the *Federal Register* and forward to Congress and the Office of Management and Budget (OMB) adequate advance notice of any proposal to establish or modify, or alter the uses of, any system of records that contains any information about persons.

b. Comply with certain requirements for the collection, use, disclosure, and safeguarding of information about individuals.

353.12 **Definitions**

353.121 **System of Records**

A *system of records* that contains information about individuals means any group of records under the control of the Postal Service, including mailing lists, from which information is retrieved by the name of an individual or by some personal identifier assigned to the individual, such as a Social Security number.

353.13 **Penalties**

353.131 **Postal Employees**

The Privacy Act provides criminal penalties, in the form of fines of up to $5,000, for any officer or employee of a federal agency, including the Postal Service, who:

a. Knowing that disclosure of specific material that includes information about a person is prohibited, willfully discloses that material in any manner to any person or agency not entitled to receive it.

b. Willfully maintains a system of records that contains information about individuals without giving appropriate notice in the *Federal Register*.

353.2 **Collecting and Using Information About Individuals**

353.21 **Approved Systems**

Notice on the systems of records listed in the Appendix has been published in the *Federal Register*. These are the only current systems of records in which information about individuals may be maintained in the Postal Service. New systems may be established only as provided in 353.24.

353.24 **New or Changed Systems of Records**

353.241 **Approval**

The following apply:

a. *Headquarters/Field.* Any Headquarters or field organization that wants to establish a new system of records with information about individuals, change an existing system, or introduce new forms to collect personal information from an individual, must obtain approval from the Postal Service records office.

b. *Limitation.* The Postal Service may collect and maintain in its records only such information about an individual that is necessary and relevant to accomplish a purpose that the Postal Service is required to accomplish by statute or by Executive Order of the president.

c. *Lead Time.* Allow 75 days to give notice in the *Federal Register* an review comments on new or changed systems.

Appendix
Privacy Act System of Records

A. Explanation

This appendix has three sections relating to systems of records regulated by the Privacy Act of 1974:

a. Section B is a sequential inventory of personal records, provided for reference, listing record system descriptions by index number.

B. Personal Systems Sequential Inventory

010.000 Collection and Delivery Records

020.000 Corporate Relations
030.000 Equal Employment Opportunity
040.000 Customer Programs

* * *

120.000 Personnel Records
.020 Blood Donor Records System, 120.020
.035 Employee Accident Reports,120.035
.036 Discipline, Grievance, and Appeals Records for Nonbargaining Unit Employees, 120.036
.040 Employee Job Bidding Records. 120.040
.050 Employee Ideas Program Records, 120.050
.060 Confidential Statements of Employment and Financial Interests, 120.060
.061 Public Financial Disclosure Reports fro Executive Branch Personnel, 120.061
.070 General Personnel Folders (Official Personnel Folders and Records Related Thereto), 120.070
.090 Medical Records, 120.090 ***(emphasis supplied)***
.091 Vehicle Operations Controlled Substance and Alcohol Testing Records, 120.091
.098 Office of Workers' Compensation Program (OWCP) Record Copies, 120.098
.099 Injury Compensation Payment Validation Records, 120.099
.100 Performance Awards System Records, 120.100
.110 Preemployment Investigation Records, 120.110
.120 Personnel Research and Test Validation Records, 120.120
.121 Applicant Race, Sex, National Origin, and Disability Status Records, 120.121
.130 Postmaster Selection Program Records, 120.130
.140 Employee Assistance Program (EAP) Records, 120.140
.151 Recruiting, Examining, and Appointment Records, 120.151
.152 Career Development and Training Records, 120.152
.153 Individual Performance Evaluation/Measurement, 120.153
.154 Employee Survey Process System Records, 120.154
.170 Safe Driver Awards Records, 120.170
.180 Skills Bank (Human Resources Records), 120.180
.190 Supervisor's Personnel Records, 120.190 ***(emphasis supplied)***
.210 Vehicle Maintenance Personnel and Operators

Records, 120.210
.220 Arbitration Case Files, 120.220
.230 Adverse Action Appeals (Administrative Litigation Case Files), 120.230
.240 Garnishment Case Files, 120.240

USPS 120.090

System Name
Personnel Records–Medical Records, 120.090

Categories of Individuals Covered by the System
Present and former Postal Service employees. . . .

Categories of Records in the System
Name, address, job title, Social Security number, installation, illness, supervisor's and physician's reports (on Authorization for Medical Attention); relevant medical history including physical examinations, treatment received at the health unit, occupational injuries or illnesses, substance abuse information, findings, diagnoses and treatment, doctor's statements and recommendations, records of immunizations, and medical findings related to employee's exposure to toxic substances. . . .

Authority for Maintenance of the System
39 U.S.C. 401, 1001

Purpose(s)
a. To provide all employees with necessary health care and to determine fitness for duty.

* * *

Routine Uses of Records Maintained in the System, Including Categories of Users and Purposes of Such Uses

General routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notice apply to this system. Other routine uses are as follows:

* * *

3. Records in this system may be disclosed to an employee's private treating physician and to medical personnel retained by the Postal Service to provide medical services for an employees health or physical condition related to employment.

USPS 120.190

System Name
Personnel Records–Supervisors' Personnel Records, 120.190.

System Location
Any Postal Service facility

Categories of Individuals Covered by the System
Postal Service employees.

Categories of Records in the System
Records consist of summaries or excerpts from the following other Postal Service personnel records systems: 120.036, 120.070, 120.151, 120.152, 120.153, 120.180, 120.210; as well as records of discipline. In addition, copies of other Postal Service records and records originated by the supervisor may be included at the supervisor's discretion.

Authority for Maintenance of the System
39 U.S.C. 401, 1001

Purpose(s)
To enable supervisor's to efficiently manage assigned personnel.

Federal Regulations Part 825
The Family and Medical Leave Act of 1993
Title 29 — April 1995

Subpart E - What Records Must Be Kept to Comply with FMLA?

§ 825.500 What records must an employer keep to comply with the FMLA?

(a) FMLA provides that covered employers shall make, keep, and preserve records pertaining to their obligations under the Act in accordance with the recordkeeping requirements of section 11(c) of the Fair Labor Standards Act (FLSA) and in accordance with these regulations. . . .

(b) ***Form of records.*** No particular order or form of records is required. These regulations establish no requirement that any employer revise its computerized payroll or personnel records systems to comply. . . .

* * *

(g) Records and documents relating to medical certifications, recertifications or

medical histories of employees or employees' family members, created for the purposes of FMLA, shall be maintained as confidential medical records in separate files/records form the usual personnel files, . . . , except that:

(1) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;

* * *

ELM, Issue 12, 5-1-89

313 Collection, Use and Disclosure of Personnel Information Under the Privacy Act

313.11 The Privacy Act guidelines presented in this part only highlight the application of privacy to employment and placement record-keeping activities. Complete requirements and guidelines appear in the *Administrative Support Manual* (ASM 353).

313.12 Under the Privacy Act of 1974, the Postal Service must:

* * *

b. Comply with certain requirements regarding the collection, use, disclosure, and safeguarding of information about individuals.

313.431 Unauthorized Records. No Postal Service officer or employee may collect or maintain information to be retrieved by the individual's name or identifying symbol except as part of one of the authorized systems of records, and then only in an authorized manner relevant to the purpose of the system.

314.3 Medical Records

314.32 Confidentiality. All medical records and information are to be considered confidential. Such records must be kept under lock when left unattended.

314.33 Maintenance. Restricted medical records and information are not to be maintained in the OPF [Official Personnel File]. They must be maintained separate from all other employee records as the Privacy Act System USPS 120.090. . . .

314.5 Supervisor's Personnel Records and Personal Notes

314.51 General. Supervisors establish an adequate personal filing system for the performance of their daily responsibilities and to maintain compliance with the provisions of the Privacy Act. Supervisor's Personnel Records are maintained by the Postal Service within the privacy system of records identified as USPS 120.190.

* * *

314.541 ***Contents.*** Supervisor's personnel files may include such employee records as: discussions; letters of warning and other disciplinary records; copies of records filed in the OPF; copies of training and placement records; attendance records; travel records; skills bank information; estimates of potential; merit evaluations; vehicle operation's and safe driver awards records; letters of commendation; customer correspondence; and other information at the supervisor's discretion.

EL-806, TL-1, 1-12-82
CHAPTER 2
MEDICAL RECORDS

212 Definition

A medical record is any document maintained by the USPS or a contract physician that contains medical/surgical information about current or former employees, or tentatively selected applicants for employment.

214 Three Categories

There are three types of medical records maintained by the Postal Service.

214.1 Administrative Medical Records

.11 Content. These records provide medical information necessary for management decisions, and document management actions. They include such information as:

a. Physician statements of employee ability to perform the duties of the position.

b. Form 2485

c. Form 3596

d. Sick leave requests

e. Blood donor records.

* * *

13. **Availability**. Administrative medical records may be made available to postal managers and other authorized officials when required for official business. However, legitimate need-to-know must be established before records will be released.

214.2 OWCP- Related Medical Records

* * *

214.3 Restricted Medical Records

.31 **Content.** These records are limited to medical personnel/facilities only. They contain detailed medical information and are, for the most part, maintained in official employee medical folders (case files). Restricted medical records include such information as:

a. Forms 2485. Both pre-employment and fitness-for-duty examination. . . .
b. Forms 1752 and other records containing both personal medical information and internal health unit operations.
c. Employee medical histories.
d. Physician diagnoses and prognoses.
e. Medical separation/retirement specifics.
f. Dependent child determinations based on medical data.
g. Employee exposure and reaction to toxic substances and related medical findings.

MANAGEMENT INSTRUCTION EL-860-98-2

Employee Medical Records

Definition
A medical record is any document maintained by the Postal Service or contracted medical provider that contains medical information about current or former employees or applicants for employment.

Categories of Medical Records
The Postal Service maintains three distinct types of medical records, each of which serves a particular function: (1) restricted medical records, (2)

administrative medical records, and (3) Office of Workers' Compensation Programs-related medical records. Regardless of the type, access must be limited to those individuals who have a legitimate need to know.

Custodians of Medical Records
Custodians are legally responsible for the retention, maintenance, protection, disposition, disclosure, and transfer of the records in their custody, and for seeing that records within the facilities are managed according to Postal Service policies.

* * *

For facilities without health units, it is the responsibility of the installation head to guarantee that the restricted medical records are maintained and secured by medical personnel. . . .

Restricted Medical Records

Definition
Restricted medical records contain medical information that is highly confidential, reflect the privileged employee-occupational health provider relationship, and have the most limitations placed on both their access and disclosure. . . . These records are maintained only in medical offices or facilities in employee medical folders (EMFs) unless otherwise directed by the national medical director.

Employee Medical Folder
An employee medical folder (EMF) is established for each employee or applicant for whom detailed medical records are obtained or created. There may be medically related documents found in the EMF that are not considered to be restricted medical records.

The EMF includes, but is not limited to, the following:

* * *

–Family Medical Leave Act medical documentation, when it includes restricted medical information, diagnoses and/or does not a involve workers' compensation claim.

Security of Restricted Medical Records
All records containing restricted medical information must be marked *"RESTRICTED MEDICAL"* and filed in locked cabinets. Keys must be kept by the medical personnel unless otherwise directed by the nation medical director. These records may be reviewed or released only under specific conditions and authority.

Administrative Medical Records

Administrative Medical Records

Definitions
Administrative medical records are documents that may contain medical information and have limitations placed upon their access or disclosure. These documents provide medical information necessary for management decisions and document management actions.

Custodian: There may be multiple custodians of administrative medical records. Custodians are legally responsible for retention, maintenance, protection, disposition, disclosure, and transfer of the records in their custody, and for seeing that records in the facilities are maintained according to Postal Service policies.

This medical information is maintained by non-medical personnel and is filed in the official personnel folder or within other related files.

Administrative medical records include, but are not limited to:

— Physician statements relative to the employee's fitness for duty that contain no restricted medical information.

* * *

— Medical suitability waivers.
— Dependent child determinations based on medical information.

Access
Administrative records may be accessed by postal managers or their designees who have a legitimate need to know.

POSITIONS OF THE PARTIES

Union's Position

The Union asserts that the system of records which is kept by Supervisor Dugas for use by supervisors in granting FMLA leave and which contains medical information is not one of the system of records permitted by the Privacy Act. The Privacy Act System of Records, incorporated in the ASM Appendix, recognizes only specific types of records that may be kept by an employer, including the Postal Service. Under Personnel Records (120.000), Medical

Records (120.090) are listed separately from Supervisor's Personnel Records (120.190). According to EL-806 section 212, a medical record is any document maintained by the USPS that contains medical information about a current employee.

In order to qualify for FMLA leave, an employee is obligated to provide medical documentation to substantiate that the employee's or his family's condition makes the employee eligible under FMLA. The form collected and maintained by the Postal Service for FMLA purposes contains medical information and is kept by Supervisor Dugas in the ATAL office.

The Union argues that the medical information kept by Dugas may only be kept in an employee's official medical record which is kept by medical personnel. ASM 351.131. The Union asserts that any distinction the Postal Service tries to make between restricted and unrestricted medical information is irrelevant. All medical information must be kept in one of the types of files designated in the system of records in the Privacy Act. There is no system of records for keeping medical information in a separate file for FMLA purposes.

To establish a medical file, such as that kept by Ms. Dugas, which is separate from that designated under the Privacy Act, the Postal Service must publish a proposal to do so in the *Federal Register* and forward advance notice to the Office of Management and Budget. The Union argues that the Postal Service did not do so and, therefore, had no authorization to establish the system of records kept by the ATAL and Ms. Dugas. Consequently, the Union asserts that the Postal Service is in violation of the Privacy Act and Postal Handbooks and Manuals that incorporate the Privacy Act.

The Union requests that the grievance be sustained, and that the Postal Service be required to abolish the system of records that is in conflict with the ASM and ELM.

Additionally, the Union requests appropriate penalties and remedies for the past violation and to ensure that it commit no future violations, as delineated in the Privacy Act and incorporated through the Handbooks and Manuals into the collective bargaining agreement.

Postal Service's Position

The Postal Service argues that the file with FMLA certification forms, which is kept in the ATAL office, does not violate the Privacy Act or Postal Service Handbooks and Manuals. The FMLA certification forms do not contain detailed medical information about an employee and/or his family and should not contain restricted medical information. If the form does contain restricted information, it is forwarded to medical records.

Section 825 of the Federal Regulations states that, for FMLA purposes, employers must maintain records and documentation relating to medical certifications, recertifications and medical history of employees and/or employees' family members as confidential medical records separate from the ususal personnel files. The Postal Service argues that it does not require that the records be kept in the medical unit. Additionally, under Supervisor's Records, 120.190 of the Privacy Act system of records, supervisors may maintain copies of Postal Service records at the supervisor's discretion. The FMLA certification forms which are kept in the ATAL office are Administrative Medical Records that provide only enough information necessary for management decisions and to document management actions, pursuant to EL-806, Section 214.11.

The Postal Service asserts that it has not violated the record keeping policy of the Privacy Act or the Postal Service. FMLA medical certification forms are kept for determining leave

qualifications only and are kept confidential. The Postal Service requests that the grievance be denied.

DISCUSSION

In the opinion of the Arbitrator, the grievance must be sustained. The medical records kept in the ATAL office for FMLA purposes is not one of the system of records authorized by the Privacy Act.

A *record* is recorded information developed or received by the Postal Service during the transaction of business and retained in its custody. ASM 351.11. A *system of records* contains information about individuals which is retrieved by the name of the individual or some personal identifier, such as Social Security number. ASM 353.121. The systems of records approved by the Privacy Act are listed in the ASM Appendix and are the only current systems of records in which information about individuals may be maintained in the Postal Service. ASM 353.21. "No Postal Service officer or employee may collect or maintain information to be retrieved by the individual's name or identifying symbol, except as part of one of the authorized system of records, and then only in an authorized manner relevant to the purpose of the system." ELM 313.431.

The ASM Appendix lists 22 categories of records in the Privacy Act system of records, one of which is Personnel Records. Within the category of Personnel Records, 31 types of records are authorized. Among these are Medical Records and Supervisor's Personnel Records. The type of records in question kept by the ATAL office could only conceivably be categorized as either one of these.

Medical Records, USPS 120.090, may contain relevant medical history, physical examinations, treatment received at the health unit, occupational injuries or illnesses, substance abuse information, finding, diagnoses and treatment, doctor's statements and recommendations, records of immunizations and medical findings related to an employee's exposure to toxic substances. Medical records must be maintained by the senior medical personnel, ASM 351.131, and must be kept separate from all other personnel files. 29 C.F.R. § 825.500; ELM 314.33 (must be kept within the privacy system of records identified as USPS 120.090).

Supervisor's Personnel Records and Notes may contain information such as disciplinary records, copies of OPF records, training and placement records, skills bank information, estimates of potential, letters of recommendation, etc. ELM 314.541. The Privacy Act system of records lists the specific USPS personnel records that may be maintained in a Supervisor's Personnel Record. They are USPS 120.036, 120.070, 120.151, 120.152, 120.153, 120.180, 120.210; as well as records of discipline. In addition, copies of other Postal Service records and records originated by the supervisor may be included at the supervisor's discretion. ASM Appendix. Conspicuously absent from the list is USPS 120.090, copies of medical records. Neither ELM 314.541 nor the ASM Appendix make any reference to supervisors being authorized to keep any kind of medical records in their file.

Therefore, it must be concluded that the Privacy Act authorizes only one kind of medical record to be kept, USPS 120.090, and that file is to be kept in the medical unit. No unauthorized type of file may be maintained. The medical information that is kept by the ATAL office is an unauthorized system of records that cannot be maintained without seeking the appropriate authorization.

To establish a new system of records about individuals, any headquarters or field organization must obtain from the Postal Service records office. ASM 353.241. The Postal Service must in turn publish its proposal in the *Federal Register* and forward adequate advance notice of the proposal to Congress and the Office of Management and Budget. ASM 353.112. Any officer or employee who willfully maintains a system of records that contains information about individuals without giving appropriate notice in the *Federal Register*, may be fined up to $5,000. ASM 353.131. The Postal Service submitted no evidence that indicated that it sought authorization of the ATAL record-keeping system that contains FMLA related files.

The Postal Service argues that the information kept in the ATAL office is not restricted medical information, but merely administrative medical records which contain only medical information necessary for management decisions. EL-806, 214, states there are three categories of medical records, Administrative Medial Records, Restricted Medical Records and Office of Workers' Compensation Program Records. Administrative Medical Records may include physician's statements of an employee's ability to perform the duties of the position, as well as sick leave requests and various Postal Service forms. Id. However, unlike the other two categories of records, Administrative Medical Records is not listed in the Privacy Act system of records.

The Privacy Act does not distinguish between restricted and non-restricted medical information. Even EL-806, which lists Administrative Medical Records as a category of medical records, states in section 221.1, Privacy Act, that medical records are maintained in four Privacy Act Systems of records: USPS 120.020 (Blood Donor Records); USPS 120.090 (Medical Records); USPS 120.098 (OWCP Records); and USPS 1201.51 (Recruiting, Examination, and

Appointment Records). Administrative Medical Records is not a separate category listed.

Therefore, Administrative Medical Records must be a type of information within the Medical Records system of records of the Privacy Act. One system of records for keeping two distinct types of medical information with varying restrictions on their disclosure. According to EL-806, 221.3, only medical personnel may have access to restricted medical information. However, administrative medical records may be available to Postal Service managers and officials when required for official business, if a legitimate need-to-know basis is established. EL-806 214.14. But, because all medical records are to be kept in the medical unit, medical personnel are the custodians of all medical records, whether restricted or non-restricted.

Therefore, while some medical information may be less restricted than others, no medical records may not be kept in a file separate from the medical file kept in the medical unit by medical personnel, unless authorized under the Privacy Act, even if they are kept confidential and locked, as Ms. Dugas at the ATAL office contends the FMLA files are. Consequently, the system of records kept in the ATAL office for FMLA purposes is an unauthorized system that must be abolished or kept in the Medical Records, USPS 120.090, by medical personnel.

The Union has requested that the Postal Service also be fined for a violation of the Privacy Act, which provides for criminal penalties of up to $5,000, "for any officer or employee of a federal agency, including the Postal Service, who. . . [w]illfully maintains a system of records that contains information about individuals without giving appropriate notice in the *Federal Register.*" Because the ATAL files that contain medical information about individuals is a system of records that the Postal Service has willfully maintained without giving notice in the *Federal Register*, a fine is appropriate. However, the medical file was not kept for malicious

or illegal purposes, but to facilitate the granting of a right of employees to FMLA leave. Therefore, the penalty need not be harsh, but it must stress the importance of following the Privacy Act provisions. The fine shall be $500, to be paid to the Union.

AWARD

The grievance is sustained. The Postal Service is directed to abolish the system of keeping medical records in the ATAL office for FMLA purposes. The records must be destroyed in accordance with ASM 351.6, or transferred to the medical unit to be kept in accordance with the Privacy Act system of records. The Postal Service is fined $500 for violation of the Privacy Act, which is to be paid to the Union.

Virginia Wallace-Curry, Arbitrator

Shaker Heights, Ohio
January 20, 1999

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

September 15, 1995

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

Dear Bill:

This letter is in response to your correspondence of July 26 concerning the need to provide additional instruction to the field on the maintenance of restricted medical records and the provisions of the Privacy Act as it applies to restricted medical records.

A letter to the field is presently being prepared by a staff attorney that will address these issues. It is anticipated that the letter will be sent out by the end of this month.

If you have any questions regarding the foregoing, please contact Charles Baker of my staff at (202) 268-3832.

Sincerely,

for Anthony J. Vegliante
Manager
Contract Administration APWU/NPMHU

SEP 1995

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

ISSUE: Privacy of Restricted Medical Information

BACKGROUND:

Complaints were received at the national level that supervisors are requiring employees to provide a diagnosis and prognosis (restricted medical information) to substantiate Family and Medical Leave (FML). Several interrelated factors that are involved are discussed below.

