

# NALC

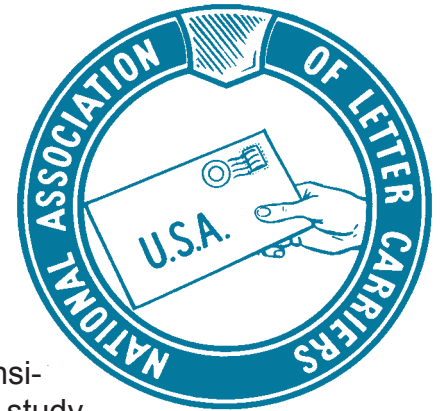
**SHOP**

**STEWARD'S**

**GUIDE**

## To NALC shop stewards

First, let me congratulate you and thank you for taking on the job of an NALC shop steward. It is truly a worthy cause and a very important position in our union. There is no greater calling and no greater responsibility in our union than that of NALC shop steward. It requires courage, study, intelligence, and hard work. It also takes a lot of heart.



When you become an NALC shop steward you become responsible to the men and women you represent. They count on you to enforce their rights on the job. As a union official at the branch level, you also become responsible to the NALC.

The shop steward's job is difficult and demanding. That's why we have created *NALC Shop Steward's Guide*. It discusses many of the roles you will play as a shop steward, especially your role in enforcing the collective bargaining agreement.

When the contract is violated, an NALC shop steward must research the facts and the contract before constructing an effective grievance. Then he or she needs to articulate the correct arguments at the very earliest steps of the grievance procedure. To do these jobs well a shop steward requires deeper and more detailed information than either the National Agreement or the *Joint Contract Administration Manual (JCAM)* provide.

NALC created this guide to help union representatives find that in-depth information and put it to work defending our contract. It explains the key principles, contract language, national settlements and arbitration decisions that one must know to effectively represent letter carriers and the NALC.

We trust you will find this booklet a helpful and informative guide to your job as a steward.



Sincerely and fraternally,

A handwritten signature in black ink, appearing to read "Fredric V. Rolando".

Fredric V. Rolando  
President, National Association of Letter Carriers

# **NALC Shop Steward's Guide**

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# Using the NALC Shop Steward's Guide

This guide can be printed in whole or in part. It has also been published in PDF format on a DVD and the NALC website for electronic use. The electronic version contains embedded hyperlinks to assist with navigating around the document and provides easy access to arbitration awards, national level settlements, and other NALC publications. Simply click on any link to go to the desired section or document.

This guide also contains both a table of contents and an index. To find material and navigate around the document, it is usually easiest to start with the table of contents. The index is found at the end of this publication.

The green links will take you to various sections of the *NALC Shop Steward's Guide* as well as the following sections of the Special Topics chapter: [Safety and Health](#), [Discrimination](#), [MSPB Appeal Rights](#), [Time Limits](#), [Investigatory Interviews](#), [Information Requests](#), [Tips for Writing Statements](#), and [Remedies](#). The Special Topics chapter is where specific subjects are covered more in depth, so when you get to a highlighted section, **check it out!**

The blue links will take you to an external website link or an external document in PDF format such as an arbitration award, national-level settlement, or an NALC publication, for example: [NALC website](#) or [M-01476](#).

Excerpts from the National Agreement are indented and indicated by text boxes.

Excerpts from the *Joint Contract Administration Manual (JCAM)* are indented and indicated by blue shading.

## Using the Adobe Acrobat Reader

This publication and all the linked documents are in PDF format. PDFs are normally viewed with Adobe Acrobat Reader. Using Adobe Acrobat Reader tools, you can search the individual documents. The Adobe tools will also assist you as you navigate through this guide and the documents linked throughout. You can also copy and paste text for use in a word processing document.

Users should modify the Adobe tools found at the top of the screen in Adobe Acrobat Reader to improve navigation. All of the page navigation tools can be very helpful, but it is especially important to have the “previous view” command. This will allow you to return to each place in this guide that you have previously been.

To add the toolbar commands in Adobe Reader XI, go to the “View” menu at the top of Adobe Reader. Select “Show/Hide,” then “Toolbar Items,” then “Page Navigation” and select the toolbar commands that you desire. For additional help using PDF documents or if these instructions do not work on your version of Adobe Acrobat Reader, consult the Adobe Reader's help files.

Another option to utilize the “previous view” command can be performed from your keyboard by holding down the “Alt” key and selecting the back (left) arrow.

## Note to Readers

This new publication is based on many previous NALC publications. It summarizes years of experience by NALC officers, national business agents, staff, arbitration advocates, and grievance handlers. We expect it to continue to grow and improve. You can help improve future editions by bringing any suggestions you have to the attention of your national business agent's office. We would especially welcome your suggestions for additional subjects to cover or sections that can be improved or clarified.

# I. Roles of a Steward

NALC shop stewards represent and defend the interests of letter carriers. Stewards are NALC members elected or appointed to represent a group of letter carriers. These union activists give their time and effort to help letter carriers in many ways.

An effective steward protects the integrity of the collective bargaining agreement through contract enforcement and by educating members of their rights and benefits under the National Agreement. There will be times when you are going to have to make decisions that some portion of the membership may not like or agree with, but understand that when you protect the integrity of the contract you are protecting the membership as a whole. What is perceived as wrong to one member today may actually be perceived as a benefit to them tomorrow. We as stewards cannot pick and choose when to file or not to file a grievance for a violation of the National Agreement. All violations must be grieved to uphold the sanctity of our National Agreement. Just follow the contract and you'll be better able to explain your decision to those members who disagree with you. It is important to realize that as a steward you have the ability to undo a wrong or unjust action in the workplace committed against a letter carrier. This is a benefit that very few jobs have!

The steward is the key to a strong union. Here are three major reasons why:

1. The steward is visible evidence of the union where it counts—on the job, day-in and day-out. The steward is always there, working side-by-side with letter carriers in each office. Letter carriers naturally judge the union by what they can see. So just make sure that when you make decisions you do so with the best interests of the group in mind.
2. The steward is the first, and thus the most important, "enforcer" of the National Agreement. Without a steward to police the contract at the workplace, a collective bargaining agreement's true value is diminished. By making the Postal Service follow the terms and conditions of the National Agreement, the steward can demonstrate how our contract is a powerful mechanism to protect letter carriers' rights and benefits.
3. The steward is a certified union official. The steward builds unity among the membership by enforcing the contract, educating the membership, and promoting union activism. The steward carries out NALC policies and builds support for NALC's national goals.

Stewards unite the members together as a whole through their commitment to protecting the rights and improving the lives of the men and women they represent. The steward does a lot more than just handle grievances. An effective NALC steward wears many different hats. The steward plays the following major roles:

1. Representative
2. Leader
3. Organizer
4. Educator
5. Legislative and Political Activist

Each of these major roles is discussed in detail on the next several pages.

### **Representative**

First and foremost, an NALC steward acts in an official capacity to represent letter carriers. Article 17 of the National Agreement and the National Labor Relations Act grant stewards the right to represent letter carriers on the job.

According to Article 17, Section 1 of the National Agreement, stewards are designated “for the purpose of investigating, presenting and adjusting grievances.” Grievances generally will involve disputes or complaints between the parties involving wages, hours, or working conditions. While this guide discusses several additional roles played by the steward, grievance handling is the core of the steward’s job. Chapter III of this guide is devoted to the subject of processing grievances. The grievance procedure is also known as the Dispute Resolution Process or the DRP. All these terms are interchangeable and mean the same thing.

Stewards do not receive higher wages for the work they do, but there is a great value to the contractual right to challenge decisions and actions that harm letter carriers through the grievance procedure. There is an even greater reward for righting wrongs and achieving justice for letter carriers.

### **Leader**

Successful leaders set a good example. This begins with following work rules and performing your job as a letter carrier in a professional manner. An effective leader always tries to maintain a positive attitude and looks out for the group before themselves. Your participation in NALC initiatives and functions will also speak volumes to the members you serve and will encourage their involvement in the union.

A leader gets things done with support from the people that he or she represents. The NALC is a voluntary, democratic organization that thrives on the support of its members. That support will enable you to make decisions that affect both individual letter carriers and the group as a whole.

A fair, even-handed leader will get the support and cooperation of fellow workers. You should listen to the members you represent and take their views into account. When you make a decision, explain your reasons to them. Good communication builds solidarity and trust.

As a leader, you will be called upon to address a variety of issues, some of which may not involve the union-management relationship. The steward may also be a counselor, peacemaker, and friend.

### **Organizer**

The steward plays an important role in organizing letter carriers by first signing them up as NALC members and then by building unity and support for union goals.

While many new letter carriers sign up at orientation, some do not. Sometimes it is necessary for the shop steward to seek them out and explain the importance of being a union member. The steward should always greet new letter carriers, give them advice and assistance on their new job, and tell them about the NALC.

New letter carriers will need information about the NALC’s accomplishments, its structure, and its methods of operation. *The Letter Carrier’s Guide* (available **free** from the [NALC Supply Department](#)) contains a basic introduction to the NALC and to the job of a letter carrier.

Stewards should work hard to organize all letter carriers who are non-members. The best way to organize non-member letter carriers is through demonstrated union effectiveness.

Your job is not finished when your unit is 100 percent organized. It has just begun. You should work to motivate members to attend and participate in NALC branch meetings, learn more about NALC programs and goals, and volunteer their time for union activities.

The steward works continuously to build support for the union and solidarity among the members. There is strength in presenting a united front to management.

### **Educator**

Stewards are in the best position to educate the members they represent. NALC members will benefit from information that only an NALC representative can provide. The steward is usually the only NALC representative that rank-and-file letter carriers see and interact with on a daily basis.

As a steward you can learn how to protect letter carriers' rights, build upon your knowledge of the union, and provide education about the National Agreement. This information can be grouped into three major topics: the union, members' rights, and NALC benefits for members.

**The Union:** The steward should educate members on the basic history of the postal labor movement and the National Association of Letter Carriers. A detailed history of the NALC can be found in the publication *Carriers in a Common Cause*. This and other publications are available from the [NALC Supply Department](#).

Members and potential members should also understand how the NALC operates. All letter carriers should know about our role as the exclusive collective bargaining agent for letter carriers, our membership services, and our link with the wider labor movement through our AFL-CIO affiliation. Encourage them to read the [NALC Bulletin](#), [The Postal Record](#), and the [NALC website](#) to keep updated on national issues affecting letter carrier jobs and the Postal Service.

To promote interest in branch affairs, inform members about upcoming branch meetings and about what they missed at branch meetings they did not attend. Stewards should encourage active participation in local union affairs and should teach members about branch by-laws and the NALC Constitution. Many branches have newsletters to help with your efforts to keep members informed, but a one-on-one conversation is the best way to communicate and get members involved.

**Members' Rights:** The steward should teach letter carriers about their rights under the contract and the law. While the steward is the person responsible for representing letter carriers, each NALC member should know the basics of their wages, benefits, and working conditions as well as their collective legal and contractual rights and protections.

The steward will need a great deal of self-education to be able to teach members all these subjects. Effective stewards continuously strive to learn more, improve their skills, and pass their knowledge on to the members.

**NALC Benefits for Members:** The steward should educate letter carriers about the [NALC Health Benefit Plan](#) and the [United States Letter Carriers Mutual Benefit Association](#). Both of these organizations offer great benefits and are owned and operated by the NALC for the benefit of our members.



The [NALC Health Benefit Plan](#) (HBP) is always among the top-ranked health insurance plans available to federal employees. The NALC Health Benefit Plan is geared toward providing the best coverage at the lowest possible rates. During “Open Season,” the steward should assist the branch health benefits representative by discussing the benefits of the NALC HBP.

The [United States Letter Carriers Mutual Benefit Association](#) (MBA) offers basic life insurance, retirement, and accident plans designed to give NALC members and their families the best possible protection for the lowest cost. Every letter carrier who is a member of the NALC receives a \$5,000.00 accidental death policy. There is no initial cost or premium to pay. It is just one of the many benefits NALC members enjoy.

### **Legislative and Political Activist**

The steward also plays a vital role in the NALC’s legislative and political efforts. Letter carriers should be active participants in legislative matters for the NALC to fight attempts by some politicians in Congress to rob letter carriers of existing rights and benefits by changing current law or passing new legislation.

Laws passed in Congress can have a major impact on the working lives of letter carriers as well as the service we provide to our customers. The impact may be positive or negative depending on the nature of the law being changed or created.

Some examples where federal laws have created rights, rules, and benefits that affect the working lives of letter carriers are:

- Our right to collectively bargain with the Postal Service over wages, hours, and working conditions. This includes our right to have a grievance procedure.
- The Federal Employees Retirement System (FERS) rules.
- The Thrift Savings Plan (TSP) rules.
- The Federal Employees Compensation Act (FECA) rules for injured letter carriers.
- The Family and Medical Leave Act (FMLA).

There are other examples of laws that affect the working lives of letter carriers, but you get the idea of why legislation is important.

Federal law can impact the service we provide to our customers. Issues such as how many days a week our customers receive mail, their right to receive delivery to their door, and the cost of postage are all governed at the federal level.

As postal workers we are federal employees. However, the United States Postal Service (USPS) receives no tax dollars for day-to-day operations. It relies on income from stamps and other postal fees to keep running.

Legislative awareness and participation is extremely important to us as letter carriers, because many on Capitol Hill are constantly attacking our wages, benefits, and the level of service we provide to our customers. These are all issues worth fighting for. Federal employees have increasingly become a target for many politicians and it is vital to our success that stewards understand what is at stake in the halls of Congress and participate in this fight.

**The Hatch Act:** With increased involvement by letter carriers in the political process, it is more important than ever to review the rules and regulations by which letter carriers can participate in elections. Specifically, carriers need to be aware of the Hatch Act, which governs specific activities by

federal employees, and the Federal Election Campaign Act, which regulates monetary and other contributions (e.g., in-kind, volunteering, etc.) in the campaign process.

### **Hatch Act Do's and Don'ts**

Here are the primary guidelines that active letter carriers need to follow when working or volunteering on political campaigns.

