



# Activist

A NEWSLETTER FOR BRANCH LEADERS  
OF THE NATIONAL ASSOCIATION OF LETTER CARRIERS

## THE STEWARD'S RIGHT TO INFORMATION

**T**he National Agreement gives shop stewards the right, in the course of grievance investigation and processing, to both review and obtain copies of relevant information held by the Postal Service. The right to information is found primarily in Articles 17.3 and 31.3. In addition, the union has a legal right to employer information under the National Labor Relations Act.

So the right to information may be enforced both within the grievance procedure and through an unfair labor practice charge filed with the National Labor Relations Board.

The National Agreement and the JCAM clearly explain the union's right to information and management's obligation to produce information promptly upon request. Note that the union has the right to review management documents and to obtain copies.

Article 17.3 provides:

*The steward... may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists...*

The JCAM explains:

- A steward may conduct a broad range of activities related to the



investigation and adjustment of grievances and of problems that may become grievances. These activities include the right to review relevant documents, files and records . . . (p. 17-4)

- The NALC's rights to information relevant to collective bargaining and to contract administration are set forth in Article 31. This section states stewards' specific rights to review and obtain documents, files and other records . . . (p. 17-5)
- Management should respond to questions and to requests for documents in a cooperative and timely manner . . . (p. 17-6)

[Continued on page 2](#)

## STRATEGIES FOR RECRUITING UNION ACTIVISTS

**S**ome branches seem to sizzle with activity. They have a lot going on and many volunteers busy working on NALC projects. They have stewards and alternates in every station, and people eager to take on more responsibility in the local union.

How do they do it—what special magic do these branches use to recruit the next generation of union leadership? In the October, 2004 issue, the *Activist* explored NALC's need to **build the pool of future leaders by recruiting new activists** as current leaders move up and ultimately retire.

This article moves from the goal—recruiting the next generation of union leaders—to the practical side, the "How-To" of activist recruitment. The best sources for advice are, of course, branch leaders who have

[Continued on page 7](#)

### INSIDE THIS ISSUE

REGIONAL TRAINING SEMINARS	3
USPS BY THE NUMBERS	8
A TALE OF TWO GRIEVANCES	10

# THE STEWARD'S RIGHT TO INFORMATION

Continued from page 1

- When a relevant request is made, management should provide for the review and/or produce the requested documentation as soon as is reasonably possible. (p. 17-6)
- If requests for copies are part of the information request, then USPS must provide the copies. (p. 31-3)
- This section [31.3] provides that the Postal Service will make available to the union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of the Agreement, including information necessary to determine whether to file or to continue the processing of a grievance. It also recognizes the union's legal right to employer information under the National Labor Relations Act. (p. 31-2)

## THE PRESUMPTION OF RELEVANCE

As the JCAM also makes clear, the steward has a right to review or obtain only "relevant" information. Although the JCAM does not define relevancy, it does provide some guidance at page 31-2 (emphasis added):

- To obtain employer information the union need only give a reasonable description of what it needs and make a **reasonable claim** that the information is needed to enforce or administer the contract. The union must have a reason for seeking the information—it cannot conduct a "fishing expedition" into Postal Service records.

The JCAM gives specific examples of the types of information that should be provided when requested (p. 31-2):

- Attendance records
- Payroll records
- Documents in an employee's official personnel file
- Internal USPS instructions and memorandums

- Training manuals
- Postal Inspection Service investigative memoranda (IM's)

The JCAM also gives broad-spectrum examples of types of information that must be provided (pp. 31-2, 3):

- ... the union has a right to any and all information which the employer has relied upon to support its position in a grievance ...
- ... the union is also entitled to medical records necessary to investigate or process a grievance, even without an em-

“The union has a right to any and all information which the employer has relied upon to support its position in a grievance.”

- Disciplinary records
- Route inspection records
- Patron complaints
- Handbooks and manuals
- Photographs
- Reports and studies
- Seniority lists
- Overtime desired and work assignment lists
- Bidding records
- Wage and salary records

ployee's authorization, as provided for in the Administrative Support Manual (ASM) Appendix (USPS 120.900) and by Articles 17 and 31 of the National Agreement.

While the JCAM does not further explore the concept of relevance, Arbitrators Carlton Snow and Richard Mittenthal have done so in national-level decisions. Arbitrator Snow has held that the standard of relevancy is broad and there is normally a presumption of relevance when the requested information relates to wages, hours or working conditions. H7N-5C-C 12397 (C-10986). Snow wrote:

*A duty to disclose relevant information in the bargaining context has its roots in Section 8(d) of the National Labor Relations Act . . . [A] key test of disclosure is that the information meet the requirement of relevancy . . . [T]here is a presumption of relevancy if the requested information pertains directly to a subject about which there is a mandatory obligation to bargain . . . [A]lthough the requirement of discovery has been narrowed by the rule of relevancy, the NLRB and courts have defined “relevancy” broadly . . . [T]he requested information should be disclosed “unless it plainly appears irrelevant” . . . [T]he parties have added to statutory requirements to share information by including a contractual provision covering the duty to do so . . . [quoting articles 31.3 and 17.3] . . . [T]he parties have implicitly adopted a broad definition of “relevancy” as it has emerged in modern discovery rules.*