DISCUSSION, Part A: The Privacy Act

The Privacy Act, itself, does not prohibit authorized postal officials, including line supervisors, when acting in an official capacity and needing information on a "need to know" basis, to request confidential medical information. However, the Privacy Act does prohibit postal officials from violating employees' privacy by inappropriately disclosing medical information. Penalties and fines can be lavied against the Postal Service for such disclosures.

DISCUSSION, Part B: Restricted Medical Records

Postal Service handbook, EL-806, "Health and Medical Service" provides procedures for personnel in Postal Service medical/health units to carry out their responsibilities in an employee health program. It identifies "physician diagnosis and prognosis" as restricted medical records. The medical unit is assigned custodial responsibility for the maintenance of restricted medical records. Therefore, any documentation received by a supervisor which contains a diagnosis or prognosis must be forwarded to the medical unit and not filed outside the medical unit. The release of medical records from their files is controlled by the EL-806.

In response to the complaints received at the national level, Dr. Reid, National Medical Director, wrote a letter dated June 22 to the Managers of Human Resources, restating the existing Postal policy. It also noted that a health care provider can provide an acceptable explanation of medical facts for leave approval purposes without specifying a diagnosis or prognosis.

DISCUSSION, Part C: Documentation

There are no specific forms required to be filled out under FMLA in order to certify a FMLA absence. In fact, just like certifications for sick leave, any form is acceptable so long as it provides the required information. The requirements for FMLA absences are set forth in Publication 71. The APWU developed five different forms for their members to use which Postal Management reviewed and approved for use to certify FMLA. In addition, form WH-380, developed by the Department of Labor, also can be used to certify FMLA. No

matter what form an employee or health care provider uses, if a supervisor questions the completeness of the information on the form, he or she should refer to Publication 71 to determine if the necessary information has been provided.

The APWU has told employees they could send medical documents containing restricted information (diagnosis and prognosis) to the Medical Unit, and bypass the supervisor. This may be fine where it can reasonably be accommodated. However, the employee is responsible for providing information required to designate the leave as FML to the supervisor. Employees should request their health care providers to avoid providing private details on the certification. Failure to provide documentation requested may result in denial of FML.

In addition to providing the FMLA certification requested for absences, employees who request leave must submit a PS Form 3971, "Request for or Notification of Absence," for each pay period and for each type of leave to be charged.

As previously mentioned, any certification format is acceptable as long as it provides the necessary information. However, in some cases a certification form may be useful. This may be true when an employee provides only a brief or incomplete certification and the supervisor needs additional information to determine if the absence qualifies as FML. In such cases, the Department of Labor form WH-380, "Certification of Health Care Provider" may be used. It was developed with employees' privacy in mind. It allows employers to obtain sufficient information from health care providers to verify that an employee has a serious health condition and the likely periods of absence by the employee, but unnecessary information is not requested. The form requests medical facts, it does not request a diagnosis or prognosis.

C. Privacy Act Systems of Records

1. Application

The following points are relevant to Postal Service systems:

a. The Postal Service's Privacy Act regulations and systems of records apply only to living persons. They do not apply to deceased persons, business firms identified by the names of individuals, sole proprietorships, partnerships, or corporations.

b. The "purpose" portion of each system notice is included to provide clarity and promote understanding of the system by the layman. It may be defined as that activity performed by those officers and Postal Service employees who have a need for component records of the system in the performance of their duties. Disclosure accounting is not maintained by the Postal Service for any activity listed as a "purpose."

c. All Postal Service records described in this list are subject to:

(1) Disclosure pursuant to an order of a court of competent jurisdiction.

(2) Review by Congress or one of its committees or subcommittees on request.

2. Prefatory Statement of Routine Uses

Where applicable, the following routine uses are incorporated by reference into each system of records set forth below (the letter "i" was not used in this list):

a. *Disclosure for Law Enforcement Purposes.* When the Postal Service becomes aware of an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, or in response to the appropriate agency's request on a reasonable belief that a violation has occurred, the relevant records may be referred to the appropriate agency, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

b. *Disclosure Incident to Litigation.* Records from this system may be disclosed to the U.S. Department of Justice or to other counsel representing the Postal Service, or may be disclosed in a proceeding before a court or adjudicative body before which the Postal Service is authorized to appear, when (a) the Postal Service; or (b) any postal employee in his or her official capacity; or (c) any postal employee in his or her individual capacity whom the Department of Justice has agreed to represent; or (d) the United States when it is determined that the Postal Service is likely to be affected by the litigation, is a party to litigation or has an interest in such litigation, and such records are determined by the Postal Service or its counsel to be plausibly relevant

to the litigation, provided, however, that in each case, the Postal Service determines that disclosure of the records is a use of the information that is compatible with the purpose for which it was collected. This routine use specifically contemplates that information may be released in response to relevant discovery and that any manner of response allowed by the rules of the forum may be employed.

c. *Disclosure Incident to Requesting Information.* Records may be disclosed to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent information, such as licenses, when necessary to obtain information from such agency that is relevant to a Postal Service decision about the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, permit, or other benefit.

d. *Disclosure to Requesting Agency.* Records may be disclosed to a federal, state, local, or foreign agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the conduct of a security or suitability investigation of an individual, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

e. *Congressional Inquiries.* Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the prompting of that individual.

f. *Disclosure to Agents and Contractors.* Records or information from this system may be disclosed to an expert, consultant, or other individual who is under contract to the Postal Service to fulfill an agency function, but only to the extent necessary to fulfill that function. This may include disclosure to any individual with whom the Postal Service contracts to reproduce by typing, photocopy, or other means, any record for use by Postal Service officials in connection with their official duties or to any individual who performs clerical or stenographic functions relating to the official business of the Postal Service.

g. *Storage.* Inactive records may be transferred to a Federal Records Center for storage prior to destruction.

h. *Disclosure to Office of Management and Budget.* Records from this system may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

j. *Disclosure to Outside Auditors.* Records in this system may be subject to review by an independent certified public accountant during an official audit of Postal Service finances.

k. *Disclosure to Equal Employment Opportunity Commission.* Records from this system may be disclosed to an authorized investigator, administrative judge, or complaints examiner appointed by the Equal Employment Opportunity Commission, when requested in connection

with the investigation of a formal complaint of discrimination filed against the U.S. Postal Service under 29 CFR Part 1614.

l. *Disclosure to Merit Systems Protection Board or Office of the Special Counsel.* Records from this system may be disclosed to the Merit Systems Protection Board or Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies, investigations of alleged or possible prohibited personnel practices, and such other functions as may be authorized by law.

m. *Disclosure to Labor Organizations.* Pursuant to the National Labor Relations Act, records from this system may be furnished to a labor organization when needed by that organization to perform properly its duties as the collective bargaining representative of postal employees in an appropriate bargaining unit.

040.000 Customer Programs
- .010 Memo to Mailers Address File, 040.010
- .020 Sexually Oriented Advertisements, 040.020
- .030 Auction Customer Address File, 040.030
- .040 Customer Holiday Address List File, 040.040

050.000 Finance Records
- .005 Accounts Receivable Files, 050.005
- .010 Employee Travel Records (Accounts Payable), 050.010
- .020 Payroll System, 050.020
- .040 Uniform Allowance Program, 050.040

060.000 Consumer Protection Records
- .010 Fraud, False Representation, Lottery, and Nonmailability Case Records, 060.010
- .020 Pandering Act Prohibitory Orders, 060.020
- .030 Appeals Involving Mail Withheld From Delivery, 060.030
- .040 Appeals From Termination of Post Office Box or Caller Service, 060.040

070.000 Inquiries and Complaints
- .010 Correspondence Files of the Postmaster General, 070.010
- .020 Government Officials' Inquiry System, 070.020
- .040 Customer and Employee Complaint Records, 070.040

080.000 Inspection Requirements
- .010 Investigative File System, 080.010
- .020 Mail Cover Program Records, 080.020
- .030 Vehicular Violations Records System, 080.030

090.000 Nonmail Services
- .020 Passport Application Records, 090.020

100.000 Office Administration
- .010 Carpool Coordination/Parking Services Records System, 100.010
- .020 Commercial Accounts Communicator Letter, 100.020
- .050 Localized Employee Administration Records, 100.050

110.000 Property Management
- .010 Accountable Property Records, 110.010
- .020 Possible Infringement of Postal Service Intellectual Property Rights, 110.020

120.000 Personnel Records
- .020 Blood Donor Records System, 120.020
- .035 Employee Accident Records, 120.035
- .036 Discipline, Grievance, and Appeals Records for Nonbargaining Unit Employees, 120.036
- .040 Employee Job Bidding Records, 120.040

.050 Employee Ideas Program Records, 120.050
.060 Confidential Statements of Employment and Financial Interests, 120.060
.061 Public Financial Disclosure Reports for Executive Branch Personnel, 120.061
.070 General Personnel Folders (Official Personnel Folders and Records Related Thereto), 120.070
.090 Medical Records, 120.090
.091 Vehicle Operators Controlled Substance and Alcohol Testing Records, 120.091
.098 Office of Workers' Compensation Program (OWCP) Record Copies, 120.098
.099 Injury Compensation Payment Validation Records, 120.099
.100 Performance Awards System Records, 120.100
.110 Preemployment Investigation Records, 120.110
.120 Personnel Research and Test Validation Records, 120.120
.121 Applicant Race, Sex, National Origin, and Disability Status Records, 120.121
.130 Postmaster Selection Program Records, 120.130
.140 Employee Assistance Program (EAP) Records, 120.140
.151 Recruiting, Examining, and Appointment Records, 120.151
.152 Career Development and Training Records, 120.152
.153 Individual Performance Evaluation/Measurement, 120.153
.154 Employee Survey Process System Records, 120.154
.170 Safe Driver Awards Records, 120.170
.180 Skills Bank (Human Resources Records), 120.180
.190 Supervisors' Personnel Records, 120.190
.210 Vehicle Maintenance Personnel and Operators Records, 120.210
.220 Arbitration Case Files, 120.220
.230 Adverse Action Appeals (Administrative Litigation Case Files), 120.230
.240 Garnishment Case Files, 120.240

130.000 Philately
.010 Ben Franklin Stamp Club Coordinators and Project Leaders List, 130.010
.020 Educators *Stamp Fun* Mailing Lists, 130.020
.040 Postal Product Sales and Distribution, 130.040
.050 United States Postal Service Olympic Pen Pal Club, 130.050

140.000 Postage
.020 Postage Meter Records, 140.020

150.000 Records and Information Management Records
.010 Information Disclosure Accounting Records (Freedom of Information Act), 150.010
.015 Freedom of Information Act Appeals and Litigation Records, 150.015

System Manager(s) and Address

VICE PRESIDENT
HUMAN RESOURCES
UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4200

Notification Procedure

Employees wanting to gain access to their official personnel folders must submit requests to the facility head where employed. Headquarters employees must submit requests to the system manager. Former Postal Service employees must submit requests to any Postal Service facility head giving name, date of birth, and Social Security number. Former Post Office Department employees having no Postal Service employment (prior to July 1971) must submit the request to the Office of Personnel Management (formerly the U.S. Civil Service Commission) at:

OFFICE OF PERSONNEL MANAGEMENT
COMPLIANCE AND INVESTIGATIONS GROUP
1900 E STREET NW
WASHINGTON DC 20415-0001

Record Access Procedures

Requests for access must be made in accordance with the notification procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

Contesting Record Procedures

See Notification and Record Access Procedures above.

Record Source Categories

Individual employee, personal references, former employers, and USPS 050.020 (Finance Records — Payroll System).

Systems Exempted From Certain Provisions of the Act

The Postal Service has claimed exemption from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a(j) and (k). See 39 CFR 266.9. To the extent that copies of exempted records from those other systems are incorporated into this system, the exemptions applicable to the original primary system must continue to apply to the incorporated records.

USPS 120.090

System Name

Personnel Records — Medical Records, 120.090.

System Location

Postal Service medical facilities and designee offices; Postal Service Corporate Health Fitness Center (Headquarters only).

Categories of Individuals Covered by the System

Present and former Postal Service employees, individuals who have been offered employment but failed the medical examination before being placed on the rolls, and employees of other agencies that have entered into an agreement with the Postal Service to have the Postal Service perform medical services for the agencies' employees; also, Headquarters employees who participate in the corporate health/fitness program.

Categories of Records in the System

Name, address, job title, Social Security number, installation, illness, supervisor's and physician's reports (on Authorizations for Medical Attention); relevant medical history including physical examinations, treatment received at the health unit, occupational injuries or illnesses, substance abuse information, findings, diagnoses and treatment, doctor's statements and recommendations, records of immunizations, and medical findings related to employee's exposure to toxic substances. In addition, Headquarters employees who participate in the corporate health/fitness program will voluntarily provide data about their lifestyle, exercise schedule, smoking habits, knowledge about personal health, personal and family medical history, nutrition, stress levels, and other data relevant to making a health risk appraisal. Records of participant employees' individualized schedules and progress may be kept.

Authority for Maintenance of the System

39 U.S.C. 401, 1001.

Purpose(s)

a. To provide all employees with necessary health care and to determine fitness for duty.

b. To provide a comprehensive individualized health promotion program for Headquarters employees and to determine the employee and organizational benefits of that program.

Note: Personal information about employee participants in the Corporate Health Fitness Program at Headquarters is under the exclusive custody of the contractor operating the program and is not available to postal management. These data are maintained only for those employees who voluntarily provide it and under conditions assuring that it will not be disclosed without the written authority of the subject employee. Aggregated data may be provided to postal management for its use in determining the employee and organizational benefits of the program, but those data will have no personal identifiers affixed to it.

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses

General routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:

1. Information in these records may be provided to the Office of Personnel Management in making determinations related to:
   (a) Veterans Preference.
   (b) Disability Retirement.
   (c) Benefit Entitlement.
2. Information in these records may be provided to officials of the following federal agencies responsible for administering benefit programs
   (a) Office of Workers' Compensation Programs.
   (b) Retired Military Pay Centers.
   (c) Department of Veterans Affairs.
   (d) Social Security Administration.
3. Records in this system may be disclosed to an employee's private treating physician and to medical personnel retained by the Postal Service to provide medical services for an employee's health or physical condition related to employment.
4. May be disclosed to an outside medical service when that organization performs the physical examinations and submits the evaluation to the Postal Service under a contract with the Postal Service as part of an established Postal Service health program for the purpose of determining a postal employee's fitness for duty.
5. May be disclosed to the Occupational Safety and Health Administration, Department of Labor, when needed by that organization to perform its duties properly under 29 CFR Part 19.
6. May be disclosed to the National Institute of Occupational Safety and Health when needed by that organization to perform its duties properly under 29 CFR Part 19.

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System

Storage

Preprinted forms and paper files (Official Medical Folders); Preprinted forms and paper files and hard copy computer storage (Corporate Health Fitness Center records).

Retrievability

Employee name.

Safeguards

Kept in locked files. Access to automated Corporate Health Fitness Center records is restricted by password protection to medical screening personnel and health/fitness specialists under contract to operate the Corporate Health Fitness Program facility at Headquarters.

Retention and Disposal

a. Employee Medical Folder — Medical records considered permanent are maintained until employee is separated and then are sent to the National Personnel Records Center for storage, or to another federal agency to which the individual transfers employment. The records are kept for 30 years from the date the employee separates from federal service.

b. Failed Eligibles — Retained in personnel office with employment application and destroyed by shredding when 2 years old.

c. Authorization for Medical Attention (Form 3956) — Destroy when 2 years old.

d. Corporate Health Fitness Center records — Retained by contractor operating Center until termination of contract, at which time they must be returned to the Postal Service.

System Manager(s) and Address

VICE PRESIDENT
HUMAN RESOURCES
UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4200

Notification Procedure

An employee wanting to know whether information about him or her is maintained in this system of records must address inquiries to the head of the facility where employed. Headquarters employees must submit requests to the system manager. Failed eligibles must address inquiries to the head of the facility where application for employment was made. Inquiries must contain full name.

Record Access Procedures

Requests for access must be made in accordance with the notification procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

Contesting Record Procedures

See Notification and Record Access Procedures above.

Record Source Categories

Postal Service employees, selected eligibles, and Department of Veterans Affairs and Postal Service medical staff.

American Postal Workers Union, AFL-CIO
817 14TH STREET, N. W., WASHINGTON, D. C. 20005

March 29, 1982

Mr. Bruce Evans
Labor Relations Department
United States Postal Service
Headquarters
Washington, D.C. 20260

Dear Mr. Evans:

On February 5, 1982 we met to discuss the Quality Control Program. It is my understanding that the Staffing Review Procedures have been released for field implementation and the union has reserved its right to subsequently challenge the separation of bargaining unit vs. non-bargaining functions contained therein.

The second phase of the program will involve the Quality Improvement Team concept. After thorough review, it is the position of the union that bargaining unit employees should not be included on the team without explicit approval of the local unions at the facility where activity is planned. The union is presently engaged in discussions with USPS managers regarding the establishment of an Employee Involvement Program and I believe that it would be presumptuous to establish a program or structured employee/management job evaluation prior to final agreement.

If there are any questions regarding the above I am available at your convenience.

Sincerely,

William Burrus,
General Executive Vice President

WE:mc

bcc: J. C. Gildea LR 1
SAPMG RF E 1
N. Barrance MP
Regional Gen. Mgr. w/copy of inc. correspondence
V. Drumb
W. Henry
LR100:JRMularski:ab 9/12/83

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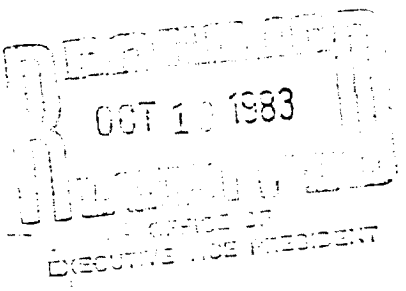

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Dear Mr. Burrus:

This is in response to your letter of August 19 regarding the composition of Quality Improvement Teams.

As you related, it is also our position that bargaining-unit employees are not to be included on Quality Improvement Teams if the local union is opposed to their inclusion. If you are aware of instances where this policy is not being adhered to, please contact John Mularski of my staff at 245-4729 so that these situations can be remedied.

Sincerely,

W. J. Downs

James C. Gildea
Assistant Postmaster General
Labor Relations Department

American Postal Workers Union, AFL-CIO
817 Fourteenth Street N.W., Washington D.C. 20005 • (202) 842-4246

WILLIAM BURRUS
Executive Vice President

August 18, 1983

James C. Gildea, Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Dear Mr. Gildea:

Please find attached a copy of a notice to the USPS that the American Postal Workers Union has not approved the inclusions of bargaining unit employees in the Quality Improvement Team program. I did not receive a follow-up response from the Postal Service from the attached notification and was left with the understanding that USPS intended to comply with our wishes in this regard. I have received recent reports that in many offices the Postal Service is forming such Teams without the concurrance of APWU locals.

I request confirmation of USPS policy in this regard.

Sincerely,

William Burrus

William Burrus,
Executive Vice President

WB:mc
Enc.

NATIONAL EXECUTIVE BOARD • MOE BILLER, President
WILLIAM BURRUS, Executive Vice President
DOUGLAS HOLBROOK, Secretary Treasurer
JOHN A. MORGEN, Director, Clerk Division
RICHARD J. WEVODAL, Director, Maintenance Division
LEON S. HAWKINS, Director, MVS Division
MIKE BENNER, Director, SDM Division
JOHN P. RICHARDS, Industrial Relations Director
KEN LEINER, Director, Mail Handler Division
REGIONAL COORDINATORS
RAYDEL R. MOORE, Western Region
JAMES P. WILLIAMS, Central Region
PHILIP C. FLEMMING, JR., Eastern Region
NEAL VACCARO, Northeastern Region
ARCHIE SALISBURY

The following constitutes full and complete settlement of all grievances and unfair labor practice charges initiated as a result of the "Policy on Personal Portable Radio or Tape Cassette Headphones" contained in Postal Bulletin #21379, dated November 25, 1982. All pending unfair labor practice charges concerning this matter, including 5-CA-14964-P, 1-CA-20635-P, 4-CA-13428-P, 9-CA-19165-P, 15-CA-8798-P, 19-CA-15344-P, 21-CA-21826-P, and 33-CA-6319-P, will be withdrawn.

The following applies to offices which permitted radio headset use prior to November 25, 1982:

> The use of radio headsets is permissible only for employees who perform duties while seated and/or stationary and only where use of a headset will not interfere with performance of duties or constitute a safety hazard. Employees will not be permitted to wear or use radio headsets under other conditions, including but not limited to: while walking or driving; near moving machinery or equipment; while involved in oral business communications; while in contact with, or in view of, the public; or where the headset interferes with personal protective equipment.

American Postal Workers Union, AFL-CIO

National Association of Letter Carriers, AFL-CIO

U.S. Postal Service

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

April 29, 1997

APR 1997

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

Dear Bill:

This letter is in response to your April 4 correspondence concerning the issue of career dual appointees as casuals within the APWU bargaining unit. Specifically, you have asked whether the Postal Service agrees that six (6) prerequisites listed in the Employee and Labor Relations Manual (ELM), Section 323.612 are required to be considered prior to the use of rural carrier dual appointees within the APWU crafts. Additionally, you have alleged that the Postal Service's current utilization of dual appointees is in violation of the ELM.

The following information identifies the specific language and understanding. Section 323.612 of the ELM reads in part:

> "All dual appointments must be cost effective and in the best interest of the Postal Service. Before deciding to make dual appointments, installation heads should consider the following factors:"

Following that, there are eight (8) prerequisites, not six (6). As stated, these elements should be considered.

Additionally, please specify and further explain your charges that the Postal Service is violating the ELM.

Should there be any questions regarding the foregoing, you may contact Thomas J. Valenti of my staff at (202) 268-3831.

Sincerely,

Peter A. Sgro
Acting Manager
Contract Administration APWU/NPMHU

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

12

323.412 Use of Temporary Appointments. *Temporary appointments* may be made to meet administrative needs for *temporary employment*. The following types of positions or circumstances are filled by temporary limited appointments:

a. Positions not expected to last more than 1 year.

b. Part-time and intermittent positions that are not clearly of a continuing nature.

c. Continuing positions, when temporarily vacated for periods of less than 1 year.

d. Emergency situations such as fire, flood, earthquake, high winds, or unforeseeable circumstances which cause a severe curtailment of available manpower, e.g., epidemics, accidents involving an unusual number of employees, etc.