**Do's:** Active letter carriers may on their own time, away from work, out of uniform, and without using a postal vehicle—

- Be candidates for public office in nonpartisan elections (that is, elections in which none of the candidates to be nominated or elected are representing a political party)
- Register to vote and vote
- Sign and circulate candidate nominating petitions and ballot initiative positions
- Assist in voter registration drives
- Speak and write publicly and otherwise express opinions about candidates, ballot measures, and issues
- Attend political rallies, meetings, and other events
- Attend fund-raisers and contribute money to political organizations and campaigns
- Volunteer for political campaigns and encourage others to volunteer
- Participate in phone-banking and precinct-walking for candidates and ballot measures
- Display bumper stickers, lawn signs, and other campaign paraphernalia
- Raise money for COLCPE from other NALC members [Note: letter carriers should not solicit contributions to COLCPE while detailed to 204b or other higher level assignments from postal employees who may be viewed as their subordinates]
- Volunteer, run for, and hold an office in a local or state political party or club

**Don'ts:** Active letter carriers may not, while on the clock, at the workplace, in a postal uniform, or in a postal vehicle—

- Engage in any of the otherwise permissible political activities listed above; for example:
  - Send or forward a partisan political email
  - Wear or display any political or campaign material, even as a computer screen-saver
  - Circulate partisan political materials to co-workers
  - Sign up electronically to contribute to COLCPE or solicit other letter carriers to contribute

**Don'ts:** Active letter carriers may not, even on their own time, away from work, out of uniform, and without using a postal vehicle—

- Use their official titles or positions when engaging in otherwise permissible activities
- Raise money for partisan political groups or campaigns (except COLCPE), including phone-banking, letter-writing, selling tickets, hosting a fund raiser, inviting people to attend a fund raiser, or allowing your name to be used in a fundraising appeal
- Otherwise solicit, receive, or handle contributions for a partisan political group or campaign
- Run for elective office in partisan (party-label) elections (even if you report "No Party Affiliation")
- Raise money for COLCPE from non-NALC members (except for their immediate families in the same household)

**Bottom line:** Be off the clock, out of uniform (and government vehicles) and away from the workplace whenever you engage in any partisan political activity, and make sure that activity is in a permissible category.

If you have any questions about permissible political activity as a letter carrier or if you would like to know more about the history of the Hatch Act, visit the [NALC Legislation and Political Action](#) page on the [NALC website](#).

Stewards should promote participation in the NALC's e-Activist network, COLCPE (Committee on Letter Carrier Political Education), and other NALC legislative and political efforts. Stewards should also encourage members to stay informed by regularly checking for updates on the [NALC website](#).

**Note:** COLCPE is the NALC's political action fund that helps pro-labor, pro-letter carrier candidates for Congress get their message out so they can go to Washington to support and protect our jobs so we can serve the public.

## II. Collective Bargaining and the Steward

One of the NALC's primary jobs is collective bargaining. The union attempts to negotiate a National Agreement that improves the wages, benefits, and working conditions of letter carriers. Then the NALC enforces the contract by "policing" it. In policing the contract, the NALC ensures that the Postal Service honors the terms of the agreement. The steward serves as the NALC's front line enforcer of the National Agreement. After the National Agreement is finalized, the NALC and USPS management work collectively to develop and agree upon interpretations of the National Agreement. These interpretations are contained in the *Joint Contract Administration Manual (JCAM)*. The National Agreement and the *JCAM*, along with the *Materials Reference System (MRS)*, are explained in detail below. Each of these documents and resources has been obtained through collective bargaining and are of great importance to NALC stewards.

### The National Agreement

The collective bargaining process begins with national negotiations. Union and management representatives at the national level meet, negotiate, and attempt to hammer out an agreement on wages, hours, and working conditions for all letter carriers.

If a negotiated agreement is reached by the parties and ratified by NALC membership, it becomes the [National Agreement](#) between the NALC and the USPS and will be enforceable through the collective bargaining agreement. The length of each contract is negotiated and may vary from contract to contract.

If no agreement can be reached through negotiations, the parties must first go through a mediation process. If an agreement still can't be reached, the terms of the National Agreement are set through a final and binding interest arbitration process. Interest arbitration involves the NALC and the USPS submitting evidence, testimony, and argument on the terms of our contract. The goal for each side is to have their positions adopted into the contract by the arbitrator. The decision of the arbitrator on the National Agreement is final and binding. While we attempt to bargain each contract in good faith, it is a great benefit to have interest arbitration in the event no agreement is reached.

Since 1970, when collective bargaining began for letter carriers, the NALC has negotiated 13 National Agreements. Seven have been settled through the negotiation and ratification process and six have been set by final and binding interest arbitration. Regardless of which way the NALC achieves our National Agreement, its terms are enforceable through the grievance procedure.

The National Agreement is made up of 43 articles addressing specific issues such as salary, benefits, hours of work, employee classifications, discipline, and working conditions. The contract is printed and made available by the NALC to its members and by the Postal Service to its managers. Every NALC steward should have a copy of the agreement and be familiar with its contents. The National Agreement is the starting point for determining any contract violation. Copies of the National Agreement can be obtained through the [NALC Supply Department](#) and it is also available in PDF format on the [NALC website](#).

### The Joint Contract Administration Manual (JCAM)

The best way to become familiar with the meaning of provisions in the National Agreement is to review the *Joint Contract Administration Manual (JCAM)*. The *JCAM* is a publication jointly written by NALC and USPS representatives at the national level. The *JCAM* provides the parties' jointly agreed upon explanation of most provisions contained in the National Agreement.

The *JCAM* contains the authoritative, agreed-upon interpretations of the National Agreement. The National Association of Letter Carriers and the United States Postal Service have agreed at the national level that this is the definitive interpretation of the contract. In the *JCAM*, you will see the actual National Agreement language and below that language you will see the explanation, or agreed upon interpretation, for that particular provision. Also incorporated into the *JCAM* are numerous national level arbitration decisions and memorandums of understanding which further explain and interpret the provisions of our National Agreement.

Postal managers and NALC representatives at all levels are required to follow the *JCAM*'s interpretations of the contract. The *JCAM* should be used by the local stewards and managers to help resolve disputes. In fact, when a dispute arises, you should go to the *JCAM* first to see if the issue in dispute is addressed. If the issue is addressed in the *JCAM*, then any dispute should be resolved in accordance with that guidance. You are encouraged to use the *JCAM* to ensure local contract compliance and to foster more professional working relationships.

Copies of the *JCAM* can be obtained through the [NALC Supply Department](#) and it is available in PDF format on the [NALC website](#). Additionally, a copy of the current *JCAM* can be found in every post office where city letter carriers are employed. The cost of printing a *JCAM* for each office was split between NALC and USPS, so you have just as much of a right to use the *JCAM* in your office as your supervisor or manager does. If there is no copy of the *JCAM* in your office, consult your branch officers or branch president for guidance.

## **The *Materials Reference System (MRS)***

An NALC shop steward must research the facts and the contract before constructing an effective grievance. Then he or she needs to articulate the correct arguments at the very earliest steps of the grievance procedure. To do these jobs well, a shop steward requires deeper and more detailed information than either the National Agreement or the *Joint Contract Administration Manual (JCAM)* provide. The [Materials Reference System](#) or *MRS* is one of our most effective tools for making the required information easily available to union activists at all levels.

The *MRS* is a collection of contract administration materials assembled by NALC Headquarters' Contract Administration Unit. The *MRS* is a searchable listing of various topics that generally arise and generally become the subjects of the grievance procedure. The *MRS* contains summaries and, in some cases, the full text of many important national-level materials, including settlements of Step 4 grievances, national-level pre-arbitration settlements, memorandums, USPS policy statements, NALC publications, and more. The *MRS* also contains cross-references to significant national and regional arbitration awards.

NALC grievance handlers should review, use, and submit these source documents when enforcing the contract. The *MRS* summaries are not substitutes for copies of the actual Step 4 settlements, arbitration decisions, or other original source documents. The summaries only briefly explain what is contained in each document, which can be easily printed after opening the associated link. The *MRS* is updated and reissued periodically to add new materials and users can check the NALC website for information about the latest edition.

Again, by providing the *MRS* as a resource, the NALC is giving the stewards the tools necessary to build the type of case files which will provide the best chance for resolution at the lowest possible step of the grievance procedure. Stewards should always utilize this valuable resource when they are researching an issue or preparing a grievance. The [MRS](#) is available in PDF format on the [NALC website](#).

We will discuss the grievance procedure in great detail later in this guide. It is very important though that you familiarize yourself now with the [National Agreement](#), the [JCAM](#), and the [MRS](#) so you have an understanding of each as they are referenced throughout this guide.

### Contract Administration

Collective bargaining is not finished when the National Agreement has been finalized. The National Agreement contains its own enforcement mechanism called the grievance-arbitration procedure, which is outlined in Article 15 of the National Agreement.

The grievance-arbitration procedure is designed to resolve disputes over the application and interpretation of the National Agreement in a timely and orderly fashion. Such disputes are resolved through discussions between union and management representatives or, if necessary, through final and binding arbitration. Once again, the grievance-arbitration procedure (Dispute Resolution Process or DRP) is described in great detail later in this guide.

The entire NALC structure, from the branch level to the national level, is involved in contract administration and grievance processing. In addition, the Postal Service has a matching structure to handle its side of contract administration. If the grievance-arbitration procedure works properly, disputes should be resolved at the lowest possible level. This principle is memorialized in Article 15, Section 3.A of the National Agreement which reads:

**Article 15 Section 3. Grievance Procedure—General**

**A.** The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. At each step of the process the parties are required to jointly review the Joint Contract Administration Manual (JCAM).

### Steward Certification

One of the first steps of contract administration is the certification of union stewards. Steward certification is the process utilized to designate a union representative who will be acting as a shop steward for a certain section, office, or installation. Designating who will be the steward in these areas is extremely important because this person is responsible for investigating, presenting, and adjusting grievances. Therefore, it is important for the letter carriers to know who is representing them as well as important for management to know who they will be meeting with when contractual issues arise. Also, designated stewards are given certain rights and responsibilities by the National Labor Relations Act and the National Agreement. Designating a steward is a formal process that must always be done **in writing** by the NALC at the branch or regional level. The rules for steward certification can be complex and easily misunderstood. Consequently, stewards are encouraged to seek advice from their branch officers or branch president if there are any questions about steward certification. The controlling language that details this process is found in Article 17.1 of the National Agreement which states:

**Article 17.1 Stewards**

Stewards may be designated for the purpose of investigating, presenting and adjusting grievances.

On [Page 17-1](#) of the 2014 [JCAM](#), this provision is explained as follows:

**Contractual Authorization for Stewards.** Although shop stewards are union representatives and NALC officials chosen according to NALC rules, stewards are also given important rights and responsibilities by the National Labor Relations Act and by the National Agreement. The contract authorizes stewards to represent carriers in the investigation, presenting and adjustment of grievances, and requires the employer to cooperate with stewards in various ways as they accomplish their grievance handling jobs. The specific steward rights and responsibilities set forth in Article 17.3 and 17.4 are supplemented in other parts of the National Agreement, including:

- Article 6.C.4 (superseniority in layoff or reduction in force)
- Article 15 (grievance handling)
- Article 27 (employee claims)
- Article 31.3 (right to information)
- Article 41.3.H (right to use telephones)

The first step of steward certification is addressed in Article 17.2.A of the National Agreement. Here, the actual appointment and certification of stewards is outlined. This language also explains how many stewards the local union is allowed to have based on the number of employees who will be represented by the steward. That section of the National Agreement reads:

**Article 17.2.A Appointment of Stewards**

The Union will certify to the Employer in writing a steward or stewards and alternates in accordance with the following general guidelines. Where more than one steward is appointed, one shall be designated chief steward. The selection and appointment of stewards or chief stewards is the sole and exclusive function of the Union.

Stewards will be certified to represent employees in specific work location(s) on their tour; provided no more than one steward may be certified to represent employees in a particular work location(s). The number of stewards certified shall not exceed, but may be less than, the number provided by the formula hereinafter set forth.

Employees in the same craft per tour or station

Up to 49	1 steward
50 to 99	2 stewards
100 to 199	3 stewards
200 to 499	5 stewards
500 or more	5 stewards plus additional steward for each 100 employees

Page 17-2 of the 2014 *JCAM* explains this provision of the National Agreement as such:

**Steward Certification.** Article 17.2.A obligates the NALC to certify each steward and alternate to the employer in writing. Once certified, the steward represents employees in a specific work location. The steward from Station A, for example, must investigate any grievance occurring at his or her location, even the grievance of a carrier who is detailed temporarily from Station B and whose grievance arose at Station A. This is true even if the Station A steward must travel to interview the grievant in Station B as provided in Article 17.3 (See Step 4 NC-C-8435, October 6, 1977, [M-00455](#)).

As explained earlier, the *Materials Reference System (MRS)* on the [NALC website](#) is a great source of information and a great resource for shop stewards in their duties of enforcing the collective bargaining agreement. The following *MRS* references and citations that support the above language are directly linked to the supporting document and each give a brief description of the issue below the link, just as every *MRS* reference does:

- **M-00455 Step 4 - October 6, 1977, NC-C-8435**  
An employee is represented by the steward for the specific work location where he happens to be working when the cause of the grievance arose.
- **M-00083 Step 4 - November 8, 1984, H1C-3F-C 35597**  
The number of stewards certified shall not exceed, but may be less than the number provided by the formula set forth in Article 17, Section 2, which is based on the total number of employees in the same craft per tour or station.

### Acting Stewards

At times the union may choose to have union representatives, other than the designated steward, investigate and process grievances. This can happen for various reasons depending on the circumstances at hand. These union representatives, or acting stewards in this case, must still be certified in writing to the Postal Service and the union is still subject to the following provisions of the National Agreement when designating these individuals to act as a steward in a particular installation:

**Article 17.2.B** At an installation, the Union may designate in writing to the Employer one Union officer actively employed at that 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. The activities of such Union officer shall be in lieu of a steward designated under the formula in Section 2.A and shall be in accordance with Section 3. Payment, when applicable, shall be in accordance with Section 4.

**17.2.C** To provide steward service to installations with twenty or less craft employees where the Union has not certified a steward, a Union representative certified to the Employer in writing and compensated by the Union may perform the duties of a steward.

**17.2.D** At the option of the Union, representatives not on the Employer's payroll shall be entitled to perform the functions of a steward or chief steward, provided such representatives are certified in writing to the Employer at the area level and providing such representatives act in lieu of stewards designated under the provisions of 2.A or 2.B above.

The accompanying *JCAM* interpretation, found on [pages 17-2](#) and 17-3 of the 2014 *JCAM*, for the above National Agreement language reads as such:

**Acting as Steward.** Article 17.2 establishes four alternate ways individuals may be certified as stewards as circumstances warrant.

- Article 17.2.B The union may designate in writing one union officer actively employed at that 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. The individual designated will act in lieu of a steward designated under the formula in



Section 2.A and is paid in accordance with Section 4, below. For the purposes of this section, full-time union officials are considered to be “actively employed.” (Prearbitration Settlement H94N-4H-C 96084996, October 2, 1997, [M-01267](#))

- 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.
- Article 17.2.C In offices with twenty or less total craft employees which have no steward certified under Article 17.2.A, the union may certify a representative who is compensated by the union.
- Article 17.2.D The union may certify a representative not on the employer’s payroll to perform the functions of a steward or chief steward. Such representatives must be certified in writing to the appropriate Area office and will act in lieu of stewards designated under the provisions of Article 17.2.A or Article 17.2.B.

Representatives certified by the union pursuant to Article 17.2.D may be anyone who is not on the employer’s official time. This would include, for example, employees from another installation (Prearbitration settlement, H8N-2B-C-12054, May 26, 1982, [M-00233](#)) and former employees (Step 4, H4C-1M-C 2986, April 29, 1987, [M-00798](#)).

