American Postal Workers Union

ALL CRAFT CONFERENCE 2015
LAS VEGAS, NEVADA

THE GRIEVANCE PROCEDURE
AND STEWARDS RIGHTS
ARTICLE 15 AND 17
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ARTICLE 17
REPRESENTATION

Article 17.2. provides for when the union is appointing stewards the union must certify which work location a steward will represent and only one steward may be certified per work location.

Alternate Stewards may be appointed to cover absences of the regular stewards. The number of regular stewards appointed may be less than, but cannot exceed, the number provided by the formula in Article 17.2.A.

The union certification of chief stewards, stewards and alternates must be in writing to the Postal Service.

SUPERSENIORITY

Article 17, page 2 and page 7, Question 9 of the J C I M provides that a steward cannot be involuntarily reassigned from his/her tour, station or branch, or installation so long as there is work there for which that steward is qualified, unless the steward gives up this right.

Following excessing, stewards maintain this superseniority for the purpose of bidding on initial vacancies over excessed employees wishing to exercise their retreat rights.

VIOLATING THE DUTY OF FAIR REPRESENTATION

Arbitrary
Capricious
Perfunctory
Bad Faith

STEWARDS SPECIAL IMMUNITY

Special Immunity Rule
Counseling Employees
Direct Order
Disruption of the Workplace
Safeguarding Immunity
**STEWARD TIME**

Article 17.3 establishes the following rules:

- The Postal Service may not predetermine the amount of time which a steward reasonably needs to investigate a grievance.
- Likewise, once time is granted, the steward has an obligation to request additional time and to state reasons why this additional time is needed.
- Requests for additional time to process grievances should be dealt with on an individual basis and may not be unreasonably denied.

If additional time is necessary, the steward should discuss the need with the supervisor.

Additional time may be granted in conjunction with the previously specified time or at a later time or date.

The appropriate remedy in a case where management has unreasonably denied a steward time on the clock is an order or agreement to cease and desist, plus, where the steward was required to process the grievance(s) off the clock, payment to the steward for the time which should have been allowed spent processing the grievance off-the-clock.

**Leave for other union activities**

Article 24 provides that when an employee uses LWOP to perform official union business, the leave is charged to LWOP-Union Officials (currently code 84). If management determines that the employee’s services can be spared and it approves the requested absences, then the employee has the option of annual leave or LWOP.
The union’s entitlement to information relevant to collective bargaining and contract administration is set forth in Article 31.3. Article 17.3 states specific rights to review documents, files and other records, in addition to the right to interview a grievant, supervisors and witnesses.

A request for information should state how the request is relevant to the handling of a grievance or potential grievance.

Articles 15, 17, and 31 intend that any and all information which the parties rely on to support their position in a grievance is to be furnished and exchanged. This will foster maximum resolution at the lowest level.

For routine requests for timekeeping records, leave records, prior discipline records, staffing records, and work schedule records no specific explanation of relevancy is required on the union’s request form as per Article 17, page 9, question 21 of the JCIM.

The union is entitled to medical records (under the authority and control of the Postal Service) which are necessary to investigate or process a grievance, even without an employee’s authorization, as provided for in Handbook AS 353, Appendix (USPS 120.090), the Health and Medical Services Handbook, (EL-860).

When the union is provided with information, for example medical records, it is subject to the same rules of confidentiality as the Postal Service.
Judicious use of a camera to establish or refute a grievance may facilitate resolution of some problems.

If the union desires to take photographs on the work room floor, permission must first be obtained from local management, and a supervisor must be present.

If management deems it necessary to take evidential photographs related to a possible grievance, it would also be prudent to have a steward or union official present.

The use of camera equipment by union stewards to photograph mail processing operations on postal premises is not within the purview of Article 17.

Information relied on by the parties to support their positions in a grievance should be exchanged between the parties’ representatives at the lowest possible level.

If the union requests a copy of PS Form 2608 at Step 2 or any subsequent step in the grievance procedure, it will be made available.