323.42 Casual Appointment. A *noncareer limited term appointment* to positions used as a supplemental work force as described in the National Agreement or in similar provisions in other Postal Service collective-bargaining agreements, requiring the performance of duties otherwise assigned to employees in the bargaining units.

323.43 Former Postal or Federal Employees. For those hired as temporary or casual employees after having previously served in a position in the Postal Service or other federal agencies, wherein they were covered by Civil Service retirement, health benefits, or life insurance, such persons must have at least a 4-day break between such service and their appointment as a temporary employee.

323.5 Rural Carrier Positions

Normally, regular rural carrier positions and rural carrier relief/leave replacement positions are filled in accordance with any applicable collective-bargaining agreement.

323.6 Dual Employment or Dual Compensation

323.61 Within the Postal Service

323.611 General Explanation. Under certain circumstances, as described in this chapter, an employee may be appointed to more than one position in the Postal Service. This is known as a dual appointment. Only one of the appointments may be to a position in the career workforce. The primary purpose of dual appointments is to improve the opportunity of part-time employees (career) and employees who provide relief/leave replacement service on rural routes and postmaster relief/leave replacements (noncareer) to gain further employment and to minimize unemployment compensation expense. Substitute rural carriers (72-0 and 73-0) may be given a dual appointment to a career part-time position or noncareer position. Rural carrier relief (RCRs), Rural Carrier Associates (RCAs) and Postmaster relief/leave replacements cannot be given a dual appointment to a career position. Dual appointments also enable the Postal Service to utilize available experienced employees instead of new hires.

323.612 Prerequisite. All dual appointments must be cost effective and in the best interest of the Postal Service. Before deciding to make dual appointments, installation heads should consider the following factors:

a. Determine the estimated daily workload requirement (hour by hour) in each craft.

b. Determine if this workload can be covered by increasing the hours of part-time flexibles currently on the rolls, by the judicious use of overtime hours.

c. Determine if this workload can be covered by using employees from another craft, in accordance with applicable provisions in collective- bargaining agreements.

d. Determine if it would be more feasible to use the services of part-time employees from other nearby post offices.

e. Determine if the installation will have enough flexibility to make necessary leave replacements if dual appointments are made.

f. Determine what the average weekly work hours are for each employee on the rolls and ascertain whether a dual appointment would reduce the Postal Service's liability for State Unemployment Compensation benefits.

g. When it is proposed to offer a *substitute rural carrier* a dual appointment as a part-time employee in another craft, determine if the advantages justify the additional expense for fringe benefits. *Substitute rural carriers* are not eligible for retirement, life insurance, military leave, or health benefits. However, they become eligible for these benefits upon being appointed to a career part-time position. Normally, installation heads can obtain information on benefit and unemployment costs from the Sectional Center Director Finance/Support.

h. Determine whether the combined hours of the dual appointment will total more than 8 hours a day or 40 hours a week.

323.613 Authority to Appoint. Authority to make dual appointments must be obtained from the Field Division General Manager/Postmaster or MSC Manager/PM (or designee) as appropriate.

323.614 Appointment Requirements. Employees considered for dual appointments must meet all qualification requirements for both positions, including examination requirements, if any. Likewise, substitute rural carrier employees may be appointed to entry level career positions noncompetitively. All other procedures for conducting examinations, maintenance of registers, and selections and promotions are included in Handbook EL-311, *Personnel Operations*.

323.615 Compensation, Benefits, and Other Rights. An employee serving under a dual appointment is compensated for the work performed in a particular position at the appropriate rate for that position. Where one of the positions of a dual appointment carries with it the right to fringe benefits, the employee accrues the rights immediately upon appointment to that position and retains the rights even while working in another position that does not have such fringe benefit rights. Other rights which accrue to a position under the terms

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

March 8, 1976

Mr. Emmet Andrews, Director
Industrial Relations
American Postal Workers Union, AFL-CIO
817 - 14th Street, N.W.
Washington, D.C. 20005

Dear Mr. Andrews:

This is in further response to your letter of January 8, 1976 concerning the application of certain provisions of Appendix A of the 1975 Agreement.

You indicate it is the position of the American Postal Workers Union that the reassignment of a clerk craft employee pursuant to Appendix A, Section II, C, 5, b should be treated as a detail for the first 180 days. As Mr. Gillespie and I explained to you and John Morgen at a January 19 meeting, we fail to see where the Agreement provides for the application of the 180 day rule to all reassignments outside of the installation. It is our position that the 180 day rule is intended to be applied under the circumstances set forth in Section II, C, 7 and under circumstances encompassed by Section II, B, 7. Under all other circumstances, an employee reassigned to another installation would be eligible to exercise his seniority for preferred duty assignment immediately upon reassignment. If it had been the intent of the parties to apply the 180 day rule to situations encompassed solely by Section II, C, 5, b then we believe it would have been expressly stated in that particular provision.

In reference to the issue you raised concerning the application of various sections of Appendix A, Section II, C.8, which concerns the reassignment of part-time flexible employees, our review does not indicate that the language precludes the involuntary reassignment of part-time flexible employees. In any case, however, the seniority of a part-time flexible employee who is reassigned, whether voluntarily or involuntarily, would be established by Section II, C.8, b or c, whichever is applicable. We further believe that Paragraphs 8, e, f and g are only applicable to part-time flexibles who are involuntarily reassigned. The

applicability of these principles to part-time employees is consistent with the applicability of the same principles to full-time employees.

Sincerely,

SIGNED

Dennis R. Weitzel, Director
Office of Contract Analysis
Labor Relations Department

bcc:
Mr. Gildea
Mr. Letter
Mr. Gillespie
Mr. Gandal
Mr. Merrill
General Managers, Labor Relations, All Regions

LABOR RELATIONS

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

December 15, 1993

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

JAN 1994

RE: HOC-NA-C 45
W BURRUS
WASHINGTON DC 20005

Dear Bill:

This is in response to the concerns you raised in grievance #HOC-NA-C 45 regarding the publication of regulations permitting the search of vehicles on nonpublic postal premises.

You raised several issues regarding the implementation of these regulations. Currently, field offices have been directed not to conduct the searches authorized under the regulations until we have prepared the implementation instructions. Those instructions should cover the issues you raised. Nevertheless, prior to the release of those instructions, we will send you copy and give you the opportunity for review and comment.

Finally, I believe the action taken in this matter should resolve the above-reference grievance.

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

Sincerely,

Anthony J. Vegliante
Manager
Grievance and Arbitration

DEC 1993
Received
Office of The
Executive
Vice President

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

September 2, 1993

MEMORANDUM FOR AREA MANAGERS, CUSTOMER SERVICES
AREA MANAGERS, PROCESSING AND DISTRIBUTION
DISTRICT MANAGERS, CUSTOMER SERVICES
PLANT MANAGERS, PROCESSING AND DISTRIBUTION

SUBJECT: New Regulation Authorizing Search of Vehicles Parked on Nonpublic Postal Premises

As you may know, the Postal Service published a regulation in August 1992, permitting the Postal Service to search vehicles on nonpublic postal premises. Pursuant to the regulation, a prerequisite to conducting such searches is the posting of a sign advising employees or others entering nonpublic areas that their vehicles are subject to search. At this time, you may post signs at all entrances to employee parking lots. The signs should be large enough to be readable to an individual driving into the lot; should have white lettering and a red background; and should contain the following message:

> Vehicles and their contents in nonpublic areas on postal property are subject to inspection. (39 C.F.R. Part 232.1(b)(2))

At this time, however, do not conduct any searches pursuant to the regulation set forth above. Headquarters will issue further guidance in the near future on how this regulation should be implemented. Of course, the Inspection Service still retains the right to search vehicles under its normal procedures.

Thank you for your cooperation in this matter.

Samuel Green, Jr.
Vice President
Customer Services

Peter A. Jacobson
Vice President
Processing and Distribution

LABOR RELATIONS

APR 15 1996

UNITED STATES POSTAL SERVICE

8

3241

April 11, 1996

MANAGERS, HUMAN RESOURCES (AREAS)

SUBJECT: Article 6 and 12 Questions and Answers

Attached are documents related to Articles 6 and 12 of the collective bargaining agreement. Included is Article 6 notification correspondence to the APWU National union communicating Reduction in Force (RIF) competitive levels decided on by the Postal Service after having met the contractual obligation to consult with the union. As you know, the applicable RIF competitive areas were already established and published in a Postal Bulletin.

In addition, there is a set of Q & A's explaining and clarifying the contractual provisions of Article 6 and Article 12 to help better understand some of the necessary steps associated with the procedures. These Q & A's are intended to address the most asked questions on the seldom used provisions.

Please share this information with the appropriate labor and human resource professionals in the Area and District offices.

If there are any questions, do not hesitate to contact Peter Sgro of my staff at (202) 268-3824.

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

Attachment

475 L'Enfant Plaza SW
Washington DC 20260-4100

j. Employees in the clerk-craft who are detailed to nonbargaining positions.

434.63 Pay Computation

434.631 Out of Schedule premium is paid to eligible personnel in addition to the employee's base hourly rate and at 50% of the base hourly rate for qualifying hours worked up to 8 hours in a service day or 40 hours in a service week.

434.632 For those eligible employees who receive TCOLA (439.1), this premium is paid at 50% of the employee's base rate, plus TCOLA, in those workweeks when FLSA overtime is earned. In workweeks when FLSA overtime is not earned, this premium is calculated in accordance with 434.631.

434.633 All leave paid to an employee who is in an "out of schedule" status will be paid at the employee's straight time rate.

434.7 Nonbargaining Rescheduling Premium

434.71 Policy. "Nonbargaining rescheduling premium" is paid to eligible nonbargaining-unit employees for time actually worked outside of, and instead of, their regularly scheduled workweek when less than 7 calendar days notice of the schedule change was given. It is not paid beyond the seventh calendar day after the notice of schedule change is given.

434.72 Elgibility. All nonexempt full-time nonbargaining-unit employees grade 18 and below are eligible for "nonbargaining rescheduling premium." Full-time nonexempt postmasters and officers-in-charge, however, are only eligible when their schedule is changed because their relief is not available to work the sixth day (see 432.34).

434.73 Pay Computation

434.731 Nonbargaining rescheduling premium is paid to eligible personnel in addition to the employee's base hourly rate and at 50% of the base hourly rate for all actual work hours up to 8 hours in a service day or 40 hours in a service week.

434.732 For those employees who receive TCOLA (439.1), this premium is paid at 50% of the employee's base rate, plus TCOLA, in those workweeks when FLSA overtime is earned. In those workweeks when FLSA overtime is not earned, this premium is calculated in accordance with 434.731.

434.8 Pyramiding of Premiums.

See Exhibit 434.8 for a decision table for situations when an employee may be eligible for more than one type of premium pay for the same hour of work.

435 Severance Pay

435.1 Eligibility

Any career USPS employee who is involuntarily separated and who has been employed continuously by the USPS and/or other federal agency for at least 12 consecutive months (without a break in service of 3 or more consecutive days) immediately prior to the separation is eligible for severance pay, *except* in the following circumstances:

a. The employee is entitled to an immediate retirement annuity.

b. At the time of separation, the employee is offered and declines to accept a position in the USPS or in any other federal agency of like seniority, tenure, and pay within the same commuting area.

c. The employee is separated because of entry in the military service.

d. The employee is separated for cause on charges of misconduct, delinquency, or inefficiency.

e. The employee, at the time of separation, is receiving compensation as a beneficiary of the Federal Employees Compensation Act except when receiving this compensation concurrently with postal pay.

435.2 Computing Severance Fund

435.21 Limitation. In no case shall the severance pay fund exceed 52 weeks basic compensation.

435.22 Creditable Service. Creditable service means all service as a paid federal civilian or postal employee and all military service which interrupted a period of paid federal civilian or postal service--excluding any period of federal or postal service for which severance pay has previously been paid.

435.23 Paid Allowances. The employee is credited with *1* week's basic compensation (the weekly basic rate of pay, excluding COLA, in effect at the time of separation) for each year of creditable service up to 10 years. The employee is credited with 2 weeks' basic compensation for each year of creditable service in excess of 10 years. Each 3-month period of service that exceeds 1 or more full years of service is computed as 25% of a full year.

a. Employee in Nonpay Status. In this case, the basic compensation is the basic compensation the employee would have received had she or he been in a pay status at the time of separation.

b. Part-Time Regular Employee. In this case, determine the basic weekly compensation by multiplying the number of hours in the employee's regular schedule by the employee's hourly rate of compensation.

c. Part-Time Flexible Employee. In this case (1) divide by 52 the total number of hours--excluding overtime hours but including paid leave hours--that the employee had to his or her credit during the previous 52 weeks to find the average hours worked per week and (2) multiply the average hours worked per week by the employee's hourly rate of compensation to determine the basic weekly compensation.

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

August 14, 1998

Dear Mr. Pulcrano:

By letter of October 25, 1996, I initiated a grievance protesting the USPS interpretation of severance pay eligibility. This grievance was in response to your letter dated October 17, 1996. My records do not indicate that a response has been received or that a meeting has been scheduled to discuss the issue. Please review your records to determine if a response has been provided and if not schedule a meeting for a Step 4 discussion.

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

Greg Bell
Industrial Relations Director

Robert L. Tunstall
Director, Clerk Division

James W. Lingberg
Director, Maintenance Division

Robert C. Pritchard
Director, MVS Division

George N. McKeithen
Director, SDM 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

Mr. Samuel Pulcrano, Manager
Contract Administration
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

October 25, 1996

William Burrus
Executive Vice President
(202) 842-4246

Dear Tony:

Pursuant to the provisions of the national agreement this is to initiate a grievance contesting the employer's interpretation of Article 6 as expressed in your letter of October 17, 1996. The Section that you refer to (Section E, 1) provides that employees will receive severance pay "in accordance with Part 435 of the Employee and Labor Relations Manual" The operable Section that is in dispute is Section B, 4. which provides that "Employees who elect to terminate their employment will receive a lump sum severance payment in the amount provided by Part 435."

These provisions clearly provide that employees who voluntarily terminate their employment "will" receive severance pay in addition to early retirement benefits, if eligible.

The union interprets the national agreement as requiring the payment of severance pay.

Please schedule a date for discussion at your earliest opportunity.

Sincerely,

William Burrus
Executive Vice President

Anthony J. Vegliante, Manager
Contract Administration
475 L'Enfant Plaza, SW
Washington, DC 20260

National Executive Board

Moe Biller
President

William Burrus
Executive Vice President

Douglas C. Holbrook
Secretary-Treasurer

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Robert L. Tunstall
Director, Clerk Division

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Director, SDM Division

Regional Coordinators

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Central Region

Jim Burke
Eastern Region

Elizabeth "Liz" Powell
Northeast Region

Terry Stapleton
Southern Region

Raydell R. Moore
Western Region

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

October 17, 1996

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

Dear Bill:

This letter is in response to your April 29, correspondence requesting clarification to a response given in a management Q & A document distributed to managers of Human Resources in each Area office for guidance on Article 6 issues.

As verbally communicated to the APWU when the parties entered into discussions regarding Article 12 and 6 provisions, all inquiries regarding Article 6 & 12 would not be responded to until we had concluded the discussions. That is the reason for the delay in responding. Since we have concluded our discussions which resulted in a Memorandum of Understanding (MOU) on MPLSM downsizing, your inquiry into this matter can now be addressed.

The answer to Question 8 of the referenced document is correct in the context of the question. In your letter, you state that, ". . . The parties have agreed that those employees who qualify for early retirement will also receive severance pay. . . " and that is not true. Article 6 provides for the conditions under which employees will receive severance pay by referring to the criteria contained in the Employee and Labor Relations Manual (ELM), Section 435. In section 435, it is clear that an employee is eligible for severance pay:

> ". . . *except* in the following circumstances:
> a. The employee is entitled to an immediate retirement annuity."

An employee who gets "early retirement benefits" is entitled to "an immediate retirement annuity" and therefore does not qualify for the severance pay.

If you do not agree with this explanation, please clarify and re-submit your request to this office at your earliest convenience. If there are any questions, do not hesitate to contact me at (202) 268-3824.

Sincerely,

For Peter A. Sgro
Acting Manager
Contract Administration APWU/NPMHU

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

April 29, 1996

Dear Mr. Vegliante:

I am in receipt of a copy of your instructions to the managers of Human Resources including Article 6 questions and answers. The union disagrees with the answer to question 8 providing that "Those employees not eligible for retirement would receive severance pay as outlined in Part 435 of the ELM". This answer misstates the provisions of Article 6 B which provides that "Employees who elect to terminate their employment will receive a lump sum severance payment .....and, if eligible, will be given the early retirement benefits ".

The parties have agreed that those employees who qualify for early retirement will also receive severance pay while your response provides that only those employees NOT eligible for retirement will receive such pay.

This is to determine if the parties are in disagreement on the interpretation of Article 6 B.

Sincerely,

William Burrus
Executive Vice President

Anthony J. Vegliante, Manager
Grievance & Arbitration Division
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
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National Executive Board
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Western Region

ARTICLE 6/12 REASSIGNMENTS - QUESTION AND ANSWERS

1. **Question:** When reducing employees in an installation, would local management apply Article 12 provisions until such time as a preference eligible would be affected by placement in a lower level position?

Answer: A determination must be made, based on the results of examining various scenarios, to utilize either Article 12 or Article 6. Prior to implementing Article 6, authorization must be received from Headquarters through the Area Manager, Human Resources, or designee. [Ref. 6 (3).]

2. **Question:** When providing the ninety-day advance notification to the affected union(s) at their regional level, is management required to provide documentation supporting its position regarding: legitimate business reasons for the action; the maximum number of affected employees; and the reduction in casuals, part-time flexible workhours and overtime hours?

Answer: There is no requirement in the language of Article 6 relating to notification to the unions that would require such documentation to be included with the notice. A sample notification letter has been prepared for Area office use. However, supporting documentation should be furnished. [Ref. 6.B.1]

3. **Question:** When providing the affected employees the required sixty-day advance notification, what "rights" must they be advised of or are they advised of their rights when and if laid-off or subjected to a reduction in force?

Answer: Article 6 requires that the Postal Service provide the affected employees with a sixty-day notice that they may be affected by layoff or reduction in force (RIF). A sample notification letter has been prepared for local office use. The affected employees would be advised of their appeal rights when and if the specific actions affecting them take place.

The RIF procedures require that the employees within the competitive area where a RIF may take place be given at least a ninety-day general notice that they may be affected by a RIF. Further, employees who are affected by a RIF must be given at least a sixty-day notice of the specific RIF action and be advised of their appeal rights. The draft notices will be provided by Headquarters through the Area Manager, Human Resources. [Ref. 6.B.2.]

4. **Question:** When notifying employees that they may be subject to the provisions of Article 6, must management notify non-protected preference eligibles who have three (3) or more years of service and who are within the impacted number in the seniority unit?

Answer: Yes. They are subject to the preconditions which must be met prior to lay-off or reduction in force and would receive written notice. [Ref. 6.B.2]

5. **Question:** Is management required to separate all casuals in the affected craft?

Answer: While there is no absolute requirement to separate all casuals in the affected craft, management must separate them to the "fullest extent possible." [Ref. 6.B.4.]

6. **Question:** Is management required to reduce part-time flexible workhours regardless of salary level in the affected craft?

Answer: No. Management is required to minimize part-time flexible workhours used in positions within the affected seniority unit; i.e., positions in the salary level and craft in the specific installation. Note that, unlike reduction of casuals, this requirement applies to positions within the seniority unit rather than the entire craft; for most crafts, this is a limiting condition. [Ref. 6.B.4.]

7. **Question:** Is management required to reduce the amount of overtime worked in positions within the seniority unit?

Answer: Yes. As with minimization of part-time flexible workhours, management is required to minimize the amount of overtime worked in positions within the affected seniority unit. [Ref. 6.B.4]

X

8. **Question:** Can we offer retirement as opposed to instituting a lay-off or reduction in force?

Answer: Employees in the affected craft must be offered the opportunity to voluntarily terminate their employment as a precondition to implementation of Article 6. Those employees not eligible for retirement would receive severance pay as outlined in Part 435 of the ELM.

For early retirement, however, prior OPM approval is required before it can be offered. [Ref. 6.B.4.]

9. **Question:** Under Article 6.B.4, is management required to solicit volunteers to terminate their employment even if there are a sufficient number of available duty assignments in other seniority units to place all of the affected employees?

Answer: Volunteers are limited to a number equivalent to the number of affected employees for whom vacancies do not exist. [Ref. 6.B.4]

10. **Question:** Is management required to reduce transitional employee workhours?

Answer: No. All that the Memorandum of Understanding with the APWU and the arbitration award with the NALC require is that employees subject to lay-off be offered the opportunity to work any transitional assignments within the same category and installation. Such employees must be currently qualified for the transitional assignments. [Ref. MOU, Arbitration Award.]]

11. **Question:** When making assignments as a result of a preconditional posting, does the term "qualified" imply "currently qualified" or "minimally qualified?" If the answer is "minimally qualified," are such employees entitled to enter a deferment period as defined in Article 37, Sections 3.F.3.a., 3.F.4.a., and 3.F.7 or to demonstrate a skill(s) as defined in Article 37, Section 3.F.5?

Answer: In order to be assigned to preconditional vacancies, employees must only be minimally qualified for the assignment. If minimally qualified, they would be entitled to enter a deferment period or to demonstrate a skill in keeping with the cited provisions of Article 37. [Ref. 6.B.5.]

12. **Question:** Does the fact that employees met different entrance qualifications within a given salary level, such as Level 4 Mail Processors and Level 4 CFS Clerks with their different qualification standards, affect assignment of those employees under the preconditional posting?

Answer: Assignment under the preconditonal posting is initially based on the employees meeting the minimum qualifications, which include the appropriate entrance examination. For clerk craft employees, see also the Memorandum of Understanding re. "Interlevel Bidding -- Entrance Examination Requirements." [Ref. 6.B.5.]