It is possible for NALC stewards to even be designated to represent more than one craft or to act as a steward in a craft other than their own under certain circumstances. Again, this must be done in writing. Article 17.2.E of the National Agreement explains this provision:

**Article 17.2.E** A steward may be designated to represent more than one craft, or to act as a steward in a craft other than his/her own, whenever the Union or Unions involved so agree, and notify the Employer in writing. Any steward designations across craft lines must be in accordance with the formula set forth in Section 2.A above.

Some *Materials Reference System* cites that specifically pertain to the above referenced items in article 17.2 of the National Agreement are listed below. Please familiarize yourself with these settlements and awards to give you a better understanding of the certification process of stewards and union representatives acting as stewards.

- **[M-00217](#) Prearbitration Settlement - July 27, 1981, H8N-5K-C-14205**  
The National Association of Letter Carriers need not designate a precise group of letter carriers over which each steward shall have jurisdiction to represent letter carriers and process grievances on their particular tour and within their particular station or branch.
- **[M-00649](#) Step 4 - January 30, 1973, N-C-2114**  
A full time union official has the right to act as a steward.
- **[M-01267](#) Prearbitration Settlement - October 2, 1997, H94N-4H-C 96084996**  
The issue in these grievances is whether a full-time union official who is on the employer's rolls is "actively employed" for the purposes of Article 17.2.B. During that discussion, it was agreed to resolve the interpretive issue with an understanding that full-time union officers on the employer's rolls are considered "actively employed" for the purposes of Article 17.2.B.

- **M-00233 Prearbitration Settlement – May 20, 1982, H8N-2B-C-12054**  
A union member actively employed in a post office may be designated as a union representative to process a grievance at another post office. Such employee must be certified in writing, to the Employer at the regional level.
- **M-00798 Step 4 – April 23, 1987, H4C-1M-C 2986**  
A former employee, who is a certified union steward, will be allowed to enter a postal facility to perform the functions of a steward or chief steward in accordance with the provisions of Article 17.2.D

**Warning:** It is important that all stewards be properly certified **in writing** in accordance with the provisions of Article 17, Section 2, above. Some regional arbitrators have ruled that grievances were not arbitrable because they were filed by a steward not properly certified **in writing**. This means that the arbitrators simply dismissed the cases without even considering the merits. You can avoid any possible management claims of certification problems by making sure you are certified **in writing** prior to performing any steward duties. If you have any questions concerning certification procedures, contact your branch officers, branch president, or national business agent's office for assistance.

### Alternate Stewards

An alternate steward acts as steward in the absence of the regular steward or stewards. The alternate steward should be certified as an alternate by the union and has the same role as a regular steward when processing a grievance. Alternate stewards must also be certified **in writing**.

Article 17.2.A of the National Agreement also provides for the certification of alternate stewards. Once again, that language in pertinent part reads:

#### Article 17.2.A Appointment of Stewards

The Union will certify to the Employer in writing a steward or stewards and alternates in accordance with the following general guidelines. Where more than one steward is appointed, one shall be designated chief steward. The selection and appointment of stewards or chief stewards is the sole and exclusive function of the Union. Stewards will be certified to represent employees in specific work location(s) on their tour; provided no more than one steward may be certified to represent employees in a particular work location(s). The number of stewards certified shall not exceed, but may be less than, the number provided by the formula hereinafter set forth.

The formula in Article 17.2.A, which was discussed earlier on [page 11](#) in the [Steward Certification](#) section of this chapter, establishing the maximum number of stewards applies only to regular stewards. It does not apply to alternate stewards. Consequently, the number of alternate stewards appointed is determined by the union.

However, management is not required to pay an alternate steward to handle a grievance if all the regular stewards provided for by the formula in Article 17, Section 2 are present. An exception to this general rule is explained in [M-00503](#) below.

- **M-00503 Step 4 - May 24, 1984, H1N-1J-C 5026**  
Once an alternate steward has initiated a grievance, the alternate steward may continue processing that grievance, as determined by the union. However, only one steward will be given time for processing the grievance.

Some other helpful *MRS* references that can guide you regarding certain circumstances when it may be proper to utilize an alternate steward are as follows:

- **M-00811 Step 4 - May 9, 1986, H4C-2M-3551**  
The union will provide a list of stewards and sequentially listed alternates in accordance with Article 17 of the National Agreement. There will be no "shopping" for stewards. If a steward or alternate is not available, the Postal Service may grant the grievant an extension of time for the grievance.
- **M-00461 Step 4 - December 21, 1977, NC-S-4915**  
All stewards need not be absent before an alternate is allowed to represent employees. See also **M-00014**
- **C-10004 APWU National Arbitrator Snow - January 8, 1990, H4C-3W-C 28547**  
Management did not violate the contract when it provided the grievant with an alternate steward rather than the grievant's steward of choice when the regular steward was in overtime status.

### Chief Stewards

The chief steward is designated by the union per Article 17 of the National Agreement when there is more than one regular steward at a particular location. The chief steward may also be the branch president acting in lieu of the regular steward.

Just as it provided for the certification of stewards and alternate stewards, Article 17.2.A of the National Agreement also provides for the designation of chief stewards:

#### Article 17.2.A Appointment of Stewards

The Union will certify to the Employer in writing a steward or stewards and alternates in accordance with the following general guidelines. Where more than one steward is appointed, one shall be designated chief steward. The selection and appointment of stewards or chief stewards is the sole and exclusive function of the Union.

Some helpful *MRS* references related to the subject of chief stewards are below:

- **M-00460 Step 4 - November 7, 1980, N8-S-0470**  
The designation of chief steward does not provide for added representation beyond the particular designated work location.
- **M-00952 Step 4 - October 13, 1976, NC-W-3083**  
The union is not precluded from having the branch president, acting as chief steward, present a grievance at Step 2 in lieu of the steward.
- **M-00462 Step 4 - October 21, 1977, NC-S-7847**  
The employee who is a steward has the same right to union representation as other employees. However, management is not required to supply the president of the local union as the chief steward's union representative. The employee who is a chief steward should be represented by the steward in his section.

- **C-00245 Regional Arbitrator Epstein - April 27, 1982, C8C-4H-C 17962**

A union president also wearing the hat of "chief steward," is a steward within the meaning of Article 17 and entitled to super-seniority; out-of-schedule overtime is provided as remedy.

### Superseniority

Superseniority is a special provision protecting stewards from involuntary reassignment (excessing). This keeps management from unilaterally removing a steward from the office where they serve. Management is required per the National Agreement to place chief stewards and union stewards at the top of the seniority roster for the purposes of layoff, reduction in force, and excessing. While on the surface this may solely seem like a right and protection for the individual who is designated as a steward, this actually protects the membership at a particular office as well by ensuring they continue to receive representation from the steward who is certified by the union.

Article 17, Section 3 of the National Agreement discusses superseniority and provides the following:

While serving as a steward or chief steward, an employee may not be involuntarily transferred to another tour, to another station or branch of the particular post office or to another independent post office or installation unless there is no job for which the employee is qualified on such tour, or in such station or branch, or post office.

Article 6.C.4 of the National Agreement also addresses this topic:

**Union representation.** Chief stewards and union stewards whose responsibilities bear a direct relationship to the effective and efficient representation of bargaining unit employees shall be placed at the top of the seniority unit roster in the order of their relative craft seniority for the purposes of layoff, reduction in force, and recall.

Page 17-7 of the 2014 *JCAM* further provides the following explanation:

#### Superseniority in Transfers

The contract contains special provisions protecting steward positions from transfer or reassignment. These special steward rights are known as "superseniority." The steward superseniority provision is contained in the last paragraph of Article 17.3. That language protects stewards from being transferred from a facility or tour where letter carriers are working—unless there is *no other city letter carrier job left*.

National Arbitrator Britton ruled in H4N-5C-C 17075, November 28, 1988 (C-08504), that Article 17.3 bars both temporary and permanent reassignments of stewards, and that the prohibition applies even if there are no vacant job assignments. In other words superseniority rights must be observed even if it requires an involuntary transfer of another, more senior carrier, whether full- or part-time (Step 4, H1N-2B-C 7422, October 25, 1983, M-00077).

The steward's superseniority rights override the excessing provisions of Article 12, *Principles of Seniority, Posting and Reassignments*. So NALC stewards are always the last letter carriers to be excessed from a section, the craft or an installation, regardless of their seniority or their full- or part-time status.

Arbitrator Britton's award and the Step 4 decision mentioned above, as well as an arbitration decision from Regional Arbitrator Epstein, speak directly about superseniority:

- **C-08504 National Arbitrator Britton - November 28, 1988, H4N-5C-C 17075**  
Management violated Article 17, Section 3 by temporarily assigning a steward who was a full-time reserve carrier to another station. The arbitrator held that the prohibition on transfers provided for in Article 17.3 applies to temporary as well as permanent reassignments and that the prohibition applies even if there are no vacant job assignments. In other words superseniority rights must be observed even if it requires an involuntary transfer of another, more senior carrier, whether full- or part-time.
- **M-00077 Step 4 - October 25, 1983, H1N-2B-C 7422**  
Under Article 17, Section 3, of the National Agreement, a certified steward "may not be involuntarily transferred to...another branch...unless...". Management may, however, take whatever action is appropriate and necessary, e.g., excessing of the junior full-time carrier, in order to provide the grievant with an assignment at the main office. See also [M-00520](#) and [M-00541](#).
- **C-00245 Regional Arbitrator Epstein - April 27, 1982, C8C-4H-C 17962**  
A union president also wearing the hat of "chief steward," is a steward within the meaning of Article 17 and entitled to super-seniority; out-of-schedule overtime is provided as remedy.

## Steward's Rights

The next two sections of this guide explain the basic rights of NALC stewards. In these two sections we will discuss the contractual language that gives stewards the authority to investigate a specific problem or issue and the ultimate authority to file a grievance, which we will start discussing in the next chapter. We will also discuss the right for stewards to be paid for their work. Without these rights, the NALC would be unable to fulfill its responsibilities to negotiate and enforce the National Agreement.

Articles 17 and 31 of the National Agreement establish the basic rights of NALC stewards to investigate and process grievances as well as the right to obtain information for these potential grievances. Article 31 gives the union access to all relevant information necessary to investigate a situation and determine if a contractual violation exists.

The pertinent sections of Article 17, Section 3 of the National Agreement provide the following language explaining some of these steward's rights:

### Article 17, Section 3. Rights of Stewards

When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and such request shall not be unreasonably denied.

In the event the duties require the steward leave the work area and enter another area within the installation or post office, the steward must also receive permission from the supervisor from the other area he/she wishes to enter and such request shall not be unreasonably denied.

The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appro-

appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.

This provision in the National Agreement gives stewards the right to:

1. Leave the work area to investigate and adjust grievances.
2. Leave the work area and enter another area within the installation to perform investigatory duties.
3. Request and obtain all of the documents, files, and other records necessary to investigate and adjust grievances.
4. Interview employees, supervisors, and witnesses during working hours.

None of the above rights can be unreasonably denied by management and they are very powerful tools for the steward in his or her daily duties and investigations. The right to obtain information is further discussed in Article 31, Section 3 of the National Agreement:

### **Article 31, Section 3. Information**

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or designee. All other requests for information shall be directed by the National President of the Union to the Vice President, Labor Relations.

Nothing herein shall waive any rights the Union may have to obtain information under the National Labor Relations Act, as amended.

A more detailed explanation of information requests and what you should do if you are not provided with the requested information can be found in the [Information Requests](#) section on page 82 in the [Special Topics](#) chapter. For a greater understanding of this subject, you should go to that section now.

In the next section we will further discuss the rights of stewards, as outlined in the National Agreement, as we explain their right to obtain steward time and the right for that steward time to be “on the clock.”

## **Steward Time “On the Clock”**

NALC shop stewards donate considerable amounts of time to activities such as union meetings, training sessions, charitable work, etc. However, the NALC has negotiated strong provisions in Article 17, Section 4 of the National Agreement that give stewards the right to be paid for grievance handling. Those provisions read:

### Article 17, Section 4. Payment of Stewards

The Employer will authorize payment only under the following conditions:

Grievances—Informal and Formal Step A: The aggrieved and one Union steward (only as permitted under the formula in Section 2.A) for time actually spent in grievance handling, including investigation and meetings with the Employer. The Employer will also compensate a steward for the time reasonably necessary to write a grievance. In addition, the Employer will compensate any witnesses for the time required to attend a Formal Step A meeting.

Meetings called by the Employer for information exchange and other conditions designated by the Employer concerning contract application.

Employer authorized payment as outlined above will be granted at the applicable straight time rate, providing the time spent is a part of the employee's or steward's (only as provided for under the formula in Section 2.A) regular work day.

Page 17-5 of the 2014 *JCAM* explains these provisions as follows:

**Right to Steward Time on the Clock.** Although a steward must ask for supervisory permission to leave his or her work area or enter another one to pursue a grievance or potential grievance, management cannot "unreasonably deny" requests for paid grievance-handling time.

Management may not determine in advance how much time a steward reasonably needs to investigate a grievance (National Arbitrator Garrett, MB-NAT-562/MB-NAT-936, January 19, 1977, [C-00427](#)). Rather, the determination of how much time is considered reasonable is dependent on the issue involved and the amount of information needed for investigation purposes (Step 4, NC-S-2655, October 20, 1976, [M-00671](#)).

Steward time to discuss a grievance may not be denied solely because a steward is in overtime status (Prearbitration Settlement, W4N-5C-C 41287, September 13, 1988, [M-00857](#)). It is the responsibility of the union and management to decide mutually when the steward will be allowed, subject to business conditions, an opportunity to investigate and adjust grievances (Step 4, N-S-2777, April 5, 1973, [M-00332](#)).

If management delays a steward from investigating a grievance, it should inform the steward of the reasons for the delay and when time will be available. Likewise, the steward has an obligation to request additional time and give the reasons why it is needed (Step 4, NC-C-16045, November 22, 1978, [M-00127](#)).

An employee must be given reasonable time to consult with his or her steward, and such reasonable time may not be measured by a predetermined factor (Step 4, H1C-3W-C 44345, May 9, 1985, [M-00303](#)).

Although Article 17.4 provides that the grievant and a steward shall be paid for time actually spent in grievance handling and meetings with management, there are no contractual provisions requiring the payment of travel time or expenses in connection

with attendance at a Formal Step A meeting (Step 4, N8-S-0330, June 18, 1980, [M-00716](#)). Nor does the National Agreement require the payment of a steward who accompanies an employee to a medical facility for a fitness-for-duty examination (Step 4 Settlement, NC-N-12792, December 13, 1978, [M-00647](#)).

**Denial of Steward Time** - The denial of steward time is an extremely serious contract violation. This is because it undermines the ability of the union to enforce the contract and protect its members. In fact, it is so serious that it is one of the few contract violations for which the *JCAM* discusses a remedy. [Page 17-6](#) of the 2014 *JCAM* provides the following explanation of remedies for stewards improperly denied time:

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 payment to the steward for the time spent processing the grievance off-the-clock which should have been paid time.