In an earlier national-level decision, Arbitrator Mittenthal explained that the standard of relevance goes to the union’s decision to file or forego pursuing a grievance, not to the merits of a particular grievance. In other words, even if information is not relevant to the union’s ability to win a case, as long as it is relevant to the union’s decision-making process to pursue or not pursue a grievance, it should be provided on request. H4T-2A-C 36687 (C-10363). Mittenthal explained:

*It is for the [union] alone to “determine if a grievance exists...to determine whether to file . . . a grievance . . .” If the information it seeks has any “relevancy” to that determination, however slight, its request for this information should be granted . . . (W)hether a piece of information is “relevant” to the merits of a given claim is one thing; whether such information is “relevant” to*

*[the Union’s] determination to pursue (or not pursue) that claim through the filing of a grievance is quite another. The latter question allows “relevancy” a far broader reach and should have permitted the [Union], for the reasons already expressed, to receive [the requested information].*

## THE PRIVACY ACT CONNECTION

Sometimes management refuses to provide requested information to the union, claiming that the Privacy Act bars USPS from disclosing medical records or other confidential information. Often, managers tell NALC representatives they will not

## REGIONAL TRAINING SEMINARS

Contact your National Business Agent for more information about these scheduled regional training seminars.

### Region 1

(California, Guam, Hawaii, Nevada)  
*NBA Dale Hart, 650-968-7143.*  
 May 20-22, NBA-CSALC Northern California Training Session, Pasadena Hilton, Pasadena CA.

### Region 2

(Alaska, Idaho, Montana, Oregon, Utah, Washington)  
*NBA Paul Price, 360-892-6545.*  
 May 2-5, Idaho State Shop Steward College, Red Lion Hotel, Twin Falls ID.  
 May 15-18, Montana State Shop Steward College, Holiday Inn, Bozeman MT.  
 May 23-26, Washington State Shop Steward College, Huston Center, Gold Bar WA.  
 October 4-8, Region 2 Regional Assembly, Hilton, Eugene OR.

### Region 3

(Illinois)  
*NBA Neal Tisdale, 309-762-0273*  
 October 23-25, ISA Fall Statewide Training, Pere Marquette Hotel, Peoria IL.

### Region 5

(Missouri, Iowa, Nebraska, Kansas)  
*NBA Art Buck, 314-872-0227*  
 May 1-3, Iowa Convention and Training, Grand Harbor Resort Hotel, Dubuque IA.  
 May 6-7, Kansas Convention and Training, Holiday Inn Holidome, Lawrence KS.  
 June 10-12, Missouri Convention and Training, Inn at Grand Glaize, Lake of the Ozarks MO.  
 October 22-23, Nebraska Fall Training, Mid-Town Holiday Inn, Grand Island NE.

November 6-8, Iowa Fall Training, Holiday Inn Hotel & Conference Center, Coralville IA.

### Region 7

(Minnesota, North Dakota, South Dakota, Wisconsin)  
*NBA Ned Furr, 612-378-3035*  
 May 2-6, Regional Training Seminar, Holiday Inn Metrodome, Minneapolis MN.

### Region 9

(Florida, Georgia, North Carolina, South Carolina)  
*NBA Judy Willoughby, 954-964-2116*  
 May 6-7, South Carolina Convention, Holiday Inn, Rock Hill SC.  
 June 4-5, Georgia Training Seminar, Renaissance Concourse, Atlanta GA.  
 June 9-11, Florida Convention, Naples Beach Hotel & Golf Club, Naples FL.  
 June 17-18, North Carolina Convention, Hilton RDU Airport at RTP, Durham NC.  
 August 5-7, Rap Session, Callaway Gardens Resort, Pine Mountain GA.  
 October 28-29, North Carolina Training Seminar, Hilton RDU Airport at RTP, Durham NC.  
 October 29-30, Florida Training Seminar, Royal Plaza Hotel, Lake Buena Vista FL.  
 November 5-6, South Carolina Training Seminar, Embassy Suites Hotel and Golf Resort, Greenville SC.

### Region 10

(New Mexico, Texas)  
*NBA Gene Goodwin, 281-540-5627*  
 October 9-10, Annual Fall School, Hilton El Paso Airport, El Paso TX.

# THE STEWARD'S RIGHT TO INFORMATION

release personal information without the written consent of the affected person.

These management excuses are flatly wrong, because the Privacy Act's regulations authorize disclosure to the union of most records containing personal information.

The Privacy Act requires federal agencies including the Postal Service to restrict access to certain records that contain information about individuals. The Act also requires agencies to publish descriptions of their records systems in the Federal Register.