Likewise, PS Form 2609 will be made available, upon request, at Step 3 or any time thereafter.
If any part of a video tape has been or is intended to be used as a basis for disciplinary action, those portions will be reproduced and afforded to the union, upon request.

The union is responsible for the costs associated with reproduction.

Make certain your request is for the complete, unedited tapes.

If a request for copies is part of the information request, then the Postal Service must provide the copies.

Upon request of the union, reports previously provided in hard copy will be provided electronically when it is possible to do so.-JCIM, Article 17, page 3 & Article 31, page 1.

COST

Handbook AS-353 governs the costs which management may charge the APWU for providing information.

The union may obtain estimates of the cost of providing the information in advance.

The first two hours of research time and the first 100 individual copies are furnished to the union at no charge for each request.
The charges required for information furnished pursuant to Article 31 will not be greater than charges imposed by the Postal Service for release of information under the Freedom of Information Act.

STEWARD RIGHTS

The following outlines basic steward rights:

• The right to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance.

• The right to review documents, files, and other records which are necessary for processing the grievance or determining if a grievance exist.

• The right to interview the aggrieved employee, supervisors and witnesses.

• The right to represent an employee during an Inspection Service interrogation, when requested by the employee (See Weingarten Rights, JCM ARTICLE 17, PAGE 4 & 5).
• The right to reasonable time on the clock to complete grievance forms and write appeals, including Step 3 appeals and the union’s additions and corrections to management’s Step 2 decision.
• The right to process post-removal grievances provided the grievance is non-disciplinary, not related to the removal action and initiated prior to the date of separation from Postal Service rolls. Note: Art. 19 change, regarding retiree debts.
• All of the above activities are compensable pursuant to Article 17.4.

Steward Designation-Special Circumstances
In accordance with Article 17.2.B the union may designate in writing, one union officer, who may also be a steward in a different section, actively employed at an installation to act as a steward to investigate, present and adjust a specific grievance or to investigate a specific problem to determine whether to file a grievance.

This is not an ongoing certification, rather for a specific grievance or problem only.

WEINGARTEN RIGHTS
Federal labor law gives each employee the right to representation during any investigatory interview which the employee reasonably believes may lead to discipline. This right originated in NLRB v. J. Weingarten, U.S. Supreme Court 1975, and is commonly called the “Weingarten rule” or “Weingarten rights.”

The Weingarten rule only applies to an investigatory interview when management is searching for facts relevant to determining an employee’s guilt or deciding whether to impose discipline. Weingarten rights do not apply when management issues a disciplinary action to an employee (for example, handing an employee a letter of warning).
Weingarten representation rights apply where an employee reasonably believes that discipline could result from the investigatory interview. Whether or not an employee's belief is “reasonable” depends on the circumstances of each case.

The steward cannot exercise Weingarten rights on the employee’s behalf. Unlike “Miranda rights,” which involve a criminal investigation, management is not required to inform the employee of the Weingarten rule.

The Weingarten rule includes the right to a pre-interview consultation with a steward. Federal Courts have extended this right to pre-meeting consultations to cover Inspection Service interrogations. (Postal Service v. NLRB, D.C. Cir. 1992).

The employee has the right to a steward's assistance, not just a silent presence, during an interview covered by the Weingarten rule. An employee's Weingarten rights are violated when the union representative is not allowed to speak or is restricted to the role of a passive observer.

Although ELM, Section 665.3 requires all postal employees to cooperate during investigations, an employee with Weingarten rights is entitled to have a steward present before answering questions.

The employee may respond that he or she will answer questions once a steward is provided.

ARTICLE 23
RIGHTS OF UNION OFFICIALS TO ENTER POSTAL INSTALLATIONS

Article 23 establishes the right of APWU officials to enter postal installations for any official purpose related to collective bargaining.

- High mail volume on a particular day is not a legitimate reason to prevent union officials from entering a facility
- There should be no unreasonable delays in granting a requesting union official access to a postal facility.
The union needs to give management reasonable notice prior to entering a postal facility. Normally, a telephone call to an appropriate management official is sufficient.