In other words, the *JCAM* specifically acknowledges that in addition to the "make whole" remedy of payment for time spent processing the grievance, a "cease and desist" should be given. Cease and desist orders have real consequences because they establish the basis for even stronger remedies if further violations occur. [Page 41-17](#) of the 2014 *JCAM* provides the following explanation of "cease and desist" orders under Article 41, Section 2.B:

In circumstances where the violation is egregious or deliberate or 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.

**Grieving the Denial of Steward Time** - Although grievances and the grievance procedure are not discussed until the next chapter, it is important to note at this time and important to remember that stewards must always file a grievance when steward time on the clock is being denied by management. The merits of any grievance concerning the denial of steward time are a **separate matter** from the merits of the grievance that the steward initially requested the time to work on. Consequently, in cases where management improperly denies steward time, the steward should do two things:

1. The denial of steward time should be explained in the original grievance, if the quality of the grievance file is affected. It is important for the union representatives handling the grievance at higher steps to be aware of the issue so they can consider the circumstances that you were faced with.
2. A separate grievance should always be filed seeking both a cease and desist order and payment to the steward at the appropriate rate (usually overtime) for the time spent processing the grievance off the clock.

Of course, grievances concerning the denial of steward time are contractual disputes where the union has the burden of proof. To help meet this burden, any grievance concerning this issue should fully document the steward's attempts to obtain the necessary time and management's responses. It should also contain detailed time records showing exactly when the steward worked off the clock and exactly what was being done, and if possible, provide a witness statement to verify the time.



# III. The Grievance-Arbitration Procedure—Introduction

## What is a Grievance?

Article 15, Section 1 of the National Agreement provides the following:

### Section 1. Definition

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

## Broad Grievance Clause

The broad definition of a grievance set forth in Article 15.1 means that most work-related disputes can be pursued through the grievance-arbitration procedure. Most grievances will involve the National Agreement. Local Memorandum of Understanding (LMOU) provisions are other sources of grievance activity. LMOUs are items that deal with local conditions in individual postal installations (cities) negotiated under the provisions of Article 30 of the National Agreement. Other types of disputes that can be handled within the grievance procedure may include:

- Alleged violations of postal handbooks or manuals, such as [Handbook M-39](#), [Handbook M-41](#), or the [Employee and Labor Relations Manual \(ELM\)](#). Article 19 of the National Agreement provides that those postal handbook and manual provisions directly relating to wages, hours, or working conditions are enforceable as though they are part of the National Agreement.
- Alleged violations of grievance settlements, Step 4 settlements, memorandums, and arbitration awards.
- Alleged violations of other enforceable agreements between the NALC and the Postal Service, such as the [Joint Statement on Violence and Behavior in the Workplace](#). In national case [C-15697](#), National Arbitrator Carlton Snow found that the [Joint Statement on Violence and Behavior in the Workplace \(M-01242\)](#) constitutes a contractually enforceable agreement between the parties and that the union has access to the grievance-arbitration procedure to resolve disputes arising under it.
- Disputes concerning the rights of ill or injured employees, such as claims concerning fitness-for-duty exams, first aid treatment, compliance with the provisions of [ELM Section 540](#), and other regulations concerning Office of Workers' Compensation Programs (OWCP) claims. (See Step 4 Settlement G90N-4G-C 95026885, January 28, 1997, [M-01264](#)). However, decisions of the OWCP are not grievable matters. OWCP has the exclusive authority to adjudicate compensation claims and to determine the medical suitability of proposed limited duty assignments.
- Alleged violations of law such as the National Labor Relations Act, the Postal Reorganization Act, and the Rehabilitation Act. In [C-06858](#), National Arbitrator Neil Bernstein wrote the following concerning Article 5:

*The only purpose the Article [5] can serve is to incorporate all the Service's "obligations under law" into the agreement, so as to give the Service's legal obligations the additional status of contractual obligations as well. This incorporation has significance primarily in terms of enforcement mechanism—it enables the signatory unions to utilize the contractual vehicle of arbitration to enforce all of the Service's legal obligations.*

- Past Practice: An arbitrary change or breach of precedent by management regarding a customary practice followed for some time but not formalized in writing and not inconsistent with the National or local agreement.

## Introduction to Grievance Processing

Grievance processing is the single most important job a steward performs. Effective grievance handling promotes on-the-job justice for letter carriers, enforces the National Agreement, and builds union strength.

Processing grievances is a demanding job because it puts all the steward's skills to work. When a letter carrier presents a problem or when a steward determines a violation of the National Agreement may have occurred, the steward must thoroughly investigate the situation to determine whether there is a valid grievance.

If there is a valid grievance, the steward must put together the documents and evidence associated with the grievance and then prepare the case for discussion with management at the Informal Step A meeting. An Informal Step A meeting is when the employee, the steward, or both meet with the supervisor within 14 calendar days of an incident or situation covered by the National Agreement. The steward is tasked with obtaining the appropriate remedy to the grievance. If no resolution can be reached, the steward is responsible for appealing the grievance to the next step of the grievance procedure within the time limits. We will extensively discuss this process later in the next chapter of the *NALC Shop Steward's Guide*.

You will hear the terms grievance procedure, Dispute Resolution Process, and DRP used by different people. These terms will also be used interchangeably throughout this guide. Just remember, they all mean the same thing.

## Types of Grievances

All grievances are contract disputes involving either a contractual issue or disciplinary action. Grievances will normally be categorized as contract or discipline cases as a result. Even though there are differences in approach with contractual and disciplinary grievances, don't be confused. The process of the union filing a grievance and following the steps within the timeline set out in Article 15 of the National Agreement remains the same no matter what type of grievance you have. It is extremely important to note that in both types of grievances, the union is the moving party. This means the union has the responsibility to move the grievance through the grievance procedure at every step of the process. It is never management's responsibility to do this.

Contractual grievances are normally based on a claim by an individual letter carrier, group of letter carriers, or the union itself that management has violated a contract provision of the National Agreement. When the union alleges a contract violation for matters **other than** a disciplinary notice issued to an individual letter carrier, it is up to the union to prove the violation. Therefore, the union is said to have the "burden of proof" in contractual cases.

Disciplinary grievances are initiated by the union to challenge management when a disciplinary notice is issued to an individual letter carrier alleging that he or she acted improperly, broke a rule, disobeyed an order, etc. Article 16 of the National Agreement requires management to show what is known as “just cause” when they issue discipline to a letter carrier. Therefore, management is said to have the “burden of proof” in discipline cases. Management must have proof that the discipline is warranted, but please remember that the union is the moving party for the grievance. The union must initiate a grievance and the union must move that grievance through the entire grievance procedure until a resolution is reached, just as the union must do in contractual cases. Sometimes a grievant for whatever reason may not receive the disciplinary notice, but the union is notified. If this happens, contact your branch officers or branch president for guidance immediately. As mentioned above, Article 16 of the National Agreement is the controlling language that outlines the discipline procedure. Management must follow the rules set forth in this article and any grievance initiated by the union to challenge a disciplinary action must cite a violation of Article 16. The basic principles of the discipline procedure are contained in Article 16.1 of the National Agreement and read as such:

### **Article 16, Section 1. Principles**

In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

Article 19 of the National Agreement incorporates many handbooks such as the M-39 into our National Agreement. Therefore, you should also cite a violation of Section 115 of the [Handbook M-39, Management of Delivery Services](#), in any discipline grievance you file. Section 115 of the M-39 addresses what steps management must take to properly issue discipline. The basic language of that section of the M-39 follows, but you should familiarize yourself with the rest of that section when you are tasked with representing a letter carrier who has been issued a disciplinary notice.

### **Section 115.1 Discipline - Basic Principle**

In the administration of discipline, a basic principle must be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause. The delivery manager must make every effort to correct a situation before resorting to disciplinary measures.

## **The Timeline and Steps of a Grievance**

From the moment a violation of the National Agreement occurs to its eventual resolution between the NALC and the Postal Service, the process begins with a timeline and a series of steps outlined in Article 15 of the National Agreement. As stated earlier, it is the responsibility of the union to meet this timeline and process the grievance at every step of the DRP. A flow chart has been provided on the next page to give you a better understanding of the timeline of the DRP which must be met in order for the union to meet its obligations.

As you have probably already noticed, the importance of meeting the timelines of the DRP is stressed greatly throughout this guide. The last thing that you as a union steward want is to have to tell a letter

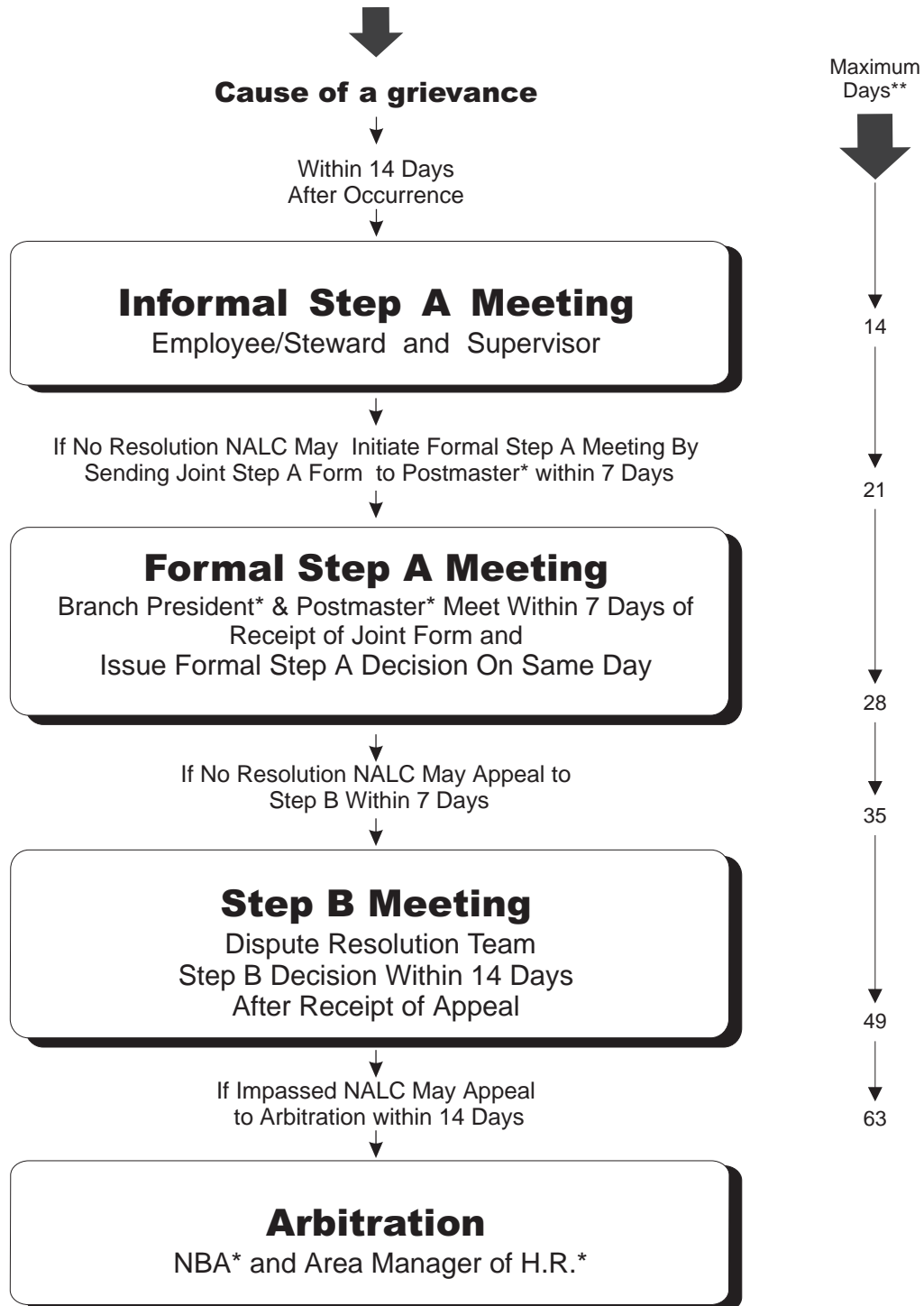
carrier whom you represent that their grievance was denied because you failed to move the grievance in a timely manner. Stewards have enough obstacles to overcome in the processing of grievances, so don't create another obstacle to deal with.



# Grievance Procedure Chart

## ARTICLE 15

### DISPUTE RESOLUTION PROCESS



\*Or Designee

\*\*Days an appeal is in transit are variable and are not counted here.

Each step of the Dispute Resolution Process (DRP) is thoroughly discussed in this *NALC Shop Steward's Guide*. As a shop steward you will normally only deal with grievances at the Informal or Formal Step A level of the grievance procedure, but grievances must be prepared as though they will go to final and binding arbitration.

You may notice that preparation is repeatedly emphasized throughout this guide. The importance of preparation cannot be stressed enough. Organizing background information, completing paperwork properly, and planning a grievance meeting strategy for each case will help you be successful. The steward who investigates, prepares, and thinks before acting always has the edge. This is true regardless of whether or not the grievance is resolved at Informal Step A of the DRP. If the grievance isn't resolved at Informal Step A, proper and thorough preparation will pay off again and again at every step of the DRP the grievance reaches after it leaves your hands.

In the following chapters, we will discuss the various steps of the DRP and you will learn everything you need to know about your role as a steward in relation to each step.

## IV. Grievance Handling—Informal Step A

When a violation comes to your attention, request union time to investigate, listen to those involved, and fully examine the matter. Once you determine the facts of what happened, research the contract before you decide whether or not it is a violation. As stated earlier on [page 18](#) in the [Steward's Rights](#) section of this guide, your time to handle grievances must be given to you while you are on the clock and getting paid by the USPS. In the [Investigation](#) section of this chapter, we will discuss what you should do if you don't have enough time or if enough time is not given to you by management. Remember though; never wait to start investigating any potential violation. Get to work on the issue as soon as possible and use the whole 14 day window that the National Agreement affords you at this step. Waiting until the last minute could have serious implications on the quality of your investigation and subsequent grievance file.

As you investigate a potential violation and prepare any subsequent grievance file you should always keep a few things in mind. In order for a grievance to have the best chance of success, stewards should be able to answer "yes" to each of the five questions below:

1. **Is there a violation of the National Agreement?**
2. **Did we properly frame the issue?**
3. **Did we determine all the facts of the case and document each one?**
4. **Do our contentions clearly explain the documented facts and how the National Agreement was violated?**
5. **Did we request an appropriate remedy for the contract violation?**

If a complaint is brought to you by an individual letter carrier, listen carefully to the letter carrier's entire problem. Ask specific questions to clear up any details you don't fully understand. If you determine that a grievance may exist, start investigating immediately. You must complete a thorough investigation and be prepared to support any claims you make with documentation and statements at the Informal Step A meeting within strict time limits (14 calendar days from the incident date).

If you determine a grievance doesn't exist, always go back to the letter carrier and tell him or her there is no grievance and explain why. If you have any doubt, contact your branch officers for advice, but you still should initiate a grievance to preserve your time limits. If it is later determined that the grievance has no merit, it can be withdrawn by the union at a later step during the grievance procedure.