Handbook AS-353, Guide to Privacy and the Freedom of Information Act, contains the Postal Service's regulations implementing the Privacy Act. Section 3-5.3 states:

*Information can only be disclosed externally under one of the following:*

...

*c. Routine use. The agency has established a routine use authorizing the disclosure.*

The AS-353 lists in its Appendix all Postal Service records systems that contain information about individuals. For each system, there is a statement of "routine uses." The Appendix notes at page 51:

*Under the Privacy Act, disclosures are authorized . . . for routine uses for which the agency has provided proper notice.*

*Appendix Section D, Prefatory Statement of Routine Uses That Apply to General Systems of Records.*

...

*The following are routine uses for general systems of records:*

...

*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 properly perform its duties as the collective bargaining representative of Postal Service employees in an appropriate bargaining unit.*

The vast majority of the specific systems of records listed in Handbook AS-353 Appendix include item "m" as a routine use.

## ENFORCING THE RIGHT TO INFORMATION

Stewards should vigorously enforce the right to review and/or obtain copies of information relevant to grievance investigations. Stewards who cannot enforce their own rights as shop steward cannot reasonably expect to succeed in helping other letter carriers enforce their rights. Nor can they expect to prevail in grievances. Grievances are won when the union's arguments are proven with documentation.

Stewards facing management recalcitrance in providing review of, or copies of, requested information should keep the following guidelines in mind.

## TIME LIMITS

Remember that the time limits for an underlying grievance are not waived by a management delay or refusal to provide requested information. For instance, a grievance protesting lack of just cause for discipline (based, say, on a disparate treatment argument) must be filed within 14 days of management's issuance of the disciplinary notice, even if management has refused the

steward's request for information relating to disparate treatment.

## DOCUMENTATION

The steward must be able to prove that requests for information were made and properly submitted. While the National Agreement does not require that such requests be made in writing, it is recommended that stewards present requests in writing, keep a copy, and document details regarding the submission. The request should include a brief note explaining the relevancy of the information sought, in accordance with page 17-6 of the JCAM: "Steward requests to review and obtain documents should state how the request is relevant to the handling of a grievance or potential grievance."

One method of documentation is to have the receiving supervisor sign and date the request to acknowledge receipt. This works well if the supervisor agrees to sign. If the supervisor refuses to sign, the steward should clearly record on the copy who received it and the time and date it was submitted. In addition, the steward should make a record of the receiving supervisor's response.

If the receiving supervisor does not tell the steward when or if the requested information will be made available, the steward should consider presenting a second written request the next day, following the same format as the first request, but clearly indicating in writing that it is a second request and that no response was received to the first. Likewise, if there is no response to the second request, a similar third request might follow the next day. If there is still no response, a grievance should ensue.

If management responds orally to the request by telling the steward when the information will be provided, the steward should docu-

ment that response by authoring a letter or memo to the supervisor stating the steward's understanding.

In addition, if the steward believes a delay is unreasonable, he or she should initiate a second grievance investigation regarding the reasonableness of the delay.

Clearly, in these circumstances, one grievance will multiply quickly into many, many grievances. Much work, organization and energy is required to document management's intransigence. The steward must write and maintain all of the necessary letters, memos and requests.

This recommended documentation process is not contractually required and it is difficult, but it ensures that the resulting grievance file is sufficient to meet the union's burden of proof.

## ARGUING UNDERLYING GRIEVANCES

The steward should argue in the underlying grievance that he or she has requested information, that management has refused to provide it, and that therefore an adverse inference should be made against management's position.

*Elkouri* states the principle, in the context of a management failure to provide a witness:

*Also, an Arbitrator may note the "well-established" rule that the failure to call a witness who is available to a party gives rise to a presumption that the witness's testimony would be adverse to the position of the party having the ability to call that witness.*

*Elkouri & Elkouri, How Arbitration Works*, Marlin M. Volz, Edward P. Goggin, eds. (BNA Books, 5th ed. 1997), at p. 428.

The same principle can be applied to failure to provide information, e.g., the failure to provide requested

information gives rise to a presumption that the information would be adverse to the position of the party refusing to provide it.

Regional postal panel arbitrators routinely apply this principle. See, for example, Arbitrator Scarce, in C-05751:

*Where, as here, the local management chooses to ignore the contractual obligation to make such data available in the face of repeated valid requests, a conclusion*

perhaps Forms 1769 from prior roll-away accidents. If management refuses to provide access to this information, the steward should argue in the removal grievance that the grievant was treated disparately, that management controls the documents that would prove it, that the steward requested review of the documents, that management refused the request, and that an adverse inference should be made against management for that refusal. (Of course, if possible, the steward

“Stewards who cannot enforce their own rights as shop steward cannot reasonably expect to succeed in helping other letter carriers enforce their rights.”

*must be derived that the complained-of activity was in error on its face and the Service chose to avoid addressing the matter by not making official records available.*

See also Arbitrator Marks-Barnett, C-23599 and Arbitrator Herring, C-23730.