With reasonable notice, duly authorized representatives of the union will be authorized to enter postal installations for the purpose of performing and engaging in official union duties and business related to the collective bargaining agreement.

Such representatives need not be on the employer’s payroll and may include “safety and health experts.” All such representatives must adhere to the terms and conditions of Article 23.

**ARTICLE 15**

**GRIEVANCE ARBITRATION PROCEDURE**

**DEFINITION:**

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours and conditions of employment.

**STEP 1**

**FILING A GRIEVANCE**

The grievant or the union must discuss the grievance with the employee’s immediate supervisor within fourteen days of when the grievant or the union first learned, or may reasonably have been expected to learn, of the alleged violation.
Should the grievance affect more than one employee in the office, the union may initiate a class action grievance on behalf of all affected employees and management is obligated to designate an appropriate employer representative.

If the employee files his/her own grievance, then the grievant may be accompanied and represented by a union representative.

If the union initiates a grievance on behalf of an individual, the individual grievant’s participation in a Step 1 meeting is at the option of the union.

The union may designate one steward or union official in writing to the installation head/designee in lieu of all other stewards to file one class action grievance on behalf of all employees in an office/facility/installation. When the union notifies management of an office/facility/installation wide class action grievance, management will advise the union of the management rep.
When the union files a class action grievance, all affected employees are covered and individual grievances shall not be filed on the same issue. All relevant information necessary to file or continue the processing of the grievance will be provided.

**TIME LIMITS**

The fourteen days for filing a grievance at Step 1 begins with the date of the occurrence or the date when the grievant or the union may reasonably have been expected to have learned of the occurrence.

For example, when an employee receives a letter of warning, day one of the fourteen days is the day after the letter of warning is received.
The intent of the parties is to resolve cases at the lowest possible level whether it is done by telephone or in person. Normally, the parties will meet on Step one (1) grievances in person; however, in unusual circumstances, to accommodate the process, a Step 1 grievance may be done by telephone.

Continuing Violation

- A continuing contract violation is an exception to the general rule for grievance time limits.
- Where the union asserts that the alleged contractual violation has been on a continuing basis, a grievance filed within 14 days of an event would be considered timely. However, any liability normally could not extend retroactively more than 14 days prior to grievance initiation.
SETTLEMENT - STEP 1

Article 15.2, Step 1(b) gives the Step 1 representatives the authority to resolve a grievance at the initial stage of the grievance/arbitration procedure.

DENIAL - STEP 1

When the parties are unable to resolve a grievance at Step 1, the supervisor shall give the reasons for the denial when rendering the oral decision.

The Step 1 decision must be given within five days of the Step 1 meeting, unless the time limits are mutually extended.

Within five days from the issuance of the decision, the supervisor must, if the union so requests, initial the standard grievance form to confirm the date of the Step 1 decision.
At that time, the grievance form must contain sufficient information completed for the supervisor to determine that they are, in fact, verifying a decision date of the grievance that was heard.

Given the verbal nature of Step 1 discussions, the Form 2608 is not normally available at the time of discussion at that step.

However, in cases where the Form 2608 is completed, the parties agree that the union may request to review Form 2608 at Step 2.

STEP 2

WRITING STEP 2 GRIEVANCES

A BASIC GUIDE TO CLARITY
Writing Step 2 Grievances

• Introduction
• Filling Out the Form
• Writing a Lead
• Assembling Your Arguments
• Supporting Your Arguments With Facts
• Writing the Remedy
• Tactical Advice

FILLING OUT THE FORM

KEY POINTS:
Complete All Items!
Item 1: Nature of Discipline/Contract Issue
Item 8: Union or Grievant?
Items 8, 9 & 10: Grievant’s Information
Item 11: Cite Articles/Handbooks/Other
Identify Exhibits

WRITING THE LEAD

“The letter of warning for alleged insubordination received by Grievant John Doe on 2/1/13 was not issued for just cause and was punitive rather than corrective in violation of Article 16.1 of the Collective Bargaining Agreement and the JCI M, for the following reasons:”
“The placement of the grievant’s name on the restricted sick leave list on 2/9/13 was in violation of Article 10, Sections 2 & 5, of the CBA because management misapplied procedures set forth in Section 513.391 of the Employee & Labor Relations Manual, to wit: RSL was not preceded by the requisite quarterly discussions, nor did the supervisor have any evidence indicating an abuse of sick leave.”