### Time Limits

Article 15, Section 2 Informal Step A (a) of the National Agreement is the controlling language which outlines the strict time limits mentioned above which must be met at the Informal Step A level of the DRP. That section states:

**(a)** Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (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. This constitutes the Informal Step A filing date. The employee, if he or she so

desires, may be accompanied and represented by the employee's steward or a Union representative. During the meeting the parties are encouraged to jointly review all relevant documents to facilitate resolution of the dispute. The Union also may initiate a grievance at Informal Step A within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. In such case the participation of an individual grievant is not required. An Informal Step A Union grievance may involve a complaint affecting more than one employee in the office.

The steward or the grievant has 14 calendar days to meet and discuss the dispute with the grievant's immediate supervisor at Informal Step A. **The 14 days are counted from the time the union or the grievant first learned or may reasonably have been expected to have learned of its cause.** For example, if a grievant receives a letter of warning, day one of the fourteen days is the day after the letter is received. Be careful! See the [Time Limits](#) section **now** on [page 78](#) in the [Special Topics](#) chapter for a more detailed explanation.

**Proposed Actions:** Exercise care when dealing with time limits for proposed actions for "preference eligible" employees who have Merit System Protection Board (MSPB) appeal rights. Under MSPB procedures, preference eligible employees who are being issued a disciplinary action involving a removal or suspension greater than 14 days must first be issued a notice of proposed discipline and then a final decision letter after they have been given an opportunity to respond to the charges. Always treat a notice of "proposed" action as you would any other discipline case when it comes to time limits for filing a grievance. Pretend the word "proposed" isn't even there and treat it exactly the same as any other discipline and file your grievance within the 14 calendar day time limit. See the [MSPB Appeal Rights](#) section **now** on [page 75](#) in the [Special Topics](#) chapter for more information.

**Time Limit Extensions:** The local parties at the Informal Step A level are free to mutually agree to an extension of the 14 calendar day time limit for initiating a grievance. Although it is not contractually required, time limit extensions should always be in writing and signed by both parties before expiration of the 14 calendar day period. The sample [Time Limits Extension Form](#) in the [Sample Forms for Stewards](#) chapter starting on [page 107](#) can be used to document a time limit extension at the local level. However, time limit extensions should be the **exception**, rather than the rule, at both the Informal and Formal Step A levels of the grievance procedure.

Since extensions must be mutual, the union must be ready to discuss the grievance within the 14 calendar day time limit. The union is the moving party in the grievance procedure and bears the responsibility of ensuring the time limits are followed and the grievance continues to move through the steps of the DRP at the local level. This is true for contractual and discipline cases alike. It is really important to remember that you as the NALC steward have both the authority and the responsibility to ensure that grievances move in a timely manner through each step of the DRP that you handle.

Time limit extensions will be discussed further at other points in this guide to give you an understanding of how and when they would be appropriate at the different steps of the DRP.

## Continuing Violations

Grievances where a violation of the National Agreement is said to be continuing in nature are an exception to the 14 calendar day time limit. This type of grievance is referred to as a "continuing violation." This concept is best explained as a single contract violation that occurs each day. Each and every day that the violation continues going forward is an uninterrupted string of violations.

Remedies for continuing violation grievances will depend on several factors to determine how much remedy is appropriate. For instance, if a letter carrier finds out that they were paid improperly for a year; the Postal Service would need to make him or her whole for that entire year in a remedy. This is due to the fact that they just realized there was an issue with improper payment and therefore the proper remedy would be one that makes that letter carrier whole for the entire period that they were paid improperly.

A different example would be a letter carrier injured on the job who could work with restrictions. Management refused to find work for that letter carrier for nine months and then you file a grievance. You or that letter carrier should have known of a possible violation of the National Agreement nine months earlier but waited to file a grievance, therefore affecting the remedy you would have otherwise been entitled to had the grievance been filed at that time. In other words, any grievance citing a violation in this instance should have been filed at the time the letter carrier was initially refused the work by management in order to achieve the best results. By waiting nine months to file the grievance, it may make it difficult for the union to make a continuing violation argument and therefore affecting the remedy of making the letter carrier whole for the entire nine month period. Management may make the claim that the action of refusing the work happened nine months earlier and therefore happened outside of the 14 day time limit period in which the union must file the grievance.

**Warning:** Discipline cases are not continuing violation cases. Discipline cases should have a specific incident date in Block 10 of the [PS Form 8190](#), which will be discussed later in this chapter. The incident date is the day the discipline is received by the grievant. Remember, all discipline cases fall under the provisions of Article 16 of the National Agreement, which was discussed in the previous chapter.

You should seek guidance from your branch officers or branch president regarding the concept of continuing violations if you need additional assistance.

## Investigation

The idea of the DRP is to settle any disputes at the lowest step possible of the procedure. To have the best chance of achieving this goal, you should always have all the relevant information. Any factual claims you make in a grievance should be supported by documentation and statements from the grieving letter carrier, witnesses, and even yourself. The steps to completing a proper investigation are as follows:

- Begin by notifying the immediate supervisor that a dispute has arisen, as well as the nature of the dispute.
- Conduct a thorough investigation as far in advance of the Informal Step A meeting as possible under the circumstances. Remember that Articles 17 and 31 of the National Agreement and federal law require management to make available to the union all relevant information necessary for collective bargaining or the enforcement, administration, or interpretation of the National Agreement. Gathering this information as soon as possible will assist you in the development of the grievance. If you need further clarification, revisit the [Stewards' Rights](#) section on [page 17](#) of this guide.
- Request the time you need to investigate the dispute. You must request any needed information and time on the clock to interview witnesses or collect statements. Although it is not contractually required, it is strongly suggested that such requests be in writing so that there



can be no dispute as to what information was requested and when it was requested. There will be instances when you request the time you need to investigate a dispute and management will not always be able to immediately offer you the necessary time you have requested. If this happens, then ask when they will be able to give you the time. Inform them that you only have 14 days to file any grievance that may result from your investigation. If management states that they will not be able to give you time on the day of the request, then ask them to schedule appropriately to give you the requested time on the next day. In the event that you have been given the requested time, but then realize you still need more time to complete your investigation and processing of a grievance, you must immediately request additional time to complete your work and still meet the 14 day time limits. Make sure that all of your requests are documented in writing. If no time is given to you at all, then immediately inform your union officers or branch president about the situation. If they are unable to correct the situation with management, then you must still investigate and file the grievance but also file a separate grievance for the denial of time. In addition to the important time requests, be sure to read the [Information Requests](#) section on [page 82](#) for a detailed explanation on requesting information and interviews. Additionally, the sample forms [Request for Information](#) and [Request for Information — Discipline](#) can be found in the [Sample Forms for Stewards](#) chapter starting on [page 107](#). Written information and time requests will become important evidence if management does not provide you with everything you have requested.

- Submit the information and interview request to your immediate supervisor or the one designated by management for union requests. Be careful not to let management play games with who you must deal with when submitting requests. Generally any member of management can fulfill a request, but always document which member of management the request is given to. Ask him or her to sign and date the information and interview request as received. If management refuses to sign and date any requests, document the refusal on the form with your initials and date. If anyone witnessed management's refusal you should also have them initial and date the form. After you document the refusal on the written request, provide a copy to management and keep a copy for yourself.
- Keep a copy of the information and interview request that was signed and dated as received by the appropriate supervisor with your grievance file. It is important to keep a copy of all requests in case they are needed to verify when time requests were made and what information was requested during the later steps of the grievance procedure.
- Make sure any statements you gather are legible, signed, dated, and of sufficient detail to be relevant and helpful to your case. A common mistake is to submit statements that do not support the union's case or are illegible. When you gather a statement, you should also include the printed name (no nicknames), title, and contact information for the person writing the statement. See the section on [Tips for Writing Statements](#) on [page 98](#) of this guide for more information.
- If management fails to provide requested information, do not delay meeting with management and, if necessary, appealing the grievance to Formal Step A in a timely manner. This will be discussed later in this chapter. You should document the requests and refusals by management to provide the information and include them in your grievance as an additional issue. If the grievance is being appealed, it is important to let the union representative at Formal Step A know what information was not provided and when it was requested.
- Discrimination and safety grievances may (but do not have to) be filed directly at Formal Step A. These cases can present complex procedural issues, so seek advice and carefully

review the explanation of each section **now** in the Special Topics chapter. ([Safety and Health](#) on [page 70](#) if you are processing an Article 14 grievance and [Discrimination](#) on [page 74](#) if you are processing an Article 2 grievance).

- The Veterans' Preference Act guarantees “preference eligible” employees certain special rights concerning their job security. It is important that you are aware of their rights so you can properly represent them and successfully process any grievances filed on their behalf. As a steward, you should seek advice and carefully review the explanation of [MSPB Appeal Rights](#) on [page 75](#) when handling these issues.

## Is it a Grievance? – How to Decide

As you collect all the necessary facts, organize and review them. This will make it much easier to decide whether the problem you are investigating is a grievance.

- **Listen.** Pay attention to the problem presented and do not make snap judgments. Remember, your job is to represent the letter carrier involved, so keep an open mind on whether the collective bargaining agreement was violated.
- **Base your decision on the facts.** You can best decide whether or not a problem is a grievance after investigating and weighing the evidence. So, if after talking to the letter carrier you are not sure whether or not a grievance exists, let them know that and continue to look into the matter. Be sure to get back to the letter carrier once you have made a final determination.
- **Go the extra mile.** Just how much investigation is “enough” will vary from case to case. As a general rule, the steward should investigate far enough to make an informed and intelligent decision. This won't be a waste of time even if it turns out not to be a grievance. If the problem is grievable, you will need all the facts anyway. If it is not, you can use the information to help explain to the letter carrier why it is not a violation of the National Agreement.
- **Analyze your information.** Take the time to evaluate the problem carefully. Think it through completely, considering its merits and the evidence you have.
- **If you still do not know for sure, seek advice.** No single person has all the answers so ask other union officers for help when you need it.

**If it is not a grievance:** If a problem clearly is not a grievance, tell the letter carrier the plain truth of the matter. He or she may be disappointed, so be as tactful and diplomatic as possible and always explain to him or her why and how you reached your conclusion.

## Preparing for the Informal Step A Meeting

Once you have received your time and necessary information, and you have determined that the issue has created a grievance, it is now time to schedule the Informal Step A meeting with management and present your findings to them. Here are some tips to get you ready for your meeting:

- Remember to keep track of your dates to be sure you comply with time limits.
- Request the time necessary to prepare for the Informal Step A meeting.

- Arrange a time for the Informal Step A meeting that is convenient for you and the management representative. Remind him or her of when the incident occurred and when the 14 day deadline for filing your grievance ends. When you initiate the grievance meeting with the management representative, make it clear that you consider it to be an Informal Step A meeting of the grievance procedure, rather than just an informal chat. For example, saying something like “I am filing an official grievance with you about. . .” would make it clear.
- Confirm with management which pending cases you are going to discuss and be prepared for all of them.
- Organize the case file or files into a logical order.
- Review each file for completeness and do any additional investigation or research that you need to do prior to meeting with management if possible.
- Once again, make sure any statements you plan to submit are legible, signed, dated, and of sufficient detail to be relevant and helpful to your case. Don't submit statements that are not relevant to the union's case. When you submit a statement, remember to include the printed name (no nicknames), title, and contact information for the person who wrote the statement. If you haven't already done so, see the section on [Tips for Writing Statements](#) on [page 98](#) of this guide now for more information.
- Write or frame a suggested issue statement on a **separate sheet of paper**. By writing the suggested issue statement on a separate sheet of paper, this will give you the opportunity to collect your thoughts about the issue and properly present the issue to the management representative that you will be meeting with. Furthermore, this written issue statement can be given to the Formal Step A union representative in the event that you are unable to resolve the grievance at the Informal Step A level. The issue statement should identify the relevant contractual or handbook provisions involved. If it is a disciplinary grievance, always indicate the type of discipline (letter of warning, 7 or 14 day suspension, indefinite suspension, etc.) in the issue statement. Issue statements are “stated” or “framed” in the form of a question.

Here is an example of an issue statement for a discipline case:

***Did management violate Article 16 and Section 115 of the M-39 Handbook via Article 19 of the National Agreement when a letter of warning was issued to the grievant dated 8/08/2013 for unsatisfactory work performance, and if so, what should the remedy be?***

You could use this example for almost any discipline case. You just need to change the level of discipline, the date, and the charge. The rest of the words would serve you well.

Here is an example of an issue statement for a contract case:

***Did management violate Article 8, Section 5.G of the National Agreement when the grievant was required to work overtime on 8/08/2013, and if so, what should the remedy be?***

- If you have multiple contract violations, it may be appropriate to frame multiple issue statements in the same case. For instance, you may have an overtime grievance in an office

where you also have precedent-setting Formal Step A settlements or Step B decisions where management was told repeatedly to stop violating the contract. This leaves you with an issue for the Article 8 violation and an issue for the non-compliance with a previous grievance settlement. In this situation, each issue should have its own issue statement. The thing to remember is if you are going to frame multiple issues, you should have facts, contentions, documentation (proof), and a remedy request for each issue statement you frame.

- Be sure to make an outline of the points you want to bring up at the meeting for each grievance you plan to discuss.
- Decide what elements of a remedy you will seek.
- Prepare each grievance at every step of the DRP as described in this *NALC Shop Steward's Guide*.

If there isn't enough information in the grievance file to prove your case and you think you have a grievance that has merit but needs more documentation, request in writing any additional information or interviews needed. Any such requests should be submitted as far in advance of the Informal Step A meeting as possible.

## USPS/NALC Joint Step A Grievance Form (PS Form 8190)

A document of extreme importance to all grievance files is PS Form 8190. This form consists of three pages and it documents very important information relevant to the grievance file. In the event that a grievance is not settled at any level of the DRP, this form is appealed with the grievance at every step of the process. Every grievance file must contain this form and you must have this form when you meet at the Informal Step A meeting. You should always use the most current version of the form and a fill-in-the-blank version of [PS Form 8190](#) is available for your use on the [NALC website](#). You should reference this document now as you read the following explanations of each portion of PS Form 8190. You should have blocks 1-10 and blocks 12a and 12b of the PS Form 8190 filled in before the meeting. Blocks 11, 13a and 13b will be filled out at the meeting.

- **Block 1—Grievant's Name:** Insert the individual letter carrier's name or, where there are two or more letter carriers that will be part of the remedy request, such as a grievance involving mandating non-overtime desired letter carriers when auxiliary assistance was available to carry the overtime, write "Class Action" in this block. A class action grievance could involve the entire office or a special group of two or more letter carriers who all have the same grievance. However, you should not file a class action grievance in discipline cases. When it comes to discipline cases, you should always file them as individual grievances even if you have multiple letter carriers disciplined for the same alleged infraction at the same time.
- **Block 2—Grievant's Telephone Number (include Area Code):** Cell phone numbers are preferable when available as most letter carriers are more accessible on their cell phones than any other number. This is extremely important as the file moves through the grievance-arbitration procedure; other union representatives may have questions for the grievant that a telephone conversation might answer.
- **Block 3—Seniority Date:** Indicate the grievant's seniority date within the carrier craft. (Not used for class actions.) The seniority date plays an important role in most grievances. This

is particularly true in discipline cases. It is said that tenure creates a “bank of good will.” The more tenure a letter carrier has, the more weight his or her years of service will be given when discipline cases are decided. If a letter carrier has more total years of service than indicated in his or her craft seniority in the installation, make sure to write that in your facts and contentions/notes. This happens anytime a letter carrier transfers crafts or installations.