Stewards should ensure this argument is made in appropriate cases. For instance, consider a case in which an employee failed to set the vehicle handbrake and USPS removed her following a rollaway.

The steward might have knowledge that other employees had failed to set their handbrakes and had received lesser discipline or none at all. The steward should request Forms 4584, Driver Observation, and

should develop and present other evidence supporting the argument, such as statements from involved employees.)

## ARGUING 'FAILURE TO PROVIDE REQUESTED INFORMATION' GRIEVANCES

Stewards should also file separate grievances protesting management's violations of Articles 17 and 31. The contentions should include violation of Articles 5, 17, 31, and the National Labor Relations Act. If management claims the requested information is not relevant, the Snow and Mittenthal awards should be cited. If the requested information is found in the Handbook AS-

# THE STEWARD'S RIGHT TO INFORMATION

353 Appendix and Item “m” is included as a routine use, that information should be noted in the grievance.

## REMEDIES

Stewards should give careful attention to the requested remedy in grievances protesting refusals to provide information. The remedy should be designed to fix the underlying problem. If a simple oral agreement by management at Informal A, to cease and desist similar violations,

Articles 17 and 31 and the NLRA, and a promise to stop. Or it might require a higher-level manager to send a letter advising the supervisor that she violated the National Agreement and the law and ordering her to cease and desist; a copy should go to the union.

In any event, the remedy should escalate in succeeding grievances when a prior remedy has failed to solve the underlying problem. The rationale for escalating remedies is similar to management's rationale when it issues progressively more severe discipline. The idea is that the

*after local management has received previous instructional resolutions on the same issue and it appears that a “cease and desist” remedy is not sufficient to insure future contract compliance, the parties may wish to consider a further, appropriate compensatory remedy to the injured party to emphasize the commitment of the parties to contract compliance. In these circumstances, care should be exercised to insure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy.*

Finally, the remedy should flow from the strength of the case. If the provable facts of the case are weak, the steward is not in a strong position to demand an enhanced remedy. On the other hand, if the facts of the case are strong, or if management's violations are serious, repeated or deliberate, the steward should be less willing to resolve the grievance for a toothless remedy.

“The remedy should be designed to fix the underlying problem.”

fixes the problem, fine. If, however, such an agreement is simply used by management as a ruse, or is made with a wink and a nod, then the union is under no obligation to settle on that basis.

To fix the underlying problem, a remedy should be targeted at the culpable supervisor(s). If the problem is that a particular supervisor is unaware of management's obligations to provide information, then the remedy might require the supervisor to review relevant JCAM chapters, perhaps with the steward.

If the underlying problem is that a particular supervisor knows the requirements, but simply chooses to violate them, then the remedy might include a written acknowledgment by the supervisor that he violated

minimum penalty necessary to resolve the problem should be used, but that if the problem continues, a more significant penalty is necessary.

Moreover, each succeeding similar grievance should specifically cite each of the prior grievances. Where patterns exist, the union should point them out and argue accordingly. The union should argue that the prior, agreed-upon remedies did not resolve the underlying problem and therefore a more significant remedy is required. The union should cite the JCAM at page 41-15, in which the parties implicitly endorse the concept of contract compliance incentives:

*In circumstances where the violation is egregious or deliberate or*

## SEEK ASSISTANCE

A management refusal to provide requested information is much more than a run-of-the-mill contract violation. Such violations challenge and undermine the fundamental ability of the union to fulfill its right and obligation to represent letter carriers. Stewards who encounter difficulties exercising their right to information should bring the matter to the attention of branch officers. Branch officers should contact the National Business Agent if they are unable to resolve the problem.

In serious cases it may be necessary to consider filing unfair labor practice charges with the National Labor Relations Board. A branch should contact the National Business Agent for advice prior to filing charges with the NLRB. ✉

# STRATEGIES FOR RECRUITING UNION ACTIVISTS

Continued from page 1

succeeded in recruiting many new activists into NALC.