“Management violated Article 8.5 of the CBA on 2/9/05 when OTDL Clerk Jane Doe, who was qualified and available, was bypassed for 2 hours end of tour overtime in Express Mail from 2100 hours to 2300 hours in lieu of non-list employee union member.”

“The letter of demand for $21,646 issued to the Grievant on 2/9/05 was in violation of Article 28 and applicable Handbook Regulations governed by Article 19 of the CBA for the following reasons:”
**WRITING THE LEAD**

* Introductory Sentence or Paragraph
* Frame The Issue
* Answer the Success Questions
* Convey Facts Clearly

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**ASSEMBLING YOUR ARGUMENTS**

“1. The Grievant is charged with violating a rule, but the fact is he was unaware of the rule and had never been forewarned of the disciplinary consequences of his behavior for failure to follow the alleged rule in violation of The principles of Just Cause listed in the Article 16 of the mandatory JCIM.

The Grievant states he first learned of a possible rule violation when he was handed the letter of warning.”

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“2. The alleged rule in question is not reasonably related to management’s overall objective of safe and efficient work performance, in violation of the principles of Just Cause listed in the EL-921 Handbook, and Article 16 of the mandatory JCIM.

Management cannot arbitrarily require all employees who call in sick on New Year’s Eve to provide medical certification. A blanket rule such as was applied in this case is unreasonable.”
“3. The union has evidence the alleged rule has not been equitably enforced by management, causing the grievant to be the victim of disparate treatment in violation of the principles of Just Cause listed in the EL-921 Handbook, and Article 16 of the mandatory JCIM.

Similarly situated employees in the installation have not received discipline for the same alleged infraction.

These employees are listed as follows: Bugs Bunny, Elmer Fudd, Yogi Bear, etc.”

“4. The supervisor failed to complete a thorough and objective investigation before administering discipline in accordance with the principles of Just Cause listed in the EL-921 Handbook, and Article 16 of the mandatory JCIM.

The Grievant was not afforded his “day in court” privilege prior to the issuance of discipline, therefore, the resultant discipline is fatally flawed.

If the supervisor had actually completed a proper investigation he would have discovered the Grievant was in fact innocent of all charges.”

“5. The discipline is not reasonably related to the alleged infraction itself or to the Grievant’s past record in violation of the principles of Just Cause listed in the EL-921 Handbook, and Article 16 of the mandatory JCIM.

Because the alleged infraction must be considered minor at most and because the Grievant has had no prior discussions or prior discipline on file, the [letter of warning, suspension, removal] is punitive rather than corrective in violation of Article 16.1 of the Collective Bargaining Agreement.”
“6. The discipline was issued six weeks after the fact and is thus untimely in violation of the principles of Just Cause listed in the EL-921 Handbook, and Article 16 of the mandatory JCIM.

Management’s failure to investigate in a timely manner has deprived the Grievant of a reasonable opportunity to reconstruct the incident in his memory in order to prepare a defense.”

“On Sunday, 2/6/05, management violated Article 8.5.G. when five OTDL employees were not maximized to 12 hours at the end of their tour prior to assigning one hour overtime to ten non-list employees.

On that morning MDO IM Boss mandated all of Tour 1 to work overtime. The five OTDL clerks were worked 2 hours each in their respective schemes and sent home.

The ten non-list clerks worked one hour each in SCF, work that all the OTDL clerks were qualified to do.
The Union contends the OTDL should have been maximized because the five clerks on the list could have worked two hours each in SCF after they completed their two hours OT, equal to the 10 hours worked by non-list clerks.

The incident occurred on a Sunday morning. Overtime was not called to complete a dispatch.