- **Block 4—Status:** Check the appropriate block: FT, FTF, PTR, PTF, or CCA
- **Block 5—Grievant’s Employee Identification Number (EIN):** Do not use Social Security numbers.
- **Block 6—District, Installation, Work Unit, Zip Code:** Indicate the postal district, city, station name, and ZIP code in which the grievant works.
- **Block 7—Finance Number:** Indicate the finance number for tracking and accounting purposes.
- **Block 8—NALC Branch Number.**
- **Block 9—NALC Grievance Number:** Different branches use different methods for assigning local grievance numbers. Consult with your branch president or Formal Step A representative to find out how your branch assigns local grievance numbers.
- **Block 10—Incident Date:** The incident date is key to the timeliness of a grievance. Normally, it is not the date the grievance is filed.

In **contract cases**, the incident date is the day you should have known the violation has occurred. When grieving a continuing violation, write “**ongoing**” in block 10.

In **discipline cases**, the incident date is always the date the discipline was received by the letter carrier. Don’t get confused by the date on a discipline notice or the date the alleged infraction occurred. Just pay attention to the date the discipline was received by the letter carrier and enter this date in block 10.

An **exception** to this rule is an Article 16.7 Emergency Procedure when a letter carrier is immediately placed off the clock by management for reasons outlined in the National Agreement. The incident date in this situation should be the day the letter carrier is put off the clock.

- **Block 11—Date Discussed with Supervisor (Filing Date):** This is the Informal Step A meeting date. Again, this date is very important in preserving the time limits of a grievance. This date should not be more than 14 calendar days from the date in block 10 unless you have a written time limit extension signed by both parties or the grievance is for an ongoing violation.
- **Block 12 a & b—Companion MSPB or EEO Appeals:** Answer yes or no if you know the answer. Leave these questions blank if you do not know the answer.
- **Block 13 a—Supervisor’s Printed Name, Initials, and Telephone No:** (completed by supervisor). This block must be completed by the supervisor at the request of the union. Stew-

ards should always ensure that this block is completed by the supervisor. If the supervisor refuses to complete this information after the Informal Step A meeting, appeal the grievance within 7 calendar days after the Informal Step A meeting to the Formal Step A level. The refusal of a supervisor to sign block 13a after a meeting is a serious violation. If this happens, write “refused to sign” and your initials in block 13a. Then carefully document the exact circumstances and send the information along with the appeal to Formal Step A.

- **Block 13 b—Steward’s Printed Name, Initials, and Telephone No:** (completed by steward). The steward should fill out this block to preserve the record of a grievance. Cell phone numbers are preferable if available as most stewards are more accessible on their cell phones than any other number.

At the Informal Step A level of the DRP, you will not fill out any portion of PS Form 8190 past block 13b. This is a common mistake made by stewards. The rest of the form is reserved for the Formal Step A representatives. One exception to this rule is **if you and the management representative whom you meet with at the Informal Step A meeting are able to reach an agreement**. It is common practice at that point for the Informal Step A representatives to memorialize their settlement on the first page of PS Form 8190 with signatures. This also commonly takes place though on a separate sheet of paper. If you ever have questions about how to fill out this document, the second page of PS Form 8190 contains instructions detailing the proper procedures.

Stewards at the Informal Step A often mistakenly use block 15 of PS Form 8190 to frame their issue statement. Remember this block is reserved for the Formal Step A representatives. **As stated earlier, write or frame a suggested issue statement on a separate sheet of paper.** This will give you a chance to focus on the reason for the grievance and if the grievance is not resolved you can provide it to the Formal Step A representative with the rest of the grievance file.

## General Bargaining Tips and Advice

Now that you have prepared the documents and you have scheduled the time necessary for the Informal Step A meeting, it is important to know before the meeting how you and the management representative should interact while you are at the meeting. The following tips and advice should be followed to ensure that your meeting gives you the result that you are seeking. After all, the DRP is designed with the goal to settle disputes at the lowest step possible and therefore this first meeting of the process is extremely important. How you interact with the management representative at this meeting will directly affect your ability to achieve this goal.

- **Bargain as an equal:** During grievance discussions you and management’s representative are on equal ground. You are empowered by law and the National Agreement with the same right to bargain over grievances as management. Never let a management representative intimidate you during bargaining, even if he or she is your boss at other times. You have an equal right to present your side of each grievance.
- **Listen:** Listen very carefully to what the management representative is saying. Good negotiating is an art, and listening is a key to success. Fully consider management’s position.
- **Review all information:** Jointly review all the information each party gathered.
- **Review the JCAM:** Jointly review *JCAM* language relevant to the dispute you are attempting to resolve.

- **Keep your cool:** Thorough preparation will help you feel cool, calm, and confident each time you have grievance discussions with management. It is important to remain that way during any grievance meeting. Treat the management representative with respect, as you expect to be treated in return. Some management representatives will try to provoke you into losing your temper. Don't fall into this trap. Angry exchanges can ruin the chances for resolving the grievance under discussion. They can also damage the union-management relationship over the long run. Remember, in most cases this will not be the only time you will need to meet with this management representative. Maintaining your integrity is imperative. Keep it about business; don't get personal. Just keep your eye on the ball —achieving the resolution you seek for the grievance under discussion — and you'll be fine.
- **Keep your goals in mind:** As you negotiate, glance at your notes from time to time to make sure you cover everything you planned to say. The clearer your objectives, the more likely you are to attain them. Some management representatives may try to draw you off the point by discussing a side issue or going off on a tangent. When this happens, give the management representative a chance to finish talking. This may reduce any tension and create the groundwork for a constructive working relationship. Once they have finished, politely return your discussion to the main issue.
- **Making grievance settlement offers:** Negotiating may involve a give-and-take process, but each grievance is resolved on its own merits. When resolving grievances you may not always be able to achieve everything you want. In such cases, seek the most appropriate remedy you can achieve that is grounded firmly in the contract. Make settlement offers cautiously and at the proper time. The settlement offers you make are not official unless final settlement is reached. If you cannot resolve the grievance, any possible resolutions discussed at any step of the grievance process are null and void. If you appeal the grievance to the next level, bargaining begins again from the union's original position.
- **Prepare the grievant:** If a grievant is going to attend a grievance meeting, he or she should be fully prepared. Take the time to determine if the grievant would be helpful in the meeting. Grievants are usually emotionally involved which can make having them present at the grievance meeting counter-productive to your effort to resolve the grievance. An angry grievant can reduce settlement chances. In some cases, your best course may be to avoid having the grievant attend the grievance meeting. To help avoid problems, be sure to fully brief the grievant on the case and the procedure. Discuss and explain the remedy you will seek and the outcome that can realistically be expected prior to the grievance meeting.

## The Informal Step A Meeting

Now that you are thoroughly prepared and you understand what is expected, it is time for the Informal Step A meeting. The Informal Step A meeting is the basic foundation of the entire grievance-arbitration procedure. Proper grievance handling at this step in the process builds a strong, healthy grievance system. Ideally, most grievances should be settled at this early stage. The Informal Step A meeting is so important that extensive suggestions and guidance on handling it are provided below.

- **Authority:** Come to the meeting with full authority to resolve the grievance. As a properly certified union steward you have the authority to act on behalf of the union and our members.
- **Bring the USPS/NALC Joint Step A Grievance Form (PS Form 8190) to the Formal Step A meeting:** Blocks 1-10 and blocks 12 a and 12 b should be filled out, along with all of the information and statements you have collected.

- **Present the grievance:** Begin by stating to your management counterpart what you believe the issue is in the case. Then explain the facts of the grievance and show your counterpart the documentation you have to prove them. Next, explain how the contract was violated. Last, but certainly not least, tell your counterpart what you believe are the elements of an appropriate remedy. Explain why you believe each element of the remedy you are requesting is appropriate and how the remedy you've requested will make the grievant "whole." See the [Remedies](#) section on [page 101](#) of this guide for a detailed explanation.
- **Listen to what management has to say:** Listen fully to management's position for each grievance and be sure to take notes of everything that was discussed. If management has evidence that supports there is not a violation as alleged, then consider that evidence to determine how you should proceed with the grievance.
- **Settlement offers:** At the Informal Step A meeting, you or the management representative may make an offer to settle the grievance you are discussing. The offer may be to settle the grievance exactly how you have structured the remedy. In other instances though, the offer may be to "meet in the middle." For example, you file a grievance because a letter carrier received a letter of warning for failing to deliver a USPS Priority Express Mail piece by the time noted on the package. A settlement offer by management may be to reduce the length of time that the disciplinary action is active. The offer may be to reduce the time from two years to three months, or maybe even reduce the action to time already served. This may be a legitimate offer to settle the grievance. You must decide if the settlement offer fits the situation that you are meeting about. At that time, you may want to consider the offer and accept it or you may want to consider the offer and decline it. Settlement offers are very common at every step of the DRP. Your role as a steward though is to weigh the facts of the case while considering the offer and determine whether to accept the offer or proceed with the original remedy that you requested.

If either party needs more time to discuss a settlement offer or if you need a day or two to consult and consider a settlement offer, request a time limit extension for a few days. Keep in mind that time limit extensions should always be **in writing** and signed by both parties. This is an area where you have to use some judgment while keeping in mind the general principle that time limit extensions should be the exception rather than the rule. Remember, unless you have a time limit extension, the 7 calendar day time limit for appealing your case to Formal Step A has started once you end your Informal Step A meeting. Time limit extensions are discussed further below.

- **Resolutions:** If the grievance is resolved at the Informal Step A meeting, the resolution should always be in writing, dated, and signed by both parties. Remember, at this point the parties may use the [PS Form 8190](#) to memorialize the resolution. Alternatively, the parties may record their resolution on a separate sheet of paper. In either instance, **the resolution must be signed by both parties**. By mutual consent, the parties can also agree to use the sample [Informal Step A Resolution Form](#) found in the [Sample Forms for Stewards](#) chapter starting on [page 107](#) of this guide. Whatever means is used, be sure to fully explain what the dispute is about and how the dispute is being resolved in sufficient detail so that anyone can fully understand the settlement agreement. Copies of all resolutions should be kept and filed in a central location for use by you or future stewards or branch officers. Most NALC branches have a filing system in place to track and store grievances. If your branch does not have such a system, you will definitely want to create a system of your own. You never know when you may want to refer to a particular grievance or when you may want to use a specific grievance to support a future grievance of similar nature.



The supervisor should give you a decision on the grievance during the meeting. However, if no resolution is reached or if a decision is not rendered by the supervisor, the appeal time limits to request the Formal Step A meeting (7 calendar days) have started the day of the Informal Step A meeting, unless the parties agree to a mutual extension of the time limits.

Regardless of the outcome at the Informal Step A meeting, thank the supervisor for their time, ask them to fill out their portion of PS Form 8190, and politely conclude the meeting.

**Note:** Always inform the grievant of the results of the Informal Step A meeting if he or she did not attend. If he or she did attend, and the grievance was not resolved, explain the next step in the process.

## Can Letter Carriers Represent Themselves?

Page 15-2 of the 2014 *JCAM*—covering Article 15, Section 2 Informal Step A—explains a letter carrier’s right to represent themselves at the Informal Step A of the DRP as follows:

An employee or union representative must discuss the grievance with the employee’s immediate supervisor within fourteen calendar days of when the grievant or the union first learned, or may reasonably have been expected to learn, of its cause. The date of this discussion is the Informal Step A filing date.

- If the union initiates a grievance on behalf of an individual, the individual grievant’s participation in a Informal Step A meeting is neither required nor prohibited.
- If a letter carrier instead files his or her own grievance, management must give the steward or other union representative the opportunity to be present during any portion of the discussion which involves adjustment or settlement of the grievance (Prearbitration settlement H7N-5R-C 26829, April 2, 1992 [M-01065](#)).

Letter carriers may present their own grievances at Informal Step A without the presence of the union. However, the union must be allowed to be present when any portion of the discussion between an individual letter carrier representing themselves and management involves resolving the grievance at Informal Step A. This basically means if management and the grievant have a meeting where any possible resolution could be discussed, the union is entitled to be at that meeting.

An individual letter carrier cannot represent themselves after Informal Step A. This means that any grievance becomes the union’s grievance after Informal Step A. Therefore, a letter carrier who chooses to represent themselves cannot appeal a grievance that isn’t resolved at Informal Step A to Formal Step A. Only the union can appeal to and present grievances at Formal Step A and each step thereafter of the DRP.

## Time Limit Extensions

For whatever reason, an extension may be needed during the processing or appeal of the grievance at the Informal Step A. A time limit extension is a mutual agreement between the union and management to extend the normal time limitations outlined earlier to process and move grievances through the DRP. Time limit extensions must be jointly agreed to and should be in writing.

Three basic types of time limit extensions would be:

1. To extend the time until the Informal Step A meeting is held.
2. To extend the continuance of the Informal Step A meeting to a later date.
3. To extend the time for the appeal to the next step in the grievance procedure.

Some examples of why a time limit extension may be necessary are that you or the management representative has a leave situation which will not allow you to meet the timelines for meeting or appeal to the next step. You or the management representative may also need some time to consider a settlement offer. Or, something may have arisen during a meeting that requires you or the management representative to further investigate the situation. There are many legitimate reasons that would require the union or management, or both, to need an extension of the time limits.

If you or your management counterpart needs a time limit extension, document the extension in writing and be sure to place a jointly signed copy of the time limit extension in the case file. Just remember to balance being reasonable with following the principle that time limit extensions should be the exception, not the rule.

## Management Fails to Meet

If management refuses or fails to have an Informal Step A meeting with you, follow these three simple steps before you send your appeal to Formal Step A:

1. Write another suggested issue statement for the Article 15 violation that has just occurred. When management fails to meet on a grievance, Article 15 of the National Agreement has been violated. Make that argument in your case and have an issue statement and evidence to support it.
2. Write a statement explaining that management refused or failed to meet with you at Informal Step A and include any details about your efforts to meet in good faith with management.
3. Suggest an appropriate remedy for the Formal Step A representative to request. For example, *management will cease and desist from failing to meet at Informal Step A of the Dispute Resolution Process*. If management makes a habit of not meeting with you at Informal Step A, then you should request additional remedies to encourage compliance.

If you follow these three steps each time and stay persistent, you will have the best chance of getting management to meet with you at Informal Step A as required by the National Agreement.

The failure to meet can also be addressed in another separate grievance. If you are unsure about which way is better, call one of your branch officers or the branch president for further guidance. Just remember that if a failure to meet at any level of the grievance process occurs, it only makes sense to document it in the current file for other representatives to see as the case goes forward.