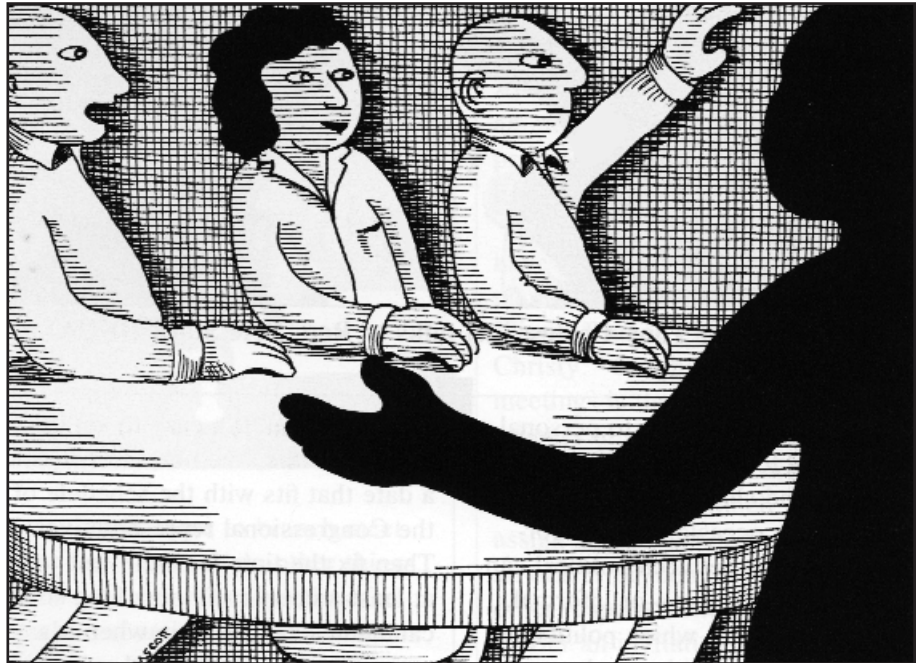
A sampling of such local leaders reveals different situations and strategies, but also certain similarities. First, successful branches **make recruitment of new activists a top priority**. Second, such branches have implemented **conscious plans** to recruit new activists and develop a new generation of leaders. Third, these branches **offer numerous training opportunities** to members to entice them into union activism. Finally, the branches have an **inclusive, welcoming culture** that attracts members to union leadership roles.

## STRENGTH IN NUMBERS

For Nicole Rhine, president of Branch 8 in Lincoln, Nebraska, the logic of aggressive recruitment is obvious. "There is strength in numbers," Rhine says, "and there's a lot to do."

Branch 8's leaders also anticipated a major change in their own ranks. Rhine explains, "We looked around at a union meeting and realized that we had a wealth of knowledge in the room. But a lot of that was getting ready to walk out of the Post Office in a few years."

Branch 8 decided to take control of the situation and recruit younger letter carriers into the union, often people never involved before. Rather than waiting for members to sign a sheet to run for steward or assistant steward, the branch started an active recruitment program. "We met with the stewards and sent



them out to recruit new people," Rhine says. "They talked to people and said, 'We'd love to have you become an assistant steward. We'll train you.'" The branch successfully recruited members to run for both steward and alternate positions.

The branch also works hard to reach out to new members. "We say," explains Rhine, "we'll help you, the union has good people and you're not out there on your own." To get new people involved in the union, "We may start with smaller things." She and her fellow branch officers recognize that being a steward "is hard work. So we may say, 'How about coordinating the picnic?' Or 'Why don't you come to a convention or to training, and see what you think?'"

Training opportunities are an essential part of Branch 8's recruiting strategy. When the state and region offer training sessions, says Rhine, "the branch is always well-represented. We send as many as we can to every training. We're not afraid to spend money on giving people knowledge. You can't put a price on that."

Reflecting on Branch 8's success in recruiting new activists, Rhine re-

flects, "Why do they join and get active? A lot of it has to do with the character of the branch and what it does besides file grievances." The Lincoln branch has a retirement dinner, picnics and other social activities. It is "very proactive in the food drive and COLCPE fund-raising, and it has a pretty good newsletter. And we are always offering to help out the new people."

## SMALL BRANCH ADVANTAGE

Mike Birkett, president of Dubuque Branch 257, believes that small is beautiful. "I think we've got an advantage in a branch our size. We've got about 75 active members and we average 20 to 30 people at a union meeting."

Social relationships help bind the union together in Dubuque. Union meetings are informal, says Birkett. "We don't run a formal meeting. We never have. We try to address everybody's questions and problems. We have free beverages and food at every meeting." The branch's executive board also has a social dimension. "We try to do a lot of things together that are not postal-related.

## BY THE NUMBERS

USPS Operations Feb. 2005			Employment/Wages March 2005		
	Number	Chg. from SPLY*		Number	Chg. from SPLY*
Total mail volume year-to-date (Billions of pieces)	90.2	3.3%	City carrier employment	227,491	0.1%
			Percent union members	92.0%	—
			Percent career employees	100.0%	—
Mail volume by class (YTD in billions)			City carrier casual/TE employment		
First-Class	42.5	0.3%	Casuals	5,873	1.6%
Priority Mail	0.4	2.7%	Percent of bargaining unit	2.6%	—
Express	0.1	0.7%	Transitionals	1	-66.7%
Periodicals	3.7	-0.6%	Percent of bargaining unit	0.0%	—
Standard Mail	42.4	6.9%	City carrier per deliver supervisor	18.6	1.8%
Packages	0.5	-1.0%	Career USPS employment	701,955	-1.5%
International	0.4	0.1%	City carrier avg. straight-time wage	\$21.58/hour	2.8%
Daily delivery points	143.1 mil.	1.3%	City carrier overtime ratio (OT hrs/total work hours)	14.0%	—
Percent city	73.1%	—	Ratio SPLY	11.9%	—
Percent rural	26.9%	—			
City carrier routes	164,598	0.0%			
Rural carrier routes	71,322	1.9%			
Net Income (\$ mil.)	\$1,800.7	-19.6%			
Total Revenue	\$29,961.4	1.8%			
Total Expense	\$28,160.7	3.5%			

\*SPLY=Same Period Last Year

This information compiled by the NALC Research Department from USPS Reports.