All SCF stations were closed. The mail would not be delivered to the stations until Monday morning.

Management’s desire to avoid penalty overtime was in direct violation of the contract.

“Management violated Article 7.1.B.2 during Pay Period 11, Week 2, 2012, when PTF Clerk Tony Soprano was worked only 38 hours at the straight time rate.

On Wednesday, 1/26/05, the Grievant was sent home at 0800 hours while PSE Clerk Ralph Kramden continued to work until 1000. Since this was during the course of the service week and the PTF was qualified and available, the PTF should have been utilized at the straight time rate prior to assigning such work to PSEs.”
ASSEMBLING YOUR ARGUMENTS

+ Analyze the Case
+ Select a Format
+ Arguments Listed Separately vs. Narrative Style
+ Numbers or Bullet Points For Complex Cases
+ Narrative Style for Single Arguments

SUPPORTING YOUR ARGUMENTS WITH FACTS

* Facts Are the Who, What, When, Where, How and Why of Your Case
* Facts are Names, Dates, Times, Places and Other Relevant Information
* Key Point: Be Specific! Name Names--Identify Class Action Grievances, Supervisors, Witnesses, etc., By Name!

“On February 7, 2005, Supervisor I. Conduit was observed distributing mail into patron boxes in the box section at South Station for two continuous hours from 0600 to 0800 in violation of Article 1.6 of the Collective Bargaining Agreement. This violation was observed by craft employees Gilligan and The Skipper, whose statements are attached (see Exhibits 1 & 2).

It is requested the senior available employee on the OTDL (Gilligan) be compensated for two hours pay at the overtime rate.”
WRITING THE REMEDY

“It is requested the [action] be rescinded and expunged from the record and that the Grievant be made whole in all respects.

-or-

“It is requested the [action] be rescinded and expunged from all records and that the Grievant be made whole for loss of pay and all other entitlements.

“The Union is requesting 2 hours penalty overtime pay for each of the five employees on the overtime desired list scheduled on Sunday 2/6/05: J. Dirzius, M. Gallagher, P. Coradi, J. LaCapria and L. Swigert.”

Discipline: “Rescind/ Make Whole”

Letters of Demand: “Rescind/ Be Absolved of Financial Responsibility”

Overtime Remedies/ MOU Pg.303 CBA

Monetary Compensation for Contract Violations
TACTICAL ADVICE

• Resist Personal Attacks
• Use Easy to Understand Words
• Less is Sometimes More
• Clarity is More Important Than Quantity

When appealing a grievance to Step 2, day one of the time limits is the day following the supervisor's Step 1 decision.

When appealing a grievance to Step 2 by mail, the appeal must be postmarked on or before the tenth day following the Step 1 decision (for example, on the fourteenth if the decision is received on the fourth).
When using alternative methods, the Step 2 appeal must be received on or before the tenth day. To avoid potential procedural issues the union representative should not wait until the last day.

**STEP 2 MEETING**

The Step 2 meeting must be held within seven days of receipt of the Step 2 appeal unless the time limits are mutually extended.

The union representative at the Step 2 meeting shall fully discuss the union's position, including the contractual provisions allegedly violated and the corrective action requested.

The union may furnish written statements from witnesses or other individuals who have information pertaining to the grievance. Both parties are required to state in detail the evidence and contract provisions relied upon to support their positions.

The Postal Service is also required to furnish to the union, if requested, any documents or statements of witnesses as provided for in Article 31, Section 3.
STEP 2 - WITNESSES

In a non-discharge case, the parties can mutually agree to jointly interview witnesses at the Step 2 meeting. In discharge cases, either party may present two witnesses at that meeting, with additional witnesses possible should the parties mutually agree.

Witnesses will be on the clock while in attendance at the Step 2 meeting, as provided for in Article 17.4.

STEP 2 - AUTHORITY

The representatives at Step 2 shall have the authority to settle or withdraw grievances in whole or in part.

A settlement or withdrawal shall be in writing or noted on the standard grievance form and will not be precedent setting unless the parties specifically agree otherwise.