If management refuses or fails to meet with you at the Informal Step A in a timely manner, it is up to you to appeal the grievance to Formal Step A without a meeting within 7 calendar days from when the Informal Step A meeting should have taken place. Remember, you are the moving party. You should always appeal the case to the Formal Step A as soon as possible after the Informal Step A meeting should have taken place.

The [PS Form 8190](#) should be filled out through block 13b with blocks 11 and 13a notating management failed to meet with you. Remember to write a statement regarding your efforts to hold the meeting and include any documentation you have to back it up in the grievance file. Be sure to notify the union representative at the Formal Step A level of the circumstances and remind him or her to include management's failure to meet as an additional issue in the case.

## After the Informal Step A Meeting

After the Informal Step A meeting, you must determine if you will appeal the grievance to the Formal Step A level of the DRP if you were unable to reach a resolution to the grievance you presented. Article 15, Section 2 Informal Step A (c) of the National Agreement gives you the right to appeal the grievance to the next step. That language from the National Agreement reads as such:

**(c)** If no resolution is reached as a result of such discussion, the Union shall be entitled to file a written appeal to Formal Step A of the grievance procedure within seven (7) days of the date of the discussion. Such appeal shall be made by completing the Informal Step A portion of the Joint Step A Grievance Form. At the request of the Union, the supervisor shall print his/her name on the Joint Step A Grievance Form and initial, confirming the date of the discussion.

In making your decision whether or not to appeal a grievance to Formal Step A, you should re-examine the merits of the grievance. Again, go back to the five questions and make sure you can answer “yes” to each one:

- 1. Is there a violation of the National Agreement?**
- 2. Did we properly frame the issue?**
- 3. Did we determine all the facts of the case and document each one?**
- 4. Do our contentions clearly explain the documented facts and how the National Agreement was violated?**
- 5. Did we request an appropriate remedy for the contract violation?**

If nothing at the Informal Step A meeting surfaced to change your opinion that the grievance has merits, then you should appeal the grievance to the Formal Step A level of the DRP which we will discuss next. If something did surface to change your opinion of the merits of the grievance, then you should immediately tell the NALC Formal Step A representative or contact your branch president for guidance if you are unsure what to do.

## Appeal to Formal Step A

Once you have determined that you will appeal a grievance to the Formal Step A level of the DRP, you will now need to know how to appeal the grievance. Grievances at the Formal Step A level are handled by the branch president or their designee. In some instances, the Informal Step A representative is also the Formal Step A representative. Make sure you know who handles your grievances at Formal Step A and develop a good working relationship with them. If you are the Formal Step A designee for your office, ask the branch president if you have any questions about your responsibilities.

Now that you know who the Formal Step A representative is you must also know how you appeal your grievance to them. In some branches it is the responsibility of the Informal Step A representative to actually make the appeal, but in other branches the Formal Step A representative is the individual who informs management that they are appealing the grievance to the next step. Other places may actually have the Informal Step A representative forward their grievance to a designated representative in their branch who handles all of the appeals and then forwards the grievance to a different person who meets with management at the Formal Step A. The important thing to realize though is that you must familiarize yourself with the appeal process in your branch so you can make your appeal to Formal Step A in a smooth and timely fashion. If you are not sure of the process in your branch then

ask your branch president about the proper appeal procedures. The 7 day time limits for appeal still must be met and you don't want to waste time by not knowing how the appeal process works.

If you choose to mail your appeal to the Formal Step A management representative you have the right to use "penalty envelopes" with the G-10 endorsement provided by the Postal Service. However, if you desire to use extra services such as USPS Tracking or Certified Mail then the full cost of the postage and extra services must be paid by the union. Usage of "penalty envelopes" is only an option; it is not required. If you have any questions about the usage of "penalty envelopes" or if management gives you any problems regarding the usage of them, then please refer to question #52 of [M-01569](#) in the [Materials Reference System](#) for further guidance.

The procedure for appealing the grievance to the Formal Step A level may change from branch to branch, but the contractual rules remain the same. [Page 15-3](#) of the 2014 *JCAM* states in pertinent part:

The steward appeals a grievance to Formal Step A by filling out the Informal Step A portion of the NALC-USPS Joint Step A Grievance Form (PS Form 8190) and sending it to the installation head or designee. The grievance appeal to Formal Step A should include relevant documents that were shared and discussed at the Informal Step A meeting.

The following guidelines will lead you through this process:

- Contact the NALC Formal Step A representative after the Informal Step A meeting while still on union time and inform him or her that you have reached an impasse on a grievance.
- As discussed above, follow your branch's normal internal procedures when appealing grievances to the Formal Step A level of the DRP.
- The union must file a written appeal to Formal Step A using [PS Form 8190](#) **within 7 calendar days** after the Informal Step A meeting (unless time limits are mutually extended). Be careful not to steal time from the union's Formal Step A representative by delaying the forwarding of the case file. He or she will need as much time as possible to prepare for the Formal Step A meeting.
- If it is your responsibility to appeal grievances to the Formal Step A level of the dispute resolution process, send a copy of the PS Form 8190 with blocks 1 – 13b filled out to the installation head or designee along with copies of all supporting documentation shared and discussed at the Informal Step A meeting. Immediately forward the original PS Form 8190 and all of the information you have gathered pertaining to the grievance to the union Formal Step A representative.
- If management failed to meet with you at the Informal Step A level, then you still must appeal your grievance to the Formal Step A level in a timely manner (within 7 calendar days of when the Informal Step A meeting should have taken place). Since the *JCAM* requires that your grievance appeal to Formal Step A should include relevant documents that were **shared and discussed** at the Informal Step A meeting, you will only be able to appeal PS Form 8190 to the installation head or designee. Since management failed to meet with you, no documents could have been shared and discussed. However, you should still send everything you have to support your grievance to the union Formal Step A representative for their consideration and support of the grievance as they move forward.
- If it is not your role to appeal grievances to the Formal Step A level of the Dispute Resolution Process, be sure to immediately forward the original PS Form 8190 and all of the information you

have gathered pertaining to the grievance to the person who is responsible for making the appeal and keep a copy of the case file for your records. Keeping copies for your records is very important in case something happens to the original case file that you just appealed. A copy of the case file will be important to you for reference in the event that the parties at the following levels of the DRP need to contact you for any clarification about your grievance. You could even be called to testify at hearing if your grievance makes it all the way to arbitration.

**Note: Check with branch officials if you have any questions about the appeal process.**

## Paperwork, Evidence, and File Order

It is absolutely essential that all grievance files appealed to the next step of the DRP be clearly written, well-organized, and kept in the proper order. The grievance system cannot operate without paperwork, and you as the steward are responsible for originating and assembling grievance records.

Evidence is important! Documentary evidence contained in the grievance file usually determines the outcome of a grievance. Documentary evidence includes forms, documents, records, photographs, written statements, interviews, or other tangible items that prove the facts of the case.

Make the grievance packet easy to go through and understand. Making the file clear and straightforward will benefit both parties when they attempt to resolve the grievance at every level. Put your grievance documents in a logical order using the following order as an example:

- **Joint Step A Grievance Form:** The PS Form 8190
- **Central Documents:** The next item in the file should be the central documents in the case, if any. This might be a letter of warning, a suspension, or a removal notice in a disciplinary case. It could be an administrative action such as a letter placing an employee on restricted sick leave, a letter of demand, or an improper Form 50. The central document could also be a policy notice, a denied leave slip, or some other method of written communication in which the form or content is in dispute.
- **Documentary Evidence:** This is “*where the rubber meets the road*” because the documentary evidence contained in a file usually determines the outcome of the grievance. It does not matter how articulate or persuasive the arguments of a case are written if the documentary evidence is not there to support them. Thus the saying: “*It’s not what you say happened that counts, but what you can **prove** happened.*”

Documentary evidence includes forms, documents, records, photographs, written statements, or other tangible items that prove a fact. For example, the document used to establish whether someone is on the overtime desired list would be a copy of the ODL itself.

In preparing the documentary evidence for an appeal, the representatives should review each fact they seek to establish in the grievance and make every effort to ensure that there is some piece of written or printed evidence to prove it. Sometimes a single piece of documentary evidence can be used to establish more than one fact. Normally, it is necessary only to include one copy of the document in question.

- **Investigatory Notes:** During the course of investigating a grievance, the shop steward or manager should take notes of conversations and interviews. These may be interviews held at the request of management, such as an investigatory interview. These may also be interviews that the steward has initiated while investigating the grievance.

Normally, interview notes are considered as “hearsay” since, by themselves, they only establish what the steward or manager was told had happened by someone else who actually observed it. Nevertheless, such notes are important as they record answers to pertinent questions relevant to the grievance while the events are still fresh in the mind of the witness. They may also be used to verify the consistency of witness accounts.

Investigatory notes should be identified by time, date, location, person being interviewed, others present, and person conducting the interview.

- **Contractual Cites and Prior Cases:** Copies of contractual language or any handbook, manual, external law, or other provisions cited as a basis for the action or the grievance should be included in the file. Prior arbitration or grievance decisions that are being cited to support our contentions or remedy should be included as well. Since these are normally not considered “evidence,” they may be marked to highlight pertinent parts.
- **Miscellaneous Items:** This is kind of a catch-all category for those items generated by the processing of the grievance itself. This includes items such as information and steward time request forms, extension letters, and mailing receipts. These should not be marked upon or altered.

Each party should retain a copy of the entire file, including all of the above, for their records. These files may be needed for future reference should the case be remanded by the Step B Team or impasse to arbitration.

Remember, all grievance forms must be filled out clearly and legibly. Also, each case file must be complete, organized, and legible. All necessary attachments, supporting documents, and other papers should be orderly arranged. Make sure that photocopied material is legible. Pay particular attention that highlighted text or color documents are still legible when copied. Remember to make sure that any pages or statements written on front and back are copied on both sides. It is also helpful if you use 8-1/2” by 11” sheets of paper for all documents in your case file whenever possible. The grievance file should be copied and properly stored, following the storing and filing procedure in your branch, to maintain a record of the file and to prevent it from being lost or damaged. The original file should be sent to the appropriate union officer who handles the Formal Step A appeal.

These measures are all part of building a strong foundation for each grievance you handle. When other union officers receive a case file, they should be able to read, comprehend, and process the grievance without any further explanation. Too often, union representatives at Formal Step A and higher end up with a weaker grievance because the case file is incomplete or illegible. It is up to the steward to make sure this does not happen. Avoiding this kind of problem isn’t difficult. Just follow the advice contained in this guide and you’ll be fine. If you do that, then we will have our best chance for success in the grievance procedure.

Remember, after you forward your grievance to the proper union official for handling at the Formal Step A, you should always go back to the grievant and inform him or her about where their grievance is in the DRP. Let them know what will happen next and what may happen in the future if it can’t be settled at the next step.

## Additional Resources

NALC stewards have access to a variety of resources to develop their understanding of the National Agreement and grievance procedure:

- Attending branch meetings and steward training.
- Networking with other stewards.
- Attending regional training conducted by your national business agent's office.
- Going to NALC's website, [www.nalc.org](http://www.nalc.org) to look around! The [resources](#) page on the website has the National Agreement, *Joint Contract Administration Manual*, the *Materials Reference System*, USPS handbooks and manuals, and other resources in PDF format that can assist a steward with almost any grievance issue.
- Consulting your branch officials or other stewards if you don't understand any part of the grievance procedure. Don't wait; ask questions early and often.

The following chapters of this guide will give you an explanation of what happens at Formal Step A and Step B, as well as what happens at arbitration. This will give you a better understanding of the process and it will also enable you to keep the letter carriers in your branch well informed of what to expect next regarding the grievance that you just handled for them.

## V. Grievance Handling—Formal Step A

Grievances at the Formal Step A level are handled by the branch president or their designee. If the branch president does not perform the duties of Formal Step A representative, who their designee is can vary widely from branch to branch. In some instances, the NALC representative at the Informal Step A actually performs the duties as the Formal Step A representative as well. In some branches a union designee may handle all of the grievances for an entire city or geographical area at the Formal Step A. In some large cities and branches, this can actually be a full-time job.

The role of the Formal Step A representative, like the Informal Step A representative, is extremely important to the letter carriers that we represent. Unlike Informal Step A though, Formal Step A of the DRP is the step where, if the grievance is not resolved through discussions, the issue statement, undisputed facts, the union's disputed facts and contentions, and the requested remedy must be formally reduced to writing. A thorough understanding of the grievances that you handle at this step of the DRP is very crucial to your success.

Processing a grievance at Formal Step A starts with making sure the grievance is appealed timely to Formal Step A. You may be the individual in your branch that actually appeals the grievance to the management representative at Formal Step A, or you may not. In some branches it is the responsibility of the Informal Step A representative to actually make the appeal. Other places may actually have the Informal Step A representative forward their grievance to a designated representative in their branch who handles all of the appeals and then forwards the grievance to a different person who meets with management at the Formal Step A. The important thing to realize though is that the time limits to appeal to Formal Step A and the time limits to meet at Formal Step A, which will be discussed in the next section, must always be met. If you are not sure of the process in your branch then ask your branch president about the proper appeal procedures.

Elements of a successful grievance will always contain certain qualities that allow the union to achieve desired results. As you perform your duties as a Formal Step A representative, and you are reviewing the grievance file submitted to you from the Informal Step A, you should always keep the following in mind because you should be able to answer "yes" to each of the questions below to make sure the grievance has the best chance for success:

- 1. Is there a violation of the National Agreement?**
- 2. Did we properly frame the issue?**
- 3. Did we determine all the facts of the case and document each one?**
- 4. Do our contentions clearly explain the documented facts and how the National Agreement was violated?**
- 5. Did we request an appropriate remedy for the contract violation?**

You must complete a thorough review of the grievance submitted to you from the Informal Step A and be prepared to support any claims that the union is making with documentation and statements at the Formal Step A meeting within strict time limits (7 calendar days from the date that the appeal was received at Formal Step A). During your review of the grievance appealed to your step, you may have questions that would give you a better understanding of the grievance file. If this is the case, then contact the Informal Step A representative to ask specific questions to clear up any details you don't



fully understand. It is your responsibility to determine that a grievance actually exists, so start reviewing the grievance file immediately. It is possible that a grievance was initiated at the Informal Step A, but the facts do not support that a violation exists or that the union can even support a successful grievance.

If you determine a grievance doesn't exist, you should consult with the Informal Step A representative who initiated the grievance. If you have any doubt, contact your branch officers for advice, but you still should schedule the Formal Step A meeting and meet with the Formal Step A management representative to preserve your time limits. If it is later determined that the grievance has no merit, it can be withdrawn by the union at a later step during the grievance procedure.

## Time Limits

Article 15, Section 2 Formal Step A (c) of the National Agreement is the controlling language which outlines the strict time limits mentioned above which must be met at the Formal Step A level of the DRP, in regards to when the Formal Step A meeting must take place. That section states:

**(c)** The installation head or designee will meet with the steward or a Union representative as expeditiously as possible, but no later than seven (7) days following receipt of the Joint Step A Grievance Form unless the parties agree upon a later date. In all grievances at Formal Step A, the grievant shall be represented for all purposes by a steward or a Union representative who shall have authority to resolve the grievance as a result of discussions or compromise in this Step. The installation head or designee also shall have authority to resolve the grievance in whole or in part.