13. **Question:** If a non-protected preference eligible employee does not request assignment to the sole vacancy in the same level at the time of the preconditional posting, while a junior non-protected non-preference eligible makes such request, who is assigned to the vacancy? What would be the result if the non-protected non-preference eligible were the senior of the two (2) employees?

Answer: As there was only one vacancy in the same level, the non-protected preference eligible would be assigned, even though s/he did not request the vacancy, regardless of relative seniority standing. [Ref. 6.B.5.]

14. **Question:** If two (2) vacancies in the same level were available in the preconditional posting, would they be assigned based on seniority if the non-protected preference eligible, who is senior, failed to request assignment while the junior non-protected non-preference eligible made a request?

Answer: In this example, as two (2) same level vacancies were available, the junior non-protected non-preference eligible would be assigned to the vacancy of his/her choice and the senior non-protected preference eligible would be assigned to the remaining vacancy. This answer assumes both employees were minimally qualified. [Ref. 6.B.5.]

15. **Question:** Are affected non-protected preference eligibles in the affected seniority unit entitled to request reassignment to available lower level duty assignments posted during the preconditonal posting?

Answer: Yes. [Ref. 6.B.5]

16. **Question:** Are duty assignments in the same seniority unit as the affected employees which are vacant at the time that the Article 6 preconditions are implemented included in the twenty-day posting?

Answer: No. Unassigned protected employees would already have been assigned to such vacancies. [Ref. 6.B.5]

17. **Question:** Can non-protected, non-preference eligible employees within the seniority unit who will not be impacted based on the number of employees involved request assignment to a duty assignment which is offered during the twenty-day preconditional posting?

Answer: Yes. [Ref. 6.B.5.]

18. Question: Can management utilize the duty assignments encumbered by affected employees to place the remaining unassigned employees in the seniority unit whose positions have been abolished?

Answer: Protected employees who are unassigned due to their duty assignments being abolished and non-protected employees who are unassigned due to their duty assignments being
abolished and who will not be impacted can be assigned to duty assignments encumbered by affected employees in the seniority unit. [Ref. 6.B.5.]

19. Question: How are seniority units constructed?

Answer: A seniority unit is composed of all non-protected preference eligible and non-protected non-preference eligible employees in the same craft, same category and same salary level within each installation, as installations were defined under the 1990 Collective Bargaining Agreements. The parties may mutually agree to define seniority units on terms other than those outlined herein. [Ref. 6.C.3.]

20. Question: What are seniority units utilized for?

Answer: Seniority units are defined for the purposes of identifying employees exposed to lay-off and/or reduction in force, identifying positions in which overtime and part-time flexible hours must be minimized and identifying vacancies which employees may apply for in the preconditional posting. [Ref. 6.B.3., B.4., and B.5.]

21. Question: Are employees with saved grade in lower level positions treated as though they are in the level they are working or as though they are in the saved grade level?

Answer: Employees with saved grade working in lower level positions are considered to be in the level in which they are working, not in the level of their saved grade. Where such employees are working with other employees occupying positions in that same level, neither group has preference over the other simply by virtue of one group being in saved grade status. [Ref. 6.C.3.]

22. Question: How are multi-craft duty assignments placed into seniority units?

Answer: Multi-craft duty assignments are placed into seniority units based on the identity of the incumbent. For example, if a letter carrier held a VOMA assignment, that assignment would be in the seniority unit composed of Level 5, full-time regular, letter carrier craft employees at the particular installation. [Ref. 6.C.3.]

ARTICLE 6/12 REASSIGNMENTS - QUESTIONS AND ANSWERS

23. Question: How are competitive areas for reduction in force purposes defined? For example, custodial assignments are on the plant organization structure, but the custodians holding the assignments physically work in a station - is the competitive level the plant or the station at which they work?

Answer: Competitive areas were listed in Postal Bulletin 21887, dated February 16, 1995. In order to determine which competitive area a specific job assignment falls into, PB 21887 must be referred to. [Ref. 6.C.5.]

24. Question: Have competitive levels been identified for bargaining unit employees?

Answer: Yes.

25. Question: When a non-protected, preference eligible career conditional employee is released from his/her competitive level, is s/he entitled to bump a non-protected, non-preference eligible from a duty assignment obtained during the preconditional posting required by B.5?

Answer: Depending upon the employee's RIF retention standing, a non-protected, career conditional preference eligible who is released from his or her competitive level could displace either a non-protected, career conditional non-preference elibible or even a non-protected, career conditional preference eligible. [Ref. 6.C.5]

26. Question: Can a preference eligible Level 6 Distribution Clerk - Machine MPLSM who has never been a manual clerk bump a non-preference eligible manual clerk during a reduction in force?

Answer: During a reduction in force, a preference eligible can "bump" an employee in a lower tenure group or a lower subgroup within the same tenure group within his or her competitive area who is holding a position for which the preference eligible is minimally qualified and which is up to three grade levels below the grade level of the preference eligible's current position.

Also, a preference eligible can "retreat" to a position which is the same position, or is an essentially identical one, to that which had been previously held by the employee. The position must be held currently by another employee with a lower retention standing in the

SAMPLE LETTER #1

[90-Day Regional Union Notification]
(NOTE: Footnotes are included for aid in preparation only.)

DATE:

SUBJECT: Notification of Reassignment, Layoff and/or Reduction in Force

TO: APWU Regional Coordinator
NALC National Business Agent
NPMHU Regional Director[1]

Dear Sir/Madam:

In accordance with the provisions of Article 6B.1[2], advance notification is hereby given that an excess of employees (exists/will exist)[3] at (name of installation) and that a layoff and/or reduction in force will be implemented no sooner than (date)[4]

This action is required due to (business condition)[5].

There are a maximum of (insert number and related information)[6] at the installation who may be subject to the actions outlined above.

In keeping with the above, the conversion of part-time flexibles in the affected craft to full-time regular or full-time flexible[7] will be discontinued until further notice.

Please contact me if you have any questions in this regard.

Area Manager, Human Resources

cc: District Manager, Human Resources
Regional Union(s)[8]

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[1] Addressee is determined based on craft of affected employees.
[2] The reference is Article 6.3A when mail handlers are the affected employees.
[3] Select based on whether the excess condition currently exists or is projected.
[4] Date must be no sooner than 90 calendar days from the date of the letter.
[5] Specify the business condition which requires this action; e.g., introduction of automation, implementation of RBCS or DPS, etc.
[6] Specify the maximum number of employees and indicate their craft(s), category(s), and level(s).
[7] If the letter is addressed to the NPMHU, delete the reference to full-time flexibles.
[8] Copy the letter to the union(s) not listed in the address as outlined in Footnote 1.

SAMPLE LETTER #2

[Letter 2: 60-Day Notice to Affected Employees]
(NOTE: Footnotes are included for aid in preparation only.)

Via Certified Mail

DATE:

SUBJECT: Notification of Reassignment, Layoff and/or Reduction in Force

TO: Name of Affected Employee
SS#
Job Title
Address

You are hereby notified that the U. S. Postal Service may be required to conduct a reassignment, layoff and/or reduction in force under the provisions of Article 6 of the Collective Bargaining Agreement, and applicable federal statute. You may be affected by one or the other of these actions no sooner than sixty (60) calendar days[1] from the date of your receipt of this letter.

A listing of vacancies in other seniority units within your installation and in other installations within the commuting area to which you may request reassignment will be posted no less than twenty (20) calendar days prior to the effective date of this action. You will be provided with additional information regarding submission of requests for reassignment to those vacancies at that time.

Additionally, you have the option of voluntarily terminating your employment or, if eligible, applying for early retirement. Please review the attached notice which will be posted on the official bulletin board.[2] If you are interested in exercising either of these options, please contact (name of designee) at (telephone number) for further information.

If you are affected by layoff or reduction in force, you will be provided with recall rights in keeping with the provisions of Article 6 of the Collective Bargaining Agreement or federal statute, as applicable.

Please contact the individual listed above if you have any questions regarding your craft seniority date, years of service or other matters related to this notice. If you believe that your veterans' preference status is incorrectly recorded in your Official Personnel Folder, or if you have other questions regarding your preference eligibility, please be prepared to provide a copy of your DD-214 to validate your claim.

Postmaster/Plant Manager

cc: Manager, Human Resources
Local Union President
OPF

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[1] Establish effective date to allow for delivery time in addition to required 60-day notice.
[2] Attach a copy of the "NOTICE TO ALL ___ CRAFT EMPLOYEES" regarding solicitation for voluntary termination.

SAMPLE LETTER #3
[Letter 3: Affected Employee Job Selection Letter]
(NOTE: Footnotes are included for aid in preparation only.)

Via Certified Mail

DATE:[1]

SUBJECT: Notification of Article 6 Reassignment Options

TO: Name
SS#
Job Title
Address

By letter dated (insert date), you were provided with sixty (60) days advance notice that you could be affected by reassignment, layoff and/or reduction in force. As a precondition to layoff or reduction in force, all vacancies in the same or lower level in other seniority units within your installation and other installations within the commuting area have been identified and posted on the official bulletin board(s).

As an affected employee, you may request reassignment to available vacancies for which you meet the minimum qualifications by indicating your preference(s) on the attached form. Space is provided for you to indicate your order of preference if you are minimally qualified for more than one of the posted vacancies. Selection among qualified preference eligible and qualified non-preference eligible employees who request reassignment will be made on a seniority basis, except as limited by the requirement stated in 1 below[2]. **If you are a preference eligible employee, selection of a vacancy at a lower level is entirely voluntary on your part.**

Indicate your preference for posted vacancies and forward the completed and signed form to the individual listed hereunder, postmarked no later than ten (10) calendar days from the date of this letter.

(Insert Name and Address of Designated Management Representative)

If you decline to request reassignment or if you fail to timely return the attached form, you will be affected as follows:

1. If you are a preference eligible employee, you will be assigned to one of the posted vacancies at the same level as your current duty assignment;[3]

2. If you are not a preference eligible employee, you will become exposed to lay-off.

---

[1] Vacancies must be posted no less than twenty (20) calendar days prior to the effective date of the reassignment, layoff or reduction in force. This letter must be dated and mailed no later than the date the subject vacancies are posted.
[2] See Footnote 3. If #1 will not be included in the letter, end the sentence after "basis."
[3] Include #1 only if vacancies in the same level are, in fact, available in other seniority units in the installation or other installations within the commuting area.

SAMPLE LETTER #3 (Cont.)

If you have any questions regarding these matters, please contact the individual listed above at (telephone number).

Manager, Human Resources

cc: Manager
Local Union President
OPF

SAMPLE LETTER #5

[Letter 5: Non-Affected Employee Job Selection Letter - Job Not Abolished]
(NOTE: Footnote is included for aid in preparation only.)

Via Certified Mail

DATE:[1]

SUBJECT: Notification of Article 6 Reassignment Options

TO: Name
SS#
Job Title
Address

By letter dated (insert date), certain employees in your craft, category and salary level (i.e., seniority unit) were provided with sixty (60) days advance notice that they could be affected by reassignment, layoff and/or reduction in force.

It has been determined that you will not be affected by any of the actions outlined in that letter. Your current duty assignment will not be abolished. Therefore, you are not required to take any further action if you wish to retain your current duty assignment.

However, as an employee in an affected seniority unit, you may request reassignment to available vacancies for which you meet the minimum qualifications in the same or lower level in other seniority units within your installation and other installations within the commuting area. Such vacancies have been identified and posted on the official bulletin board(s). Space is provided on the attached form for you to indicate your order of preference if you are minimally qualified for more than one of the posted vacancies. Selection among qualified preference eligible and qualified non-preference eligible employees who request reassignment will be made on a seniority basis. If you are a preference eligible employee, selection of a vacancy at a lower level is entirely voluntary on your part.

Indicate your preference for posted vacancies and forward the completed and signed form to the individual listed hereunder, postmarked no later than ten (10) calendar days from the date of this letter.

(Insert Name and Address of Designated Management Representative)

If you have any questions regarding these matters, please contact the individual listed above at (telephone number).

Manager, Human Resources

cc: Manager
Local Union President
OPF

[1] Vacancies must be posted no less than twenty (20) calendar days prior to the effective date of the reassignment, layoff or reduction in force. This letter must be dated and mailed no later than the date the subject vacancies are posted.

SAMPLE LETTER #6

[Letter 6: Non-Affected Employee Job Selection Letter - Job Abolished]
(NOTE: Footnote is included for aid in preparation only.)

Via Certified Mail

DATE:[1]

SUBJECT: Notification of Article 6 Reassignment Options

TO: Name
SS#
Job Title
Address

By letter dated (insert date), certain employees in your craft, category and salary level (i.e., seniority unit) were provided with sixty (60) days advance notice that they could be affected by reassignment, layoff and/or reduction in force. It has been determined that you will not be affected by any of the actions outlined in that letter.

While your current duty assignment will be abolished, it has been determined that a sufficient number of duty assignments in your salary level will be available for your placement. Therefore, it is not necessary for you to make a selection during the current preconditional posting period.

However, as an employee in an affected seniority unit, you may request reassignment to available vacancies for which you meet the minimum qualifications in the same or lower level in other seniority units within your installation and other installations within the commuting area. Such vacancies have been identified and posted on the official bulletin board(s). Space is provided on the attached form for you to indicate your order of preference if you are minimally qualified for more than one of the posted vacancies. Selection among qualified preference eligible and qualified non-preference eligible employees who request reassignment will be made on a seniority basis. **If you are a preference eligible employee, selection of a vacancy at a lower level is entirely voluntary on your part.**

Indicate your preference for posted vacancies and forward the completed and signed form to the individual listed hereunder, postmarked no later than ten (10) calendar days from the date of this letter.

(Insert Name and Address of Designated Management Representative)

If you have any questions regarding these matters, please contact the individual listed above at (telephone number).

Manager, Human Resources
cc: Manager
Local Union President
OPF

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[1] Vacancies must be posted no less than twenty (20) calendar days prior to the effective date of the reassignment, layoff or reduction in force. This letter must be dated and mailed no later than the date the subject vacancies are posted.

Burns

186

P030 683 120

LABOR RELATIONS

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

September 2, 1994

Mr. Moe Biller
President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Gentlemen:

As a matter of general interest, enclosed is a copy of the message from Postmaster General Marvin Runyon to be published in an upcoming Postal Bulletin. The message from Postmaster Runyon contains information concerning the U.S. Postal Service's position on sexual harassment in the workplace.

If there are any questions regarding the foregoing, please contact Randy M. Wilson of my staff at (202) 268-2479.

Sincerely,

Curtis Warren
Acting Manager
Contract Administration (APWU/NPMHU)
Labor Relations

Enclosure

Message From the Postmaster General

Sexual Harassment is a subject many managers prefer not to talk about. It is so clearly a behavior that has absolutely no place in the work world that people are reluctant even to acknowledge its existence. Unfortunately, sexual harassment does exist in the workplace. If we are to eliminate the problem — and I am very committed to doing just that — the example must come from the top. Postal management must emphasize that, like any action that threatens our commitment to full equal employment opportunity, sexual harassment will not be tolerated in the Postal Service in any form. The penalty for engaging in sexual harassment is severe discipline, including discharge. I am counting on our postal leaders to demonstrate that sexual harassment is totally unacceptable in the Postal Service.

All employees must be made aware of the following:

USPS POLICY ON SEXUAL HARASSMENT

The United States Postal Service is committed to providing a work environment free of sexual harassment.

Sexual harassment, improper and unlawful conduct that undermines the employment relationship as well as employee morale, includes:

- Making or threatening to make employment decisions based on an employee's submission to or rejection of sexual advances or requests for sexual favors.
- Deliberate or repeated unsolicited remarks with a sexual connotation or physical contacts of a sexual nature that are unwelcome to the recipient.
- A sustained hostile and abusive work environment so severe that it changes the terms and conditions of one's employment.

The Postal Service will not tolerate the presence of sexual harassment in the workplace, and employees who are found to have engaged in sexual harassment should expect serious disciplinary action, including removal. Postal employees who believe that they are the victims of sexual harassment should immediately bring the situation to the attention of an impartial supervisor or manager. All managers and supervisors are charged with the responsibility for:

- Preventing sexual harassment in the work place.
- Taking immediate and appropriate action when a complaint of sexual harassment is brought to their attention.
- Conducting a prompt investigation of the alleged charge and instituting appropriate corrective measures whenever necessary.

Employees may also seek relief through any of the following:

- The Equal Employment Opportunity (EEO) complaint process.
- Grievance arbitration procedure for bargaining unit employees under the collective bargaining agreements.
- The grievance procedures for nonbargaining unit employees.

Any possibly criminal misconduct should be reported to the Postal Inspection Service.

MARVIN RUNYON
Postmaster General

LABOR RELATIONS

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

September 2, 1994

Mr. Moe Biller
President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Mr. Vincent R. Sombrotto
President
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, DC 20001-2197

Gentlemen:

As a matter of general interest, enclosed is a copy of Poster 21, to be published in an upcoming Postal Bulletin. The poster contains information concerning the U.S. Postal Service's position on sexual harassment in the workplace.

If there are any questions regarding the foregoing, please contact Randy M. Wilson of my staff at (202) 268-2479.

Sincerely,

Curtis Warren
Acting Manager
Contract Administration (APWU/NPMHU)
Labor Relations

Enclosure

THE USPS WILL NOT TOLERATE SEXUAL HARASSMENT IN THE WORKPLACE

The United States Postal Service is committed to providing a work environment free of sexual harassment. Sexual harassment, improper and unlawful conduct that undermines the employment relationship as well as employee morale, includes:

- Making or threatening to make employment decisions based on an employee's submission to or rejection of sexual advances or requests for sexual favors.
- Deliberate or repeated unsolicited remarks with a sexual connotation or physical contacts of a sexual nature that are unwelcome to the recipient.
- A sustained hostile and abusive work environment so severe that it changes the terms and conditions of one's employment.

Employees who are found to have engaged in sexual harassment should expect serious disciplinary action, including removal.

All managers and supervisors: are charged with the responsibility for preventing sexual harassment in the workplace and, if sexual harassment occurs, for taking ***immediate and appropriate corrective action.***

Postal employees who believe that they are the victims of sexual harassment should bring the situation to the attention of impartial supervisors or managers.

In addition, postal employees may seek relief through the Equal Employment Opportunity (EEO) complaint process, grievance arbitration procedures for nonbargaining unit employees under the collective bargaining agreements, and the grievance procedures for nonbargaining employees.

Report any possible criminal conduct to the Postal Inspection Service.

UNITED STATES POSTAL SERVICE

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

Re: HOC-NA-C 19020
Q90C-4Q-C 93044076

Dear Mr. Burrus:

Recently we met in a pre-arbitration discussion of the above cases.

The issue in these cases is whether management violated Article 19 of the National Agreement in the issuance of the 1993 revision of Section 880 of the Employee and Labor Relations Manual regarding smoking.

We mutually agree that consistent with the provisions of Section 880 of the Employee and Labor Relations Manual, smoking is prohibited in all postal facilities. However, safety and health committee union representatives shall participate in the selection of designated smoking areas on postal property outside of postal facilities, where designation of such smoking areas is feasible. In those installations that do not have a safety and health committee, the union president shall participate in the selection of designated smoking areas. Employee convenience, safety, health, housekeeping, and public access will be considered in the identification of designated smoking areas.

This settlement resolves all locally filed grievances and cases pending with the National Labor Relations Board relating to the smoking policy.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle these cases, withdrawing case number HOC-NA-C 19020 and Q90C-4Q-C 93044076.

Sincerely,

Anthony J. Vegliante
Manager
Grievance and Arbitration
Labor Relations

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

Date: 3-21-95

Employee and Labor Relations Manual Revision

Environmental Protection Agency (EPA) recently announced the results of a study that concluded that exposure to "secondhand" cigarette smoke is causally associated with lung cancer and other adverse health effects. The report labels environmental tobacco smoke as a known human carcinogen.

Present U.S. Postal Service policy allows smoking only in strictly defined and designated areas. However, in light of these recent findings, and to ensure the safety and health of Postal employees, Subchapter 880 of the Employee and Labor Relations Manual is revised as follows:

880 SMOKING

881 Definition

Smoking is defined as having a lighted cigar, cigarette, pipe, or other smoking material.

882 Policy

Smoking is strictly prohibited in all buildings or office space (including service lobbies) owned or leased by the U.S. Postal Service. There will be no indoor smoking permitted by any occupant of such space. Local managers, with input from employee representatives, may decide whether or not to permit smoking in designated outdoor locations on Postal Service property.

Existing mention of the smoking policy in manuals and official instructions will be updated to reflect this new policy. Questions should be referred to local Human Resources managers.

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

May 26, 1999

Dear Mr. Sgro:

In further response to my inquiry of May 10th regarding the solicitation of postal employees at their place of employment, I am enclosing a copy of the letter forwarded to postal employees. This solicitation was sent to thousands of employees across the country. It is apparent that the sender was provided the mailing address of employees and contrary to the information in your response of May 24, 1999, it was received at their place of employment. I do not know the reference of the identification number used and whether or not it includes the employees' Social Security numbers.

Please inform of the postal policy regarding access to the name and work location of postal employees to commercial enterprises and the legitimacy of them sending correspondence to employees at their work location.

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

Robert L. Tunstall
Secretary-Treasurer

Greg Bell
Industrial Relations Director

C. 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

Mr. Peter A. Sgro
Contract Administration
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

WB:rb
opeiu#2
afl-cio

201 North Walnut Street, Wilmington, DE 19801-2940

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Bulk Rate
U.S. Postage
PAID
Card Center

CHANGE SERVICE REQUESTED

First USA Platinum MasterCard® *for*

POSTAL SERVICE PROFESSIONALS

FREE Carafe

see details inside ...