STEP 2 DECISION

Management must provide the union representative a written decision within ten days of the Step 2 meeting unless time limits are mutually extended. The decision shall include:

1) all relevant facts;
2) contract provisions involved; and
3) detailed reasons for denial
ADDITIONS AND CORRECTIONS

Where the union representative believes that the facts or contentions set forth in management’s Step 2 decision is incomplete or inaccurate, the representative may file, within ten days of receipt of the Step 2 decision, a written statement with the management Step 2 representative setting forth any corrections and additions to the Step 2 decision.

The filing of any corrections or additions does not extend the time limits for filing the appeal to Step 3. The steward is entitled to time on-the-clock to write the union’s statement of corrections and additions to the Step 2 decision.

TIMELINESS REGARDING STEP 2(H) APPEALS

Where the union incorrectly appeals a grievance directly to arbitration under Article 15.2 Step 2(h) and that grievance should have been appealed to Step 3, or vice versa, the grievance is not waived as untimely provided the union can show a timely appeal to arbitration/Step 3.

If no timely appeal can be established by the union, then management retains the right to raise the timeliness issue.
**STEP 3 APPEALS**

An appeal to Step 3 must be filed within fifteen days of receipt of the Step 2 decision. When appealing a grievance to Step 3 by mail, the appeal must be postmarked on or before the fifteenth day following the Step 2 decision.

When using alternative methods, the Step 3 appeal must be received on or before the fifteenth day. To avoid potential procedural issues the union representative should not wait until the last day.

The union's Step 3 appeal must include copies of:

- The Standard Grievance Form
- The Postal Service’s written Step 2 decision, if any, and
- The union’s corrections or additions, if filed.

**ARBITRATION APPEALS**

An adverse Step 2 decision may be appealed directly to arbitration for disciplinary grievances or contract grievances which involve the interpretation, application or compliance of a Local Memorandum of Understanding (LMOU) and those issues the parties have agreed are appealed to expedited arbitration.
TIME LIMITS
DIRECT APPEALS

When appealing a grievance directly to arbitration by mail, the direct appeal must be postmarked on or before the thirtieth day following the Step 2 decision.

When using alternative methods, the direct appeal must be received on or before the thirtieth day.

TIMELINESS

If management fails to raise the issue of timeliness at Step 2, or at the step at which the employee or union failed to meet the prescribed time limits, whichever is later, it waives the right to raise the issue.

If management asserts that a grievance was not timely at Step 1, management must raise the issue at Step 2 (because Step 2 is “later” than Step 1) or the objection is waived.

FAILURE TO SCHEDULE A MEETING/ISSUE A DECISION

If management fails to schedule a timely meeting or issue a timely decision (unless the parties mutually agree to an extension) the union must appeal the case to the next step within the prescribed time limits, if it wishes to pursue the grievance.
In cases where management fails to issue a timely decision, the time limits for appeal to the next step are counted from the date the decision was due.

In cases where management fails to schedule a timely meeting, the time limits for appeal to the next step are counted from the last date a timely meeting could have been scheduled.

If management fails to issue a Step 2 decision within ten days of a Step 2 meeting, the union must make any appeal to Step 3 within fifteen days of the date the Step 2 decision was due.

ROLE OF INSPECTION SERVICE

The Postal Inspection Service has an obligation to comply fully with the letter and spirit of the National Agreement and may not interfere in the dispute resolution process as it relates to Articles 15 and 16. Note: This provision also applies to Special Agents of the OIG.
An independent review of the facts by management is required prior to the issuance of disciplinary action, emergency procedures, indefinite suspensions, enforced leave or administrative actions.

Management is not precluded or limited from reviewing Inspection Service documents in making a decision to issue discipline.

Inspectors may not make recommendations, provide opinions, or attempt to influence management personnel regarding a particular disciplinary action, as defined above.

THANKS FOR JOINING US!
WE SALUTE YOU AND CONGRATULATE YOU!!
GOOD LUCK AND HANG TOUGH!!