Over the years we've become good friends."

The branch provides training to help recruit and encourage branch activists. "The state association and the region do a lot of training, usually out of town," says Birkett. "Anybody shows an interest, we send them to training. With two or three days together out of town people have a chance to bond somewhat. We send the maximum number of people to training that we can." The branch also sends a full delegation to the state convention.

Branch activists also "try to keep a free flow of information back to the membership," Birkett explains. "We pick up information at various events, and part of our responsibility is to report back to the branch and make sure it gets back to the workroom floor."

These strategies have kept the branch vibrant and active. "We never

have a problem getting people to run for office," says Birkett. Lots of people want to be a trustee or Sergeant-at-Arms, both of which are good positions for newer activists.

### SO WHO'S YOUR REPLACEMENT?

In Schenectady, NY Branch 358, president Bill Cook tells all new officers the same thing: "First I want you to learn your job. Then I want you to teach your job to somebody else."

Cook says his strategy follows a tradition in his branch, in which leaders have long recognized the importance of training the next generation. As he puts it, "Sooner or later, we're all not gonna be here. Somebody's got to take this thing over."

Branch 358 has 56 stewards and 12 officers. When a steward tells Cook he

or she would like to become an officer, Cook shoots back, "Good. Who's going to be your replacement?"

The branch also has a member who is building the union a website. "When he gets the site up and running for us," says Cook, "his next job is to train somebody else to do that job."

Cook has planned carefully for succession in his branch's leadership. When one branch officer—say a treasurer—retires from the branch office, Cook asks another branch member to complete the term. He also asks the retired treasurer to provide continuing advice to the new one.

Cook believes this kind of planned mentoring is essential. Branch 358 has a new executive vice president, whom Cook trains and mentors to take over his own job. "On a regular basis throughout the day, I'm talking with my exec about what I'm doing as



president." They meet at lunchtime or Cook phones him. "Okay, John, this is what I'm doing today. Just in case I drop dead tomorrow, here's what I'm working on."

In recruiting, says Cook, "you've got to use common sense and play to people's strengths." For example, the branch found a member for an open assistant secretary-treasurer position who had experience on the credit union board and had worked in finance in the private sector.

To recruit entry-level activists, the branch might ask members to try Customer Connect or join the safety and health committee. Those who show talent are often asked to become shop stewards.

The branch routinely offers training opportunities to officers and stewards. Officers have taken union training courses at Cornell University's School of Industrial and Labor Relations. The branch also runs an annual training for shop stewards, paying for hotel rooms and meals and encouraging stewards to bring their families.

"In 10 years when I'm out of here," Cook says, "there will be a group of people running this organization. They've got to be prepared to do it."

## TARGETED RECRUITMENT, INCLUSIVE CULTURE

Young activists are difficult to recruit, according to L.C. Hansen, president of Portland, Oregon Branch 82. "The demographics are against us as recruiters. Most of them are in their prime family years and have small children. Given the economy they often need to work overtime," she explains.

The solution? "We adapt to the demographics," Hansen says. The Portland branch targets its recruitment efforts, using different strategies to attract different segments of the membership.

"Empty nesters," says Hansen, are the best source for highly-skilled activists. "We try to start involving people just as they're about to become empty-nesters," usually when their kids are teenagers. These people have more free time, and are valuable because "they are senior carriers who have been around for 10 or 15 years," Hansen observes. "We have consciously recruited and mentored such people," often asking them to run for steward positions.

Branch 82 has different strategies for recruiting younger activists. "If they are younger and have family responsibilities," Hansen explains, "we try to find union activities they can do on the clock." As examples, the branch needs activists to coordinate Customer Connect, to monitor overtime equitability, to track annual leave sign-ups, to be on-the-job instructors (OJIs) or safety captains, and to attend labor-management meetings.

more fundamental: "The branch's culture and structure must be inclusive." She explains, "If you want to get people in then you have to listen to their ideas." The branch also holds many social events. "The first step," Hansen says, "is to make active members out of passive members."

Once members are activists, Branch 82 finds several ways to "pay people back for their activism," says Hansen. She believes union activists are motivated by two main factors. First, they have a "sense of justice" that drives them to help their fellow letter carriers. Second, they want to learn, to challenge themselves, to grow and earn a sense of accomplishment. To satisfy these motivations, says Hansen, the union should be "creative in the opportunities it offers."

Branch 82 offers a wide range of training opportunities to its activists. It sends them to NALC training

## “The solution?

‘We adapt to the demographics.’”

—L.C. Hansen

The branch accommodates younger people by providing child care at monthly Steward Council and general membership meetings. The branch also encourages "an ethic that steward rotation is good," says Hansen. "It's fine to step back and be an alternate. We would love to have everybody in the station work as a steward at some time."