3.9% *Fixed Introductory APR*

- No Annual Fee
- Credit line up to $100,000
- Balance Transfer Savings

#BYNJSCZ
#637212141682#
Mr. Michael E. Gunter
1301 E. Main St.
Carbondale, IL 62901-9998

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

May 24, 1999

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

Dear Bill:

This letter is in reference to your correspondence to Anthony J. Vegliante, Vice President, Labor Relations, dated May 10. The correspondence concerned a mailing to employees at the address of their employment by a private credit card company. You specifically questioned the process by which the mailer was able to receive the personal information of postal employees and make the solicitation

Though your inquiry did not provide specific information about where or when this solicitation occurred, the following is provided to respond to your inquiry. The Postal Service is required by the Freedom of Information Act (FOIA), postal regulations implementing the FOIA (Administrative Support Manual 352.416) (copy enclosed), and legal precedent to provide public information about our employees. However, requesters who are given information are advised that employees must not receive personal mail at their place of employment, and mail that is addressed to an employee at a postal facility and is intended for the employee personally can be refused, but must not be opened.

If there are any questions concerning this matter, please contact Curtis Warren of my staff at (202) 268-5359.

Sincerely,

Peter A. Sgro
Acting Manager
Contract Administration (APWU/NPMHU)

Enclosure

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

May 10, 1999

Dear Tony:

I have been made aware that a private credit card company has been provided access to the USPS mailing address and has made a mailing to postal employees at the address of their employment. This specific solicitation was made by Postal Service Professionals for a Platinum Master Card. This is to inquire as to the process by which the mailer received the personal information of postal employees to make this solicitation.

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

Robert L. Tunstall
Secretary–Treasurer

Greg Bell
Industrial Relations Director

C. 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

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

WB:rb
opeiu#2
afl-cio

e. Materials listed in the public index that were created on or after November 1, 1996, also will be available in electronic format at the Postal Service's World Wide Web site at http://www.usps.com.

352.416 **Listings of Employees' Names**

On written request, the Postal Service provides, to the extent required by law, a listing of postal employees working at a particular postal facility (but not their home addresses or Social Security numbers). In all instances of requests for a listing of postal employees, the Postal Service Freedom of Information/Privacy Acts officer is deemed to be the custodian.

352.417 **Congressional Requests**

If the request is:

a. *On Behalf of Congress Through Committee or Subcommittee.* Disclosure is the general rule. In most cases, only the interposition of Executive privilege could justify nondisclosure. Seek advice of counsel.

b. *Not on Behalf of Official Congress Committee or Subcommittee.* Process as a request from any person under the regulations in this subchapter. Forward all requests for nonpublic records from individual members of Congress not acting on behalf of a committee or subcommittee to:

VICE PRESIDENT LEGISLATIVE AFFAIRS
UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-3500

352.42 Records Not Subject to Mandatory Public Disclosure

Certain classes of records are exempt from mandatory disclosure under exemptions in the *Freedom of Information Act* and in 39 U.S.C. 410(c). Under 352.12 as implemented by instructions issued by the records office with the general counsel's approval, the Postal Service exercises its discretion in determining whether the public interest is served by the inspection or copying of records that are:

a. Related solely to the internal personnel rules and practices of the Postal Service.

b. Trade secrets, or privileged or confidential commercial or financial information, obtained from any person (see also 352.453 and 352.6).

c. Commercial information, including trade secrets, whether obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed. This class includes, but is not limited to:

(1) Information about methods of handling valuable registered mail.

(2) Money orders records.

(3) Technical information on postage meters and prototypes submitted for Postal Service approval before leasing to mailers.

(4) Market surveys conducted by or under contract for the Postal Service.

MEMORANDUM OF AGREEMENT
BETWEEN THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO
AND THE
UNITED STATES POSTAL SERVICE

37

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In full and complete settlement of the issue of step increase deferrals resulting from poor attendance, as raised in national level grievance H1C-NA-C-10, the parties collectively agree:

> Existing instructions clearly provide that repeated, and/or continuous lack of cooperation, poor attendance, failure to produce acceptable work or other similar characteristics, even after individuals have been subjected to discussion of deficiencies during the waiting period, is the basis for determining whether or not an employee's rating is unsatisfactory to receive a step increase. However, an overt act of misconduct, including attendance deficiencies for which an employee has been subjected to discipline, does not, in and of itself, demonstrate that an employee has "repeatedly and/or continually" failed to meet the requirements of the position throughout the waiting period and such an overt act, in and of itself, would not provide a basis for withholding a step increase.

It is further agreed that the determination to grant or deny a step increase rests on the individual fact circumstances present in each instance and must be adjudged accordingly.

In witness whereof the parties hereto affix their signatures below this 14 day of December 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
UNIONS:

William Burrus

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

Francis J. Conners

Francis J. Conners
Vice President
National Association of
Letter Carriers, AFL-CIO

American Postal Workers Union, AFL-CIO
817 Fourteenth Street, N.W., Washington, D.C. 20005 • (202) 842-4246

WILLIAM BURRUS

December 3, 1982

Mr. William Henry, Director
Office of Grievance and Arbitration
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Re: W. Burrus
Washington, D.C.
H1C-NA-C-10

Dear Mr. Henry:

In response to your letter of November 30, 1982 I submit the following as a resolution to the question of step increase deferral resulting from poor attendance.

Existing instructions clearly provide that repeated, and/or continuous lack of cooperation, poor attendance, and failure to produce acceptable work even after individuals have been counseled on deficiencies during the waiting period is the basis for determining whether or not an employee's rating is unsatisfactory to receive a step increase. How, ever, an overt act of misconduct, including attendance deficiencies for which an employee has been subjected to discipline, does not, in and of itself, demonstrate that an employee has "repeatedly and/or continually" failed to meet the requirements of the position throughout the waiting period and such an overt act,

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MIKE BENNER, Director SDM Division
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KEN LEINER, Director Mail Handler Division
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JAMES P. WILLIAMS, Central Region
PHILIP C. FLEMMING JR., Eastern Region
NEAL VACCARO, Northeastern Region
ARCHIE SALISBURY, Southern Region

in and of itself, would not provide a basis for withholding a step increase.

Sincerely,

William Burrus,
Executive Vice President

WB:mc

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

RECEIVED
DEC 01 1982
OFFICE OF
EXECUTIVE VICE PRESIDENT

November 30, 1982

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005

Re: W. Burrus
Washington, D.C.
H1C-NA-C-10

Dear Mr. Burrus:

On October 14, 1982, we met to discuss the above-captioned national level grievance in accordance with the provisions set forth in Article 15, Section 3(d), of the 1981 National Agreement.

The question raised in this grievance is whether an employee's step increase can be deferred solely on the basis of poor attendance.

Existing instructions clearly provide that repeated and/or continuous failure to meet the essential requirements of a position during the waiting period, including attendance requirements, is the basis for determining the eligibility of an employee to receive a step increase. However, an overt act of misconduct, in and of itself, does not demonstrate that an employee has "repeatedly and/or continually" failed to meet the requirements of the position and such an overt act, in and of itself, would not provide a basis for withholding a step increase.

As discussed during our meeting, the determination to grant or deny a step increase rests on the individual fact circumstances present in each instance and must be adjudged accordingly.

Sincerely,

W. E. Henry, Jr.

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

American Postal Workers Union, AFL-CIO
817 Fourteenth Street N.W. Washington, D.C. 20005 • (202) 842-4250

WILLIAM BURRUS
General Executive Vice President

#5

July 6, 1982

Mr. Joseph Morris
Senior Assistant Postmaster General
Employee & Labor Relations Group
United States Postal Service
Washington, D.C. 20260

Dear Mr. Morris:

The Employee & Labor Relations Manual at Part 422.355 states in part as follows:

.355 Withheld Increase

...(Note: Witholding of a step increase should *not* be used as punishment for overt acts which should be handled under the disciplinary procedure.)

The American Postal Workers Union interprets the above cited language as a limitation on the right of the employer to withhold Step increases.

Employee's failure to be regular in attendance is a frequent reason for disciplinary action. The American Postal Workers Union is of the opinion that such a failure is clearly covered by the limitations contained in Part 422.355 and therefore an employee's Step increase cannot be withheld solely for poor attendance.

In accordance with Article 15, Section 3 (d) of the 1981 National Agreement I request a written response to determine if a dispute exists as to the interpretation of this issue. I am available to discuss this issue and may be reached at 842-4246.

Sincerely,

William Burrus,
General Executive Vice President

WB:mc

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JOHN RICHARDS, Director, Industrial Relations
KEN LEINER, Vice President, Mail Handler Craft
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American Postal Workers Union, AFL-CIO
817 Fourteenth Street NW Washington DC 20005 • (202) 842-4250

WILLIAM BURRUS
General Executive Vice President

June 28, 1982

Mr. James C. Gildea
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Dear Mr. Gildea:

The Postal Reorganization Act (PL 89-375) required that:

> Any agreement negotiated under this section shall establish a new wage schedule whereunder postal employees will reach the maximum pay step for their respective labor grades after not more than eight(8) years of satisfactory service in such grades.

This language has been incorporated into Chapter 420 of the Employee and Labor Relations Manual, setting forth the Eligibility Requirements and waiting period from Step to Step.

The current application of this language in instances where an employee's Step increase is withheld for unsatisfactory performance requires that the affected employee begin a 7-pay re-determination period following the date of withholding. This is proper and in accordance with the intent of the Congress and the parties in collective bargaining, however the impact on subsequent Step increases is not clearly defined in either the law or the Postal Manual. The Postal Service currently delays each subsequent increase commensurate with the initial re-determination period. The affect of this policy on a Level 5 employee whose increase from Step 3 to Step 4 is delayed

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Northeastern Region
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Southern Region

for the required 7 pay periods is a loss of $586. The affected employee is penalized not only for the initial period of unsatisfactory service, but also for subsequent periods of satisfactory service.

I request a meeting to discuss this issue with you or a member of your staff at the earliest opportunity.

Sincerely,

William Burrus,
General Executive Vice President

WB:mc

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

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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.

I suggest that when heating or cooling problems develop and cannot be resolved locally, your regional coordinators contact the General Managers, Labor Relations, in each region to seek resolution. Our regional labor relations division will be aware of the heating and cooling objectives expressed in this letter.

Sincerely,

James C. Gildea
Assistant Postmaster General
Labor Relations Department

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

May 18, 1999

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

Dear Mr. Burrus:

This is in response to your letter of March 1, requesting our position on retroactive contributions to the Thrift Savings Plan when an employee receives back pay.

The Thrift Savings Plan was established through Public Law and is controlled by the regulations in 5 CFR 1600. Any make whole remedy concerning the Thrift Savings Plan will be accomplished in accordance with those regulations.

U.S. Postal Service regulations concerning back pay awards, with respect to Thrift Savings contributions, can be found in the Employee & Labor Relations Manual Section 594.6 (copy enclosed).

If you have additional questions concerning this matter please contact Lisa Hambalek of my staff at 202/268-3824.

Sincerely,

Peter A. Sgro
Acting Manager
Contract Administration (APWU/NPMHU)

Enclosure

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

May 13, 1999

Dear Mr. Sgro:

By letter of March 1, 1999, I raised an issue regarding the rights of an employee who is covered by the Thrift Savings Plan for reimbursement through the grievance-arbitration procedure. To date, I have not received a response and I await your reply.

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

Robert L. Tunstall
Secretary-Treasurer

Greg Bell
Industrial Relations Director

C. 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

Mr. Peter Sgro
Acting Director
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

March 1, 1999

Dear Mr. Sgro:

This is to inquire about the application of the National Agreement, Articles 15 and 16 when an employee who is enrolled in the Thrift Savings Plan is made whole pursuant to the grievance/arbitration process. Through the actions of the employer, administrative or discipline, an employee is denied compensation and full retirement benefits during the period of such action. If the employee is made whole, it is the position of the union that the employee's account should be reimbursed for the lost USPS contribution and provided the opportunity to make a retroactive employee contribution.

This is to inquire of the employer a restatement of the employer's policy under the above cited circumstances.

Sincerely,

William Burrus
Executive Vice President

National Executive Board
Moe Biller
President

William Burrus
Executive Vice President

Robert L. Tunstall
Secretary-Treasurer

Greg Bell
Industrial Relations Director

C. J. "Cliff" Guffey
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Mr. Peter Sgro
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

594.6 Back Pay Awards

594.61 General Rule

An employee receiving a back pay award must be made whole with respect to participating in the TSP. The procedures in 594.62 and 594.63 must be followed when processing back pay awards.

594.62 Erroneous Separation

The employee may elect participation or termination of elections in the same manner as though the separation did not occur. The most current election form must be processed at the DDE/DR site to begin or terminate withholdings when the employee is returned to the rolls. When the back pay claim is sent to the Minneapolis ASC, a copy of the election form(s) must be included. The Minneapolis ASC computes the TSP amount and withholds it from the back pay award. The USPS contributions are computed as appropriate.

594.63 Continuous Service

Employees who receive a back pay adjustment and who are not separated from service receive an adjustment for contributions only if they previously elected coverage. The adjustment is processed automatically.

594.7 Claim Procedure

594.71 General Rule

If there is a dispute between the findings of the Postal Service relating to an employee's entitlement to make-up contributions, or the amount refunded as a result of an administrative error was less than the amount previously withheld, the employee may file a claim for correction with the personnel services office.

594.72 Review of Claim

All employee claims must be reviewed to determine whether the claim relates to an error made by the Postal Service or by the Federal Retirement Thrift Investment Board. If the claim relates to Board errors, the claim must be sent within 10 days of receipt to:

THRIFT SAVINGS PLAN SERVICE OFFICE
NATIONAL FINANCE CENTER
PO BOX 61500
NEW ORLEANS LA 70161-1500.

The employee must be advised of the referral.

594.73 Postal Service Decision

When the claim relates to the Postal Service, the personnel services office must provide the employee with a decision within 30 days. If the decision is to deny the claim, the denial must be in writing and must contain the following information:

a. The reason for the denial, with references.

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

April 1, 1998

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

Dear Mr. Burrus:

This is a final response to the June 17 correspondence requesting a time table finalizing a program to allow employees who served in Desert Storm to contribute lost earnings to the Thrift Savings Plan.

For your information, attached is a draft of the procedure that will be implemented in the field to allow employees the appropriate opportunities under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). The procedure will be issued as soon as it is cleared by the appropriate departments here at Postal Service Headquarters.

This satisfies your request for the information. If there are any questions, do not hesitate to contact me.

Sincerely,

Samuel M. Pulcrano
Manager
Contract Administration (APWU/NPMHU)

Attachment

cc: Alan Ruof

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

HUMAN RESOURCES

UNITED STATES
POSTAL SERVICE

February 17, 1998

MANAGERS, HUMAN RESOURCES (DISTRICTS)
MANAGERS, REMOTE ENCODING CENTERS

SUBJECT: Interim Guidelines For The Employment Restoration Of Individuals Who Served In The Uniformed Services

Enclosed is a copy of the policy which regulates the restoration of employees returning from military service. This policy supersedes Handbook EL 311, Section 218, Restoration, and ELM, Section 365.234, Restoration After Military Service.

With the introduction of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), employees restoration rights and employers obligations have been substantially enhanced.

USERRA has the following critical provisions :

- Prohibits discrimination against employees or applicants with a military obligation.
- Requires that employees departing for active military service, voluntary or involuntary, be placed on leave without pay, NOA 460--consult CMS Update 97:70,12/6/97 (copy enclosed).
- Requires the restoration of the employee to the position as if he or she had never left for military service.
- Requires that active duty employees are given the opportunity for career progression. This stipulation requires locations to set up an administrative framework, including audit trail, in order to actualize leave-behind bids and/or PS Forms 991.
- Is enforced by the Department of Labor and has provisions for restitution and punitive action.

With the issuance of this policy, locations which maintained a manual list of employees currently on active duty should process a PS Form 50 (NOA 460) to identify these employees.

We are working on tools to facilitate the implementation of this policy. These aids include an employee brochure for those who are being called to active duty.

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4250

If you have any questions, please contact Gerry Brasche at (20?) 268-3962. Locations with a need for further explanation of the policy should notify Mr. Brasche via cc:Mail by February 27 in order to be included in a telecon training session.

Stephen A. Moe
Manager
Selection, Evaluation, and Recognition

Enclosures

cc: Managers, Human Resources (Areas)
Manager, Field Policies and Programs
Manager, Corporate Personnel Management
Manager, Management Association Relations
Area Human Resources RBCS Coordinators

INTERIM GUIDELINES FOR THE EMPLOYMENT RESTORATION OF INDIVIDUALS WHO SERVED IN THE UNIFORMED SERVICES

I. POLICY

It is the responsibility of Postal Management to restore to employment at the previous installation employees who served in the uniformed services and who are eligible under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), P.L. 103-353, signed October 13, 1994. The statute became effective on December 12, 1994. However, benefit aspects of the statute are made retroactive as follows:

1. to August 1, 1990, for retirement credit;
2. to August 2, 1990, for the Thrift Savings Plan;
3. to October 13, 1994, for health benefits and life insurance.

II. ELIGIBILITY

Reemployment rights are extended to employees who were absent from work because of service in the uniformed services.

A. UNIFORMED SERVICES

The uniformed services consist of the following military branches:

- Army, Navy, Marine Corps, Air Force, Coast Guard, and their respective reserve components.
- Army National Guard or Air National Guard.
- Commissioned Corps of the Public Health Service.
- Any other category of persons who are designated by the President as uniformed services in time of war or emergency.

B. TYPES OF UNIFORMED SERVICE

Service in the uniformed services can be on a voluntary or involuntary basis for a variety of purposes

- Active duty.
- Active duty for training, including initial training.
- Inactive duty training.
- Full-time National Guard duty.
- Time needed for an examination to determine fitness for any of the above types of duty.

C. DURATION OF UNIFORMED SERVICE

Under USERRA, the cumulative length of absence from employment because of service with the uniformed services is limited to five years. There are several categories of service which are excluded from the five-year limitation. These exceptions are:

- Service required in excess of five years to complete the initial period of obligated service.

- Service from which a person, without control over the circumstances, is unable to obtain a release within the five-year limit.

- Required training for reservists and National Guard members. This training includes the monthly weekend drills, the two-week annual session, and any additional training mandated as essential to the professional development of service members by the specific Secretary of a uniformed service.

- Service required under an involuntary order to active duty or to be retained on active duty because of domestic emergencies or national security matters.

- Service as the result of an order to active duty or to remain on active duty during a war or national emergency declared by the President or Congress.

- Active duty performed in support of an operational mission for which selected reservists have been involuntarily activated.

- Active duty performed in support of a critical mission or critical requirement during the time of no involuntary call up, no war, or national emergency. The Secretary of a uniformed service has the authority to designate a military operation as a critical mission or requirement.

- Federal service by members of the National Guard called into action by the President to suppress an insurrection, repel an invasion, or execute the laws of the United States.

- Service time prior to the effective date of USERRA, December 12, 1994, will not be applied to the five-year limit unless it would have counted under the previous law, The Veteran's Reemployment Rights Statute.

D. CHARACTER OF DISCHARGE

Under USERRA, persons separated from the uniformed services with a dishonorable, bad conduct, or other than honorable conditions discharge are not eligible for restoration of employment or any other benefit the law provides.

E. EFFECTS OF PERFORMANCE AND CONDUCT ON RESTORATION

Restoration may be denied on the basis of performance or conduct that occurred prior to the employee's departure from the uniformed service, if such conduct or poor performance is not related to the uniformed service. Further, restoration rights may be denied if the conduct of the employee while on uniformed service was such that the returnee would be disqualified for employment under postal regulations.

F. ADVANCE NOTIFICATION OF ENTERING THE UNIFORMED SERVICES

To ensure entitlement to reemployment rights and benefits, employees must notify their immediate supervisor of the impending absence from work because of service in the uniformed service.

The advance notice can be given by the employee orally or in writing to the immediate supervisor.

- Notification can also be made orally or in writing by the employee's military command. This situation may arise because military necessity may prevent the employee from giving notification.

- No advance notice is required if it is precluded by military necessity or it is otherwise impossible or unreasonable to give notice.

Upon receipt of notification, the responsible Human Resources office must be contacted by the immediate supervisor to assure continuation of appropriate benefits. This notification is made in writing regardless of the way the employee's departure for military service became known. Typical employee identifiers such as full name, pay location, and social security number are to be included.

The employee's military authority/postal supervision written notification are to be retained in the Official Personnel Folder (OPF) on the right side.

It is important to note that employees serving in the military and the Postal Service have a mutual responsibility under USERRA. Given the nature of the employee's obligation and the operational needs of the Postal Service, it is essential that both parties make a good faith effort to avoid conflict. Employees with reserve obligations are expected to work with their military unit to minimize the burden on postal operations because of the frequency and duration of reserve duty. Employees must give as much advance notice as possible to allow time for management to plan for coverage. In the event that managers face a legitimate operational burden, they may contact the employee's military command to express their concerns and to determine if the military duty can be rescheduled for the reservist. However, the military authority determines the schedule for duty; USERRA clearly reflects that the nature of duty, its time, or frequency is not relevant to compliance with USERRA, as long as the employee has given proper notice and the time limits stated above have not been exceeded. Military command contacts for the purpose of rescheduling are not to be made during the time when the President's mobilization authority has been exercised.

G. NOTIFICATION OF THE EMPLOYEE'S RIGHTS AND OBLIGATIONS

Managers are responsible for notifying employees orally or in writing of their rights, obligations, and benefits before departing and upon return from active service. This notification includes any appeal and grievance rights. However, this does not relieve the employee from the responsibility to exercise due diligence to request this information from management or the appropriate Human Resources office.

Additionally, the law requires that individuals on military duty are to be given the opportunity for career advancement as if they are actively present to the job. To assure compliance, local Human Resources offices need to include the following in the discussion as appropriate:

1. **Bargaining Unit Positions**

   While on military service, employees continue to accrue seniority and may bid on positions that may become vacant during the employee's absence. A written or electronic notice must be submitted by the employee to Human Resources, or if appropriate, to the manager-in-charge, such as Postmaster, indicating the departee's interest to bid on specific positions. The bid needs to be processed and awarded in accordance with the appropriate Collective Bargaining Agreement (CBA) as if the employee is actively employed. If awarded, a personnel action needs to be initiated to place the employee in the newly gained position and pay scale and to assure that seniority is credited as specified by the appropriate CBA.

   Unsuccessful bids are retained until the desired position is gained or the employee resumes active employment upon retum from the military service. Training will be deferred for employees who gain a position for which there is contractually required training until they retum. Upon their retum, the employee will be required pursuant to the respective CBA to meet the training requirements. No personnel action is to be initiated until the training requirement is completed. In these cases, every effort must be made to train the employee upon retum to work. The employee would only be awarded the position upon satisfactory completion of the required training. An audit trail documenting the bid submissions must be maintained.

2. **Nonbargaining Positions**

   Nonbargaining and bargaining unit employees on military service interested in being considered for EAS positions are required to submit completed PS Forms 991 for specific position descriptions to Human Resources reflecting the desired position(s) and location(s). Human Resources will activate the application as soon as the desired position and location has a vacancy. The application is considered in accordance with the EAS Selection Policies for local and national positions and in accordance with the area of consideration noted on the announcement. Applications resulting in a non-selection will be considered as vacancies occur in the specified occupation until the applicant has been successfully selected. Applications from employees who are on active duty with the uniformed services will be accepted at any time for subsequent consideration when an appropriate vacancy is announced.

   EAS employees on active duty may also request reassignments to lateral or lower level positions in accordance with the EAS SELECTION POLICY.

   Selected individuals will be placed in the new position and the appropriate pay level by initiating a personnel action while in the LWOP status.

   An audit trail of the selection activity needs to be established and retained by Human Resources.

Upon retum from active military service, the responsibility for submitting bids or applications for EAS positions reverts to the employee.

H. PERSONNEL ACTION

1. Employees called for active duty are to be placed in a leave without pay status, using NOA 460 and Special Benefit Code "U" as stated in CMS Update 97:70, dated December 5, 1997.

2. Individuals who exercise a written option to resign with the intention of not returning to the Postal Service must be advised that their restoration rights are not affected by the resignation. In these cases, a resignation military, NOA-313, is to be initiated. These individuals have the right to return; however, they do not accrue any seniority while they are off the rolls. These individuals need to be advised of the loss of seniority before initiating the personnel action.

I. RETURN TO WORK

The following time limits have been established for returning to work after the completion of military service:

1. **Service of 1 to 30 Days**

   - The employee needs to report by the beginning of the first regular scheduled day of work following eight hours after return home from the military service.

   - If an employee's return to work within this time frame is unreasonable or impossible and he or she is not at fault for the delay, the employee must return to work as soon as possible.

2. **Service of 31 to 180 Days**

   - A written request for reemployment must be submitted no later than 14 days after the employee's completion of the military service.

   - If submission of a written request for reemployment is impossible or unreasonable through no fault of the employee, it must be submitted as quickly as possible.

3. **Service of 181 or More Days**

   - A written request must be made within 90 days from the date of discharge.

Individuals who fail to request reemployment in writing within the above specified time frames do not forfeit their rights automatically. However, they are subject to discipline because of unexcused absences.

4. **Service Connected Hospitalization or Convalescence**

   - Members of the uniformed services who are hospitalized or are convalescing because of a service-connected disability incurred during active military service are required to return to work once recovered. They are to report or apply in accordance with their length of service as stated in Section II, Paragraph I, "Return to Work." The recovery period may not exceed two years, except as stated below.

The two-year period will be extended in order to accommodate circumstances which prevented the returnee from reasonably reporting or applying. This extension will be of minimum duration to reasonably resolve the difficulty beyond the returnee's control.

J. DOCUMENTATION TO RETURN TO WORK

1. USERRA requires the restoration of returnees in a 'prompt fashion.' The following documentation is to be requested from a service returnee who was absent in excess of 30 days.

   - The person's timely application.
   - DD214 or other official documentation showing that the returnee did not exceed the five-year limitation.
   - DD214 or other official documentation showing that the separation was under honorable conditions (see Section II D).
   - Documentation relating to convalescence or hospital confinement which resulted in a delay of returning to employment.

2. In the event that a returnee is unable to provide satisfactory documentation
   - The returnee is to be 'promptly' reemployed.
   - Subsequently, if the returnee is not able to provide documentation that meets the eligibility requirements for restoration, the individual can be separated.

III. REEMPLOYMENT POSITIONS

A. LENGTH OF SERVICE

Returnees from the uniformed services are to be reemployed promptly based on their length of military service as defined in the following categories:

1. **1 to 90 Days of Service**

Without exercising any other options, the returnee will be restored in accordance with the following priority:

a) The returnee will be restored to the seniority, step, and position he or she would have held if he or she had remained continuously employed; this is known as the escalator position. This means that craft employees progress in accordance with the provisions of the appropriate contract as if they had been active with the Postal Service during the period of military service.

Employees who were serving their probationary period at the time of entry into active duty and who met the probationary time period while serving on active duty are considered as having met the probationary requirement.

b) If the employee is unable to qualify, then the employee is assigned to:

- The position held prior to entry in the service with full seniority. If not qualified in that position after reasonable effort, then

- To any position of lesser status and pay, with full seniority, that the returnee is qualified to perform.

2. **91 Days and More Service**

Without exercising any other option, the returnee will be restored according to the following priority:

a) To the escalator position with full seniority. If not qualified after reasonable effort, then

b) To a position of like seniority, status, and pay. If not qualified after reasonable effort, then

c) To the position held prior to entry in the uniformed service, with full seniority, status, and pay. If not qualified after reasonable effort, then

d) To any position of lesser status and pay, with full seniority, that the returnee is qualified to perform.

B. RETURNEES WITH A SERVICE-CONNECTED DISABILITY

The following is the priority for reemploying individuals who return from the uniformed service with a service-connected disability:

1. Restore the applicant to the escalator position with reasonable accommodation. If not qualified for the position after a reasonable effort to accommodate the disability, then

2. Employ in any other position equivalent in seniority, status, and pay which the applicant is qualified to perform with reasonable accommodation. If the applicant is not qualified after a reasonable effort to accommodate, then

3. Employ the applicant with full seniority, consistent with the circumstances of the individual's case, in a position which approximates as nearly as possible the equivalent position in number 2 above in terms of status and pay.

C. REASONABLE EFFORT TO QUALIFY - REASONABLE ACCOMMODATION

Postal management is obligated to make reasonable efforts to qualify returning individuals who are not immediately qualified to assume employment in a position to which they are entitled. The qualifying efforts may include appropriate testing and training or refresher training to update skills where the employee did not have the opportunity to keep up with skills or technological advances.

Additionally, service members returning with a service-connected disability are entitled to reasonable accommodation into positions as stated in the above priority scheme, "Returnees With a Service-Connected Disability." Service members with non-service connected disabilities also are entitled to reasonable accommodation. Accommodations are to be accomplished in line with Handbook EL-307, "Guidelines on Reasonable Accommodation.

D. TEMPORARY POSITIONS

USERRA covers career and all temporary classifications. Temporary employees are reemployed for the remainder of their term if temporary employees are still used. The time spent in active service is not counted against the term of the temporary appointment.

E. EMPLOYMENT PROTECTION AND SERVICE CREDIT

1. While on military service, an employee may not be demoted or separated except for cause. Further, the employee does not participate in a reduction in force (RIF). If his or her position is abolished during the absence for military service, the employee must be reassigned to another position of like status and pay.

2. Reemployed service returnees with career status are protected from discrimination and retaliation. Furthermore, they are protected from discharge, except for cause, as follows:

   - For one year after the date of reemployment, if the period of military service was for more than 180 days.

   - For 180 days, if the military service period was for more than 30 days, but less and 181.

   - No protection is provided under this section for employees who served less than 31 days.

   - Temporary employees who are reemployed for the remainder of their term are not protected.

IV. OTHER RIGHTS

Service members are entitled to participate in the rights and benefits that are available to employees on a nonmilitary leave of absence. Furthermore, they are entitled to participate in any nonseniority right and benefit which became effective during their service time. Postal Service policy complies with USERRA and includes, but is not limited to, the features outlined below.

A. HEALTH BENEFITS

Employees in a leave without pay (LWOP) status or who separate to perform service covered by USERRA are eligible to continue health benefits coverage under FEHB for a maximum of eighteen (18) months.

For the first twelve (12) months, a career employee who chooses to continue health benefits coverage is responsible for paying the employee's share of the premium cost and the USPS will pay the employer's share. A noncareer employee who chooses to continue health benefits coverage must pay the full premium costs.

For the remaining six (6) months of allowance coverage, both career and noncareer employees who choose to continue health benefits coverage must pay the full premium, plus a two percent administrative charge, for a total of 102 percent of the premium.

Employees may pay premiums on a current basis or defer payment until returning to pay and duty status. The Postal Service, however, must pay the employer's cost on a current basis every pay period. When coverage terminates at the end of the 18-month period, employees are entitled to a 31-day extension of coverage and may convert to a non-group policy, but do not qualify for coverage under the temporary continuation of coverage (TCC) provision.

B. LIFE INSURANCE

USERRA provides for FEGLI coverage for employees on military leave without pay (LWOP) for up to twelve (12) months at no cost to the employee.

Employees who separate for military duty are considered to be in a military LWOP status for the purpose of FEGLI coverage. Life insurance coverage continues for up to twelve(12) months or until a date that is 90 days after the service with the uniformed service ends, whichever is earlier.

C. FLEXIBLE SPENDING ACCOUNT

An employee on military leave without pay (LWOP) must continue participating in the FSA program for as long as eight (8) consecutive full pay periods of LWOP, or until the end of the plan year, whichever comes first. Any eligible expenses incurred can still be paid through the FSA program, and the employee will be required to make up any contributions missed.

If LWOP lasts longer than eight (8) consecutive full pay periods, then on the first day of the ninth consecutive full pay period of LWOP, FSA participation ends. Likewise, if an employee separates, FSA participation ends. Whether FSA participation ends based on extended LWOP or separation, from that date on expenses that employees incur cannot be paid through the FSA program and employees will not owe any further FSA contributions. They are still required to make up any contributions missed before FSA participation ended.

D. PENSION BENEFITS

To receive retirement credit for military service, employees covered by the Federal Employees Retirement System (FERS) are required to contribute to the retirement fund either what they would have contributed had they not gone on military duty or a 3 percent deposit of their military earnings, whichever is less. Employees who were first covered by the Civil Service Retirement System (CSRS) on or after October 1, 1982, are required to pay a deposit of 7 percent of their military earnings. Employees who were first covered by CSRS prior to October 1, 1982, will continue to receive credit for their military service without being required to pay a deposit for this service until they qualify for social security benefits at age 62.

USERRA also expands retirement coverage to include all full-time National Guard duty if that duty interrupts creditable civilian service and is followed by reemployment on or after August 1, 1990.

E. THRIFT SAVINGS PLAN

FERS, CSRS, AND CSRS Offset employees returning from the military under the USERRA criteria may make up employee contributions that were missed due to military service.

FERS employees will receive Automatic Agency (one percent) and matching contributions along with lost earnings (retroactive interest). Retroactive interest is calculated at the G Fund rate.

FERS employees who separated and were not vested may have any forfeited funds restored to their TSP accounts.

FERS, CSRS, and CSRS Offset employees who separated and were required by TSP to have their accounts paid out may redeposit these monies. They may also have any taxable distributions for TSP loans reversed.

F. USE OF ACCRUED LEAVE DURING MILITARY SERVICE

Employees on active military service are permitted to request earned leave, such as annual or sick, during the period of military service. However, these requests cannot be approved for the purpose of qualifying an employee who is on leave without pay for holiday pay (ELM, Section 434.432). Furthermore, military leave is authorized in accordance with ELM, Section 517, Military Leave.

V. ENFORCEMENT OF USERRA

- USERRA prohibits discrimination against an applicant or an employee on the basis of service in the uniformed services and prohibits acts of reprisal for exercising a right stipulated in its provisions or for seeking its enforcement.

- Employees and applicants may file a complaint with the Veterans' Employment and Training Service (VETS) of the Department of Labor, which has the responsibility for investigating and resolving complaints. VETS has the right of reasonable access to records that it deems relevant to the case and to examine and to duplicate them. VETS has been granted subpoena power for witnesses and documentation.

- Responses to requests by VETS for information and/or records should be coordinated with Labor Relations and the Managing Counsel. Additionally, Selection, Evaluation, and Recognition will provide policy guidance.

- If VETS cannot successfully resolve the complaint, VETS may ask the office of special counsel to represent the employee in an appeal before the Merit Systems Protection Board (MSPB). Further, the employee may bypass VETS and appeal directly to the MSPB.

The remedy for violations of USERRA may include the award of backpay, lost benefits, and legal costs.

RECEIVED
APR 23
CLERK DIVISION

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17

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

APR 19 1984

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: Local
Phoenix, AZ 85026
H1C-5K-C 424

Dear Mr. Connors:

On March 23, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question in this grievance is whether employees are permitted to fill out Standard Form 1178 (Authorization for Deduction of Union Dues) during employee orientation.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case:

> Completion of SF 1187 as identified in ELM 913.414 may be accomplished during employee orientation in the areas designated by management.

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

Sincerely,

Thomas J. Lang
Labor Relations Department

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

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

March 19, 1999

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

Dear Bill:

This letter is in regard to your February 23 correspondence and my February 19 response concerning the union's right to medical documentation for the processing of grievances. Upon further review, the following revises the earlier Postal Service position regarding union requests for medical information.

In requesting employee medical documentation, a collective bargaining representative, i.e., authorized union representative, must demonstrate that the information sought is relevant and necessary to his/her duties in accordance with the collective bargaining agreement.

Demonstration of relevancy is addressed by answering the following two questions:

- What is the precise bargaining issue, grievance, or contemplated grievance involved?

- Why does the union claim that the information being sought is relevant and necessary to resolving the issue or dispute?

Upon receipt of this type of request and demonstration of relevancy, the information will be released, as appropriate.

Specific instructions to the field regarding the aforementioned process can be located in Management Instruction (MI) EL-860-98-2, Employee Medical Records. This MI was sent to the American Postal Workers Union on January 9. Enclosed is a copy of the transmittal letter and document.

Should there be any questions regarding the foregoing, please contact Thomas J. Valenti of my staff at (202) 268-3831.

Sincerely,

Peter A. Sgro
Acting Manager
Contract Administration (APWU/NPMHU)

Enclosure

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

APWU

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

February 23, 1999

Dear Tony:

Pursuant to the Memorandum of Understanding regarding the NLRB Dispute Resolution Process the national parties are in disagreement over the employer's obligation to provide the union employees' medical information related to the duty of representation. The February 19, 1999, letter signed by Peter Sgro makes reference to "this balancing test meets both the need for information while protecting the confidentiality of an employee's medical records." This "balancing test" refers to the prior paragraph recognizing the practice of local offices establishing "procedures that the union obtain an employee's consent before it releases medical records to the union representative." The union disagrees.

Pursuant to the ADRP this is to request that the national parties "meet and discuss the matter at the Headquarters level no later than the end of the month following the denial of the information request and to exchange written statements of position and copies of related correspondence and documents prior to the meeting."

Please schedule the meeting during the month of March at your earliest opportunity.

Sincerely,

William Burrus
Executive Vice President

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

National Executive Board
Moe Biller
President
William Burrus
Executive Vice President
Robert L. Tunstall
Secretary-Treasurer
Greg Bell
Industrial Relations Director
[illegible] "Cliff" Guffey
[illegible]ctor, 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

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

February 19, 1999

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

Dear Bill:

This letter responds to the Postal Service's October 20, 1998 interim letter and your September 18, 1998 correspondence concerning the union's right to medical documentation for the processing of grievances.

Requests for medical information are handled somewhat differently than other union requests for information due to the sensitive nature of the information requested. Because of that factor, the Postal Service, at a number of installations, has established procedures that the union obtain an employee's consent before it releases medical records to the union representative.

We believe this balancing test meets both the need for information while protecting the confidentiality of an employee's medical records.

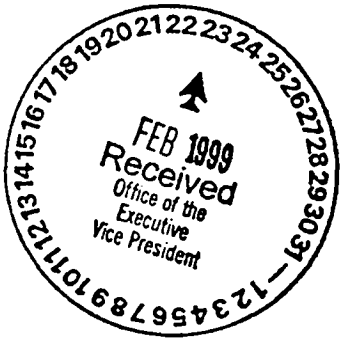
The sensitive nature of this type of request may result in instances where the medical records will not be provided to the union without a release. If the Postal Service believes that the medical request contains sensitive information which an employee might not want released, the union will be contacted and informed that the information will be released upon receipt of the employee's request to do so.

Should there be any questions regarding the foregoing, please contact Thomas J. Valenti of my staff at (202) 268-3831.

Sincerely,

Peter A. Sgro
Acting Manager
Contract Administration (APWU/NPMHU)

cc: Mr. Biller
Mr. Hajjar



475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

January 19, 1999

RE: HQT-G1999-2

Dear Mr. Potter:

By letter of September 18, 1998, I forwarded a letter raising an issue of concern regarding the union's right to medical documentation. To date, I have not received a response so this is to initiate a Step 4 grievance on the union's right to medical documentation without obtaining the consent of the employee whose medical records are needed to process or consider the processing of grievance.

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
[illegible]eg Bell
[illegible]dustrial Relations Director
Robert L. Tunstall
Director, Clerk Division
James W. Lingberg
Director, Maintenance Division
Robert C. Pritchard
Director, MVS Division
George N. McKeithen
Director, SDM Division

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Mr. John Potter
Vice President
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

September 18, 1998

William Burrus
Executive Vice President
(202) 842-4246

Dear Mr. Pulcrano:

I am informed that the issue of the union's right to medical documentation for the processing of grievances has become an issue in offices throughout the country. Postal officials are interpreting the statute as requiring the union to obtain individual waivers from employees prior to having access to medical documentation. This issue has previously been discussed and satisfactorily resolved by the parties through agreement that the union is not required to obtain employee waivers to have access to medical documentation relative to issues under consideration for the filing or processing of grievances.

The agreement reached in the Information Request Memorandum of December 18, 1997 incorporates the parties most recent agreement on this subject, providing that "The law has developed special rules for union requests for information relating to .....employee medical information". The "special rules" of the National Labor Relations Board, the Privacy Act and USPS regulations provide that the union is not required to obtain waivers for access to medical records relative to the duty of representation.

Please respond with the employer's interpretation of the law and regulations regarding the union's access to medical records.

Thank you for your attention to this matter.

Sincerely,

William Burrus
Executive Vice President

Mr. Samuel Pulcrano, Manager
Contract Administration
475 L'Enfant Plaza, SW
Washington, DC 20260

National Executive Board
Moe Biller
President

William Burrus
Executive Vice President

Douglas C. Holbrook
Secretary-Treasurer

[redacted]ell
[redacted]al Relations Director

Robert L. Tunstall
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Northeast Region

Terry Stapleton
Southern Region

Raydell R. Moore
Western Region

UNITED STATES POSTAL SERVICE®

Management Instruction

Date	5/15/98
Effective	Immediately
Number	EL-860-98-2
Obsoletes	HBK EL-806, Ch. 2
Unit	Safety & Workplace Assistance

Yvonne D. Maguire
Vice President
Human Resources

Employee Medical Records

Introduction

This instruction, which replaces Chapter 2 of Handbook EL-806, *Health and Medical Service,* provides guidelines for maintaining the status, availability, organization, and security of employee medical records. These records are essential in the administration of effective services.

Overview

A cornerstone in the development and maintenance of the Postal Service Occupational Health Program is the employee medical record. These employee records are the property of the U.S. Postal Service and are essential in the administration of effective health-related services. The occupational health professional has responsibility for the collection, use, organization, disclosure, and security of employee medical records.

The Postal Service recognizes the sensitive nature of employee medical records and places great emphasis on the custodianship and confidentiality of these documents. Postal Service employee medical records are covered by the Privacy Act. (Privacy Act Systems of Records, System USPS 120.090, *Administrative Support Manual* (ASM) 353, and 5 U.S.C. 552a.)

Questions about access to, or disclosure of, medical records involve the Privacy Act, which applies to records about individuals that are maintained in government systems of records. Although the Privacy Act applies only to information obtained from records, any medical information, whether written or verbal, must be kept confidential, both as a matter of policy and to avoid legal disputes. The Privacy Act provides criminal penalties for any employee who willfully discloses information knowing that disclosure is prohibited, and for any person who knowingly and willfully requests or obtains under false pretenses any records about another person. The Privacy Act prohibits additional copying of covered

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Sample Letter Denying an Individual's Request for His or Her Own Medical Records

documents, verbal disclosure of information contained in the documents, or distribution of the documents to any person not authorized to receive the information.

Subject to very limited exceptions, such as when release may adversely affect the individual, the Privacy Act permits individuals to obtain access to records about themselves, including medical records, that are maintained in systems of records covered by the Act. The Act prohibits disclosure of an individual's records to persons outside the Postal Service without the individual's express, written consent, except in specified circumstances (see *Release of or Access to Restricted Medical Information*). As noted above, information obtained from a record in a Privacy Act system is protected from disclosure by any means. Thus, a wrongful disclosure may occur under the Privacy Act even if the record itself is not disclosed (i.e., verbal disclosure of information contained in a record).

The Privacy Act and postal implementing regulations at ASM 353 apply to all occupational health professionals, including those under contract with the Postal Service to provide occupational health services. The Postal Service retains ownership of medical records held by the Postal Service or by an occupational health professional under contract with the Postal Service to provide occupational health services. Contractor health professionals must maintain Postal Service records separate from their general filing system and must make them available to a Postal Service health professional upon request or contract termination.

Postal health professionals are bound by federal statutes and regulations regarding their conduct. To the extent that conflicts between ethical standards for such professionals and federal statutes or regulations exist, the federal statutes or regulations will generally take precedence.

Definition

A medical record is any document maintained by the Postal Service or contracted medical provider that contains medical information about current or former employees or applicants for employment.

Categories of Medical Records

The Postal Service maintains three distinct types of medical records, each of which serves a particular function: (1) restricted medical records, (2) administrative medical records, and (3) Office of Workers' Compensation Programs-related medical records. Regardless of the type, access must be limited to those individuals who have a legitimate need to know.