These strategies provide "leadership opportunities" for younger members, which Hansen describes as "opportunities for them to develop credibility among their peers."

Hansen believes that all branch recruiting efforts begin with something

events and brings the training back for delivery within the branch. It also offers training on non-traditional topics such as stress, EAP, ethics and even grammar, "to treat the whole person," says Hansen.

## SUMMING UP

All of these branches have found ways to bring new activists into the union. Although their techniques are different, they have all succeeded in recruiting and developing new union leaders who will carry the NALC torch forward into the next generation. ☒

# A TALE OF TWO GRIEVANCES

This is the tale of two disputes that worked their way through the grievance procedure and ended up in arbitration. Each case began with the same goal in mind—to establish a violation of National Agreement Article 7.1.B.1, which prohibits management from utilizing casuals “in lieu of full or part-time employees.” However, the cases took two distinct paths which ultimately resulted in different decisions.

Although different stewards develop and present grievances in different ways, every steward must go to the contract and identify the violation. By becoming familiar with the key contract provision, a steward learns what needs to be accomplished to prove the violation. This basic understanding then guides the development of facts and the union’s strategy for success.

## BACKGROUND—UTILIZING CASUAL EMPLOYEES

Casual employees have long been a fact of life in the Postal Service. However, because casuals receive limited wages and no benefits, management has an economic incentive to employ cheap casual labor rather than using career employees. As a result NALC has negotiated strict limits on the number of casuals permitted in the bargaining unit, on terms of casual employment, and on management’s right to utilize casuals to perform the work of career employees.

Article 7 of the National Agreement governs the use of casual employees in the letter carrier craft. Many of the provisions of Article 7 have been, at one time or



another, the subject of national-level arbitration.

Article 7.1.B.1 provides:

*The supplemental work force shall be comprised of casual employees. Casual employees are those who may be utilized as a limited term supplemental work force, but may not be employed in lieu of full or part-time employees.*

In a recent national-level dispute the Postal Service maintained that this provision had no independent meaning. Rather, USPS argued, it could utilize casual employees as it wished so long as it refrained from violating the 3½ percent national cap on casual employees (Article 7.1.B.3), and followed the casual term restrictions of two 90-day terms plus the Christmas period (Article 7.1.B.4).

NALC, APWU and NPMHU disagreed. The unions argued that Article 7.1.B.1 states a separate and independent requirement which bars USPS from hiring and utilizing casual employees to replace career employees.

National Arbitrator Shyam Das ruled strongly in the unions’ favor, holding:

*The Postal Service may only employ (hire) casual employees to be utilized as a limited term supplemental work force and not in lieu of (instead of, in place of, or in substitution of) career employees.*

Q98N-4Q-C 00100499, C-22465, August 29, 2001. Arbitrator Das also clarified the importance of a man-

agement document known as the Downes Memorandum.

Das wrote:

*The Downes Memorandum includes the following paragraph:*

Additionally, questions have arisen regarding the proper utilization of casuals as a supplemental workforce. Generally, casuals are utilized in circumstances such as heavy workload or leave periods; to accommodate any temporary or intermittent service conditions; or in other circumstances where supplemental workforce needs occur. Where the identified need and workload is for other than supplemental employment, the use of career employees is appropriate.

*Although couched in terms of “utilization” of casuals, it is apparent that this paragraph is not directed at the specific assignments given to casuals on a day-to-day basis, but to the employment, that is, hiring, of casuals. As the last sentence states: “Where the identified need and workload is for other than supplemental employment, the use of career employees is appropriate.” This is entirely consistent with the National precedent in Gamser I that Article 7.1.B.1 restricts the Service from hiring casuals “instead of, in place of, or in substitution of” career employees, and provides that casuals can only be hired for the purpose of being “utilized as a limited term supplemental work force.” The Downes Memorandum puts some flesh on the bones of Article 7.1.B.1.*

The Das award was a major victory for NALC. It confirmed the union’s interpretation of Article 7.1.B.1, ending years of confusion and contradictory regional arbitration awards on this issue. It also showed the way for NALC branches to prove violations of 7.1.B.1.

When word of the DAS award reached the field, many branches were quick to seek compliance with Article 7.1.B.1. This tale of two such attempts is instructive.

## HANDLED WITH CARE

The first case began as one of many grievances filed by an NALC branch to protest management's utilization of casuals. E98N-4E-C 01269715, C-24543, August 4, 2003. In this case the local union took time to study the Das award and to consider its application to the way management had hired and used casual employees.

Arbitrator Das wrote:

*Adoption of the Postal Service's position in this case that Article 7.1.B.1, in essence, is merely introductory, and that a violation of the "employing in lieu of" provision can occur only when either the allowable percentage cap or the limited appointment duration periods are exceeded, certainly would simplify application of that provision. It also would read out of the National Agreement a separate restriction on casuals, which, as Arbitrator Mitenthal [in Case No. H7N-NA-C 36 et al. (1994)] points out, imposes an essentially local obligation, separate and apart from the National casual ceiling in Article 7.1.B.3. Under the Postal Service's position, to take an extreme example, the Postal Service could staff an entire facility with a succession of casual employees on an indefinite basis, provided it did not exceed the National casual ceiling, which hardly seems consistent with the language in Article 7.1.B.1... The Postal Service's assertion that trying to determine whether or not a particular hour worked by a casual was worked "in lieu of" is well nigh impossible raises a false issue. Article 7.1.B.1 is a limitation on the employment or hiring of casuals, not on any particular assignment. As Arbitrator Mitenthal noted, "a mat-*

*ter to be determined by conditions existing at a particular time at a particular postal facility."*

The local union concluded that management should be pressed to justify the continuous employment of casual employees. It made a request in writing for management's justification for hiring casual employees. Management responded with a letter that did not answer the question. Undaunted, the branch wrote a second letter, and management ultimately explained that the casuals were replacing a long-time limited-duty employee.

With this information in hand, the union set about proving that casuals were hired to replace or substitute for career employees. It requested and assembled time records showing that during the year prior to the hiring of a casual, a variety of career employees had been used to replace the injured limited-duty carrier—including PTE, unassigned and vacation relief carriers.

When the case was impasse and appealed to arbitration, the local

would have gutted its holding. Arbitrator Frietas examined the facts and the award and quickly dispensed with these arguments:

*Repeatedly throughout its argument in this case, the Postal Service has quoted and emphasized that phrase of the Downes memo, which stated: "...or in other circumstances where supplemental work-force needs occur." It almost appears that the Postal Service, in this case, wishes the arbitrator to overlook the adjectival phrase—"limited term"—which joined together with the adjective "supplemental" expressly and jointly qualify the kind of work casuals may perform without running afoul of Article 7.1.B.1. Downes, in his memo, separates these joint adjectives into distinct phrases and defines "limited term" as "temporary or intermittent." He also indicates that the Postal Service should be able to "identify" the "need and workload" of the casual to be utilized.*

Once Arbitrator Frietas rejected management's attempt to evade

“Without a strong documentary case, no matter how unlikely management's rationale for hiring casuals, any grievance is likely to fall short.”

union's crucial, detailed documentation was in the file. NALC's arbitration advocate was able to present a full and compelling case before Regional Arbitrator Joseph Frietas, Jr.

At arbitration management urged an interpretation of the Das Award that

Das's holdings, the facts provided by the local union made it easy for the arbitrator to rule for NALC:

*It is difficult for this arbitrator to understand the need for a "limited term supplemental" employee to cover for limited duty employees*

whose work had been covered by career employees for a year since their on-the-job injuries.

Arbitrator Frietas sustained the union's grievance. He ordered USPS to cease and desist and to pay career letter carriers an amount equal to the difference between career and casual wages and benefits multiplied by the number of hours improperly worked by casuals.

## A DIFFERENT CASE

A second case also involved the use of casuals in an office. In this case, too, the local union grieved a violation of Article 7.1.B.1. The similarities end there.

The facts provided by the union showed that during the period of January 1, 2001 through June 29, 2001, management had employed two casuals. One casual worked for the entire six-month period; he testified that he generally performed clerk work and when needed did letter carrier duties. A second casual employee worked for three months. The union submitted no evidence

showing what kind of work he performed.

At the arbitration hearing the weaknesses in the factual record became clear. The union argued that during the period when the two casuals worked, the letter carrier complement was short one employee. It also argued that after the local office failed to obtain permission to fill the position, management hired a casual instead.

Management's argument attacked the union's case as lacking factual support. It pointed out that the record was devoid of "schedules, assignments or clock rings that demonstrate the use of casuals in lieu of career employees." Management urged the arbitrator to find that NALC had not even established a prima facie case that casuals were hired in lieu of career employees.

Regional Arbitrator I. B. Helburn wrote in his decision:

*There is no evidence whatsoever of the hours worked by FTR and PTF carriers. There is no evidence whatsoever of specific duties performed, routes carried or hours worked...*

*Robinson [the casual] testified that typically he would begin at 6:15 a.m. and do 3- 4 hours of clerk work. Then he would carry mail if needed, but he was more likely to go home than carry mail. Robinson also stated that when working as a carrier, it was often on Medlin's route. This very meager evidence neither allows a conclusion nor even creates an impression that Robinson was working in lieu of the missing 14th carrier.*

G98N-4G-C 01185865, C-25223, May 14, 2004.

These two cases point out that in Article 7.1.B.1 cases, both parties have burdens to fulfill. When asked, the Postal Service must provide a rationale for its hiring of casuals—a justification that passes muster under the Das Award. The union must show through documentation that casuals were hired in lieu of—instead of, in place of, or in substitution of—full or part-time career employees. Without a strong documentary case, no matter how unlikely management's rationale for hiring casuals, any grievance is likely to fall short. ☒



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