Custodians of Medical Records

Custodians are legally responsible for the retention, maintenance, protection, disposition, disclosure, and transfer of the records in their custody, and for seeing that records within the facilities are managed according to Postal Service policies.

To facilitate both medical and administrative functions, the national medical director delegates custodial responsibility to the senior area medical directors. Additionally, the associate area medical directors, the occupational health nurse administrators (OHNAs), and the health unit staff nurses are considered to have custodial responsibility in the execution of their daily medical and nursing activities. It is the OHNA's responsibility to be aware of the location of the restricted medical records of all employees in the performance cluster.

For facilities without health units, it is the responsibility of the installation head to guarantee that the restricted medical records are maintained and secured by medical personnel. The occupational health nurse administrator serves as the custodian of the restricted medical records in the performance cluster (see Authorized Requester Categories).

Restricted Medical Records

Definition

Restricted medical records contain medical information that is highly confidential, reflect the privileged employee-occupational health provider relationship, and have the most limitations placed on both their access and disclosure. The national medical director is responsible for the handling of all restricted medical records held by the Postal Service. This responsibility is delegated to the senior area medical directors and other medical personnel who are the custodians of medical records maintained within the postal facilities. The purpose of this delegation is to expedite the handling of medically related issues as required by the Postal Service.

Only medical personnel or postal personnel with a need to know have access to this material (see Authorized Requester Categories, Administrative Medical Records, Office of Workers' Compensation Programs-Related Records). These records are maintained only in medical offices or facilities in employee medical folders (EMFs) unless otherwise directed by the national medical director. These offices or facilities include:

— Health units.

— Offices of the occupational health nurse administrators (OHNAs).

— Offices of the senior or associate area medical directors.

— Medical facilities contracted by the Postal Service.

Postal Service employee medical records held in contracted medical facilities must be sequestered from the general facility filing system. The Postal Service is the owner of these records and must be provided with these records on request. Because contractor records are Postal Service records subject to the Privacy Act, they are subject to the same rules of access and disclosure as records maintained by the Postal Service. If a contractor receives a request for medical records related to a postal employee, the request must be referred to the OHNA or designated custodian for a response. Records maintained by the contractor must be released to the Postal Service upon cancellation of the contract.

Employee Medical Folder

An employee medical folder (EMF) is established for each employee or applicant for whom detailed medical records are obtained or created. There may be medically related documents found in the EMF that are not considered to be restricted medical records.

The EMF includes, but is not limited to, the following:

— Form 2485, *Medical Examination and Assessment.*

— Other medical documentation used to make suitability determinations.

— Drivers' physical examination records.

— Form 1997, *Health Unit Case Record.*

— Laboratory, radiographic, and electrocardiographic records.

— Diagnoses.

— Medical information used in the assessment of disability retirement requests.

— Medical documentation concerning involuntary separation for medical reasons.

— Medical documentation concerning limited or light duty as a result of medical problems.

— Medical and industrial hygiene information relative to toxic exposures.

— Vaccine record and consent forms.

— Audiometry records, baseline and periodic.

— Medical documents pertaining to dependent child determinations.

— Family Medical Leave Act medical documentation, when it includes restricted medical information, diagnoses and/or does not involve a workers' compensation claim.

— Medical forensic documents.

— Copies of subpoenas for medical records.

Restricted medical records include drug and alcohol testing results. Nonrestricted documents related to drug and alcohol testing may be maintained in the relevant personnel office.

Security of Restricted Medical Records

All records containing restricted medical information must be marked *"RESTRICTED MEDICAL"* and filed in locked cabinets. Keys must be kept by medical personnel unless otherwise directed by the national medical director. These records may be reviewed or released only under specific conditions and authority.

Release of or Access to Restricted Medical Information

Every request for review or release of restricted medical records must be submitted in writing to the records custodian in the format provided in Attachment 2 and filed in the employee medical folder (EMF) (see Attachment 2). The requesting individual, except for the subject employee, must state the purpose for which the medical information will be used. *The requester must be provided restricted medical information on a need-to-know basis.*

Whenever information from a restricted medical record is released to any authorized person, the EMF must note that action, including:

— The purpose as expressed by the requester.

— The requester's name, address, and organization.

— The signature of the requester.

— The information released.

— The date the information was released.

An annotated copy of the request letter will serve this purpose as long as the letter responds to those requisites (see Attachment 2).

Requesters never automatically receive restricted medical information. Except as provided below, no more information may be reviewed or released than is required to satisfy the need. A request for restricted medical information from any individual not listed in authorized requester categories (see Authorized Requester Categories below) must be forwarded to the senior area medical director.

As noted above, applicants or employees generally are granted access to their own medical records. However, in response to an individual's request for his or her own medical records, the Postal Service records custodian has the discretion to postpone the release of such records. If he or she determines that such release may cause hardship or danger to the individual, the restricted medical records custodian shall request the name and address of the employee's private physician and, if appropriate, forward the records under sealed, restricted cover to that physician. (See *Authorized Requester Categories, Category I, Employees or applicants.*)

Authorized Requester Categories

All requests must be submitted in writing preferably using the form provided in Attachment 2.

Category I

Requesters of restricted medical records or information who may submit requests directly to the medical facility or restricted medical record custodian include the following:

— *Postal Officials:*

a. Installation head.

b. Other postal medical personnel.

c. Human Resources managers.

d. Postal Service injury compensation specialists.

e. Postal Service attorneys and Labor Relations specialists.

In general, those officials identified above should, upon request, receive restricted medical records, and not merely a summary thereof.

Postal officials who are provided copies of restricted medical records upon proper request are responsible for the security for such records, and for protecting such records in accordance with the Privacy Act. If the medical personnel have any concerns about the release of such records, the issue should be raised with the National Medical Director. *If a situation occurs where litigation is in process or imminent, the relevant information may be released upon oral request, but must be followed immediately with written documentation of the request and response.*

— *Employees or applicants,* i.e., individuals to whom the records pertain (record subjects) or any designees authorized in writing by those individuals:

Individuals may obtain copies of their medical records in response to written requests. No fees may be charged unless the copies exceed 100 pages (ASM 353.413b).

Individuals may personally review their medical files and, if they wish, obtain copies of selected records. Generally, records are available for inspection and copying during regular business hours, but any reasonable time and place may be designated (ASM 353.414). Third parties may be present only if authorized in writing by the individual (ASM 353.325b).

Employees sometimes submit requests, pursuant to either the Freedom of Information Act or the Privacy Act, that seek answers to questions or other information that is not contained in Postal Service records. Neither Act requires the Postal Service to provide such information, but the information may be provided, if appropriate. If a request for information other than records is denied, the

requester should still be advised of the right to appeal to the General Counsel.

If the Postal Service custodian of restricted medical records determines that the release of all or part of the records to the employee or applicant would have adverse effects on the employee, the custodian must provide the requester with the following:

a. The date, subject, and creator of each record or related set of records that is being withheld (see Attachment 3 or Attachment 4).

b. A statement that a copy of the requested record will be released to a physician designated by the employee.

c. A statement citing the requester's right to appeal the withholding decision to the Postal Service General Counsel at Headquarters. The General Counsel, in consultation with the National Medical Director, will decide the appeal. Attachment 3 or Attachment 4 represents the document that must be given to the requester when release of restricted medical record is denied. A copy of Attachment 3 or Attachment 4 must be placed in the EMF.

— *Requester with authority of compulsory legal process, i.e., Postal Inspection Service:* In the case of an investigation, the inspector must put the inquiry in writing and submit the request using an official need-to-know request document or document of similar format.

— *Third parties outside the Postal Service:* Third parties may obtain an individual's medical records only in specified circumstances (see ASM 353.325). The subject individual's consent to release medical records to third parties must be written. This consent must be dated not more than one year prior to the date the request is received. Authorized third parties include:

a. Disclosure in Emergencies: The Privacy Act authorizes disclosure "pursuant to a showing of compelling circumstances affecting the health or safety of an individual." Thus, records may be disclosed to handle a medical emergency. This authority is limited to emergencies, however, and the individual whose records are disclosed must receive prompt, written notification of the disclosure.

b. Office of Personnel Management making determinations relating to:

- Veterans' preference.
- Disability retirement.
- Benefit entitlement.

c. Federal benefits program administrators:

- Office of Workers' Compensation Programs.
- Retired Military Pay Centers.

- Department of Veterans Affairs.
- Social Security Administration.
- Public Health Service.

d. Contracted community-based medical facilities providing medical examinations or other medical services.

Category II

Requesters of restricted employee medical records or information who must *submit requests through the employee's installation head* include the following:

— *Postal officials, other than those listed in Category I, acting in an official capacity and in need of specific information:* Medical personnel must first summarize that portion of the medical record necessary and relevant to the requester's need. This must be a written summary. If the requester reviews the summary and claims that the summary is insufficient for their purpose, the medical professional may extract specific portions of the medical record and deliver this material to the requesting postal official. The official is responsible for restricting its use and availability to other persons in accordance with the Privacy Act.

— *Collective bargaining representatives,* i.e., authorized union representatives, acting on behalf of the employee in an official union capacity: The representative must demonstrate that the information sought is relevant and necessary to collective bargaining. Medical personnel must ask the Labor Relations official to assist in a joint decision of relevancy and necessity.

a. In certain cases, employee medical records may be provided without an employee's authorization to a postal union official under the collective bargaining agreement to which the Postal Service is a party. Requests from postal union representatives without an employee's authorization must be carefully reviewed. Information that is relevant and necessary to collective bargaining is available to an authorized representative *only when acting officially.*

b. When a union representative submits a request to inspect an employee's restricted medical records without the employee's authorization, the installation head should instruct the appropriate Labor Relations official to obtain specific answers from the union representative to the following questions (if not provided in the request letter):

- What is the precise bargaining issue, grievance, or contemplated grievance involved?
- Why does the union claim that the information being sought is relevant and necessary to resolving the issue or dispute?

c. If the union representative provides a response to the above questions that the Labor Relations official believes to be inadequate, the installation head should be advised to deny the request.

d. If the union representative provides sufficient response and the Labor Relations official and medical personnel agree that the medical information is relevant and necessary, the official will forward the union request to the medical facility where the record is maintained for disclosure.

— *Postal Equal Employment Opportunity officials,* i.e., Postal Service EEO counselors and investigators when handling an EEO complaint: Refer to "postal officials" above.

— *Requesters involved in legal proceedings* in which the Postal Service is a party before a court, administrative body, or tribunal, or other adjudicatory body: This does not include Postal Service attorneys.

— *Federal, state, or local agencies when there is an indication of a violation of the law, whether civil, criminal, or regulatory in nature:* Information contained in employee medical records may be provided, when necessary, to an agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order involved.

— *Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health* when needed by either of these organizations in accordance with 29 CFR 19.

— *Auditors:*

a. National medical program auditors.

b. Other auditors and group data collectors as deemed appropriate by the national medical director and the vice president of Human Resources. Records selected for audit must have all employee identifiers eliminated prior to the audit.

A request for restricted medical information from anyone not listed in Category I or Category II must be forwarded to the responsible area medical director.

Supervisor Handling of Medical Information

Medical documentation is necessary to certify the need for medically related absence, sick leave, light duty, or other administrative activities or decisions. Medical documents received by a supervisor from an employee that contain a diagnosis are considered to be restricted medical records and must be forwarded to the local medical records custodian for placement into the employee medical folder. Supervisors, upon re-

ceipt of restricted medical documentation, are subject to Privacy Act requirements concerning the proper handling of restricted medical information.

Withholding Release of Restricted Medical Records

Restricted medical records are exempt from mandatory public disclosure under Section (b)(6) of the Freedom of Information Act (5 USC 552 (b)(6)). An FOIA requester who does not fit into one of the authorized requester categories must be denied the information requested and advised of his or her appeal rights (ASM 352.54).

The requester should be provided the following if the request is denied:

— The date, subject, and creator of each *record* or related *set* of records that is being withheld (see Attachment 3).

— A statement citing the requester's right to appeal the withholding decision to the Postal Service general counsel at Headquarters. The general counsel, in consultation with the national medical director, will decide the appeal (ASM 353.433c). Attachment 3 represents the document that must be given to the requester when release of restricted medical records is denied. A copy of Attachment 3 should be placed in the EMF (ASM 353.428b-c).

Before denying an individual's request for access to his or her own medical records, the medical director or designee must consult with Labor Relations or Postal Service counsel (ASM 353.428a and *Authorized Requester Categories, Category I).*

Individual's Right of Amendment

The Privacy Act permits individuals to request amendment of their records on the grounds that the records are not accurate, relevant, timely, or complete. Most requests for amendment involve challenges to the accuracy of the records. A record need not be amended, however, unless it is factually inaccurate. An individual's disagreement with professional opinions, diagnoses, or evaluations is not grounds for amendment. If a request for amendment is denied, the requester must be advised of the right to appeal to the General Counsel.

Transfer or Mailing of Medical Records

Procedures for transferring or mailing medical records are outlined as follows:

— *Employee is transferred from one Postal Service duty station to another.* The medical folder should be double-enveloped and the inner envelope should be marked *"RESTRICTED MEDICAL — to be opened by medical personnel only"* and sent to the district occupational health nurse administrator.

— *The employee is being transferred to another Federal agency.* Copies of restricted medical records may be sent by Postal Service medical records custodians directly to other Federal agency medical records custodians only if such record transfer is requested in writing by the record subject. Postal medical record custodians are not to send records to other agencies as a routine procedure. Postal medical records are not to be merged with other Federal agency medical records. However, when an individual is transferred from another Federal agency to the Postal Service, that agency's medical records may be merged in the Postal Service EMF. When the Postal Service receives a request from a former employee, other Federal agencies, or third-party requester for access and release of these other agency medical records (previously received either in an OPF or from a newly hired employee), the Postal Service forwards copies of those medical records (for determinations on releasability) only to the address below. The Postal Service will notify the requester of the referral.

OPM'S OPF/EMF ACCESS UNIT
PO BOX 18673
ST LOUIS MO 63118-0673

Note: Postal Service medical records may be identified by the dates of employment of the postal employee as they relate to the records. This includes Form 1997, as well as other medical documents.

Duplicate copies of restricted medical records must always be sent by *certified mail.* Originals must be mailed by *registered mail,* with a return receipt requested, and a copy should be maintained at the medical facility.

Federal Record Centers and Record Storage and Retrieval

The Postal Service is currently transferring medical records for employees separated on or before December 31, 1989 to the Federal Record Centers (FRC) and to the National Personnel Records Center (NPRC) in St. Louis, MO for employees separated on or after January 1, 1990.

On an annual basis, occupational health nurses should purge the records of all separated employees and transfer them to the appropriate record center. Be sure to maintain a list of all EMFs that have been forwarded from your office in order to facilitate fulfilling requests for these records at a future date.

EMFs should be sent by registered mail to:

CIVILIAN PERSONNEL RECORDS
NATIONAL PERSONNEL RECORDS CENTER
111 WINNEBAGO ST
ST LOUIS MO 63118-4199

Retrieval of Separated Employee Folders

Written requests for medical records will be routed through the National Medical Director at Headquarters:

NATIONAL MEDICAL DIRECTOR
OFFICE OF SAFETY AND RISK MANAGEMENT
HUMAN RESOURCES DEPARTMENT
USPS HEADQUARTERS
475 L'ENFANT PLAZA SW RM 9801
WASHINGTON DC 20260-4235

Retrieval From the Federal Record Centers

Only medical directors may retrieve medical records from the FRCs. Medical directors must use Optional Form 11, *Reference Request — Federal Record Center.* FEDSTRIP ordering offices order this form directly from General Services Administration (GSA); non-FEDSTRIP ordering offices order this form directly from their supporting MSC supply section or their GSA Customer Supply Center.

Administrative Medical Records

Definitions

Administrative medical records are documents that may contain medical information and have limitations placed upon their access or disclosure. These documents provide medical information necessary for management decisions and document management actions.

Custodian: There may be multiple custodians of administrative medical records. Custodians are legally responsible for the retention, maintenance, protection, disposition, disclosure, and transfer of the records in their custody, and for seeing that records within the facilities are managed according to Postal Service policies.

This medical information is maintained by non-medical personnel and is filed in the official personnel folder or within other related files.

Administrative medical records include, but are not limited to:

— Physician statements relative to the employee's fitness-for-duty that contain no restricted medical information.

— Unrestricted portions of *Medical Examination and Assessment* (Form 2485, pages 1 and 6).

— *Authorization for Medical Attention* (Form 3956).

— Sick leave requests.

— Blood donation records.

— Medical suitability waivers.

— Applicant Drug Test personnel notification form.

— Dependent child determinations based on medical information.

Access

Administrative records may be accessed by postal managers or their designees who have a legitimate need to know.

Office of Workers' Compensation Programs-Related Records

OWCP medical records relate specifically to employee job-related injury or illness. These records are ultimately maintained by injury compensation personnel and include medical information relating to the diagnosis, treatment, and prognosis of injuries or illness for which compensation is or may be claimed. Copies may also be maintained in the EMF. Documentation includes Department of Labor forms and relevant medical information submitted by a physician or other health care provider. OWCP-related records may be made available to postal managers and other authorized officials for injury compensation program matters (ELM 540).

Subpoenas

To the extent required by law, medical personnel must comply with subpoenas, court orders, or other legal processes calling for the disclosure of restricted medical records. When the United States or the Postal Service is not a party to a lawsuit, the release of medical information or records pursuant to a subpoena or court order in litigation is governed by the Privacy Act and the Postal Service's Touhy regulation at 39 CFR 256.12. When restricted medical records are released in response to a subpoena or court order, the medical record custodian must include a cautionary statement as to the possible adverse effect if information from the record were known to the subject or to the public. *The manager of Human Resources and the Postal Service General Counsel in the relevant area or district should be contacted immediately upon receipt of a subpoena.*

Fitness-for-Duty Examinations and Release of Medical Information

Fitness-for-duty examination medical reports, submitted by the examining or consulting physician, are sent to the Postal Service associate medical director (AMD) for review. These reports are considered restricted medical information and must be handled as such. Upon completion of the review process, the AMD makes a recommendation based upon the examination or consultation findings to management

through the district manager of Human Resources or his or her designee. In the event that the district manager of Human Resources considers that full disclosure of the report is necessary, he or she should contact the AMD. The district manager of Human Resources or his or her designee is deemed to have a legitimate need to know (see *Authorized Requester Categories, Category I*), and the AMD should honor the request. The AMD must advise the district manager of Human Resources concerning the significance of relevant information contained in the report. If a dispute develops between the AMD and the district manager of Human Resources over disclosure, such dispute will be resolved by the area medical director in consultation with the area manager of Human Resources.

The district manager of Human Resources is responsible for safeguarding the confidentiality of restricted records and limiting access to those who have a specific need to know. The confidential information must be segregated from other records while in the custody of Human Resources personnel. Upon resolution of the issues under consideration, all confidential information must be returned to the official custodian.

Authorized Requester Categories

CAUTION: Requesters in this list never automatically receive restricted medical information. No more information may be disclosed than is required to satisfy the need. A request for restricted medical information from anyone not listed in Categories I and II must be forwarded to the Area Medical Director. Requesters are identified in Privacy Act System 120.090 (ASM, Appendix B).

All requests must be submitted in writing, preferably using the form demonstrated in Attachment 2.

Category I

Requesters of restricted medical records or information who may *submit requests directly to the medical facility or restricted medical record custodian* include the following:

A. **Postal officials:** Installation head, other medical personnel, Human Resources managers, Postal Service Injury Compensation specialists, Postal Service attorneys and Labor Relations representatives.

B. **Requesters with authority of compulsory legal process such as subpoenas:** Includes Postal Inspection Service.

C. **Third parties in limited situations only:**

1. Emergency Medical Personnel.
2. Office of Personnel Management: Veterans' Preference, Disability Retirement, Benefit Entitlement.
3. Federal benefits program administrators: Office of Workers' Compensation Programs, Retired Military Pay Centers, Department of Veterans Affairs, Social Security Administration, Public Health Service.
4. Community-based medical facilities.

D. **Subject employees or applicants.**

Category II

Requesters of restricted employee medical records or information who must *submit requests in writing through the employee's installation head* include the following:

A. **Postal officials, other than those listed in Category I.**

B. **Collective bargaining representatives.**

C. **Postal Equal Employment Opportunity officials.**

D. **Requesters for legal proceedings in which the Postal Service is a party:** This does not include Postal Service attorneys.

E. **Federal, state, or local agencies** when there is an indication of a violation of the law, whether civil, criminal, or regulatory in nature.

F. **Occupational Safety and Health Administration and the National Institute for Occupational Safety and Health** when needed by either of these organizations in accordance with 29 CFR 19.

G. **Auditors:** National Medical Program auditors, their auditors and group data collectors as deemed appropriate by the national medical director and the vice president of Human Resources. Records selected for audit must have all employee identifiers eliminated prior to the audit.

Attachment 2
Request for Medical Information (Restricted Medical Records)

UNITED STATES POSTAL SERVICE

REQUEST FOR MEDICAL INFORMATION (RESTRICTED MEDICAL RECORDS)

Requests for restricted medical information must be submitted in writing. MI EL-860-98-2, *Employee Medical Records*, cites the categories of requesters as well as to whom the request must be submitted. Requests that are not sent directly to the Medical Director or Occupational Health Nurse Administrator are submitted to the installation head.

Name of Employee_____ SSN_____

Requester's Name_____ Title_____

Information Requested_____

_____

Reason for Request_____

_____

Signature of Requester_____ Date_____

Signature of Employee_____ Date_____

Signature of Installation Head/Designee_____ Date_____

MEDICAL FACILITY ACTION

Action Taken_____

_____

Information Released/Denied_____

_____

Requester's Signature_____

Custodian's Signature_____ Date_____

Note: Retain this document in the employee's medical folder.

Attachment 3
Restricted Medical Records Withheld

RESTRICTED MEDICAL RECORDS WITHHELD

In accordance with MI EL-860-98-2, *Employee Medical Records,* the restricted medical record that has been requested is being withheld.

The custodian of restricted medical records withholds release of the requested information for the following reason(s).

_____ Insufficient 'Need to Know' justification.

_____ Release of part or all of the requested information to this requester would have adverse effects or impact negatively upon the employee.

_____ Other _____

Date of withheld document/information _____

Subject of the withheld document/information

_____

_____

_____

_____

Creator of the withheld document/information

_____

_____

_____

The custodian of restricted medical records may determine that the requested document or information will be released to a physician designated by the employee. This includes requests made by the employee when the custodian determines that release of the information should be through the employee's private physician.

The requester has the right to appeal the withholding decision to the Postal Service General Counsel at Headquarters. The General Counsel, in consultation with the National Medical Director, will decide the appeal.

Requester's signature _____ Date _____

Requester's name (print) _____

Custodian's signature _____ Date _____

Custodian's name (print) _____

Attachment 4

Sample Letter Denying an Individual's Request for His or Her Own Medical Records

UNITED STATES POSTAL SERVICE

SAMPLE LETTER DENYING AN INDIVIDUAL'S REQUEST FOR HIS OR HER OWN MEDICAL RECORDS

Dear Medical Records Requester:

This responds to your letter dated [__*date*__], in which you requested a complete copy of your Postal Service medical file. Enclosed are [__*number*__] pages of records from your file. It has been determined, however, that the report of the examination conducted by Dr. [__*name*__] on [__*date*__] could have an adverse effect on you if it is released directly to you. Therefore, the report will be provided only to a physician designated by you. If you wish to designate a physician to receive the report, please submit a written designation to this office.

If you consider this letter to be a denial of your request, you may submit an appeal to the General Counsel, United States Postal Service, 475 L'Enfant Plaza, SW, Washington, DC 20260-1100. A letter of appeal must include: (1) reasonable identification of the records to which access was requested, (2) a statement of the action appealed and relief sought, and (3) copies of the request, notification of denial, and any other related correspondence. The appeal procedure may be found in ASM 353.433c.

[__*signed*__]

475 L'Enfant Plaza SW RM 10022
Washington DC 20260-0010

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

January 9, 1998

Mr. Moe Biller
President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Moe: 806

This is in further reference to our March 19, 1997 correspondence providing notification of proposed revisions to Chapter 2, Employee Medical Records of Handbook EL-860. Those revisions were dated March 10. The final draft, enclosed for your perusal, is now being issued as Management Instruction EL-860-98-x and will replace and thereby render Chapter 2 of Handbook EL-860 obsolete.

Please note that the format of the March 10 revision has been changed to comport with Management Instruction guidelines. Additionally, subsequent discussions with union officials identified supervisor handling of medical information as an area of concern that was not addressed in the original Chapter 2 of the EL-860 or the March 10 proposed draft. Therefore, language to address that issue has been included on page 9 of the Management Instruction under the title, *Supervisor Handling of Medical Information*. There are no other substantive changes to the March 10 revision.

Should you have any questions or wish to meet to discuss this matter, please contact Corine T. Rodriguez at (202) 268-3823.

Sincerely,

Sherry A. Cagnoli
Manager
Contract Administration (NALC/NRLCA)

Enclosure

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

DATE: December 26, 1986

OUR REF:

SUBJECT: Use of Personal Vehicles While on Duty

TO:

I have reviewed the questions presented
They relate to the situation where a Postal employee is traveling in their personal vehicle while in an on-duty status and is involved in an accident. This is a common situation, and the answers to the questions presented are quite clear.

The Postal Service will pay damages to the other vehicle if it is established that the Postal Service employee was negligent. This is also true as to personal injury damages to the driver of the other vehicle. The Postal Service will not pay for the damage done to the vehicle of the Postal employee. The Postal employee will be entitled to benefits from OWCP under the Federal Employees Compensation Act, if he is injured.

Fault does not enter into whether the Postal Service would pay damages, except in determining whether payments are due to the driver or owner of other vehicles involved in the accident or other parties injured in such an accident. The Postal Service is liable for any such damages which are attributable to the wrongful or negligent conduct of a Postal Service employee acting in the scope of his or her employment. The Postal employee is entitled to OWCP benefits whether or not he or she was at fault in the accident. The Postal Service will not pay damages to the employee's vehicle, even when the employee is not at fault.

The Postal Service will not pay any increase in premiums if the insurance company charges more as a result of use of a private vehicle in Postal employment. The Postal Service will pay medical care for non-employees injured as a result of the wrongful or negligent acts of a Postal employee, acting in the scope of their employment; and any other damages which a court might determine to be payable as a result of the wrongful or negligent acts of the Postal employee. The Postal employee would be covered by the OWCP just as if they were hurt in an industrial accident on the workroom floor.

The primary difference in the situation where the Postal employee is driving a Postal vehicle and when they are driving their personal vehicle is that the Postal Service will not be responsible for damages to the private vehicle of the Postal employee, whether or not the Postal employee was at fault in the accident. The Postal Service will be responsible for damages to the Postal vehicle in such situations, except to the extent that Section 3 of Article 28 of the National Agreement might be applicable.

There are some circumstances where Postal employees have contracted to use their private vehicles in the performance of Postal Service duties. In such situations, it is possible that there may be some right to order them to use their private vehicle. That is a question which I will have to leave to Postal Service Labor lawyers. Unless there is a contract between the employee and the Postal Service for the use of the private vehicle, there would never be any circumstances in which the Postal Service could order the employee to use his private vehicle. If such an order were given, the employee would be entitled to refuse to obey. It would be a wrongful effort to exert dominion over private property on behalf of the Federal Government. The Judicial process for such an exercise is quite detailed, and the Postal Service only follows such judicial route under the most unusual of circumstances. This would never be applicable to an effort to require an employee to use his personal vehicle for Postal Service purposes.

There are some private automobile insurance policies, which contain language which can be interpreted to include the United States as an additional insured. Extensive litigation has established that the Postal Service is entitled to claim the benefits of such insurance policies, even though the premium has been paid by the employee. Many insurance companies have added exclusionary language to the policies, which will eliminate this right of the Postal Service. Where the United States is included as an additional insured and there is no exclusionary language, the Postal Service will refer any claims by outsiders to the insurance company of the employee. This may have the practical effect of raising the premium, which must be paid by the employee. If an employee is concerned about such a possibility, it would be well for him to review the language in his automobile insurance policy with the agent of the insurance company.

Lyman T. Johnston

Lyman T. Johnston
Regional Counsel

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

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

APR 14 1988

Re: H7C-NA-C 6

Dear Mr. Burrus:

On February 19, 1988, David Cybulski and Charles Dudek met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management may compel employees to use their privately owned vehicles (POV) for transportation from one postal facility to another to participate in job-related training.

During our discussion, we mutually agreed that no craft employee represented by the APWU may be coerced into furnishing a privately owned vehicle or carrying passengers therein without the employee's consent.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

David P. Cybulski
Acting General Manager
Grievance & Arbitration
Division

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

UNITED STATES
POSTAL SERVICE

February 18, 1998

PCES EXECUTIVES

SUBJECT: Voice of the Employee–Workplace Relationships

During the last several years, the Postal Service has attempted to address and resolve the complex issues associated with the workplace environment and the relationships with our employees and their representatives. Recently, we have made some progress and enjoyed certain successes. We need to build on that momentum and continue to strive to improve workplace relationships and to treat each individual with dignity and respect. To ensure success in this critical area, all managers and supervisors must take the lead and set a positive example to continue to improve workplace relationships at all levels of the Postal Service. Not only does this make sense but it is the right thing to do as well.

From our standpoint, we believe that our approach in focusing on the Voice of the Employee has several key elements:

EMPLOYEE TREATMENT

While the vast majority of managers and supervisors are capable concerning all aspects of their jobs, ***renewed emphasis must be placed on treating all employees with dignity and respect.*** Each of us knows how we wish to be treated. We must provide that same treatment to our employees at all levels of the organization. As stated at the National Executive Conference in Norman, Oklahoma, each of us is responsible for ensuring that we recognize our employees when they do a great job. Conversely, when employees make mistakes, we are responsible for ensuring that we and the employees learn from those mistakes. To the extent that any manager or supervisor cannot treat employees consistent with this philosophy, appropriate counseling should be conducted, followed by relevant training as necessary. If the manager or supervisor does not accept training or is not successful, other appropriate corrective action should be considered.

CONTRACT COMPLIANCE

Emphasis must be placed on the corporate objective that all managers and supervisors must give the highest priority to compliance with our collective bargaining agreements with the various unions. No manager or supervisor at any level of this organization has the authority to override the terms of those agreements. Those collective bargaining agreements represent the commitment of the Postal Service–that is, the commitment of each of us–to abide by the terms contained therein, in our dealings with our employees. Appropriate corrective action should be considered for any manager or supervisor who knowingly, or repeatedly, violates the clear terms of any of those agreements.

475 L'Enfant Plaza SW
Washington DC 20260

In keeping with that responsibility, all managers and supervisors are expected to resolve meritorious employee complaints and/or grievances at the lowest possible level. That includes handling grievances within the contractual time limits and promptly implementing any settlements agreed to or remedies awarded. Managers or supervisors who have questions regarding the legitimacy of a complaint or grievance should avail themselves of the necessary labor relations guidance and support.

Compliance with contractual terms and prompt resolution of meritorious cases will enable us to concentrate our efforts on vigorously defending those cases in which we believe no violation has occurred. It will also lend support to our statements to the unions that the filing of repetitive or frivolous grievances is not conducive to a mature collective bargaining relationship and must be halted at once.

COMMUNICATIONS

Responsible managers are to ensure that they are conducting regularly scheduled Labor-Management Committee meetings as outlined in our collective bargaining agreements. These meetings are excellent communications vehicles to address, resolve, or diffuse local issues. Additionally, whenever necessary, managers should communicate with local union officials to keep them informed of local matters which they should be aware.

While these key elements may seem ambitious, their accomplishment is critical to the continued success of the Postal Service. Additionally, there can be no doubt that this is the correct direction for us to pursue as an organization.

We are counting on each of you to assure that this focus on the Voice of the Employee is communicated to all operations managers and supervisors within your respective areas and that they vigorously pursue its accomplishment.

Marvin Runyon
Postmaster General

Michael S. Coughlin
Deputy Postmaster General

William J. Henderson
Chief Operating Officer
and Executive Vice President

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

February 28, 1996

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

Dear Bill:

This is in reference to your letter dated February 9, 1996, regarding noncompetitive hiring under the Veterans Readjustment Appointment (VRA) authority.

As you know, management reserves the right to fill a vacancy first through promotion, internal reassignments, transfer from other agencies and reinstatements. In addition to these methods, management may utilize other available sources prior to hiring from a register, including hiring employees under the VRA.

Hiring under the VRA authority is accomplished through a noncompetitive process. Although applicants do not require placement on an entrance register, vacancies filled under the VRA are considered the same as those filled from a register for purposes of administering the Transfer Memorandum of Understanding. As such, vacancies filled using the VRA are not considered exceptions to the ratio requirements of Section 1.B. in and of itself.

Please contact Deborah A. Seaward of my staff at 268-3842 if you have any questions.

Sincerely,

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

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

February 9, 1996

Dear Tony:

The enclosed correspondence outlines the position of the Human Resource officer in the Las Vegas, Nevada District on the subject of transfers. This position is at odds with the specific language of the transfer Memorandum included in the 1994 national agreement.

The parties agreed to specific conditions governing transfers, including the recognition of exceptions to the 1 in 4 ratio for acceptance of employees wishing to transfer. The specific language provides that "Local economic and unemployment conditions, as well as EEO factors, are valid concerns. When hiring from entrance registers is justified based on these local conditions, an attempt should be made to fill vacancies from both sources. Except in the most unusual of circumstances, if there are sufficient qualified applicants for reassignment at least one out of every four vacancies will be filled by granting requests for reassignment in all offices of 100 or more man years, if sufficient requests from qualified have been received."

The parties did not make an exception to the 1 in 4 ratio based upon hiring under the VRA authority. In fact, the use of the VRA exception is optional to local hiring authorities, and when used permits the Postal Service to place veterans at the top of the register.

I find no language contained in the agreement supportive of the position of Joe Gold. Please review and respond as to the employer's interpretation as applied to these circumstances.

Sincerely,

William Burrus

Anthony J. Vegliante, Manager
Grievance & Arbitration Division
475 L'Enfant Plaza, SW
Washington, DC 20260

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

PERSONNEL SERVICES
SUNCOAST DISTRICT

UNITED STATES
POSTAL SERVICE

Date: December 15, 1995

Ref: VDiMaio:jlc

Re: VETERANS READJUSTMENT ACT (VRA)

MAR 1996
Receiving
Office of

POSTMASTERS
MANAGERS
PLANT MANAGERS

Any VRA conversions to career must meet the following criteria:

Vietnam Era Veterans - Vietnam era veterans who served on active duty between August 5, 1964, and May 7, 1975, HAVE EITHER 10 YEARS AFTER THE DATE OF THEIR LAST SEPARATION FROM ACTIVE DUTY, or until December 31, 1995, WHICHEVER IS LATER, to be considered eligible for VRA hiring consideration.

Post-Vietnam Era Veterans - Under the current law, VRA eligibility for Post-Vietnam era veterans who served on active duty after May 7, 1975, have ten years of eligibility after the date of their last separation from active duty, or until December 31, 1999, whichever is later.

Additionally, there is no time limit for disabled veterans who have a compensable service connected disability of 30 percent or more.

Please direct any questions on this subject to your Personnel Service Center.

Victor A. DiMaio
Sr. Personnel Services Specialist

cc: Personnel Service Centers

	ACTION	INFO
MDO TOUR - 1		✓
MDO TOUR - 3		✓
[illegible] MANAGER - TOUR 2		✓
[illegible] PLANT [illegible]		✓
MANAGER, TRANSP[illegible]		✓
[illegible]		✓
ORDER [illegible]		
OBS		
COR		
[illegible]		✓
[illegible]		✓

5201 W. SPRUCE STREET
TAMPA FL 33630-9422

RECEIVED
DEC 19 1995
PLANT MANAGER
ST PETERSBURG FL 33730-9997

VRA
VETERANS' READJUSTMENT APPOINTMENTS

4 EMPLOYMENT OPPORTUNITIES TO HELP VETERANS

By law, Federal agencies may hire qualified veterans of the Armed Forces directly under the Veteran's Readjustment Appointment (VRA) program. VRA appointees initially are hired for a two year period in the excepted service. Successful completion of the VRA leads to a permanent civil service appointment in the competitive service.

✪ AM I ELIGIBLE?

You are eligible for a VRA if you served for a period of more than 180 days active duty, all or part of which occurred after August 4, 1964, and have other than a dishonorable discharge.

✪ HOW LONG AM I ELIGIBLE?

If you served on active duty between August 5, 1964 and May 7, 1975, you have either 10 years after the date of your last separation from active duty or until December 31, 1995, whichever is later.

If you first entered duty after May 7, 1975, you have 10 years after the date of your last separation from active duty, or until December 31, 1999, whichever is later.

If you have a service connected disability of 30 percent or more, you have no time limit.

✪ WHAT KINDS OF JOBS ARE AVAILABLE?

Agencies can use the VRA authority to fill jobs up through GS-11 and equivalent jobs under other pay systems. The agency you apply to decides whether you meet the experience and education requirements for the job it wants to fill. Agencies may require passing a test for some jobs.

✪ HOW DO I APPLY?

Contact the personnel office at the Federal agency where you want to work to find out what jobs are available. Agencies can recruit candidates and make VRAs directly without using OPM examination lists. If you want a list of local agency personnel offices, contact your local OPM veterans' representative listed on the back of this sheet. If you need career development help, contact your local State Employment Service or Department of Veterans Affairs Office.

✪ IS THE VRA PROGRAM MANDATORY?

No, it is an optional program. VRA eligibles are not guaranteed appointment. When agencies have vacancies to fill, they can choose candidates from civil service examination lists, agency employees, or current and former Federal employees with civil service status. The VRA program gives agencies another source to consider for selecting quality candidates. An agency picks the candidate it believes can do the job best.

✪ DO DISABLED VETERANS GET SPECIAL CONSIDERATION?

Yes. When hiring under the VRA program, agencies must give preference consideration to disabled veterans and other with veterans' preference over veterans who are not eligible for preference.

✪ WILL I RECEIVE TRAINING?

If you have less than 15 years of formal education, agencies are required to provide a training program for you. If you have 15 years or more, you may participate in training programs on the same basis as other employees. A training program could include on-the-job assignments or classroom training.

✪ WHAT IF I DID NOT SERVE LONG ENOUGH?

The requirement for more than 180 days active service does not apply to (1) veterans separated from active duty because of a service connected disability, or (2) reserve and guard members who served on active duty (under 10 U.S.C. 672 a, d, or g; 673 or 673 b) during a period of war, such as the Persian Gulf War or in a military operation for which a campaign or expeditionary medal is authorized.

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M E M O R A N D U M

TO: Bill Burrus

FROM: Anton Hajjar

DATE: June 21, 1995

RE: Postal preference eligible employees' right to appeal RIF decisions to the MSPB

You asked whether postal preference eligibles need to have a year's continuous service in order to appeal RIF decisions. The answer is no. I will explain.

The MSPB has jurisdiction to hear appeals "from any action which is appealable under any law, rule, or regulation." 5 U.S.C. 7701(a). The RIF statute -- 5 U.S.C. 3502 -- makes no mention of a right to appeal. However, it does give OPM broad rulemaking authority. An OPM rule states: "An employee who has ben furloughed for more than 30 days, separated, or demoted by a reduction in force action may appeal to the Merit Systems Protection Board." 5 CFR 351.901. The coverage of the RIF rules under 5 U.S.C. 531.202 is "each civilian employee in ... the executive branch of the Federal Government" and all other "parts of the Federal Government which are subject by stature to competitive service requirements ...." No exception is made for employees with less than a year of continuous employment. The basic treatises on MSPB procedure -- e.g., Vaughn and Broida -- do not say differently.

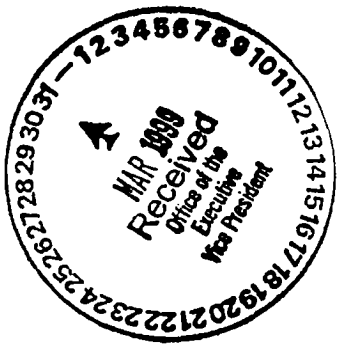
There is a statutory restriction on access to the MSPB for adverse actions. Section 7511(a) of Title 5 defines an employee as:

> (B) a preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar positions ... (ii) in the United States Postal Service ....

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

March 31, 1999



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

Dear Bill:

Reference is made to your December 17, 1998, letter to Jack Potter concerning anticipated problems associated with Y2K. Your letter indicated that during the 1998 national negotiations, Postal Service representatives mentioned that the payroll system would refuse adjustments, beginning in July 1999, based on Y2K testing. You asked that a meeting be scheduled to address this issue.

In January 1999, the Postal Service established its policy concerning 1999 priority activities for the year 2000. As part of that policy, the Postal Service determined that, effective July 31, 1999, there would be a "freeze" of all changes to Y2K affected components across the United States Postal Service. This "freeze" prohibits changes or enhancements to national and local applications, information technology infrastructure, and mail processing equipment. Please be assured, however, that contractually obligated wage changes (i.e., COLA payments, general wage increases, and step increases) will continue to be processed and implemented in a timely manner during the term of the 1998 National Agreement. In addition, we are still working with APWU representatives in a good faith attempt to address and resolve salary reform issues.

If you have any additional questions, please call me at 202-268-3812.

Sincerely,

Ed Ward

Edward F. Ward, Jr., Manager
Negotiations Planning and Support

cc: Mr. Sgro

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

December 17, 1998

Dear Mr. Potter:

During the negotiations representatives for the Postal Service announced that the payroll system would refuse adjustments beginning in July, 1999 due to testing for the year 2000 Y2K anticipated problems. There is a need for full discussions regarding the ramifications of deferring payroll adjustments.

This is to request that a meeting be scheduled at your earliest opportunity including the presence of representatives from the Payroll Department and Labor Relations.

Your assistance and cooperation in this matter is appreciated.

Sincerely,

William Burrus
Executive Vice President

Mr. Jack Potter
Vice President
Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

National Executive Board
Moe Biller
President
William Burrus
Executive Vice President
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Secretary-Treasurer
Greg Bell
Industrial Relations Director
Robert L. Tunstall
Director, Clerk Division
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George N. McKeithen
Director, SDM 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

Suzanne Leonard 247

March 9, 1999

MANAGEMENT COMMITTEE

SUBJECT: Year 2000 Freeze Policy and Approach

Effective immediately, there will be a "freeze" of all planned changes to any existing Postal component (application, infrastructure, or mail processing equipment), nor will any new components be deployed into production without the explicit approval of the Year 2000 Change Control Board. The Change Control Board is a group of key executives assigned the responsibility for reviewing all proposed changes and/or new deployments. This freeze policy excludes those changes which are mandatory for Year 2000 remediation

This memo serves as the policy for limiting and controlling potential risks associated with changes and enhancements to our applications and infrastructure leading up to the Year 2000. This policy outlines the process for identifying and approving exceptions to this policy. As Postal executives, I know you share my interest, concern, and commitment in this area. A critical success factor in our efforts to be ready for the Year 2000 is our ability to control the changes in our applications and infrastructure. Our efforts in this area will minimize our risk and ensure the proper focus for our limited resources.

The March 5, 1999, Year 2000 Executive Council made three key decisions regarding the freeze policy:

1. The freeze policy and process are effective immediately.
2. The scope of the freeze policy encompasses all impacted component types including both Information Systems (IS) and non-IS supported applications, IS and non-IS supported hardware and software infrastructure, mail processing equipment and facility systems. The scope includes nationally supported and area supported components.
3. The freeze policy includes all projects not yet started and those currently underway, regardless of implementation date.

Further details outlining the freeze policy, the Change Control Board makeup and functioning, and the Freeze Exception Process are attached for your information and review. To move forward with the freeze policy, we need to immediately begin to review all of our projects and activities using the freeze criteria. Please contact your IS Portfolio Manager if you have any questions.

The successful conclusion to this critical initiative requires our combined commitment.

Michael S. Coughlin

Attachments