The Formal Step A meeting must be held as expeditiously as possible, but no later than 7 calendar days following receipt of the [PS Form 8190](#) by the installation head or designee (unless the time limits are mutually extended). It is your responsibility to make sure that these time limits are met. See the [Time Limits](#) section **now** on [page 78](#) in the [Special Topics](#) chapter for a more detailed explanation.

Management's Formal Step A representative should contact you and set up the Formal Step A meeting shortly after he or she receives the appeal. If this does not happen, contact management's Formal Step A representative and remind him or her that you have to meet no later than 7 calendar days from when they received the appeal from Informal Step A. Keep notes about what you did and who you spoke to in this regard.

Time limits will be further discussed later in this section. In the event that you are unable to reach an agreement with the Formal Step A management representative, there are time limits that the National Agreement states must be followed for an appeal to Step B of the DRP.

**Time Limit Extensions:** The Formal Step A representatives are free to mutually agree to an extension of the 7 calendar day time limit for meeting at Formal Step A. Although it is not contractually required, time limit extensions should always be in writing and signed by both parties before expiration of the 7 calendar day period. The sample [Time Limits Extension Form](#) in the [Sample Forms for Stewards](#) chapter starting on [page 107](#) of this guide can be used to document a time limit extension at this level. However, time limit extensions should be the **exception**, rather than the rule, at all levels of the grievance procedure.

Since extensions must be mutual, the union must be ready to discuss the grievance within the 7 calendar day time limit. The union is the moving party in the grievance procedure and bears the responsibility

ity of ensuring the time limits are followed and the grievance continues to move through the steps of the DRP. This is true for contractual and discipline cases alike. It is really important to remember that you as the NALC steward and Formal Step A representative have both the authority and responsibility to ensure that grievances move in a timely manner through each step of the DRP that you handle.

Time limit extensions will be discussed further at other points in this guide to give you an understanding of how and when they would be appropriate at the different steps of the DRP.

## Is it a Grievance? – How to Decide

Ideally, we have already determined that a grievance actually exists at the Informal Step A level of the DRP considering the grievance has been appealed to Formal Step A. That is not always the case though and, as stated earlier, it is the responsibility of the Formal Step A representative to continue weighing the facts and determine whether or not there is a violation of the National Agreement. As you review the grievance file appealed to you, organize all the necessary facts and conduct a thorough analysis of the file. This will make it much easier to decide whether the problem you are investigating is a grievance.

- **Base your decision on the facts:** You can best decide whether or not a problem is a grievance after reviewing, further investigating, and weighing the evidence. If you have any doubts as to whether or not a grievance exists, consult with the Informal Step A union representative who appealed the grievance to your step of the DRP. If needed, conduct your own investigation into the situation.
- **Go the extra mile:** Just how much investigation is “enough” will vary from case to case. As a general rule, the steward and Formal Step A representative should investigate far enough to make an informed and intelligent decision. This won’t be a waste of time even if it turns out not to be a grievance. If the problem is grievable, you will need all the facts anyway. If it is not, you can use the information to help explain to the Informal Step A representative and to the letter carrier why it is not a violation of the National Agreement.
- **Analyze your information:** Take the time to evaluate the problem carefully. Think it through completely, considering its merits and the evidence you have.
- **If you still do not know for sure, seek advice:** No single person has all the answers so ask other union officers for help when you need it.

**If it is not a grievance:** If a problem clearly is not a grievance, tell the Informal Step A representative and the letter carrier the plain truth of the matter. He or she may be disappointed, so be as tactful and diplomatic as possible and always explain to him or her why and how you reached your conclusion.

## Preparing for the Formal Step A Meeting

Use the following tips to prepare your grievance for the Formal Step A meeting:

- **For starters:** Make sure you are properly certified as the Formal Step A representative.
- **Check time limits:** Remember to check the Informal Step A filing date (block 10 of the PS Form 8190) to be sure we comply with time limits. Also, check the Formal Step A time limits to ensure that we will be meeting on the grievance in a timely manner. See the [Time Limits](#) section **now** on [page 78](#) of the [Special Topics](#) chapter for a more detailed explanation.

- **Request time:** Make sure you request time to prepare for the Formal Step A meeting as discussed in the [Steward Time “On the Clock”](#) section on [page 18](#) of this guide.
- **Read the file:** Familiarize yourself with the documentation and any notes or other information sent to you by the NALC Informal Step A representative prior to the Formal Step A meeting. Contact him or her if you need clarification.
- **Continue the investigation:** Review the file to determine if any additional investigation or research is needed. Try to complete any additional investigation needed prior to the Formal Step A meeting with management. Remember to request time to work on the grievance as discussed in the [Steward Time “On the Clock”](#) section on [page 18](#) of this guide.
- **Have the information to support your case:** If there isn’t enough information in the grievance file to prove your case and you think you have a grievance that has merit but needs more documentation, request any additional information or interviews needed in writing. Any such requests should be submitted as far in advance of the Formal Step A meeting as possible. See the [Information Requests](#) section **now** on [page 82](#) of this guide to assist you.
- **Consider the issue:** The issue statement at the Formal Step A meeting is important, so think about it. You should have the issue properly framed in the form of a question identifying the relevant contractual or handbook provisions involved before the meeting. The Informal Step A representative should have forwarded to you a piece of paper with the issue statement that he or she created detailing what they thought was the issue at hand in this grievance. Review their issue statement and fully consider their thoughts.
- **Review any statements:** Make sure any statements you are submitting are legible, signed, dated, and of sufficient detail to be relevant and helpful to your case. A common mistake is to submit statements that do not support the union’s case or are illegible. When you submit a statement, you should also include the printed name (no nicknames), title, and contact information for the person who wrote the statement. See the section on [Tips for Writing Statements](#) section now on [page 98](#) of this guide for more information.
- **Organize:** The case file should be put into a logical order if the NALC Informal Step A representative hasn’t already done so. A suggested order for the case file was offered in the [Informal Step A](#) chapter of this guide, but the importance of organization cannot be overstressed and it is necessary that we revisit that suggestion at this point in the guide:
  - **Joint Step A Grievance Form:** The PS Form 8190
  - **Central Documents:** The next item in the file should be the central documents in the case, if any. This might be a letter of warning, a suspension, or a removal notice in a disciplinary case. It could be an administrative action such as a letter placing an employee on restricted sick leave, a letter of demand, or an improper Form 50. The central document could also be a policy notice, a denied leave slip, or some other method of written communication in which the form or content is in dispute.
  - **Documentary Evidence:** This is “*where the rubber meets the road*” because the documentary evidence contained in a file usually determines the outcome of the grievance. It does not matter how articulate or persuasive the arguments of a case are

written if the documentary evidence is not there to support them. Thus the saying: *“It’s not what you say happened that counts, but what you can **prove** happened.”* Documentary evidence includes forms, documents, records, photographs, written statements, or other tangible items that prove a fact. For example, the document used to establish whether someone is on the overtime desired list would be a copy of the ODL itself. In preparing the documentary evidence for an appeal, the representatives should review each fact they seek to establish in the grievance and make every effort to ensure that there is some piece of written or printed evidence to prove it. Sometimes a single piece of documentary evidence can be used to establish more than one fact. Normally, it is necessary only to include one copy of the document in question.

- **Investigatory Notes:** During the course of investigating a grievance, the shop steward or manager should take notes of conversations and interviews. These may be interviews held at the request of management, such as an investigatory interview. These may also be interviews that the steward has initiated while investigating the grievance. Normally, interview notes are considered as “hearsay” since, by themselves, they only establish what the steward or manager was told had happened by someone else who actually observed it. Nevertheless, such notes are important as they record answers to pertinent questions relevant to the grievance while the events are still fresh in the mind of the witness. They may also be used to verify the consistency of witness accounts. Investigatory notes should be identified by time, date, location, person being interviewed, others present, and person conducting the interview.
- **Contractual Cites and Prior Cases:** Copies of contractual language or any handbook, manual, external law, or other provisions cited as a basis for the action or the grievance should be included in the file. Prior arbitration or grievance decisions that are being cited to support our contentions or remedy should be included as well. Since these are normally not considered “evidence”, they may be marked to highlight pertinent parts.
- **Miscellaneous Items:** This is kind of a catch-all category for those items generated by the processing of the grievance itself. This includes items such as information and steward time request forms, extension letters, and mailing receipts. These should not be marked upon or altered.
- **Outline your case:** Be sure to at least make an outline consisting of the facts, contentions, contractual provisions involved, and the remedy we are seeking in the grievance. This should be done for each grievance you plan to discuss. Remedies can be one simple request or a list of things. It depends on what is appropriate based on the issue at hand and the facts of the case. This step will help you stay focused at the meeting and be a useful tool if you don’t reach a resolution and have to reduce the union’s case to writing. Stop and review the **Remedies** section **now** on **page 101** of this guide.
- **Get your time approved for meeting:** Once you are contacted about the Formal Step A meeting, check with your immediate supervisor to ensure that he or she has scheduled time for you to attend the meeting.
- **Confirm the cases:** Confirm which pending cases you are going to discuss with management’s Formal Step A representative and be prepared for all of those cases.

Most grievances appealed to Formal Step A should be resolved at that level. It is, after all, the last

step where the parties' representatives can be expected to have detailed local knowledge of the background, specific circumstances, and any underlying issues.

If the local parties are unable to resolve a grievance and the union appeals it to the Step B level, the representatives discussing the same grievance may be hundreds of miles away and will not normally know anything more than what appears in the file they are reading. You should prepare every case with this in mind and never assume a grievance will be resolved at Formal Step A.

### Formal Step A Meeting Tips

Before we get into the “nuts and bolts” of the Formal Step A meeting, here are some basic tips to follow when meeting with management at Formal Step A of the DRP:

- Come to the meeting with full authority to resolve the grievance.
- Bring the original grievance form, all of the information the union has, the outline you have made, a notepad, and a sample [Time Limits Extension Form](#) for each grievance you will be discussing at the Formal Step A meeting in case you need to extend the meeting. The sample Time Limits Extension Form can be found in the [Sample Forms for Stewards](#) chapter starting on [page 107](#) of this guide.
- Use your outline to fully discuss the union's position, the contract violation alleged, and the requested remedy for each grievance discussed.
- Listen to and fully consider management's position.
- Exchange all documents that you want to become part of the joint grievance file.
- Jointly review all the information each party has gathered.
- Jointly review the *JCAM* language relevant to the grievance you are attempting to resolve.
- Take notes during the meeting so you can have them to look at while writing your contentions.
- If you are unable to resolve a grievance at the meeting, you should jointly initial each page of the grievance file and make a list of exhibits.
- Prepare and exchange written positions on the same day of the Formal Step A meeting unless there is a joint time limit extension in writing extending the meeting or appeal.

### The Formal Step A Meeting

All documents, statements, and other evidence must be shared between the parties at the Formal Step A meeting. If no settlement is reached, all of the documents, statements, evidence, and the full detailed statement of facts and contentions from both parties will be combined into a joint case file at the end of the meeting. The union will then decide whether or not to appeal the case to Step B of the grievance procedure. More on that will come later in this chapter.

The union representative at the Formal Step A meeting should fully discuss the union's position, the contract violation alleged, the requested remedy, and submit into evidence any supporting documentation or written statements from witnesses or other individuals that support the union's disputed facts and contentions and remedy requested in the grievance.

The Postal Service is required to state in detail the facts and contract provisions relied upon to support its position. It is also required to submit into evidence any supporting documentation or written statements from witnesses or other individuals that support the Postal Service's disputed facts and contentions in the grievance.

In non-discharge cases, the parties can mutually agree to jointly interview witnesses at the Formal Step A meeting. In discharge cases, either party can present two witnesses at that meeting; with additional witnesses should the parties mutually agree. As provided in Article 17, Section 4 of the National Agreement, the employer will compensate witnesses for the time required to attend a Formal Step A meeting. The union determines whether the grievant's presence is necessary at the Formal Step A meeting (see [M-00790](#)).

In situations where you are processing a proposed removal action grievance for a preference-eligible employee that is subject to the 30 day notification period described in Article 16.5 of the National Agreement, the grievance is held at the Formal Step A level until the decision letter is issued. You should review the section titled [MSPB Appeal Rights](#) on [page 75](#) of this guide for further guidance and information on this very important subject. If you are dealing with a proposed removal, go there **now**. This is useful information that should be read.

The above explanation of what takes place at the Formal Step A meeting is documented in Article 15.2 Formal Step A (d) of the National Agreement. This language is binding on both parties, union and management, and instructs them what to do. That section of the National Agreement reads:

**(d)** At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Articles 17 and 31. The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. In addition, in cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above.

The parties' representatives at Formal Step A must have the authority to settle grievances in whole or in part according to the National Agreement. Such settlement shall be in writing or noted on the [PS Form 8190](#) and does not set a precedent unless the parties specifically agree otherwise as stated in Article 15.2 Formal Step A (e):

**(e)** Any resolution of a grievance in Formal Step A shall be in writing or shall be noted on the Joint Step A Grievance Form, but shall not be a precedent for any purpose, unless the parties specifically so agree or develop an agreement to dispose of future similar or related problems. If the grievance is resolved, a copy of the resolution will be sent to the steward and supervisor who initially were unable to resolve the grievance.

If you resolve the dispute at the Formal Step A meeting, write the remedy in block 19 on the [PS Form 8190](#) or an attachment. Any attachments should be dated and jointly signed. If you use an attachment, be sure to keep the attachment with the PS Form 8190. Then the Formal Step A repre-

representatives should fill out blocks 20, 21a, 21b, 21c, 21d, 22a, 22b, 22c and 22d of the PS Form 8190. Be sure to make clear in the remedy section exactly what is agreed to and, if there is agreement on how to dispose of future similar related problems, be sure this is clearly stated in the remedy agreement. Make sure the Informal Step A parties and the grievant get a copy of the PS Form 8190 showing the resolution to the grievance. PS Form 8190, Joint Step A Grievance Form, will be explained in great detail immediately following this section.

If management or the union needs time to review any settlement offer, this should only be done with a jointly signed written time limit extension for the purposes of extending the Formal Step A meeting. Just remember that time limit extensions should be the exception rather than the rule. Time limit extensions are discussed in greater detail later in this chapter of the *NALC Shop Steward's Guide*.

If the grievance is not resolved at the Formal Step A meeting, blocks 14-22 of the PS Form 8190 are to be completed in their entirety by the Formal Step A representatives on the day of the meeting. This includes management's response to the grievance, unless you mutually agree to extend the time limits of the meeting in writing as outlined in Article 15.2 Formal Step A (f) of the National Agreement:

**(f)** The Formal Step A decision is to be made and the Joint Step A Grievance Form completed the day of the meeting, unless the time frame is mutually extended. The Union may appeal an impasse to Step B within seven (7) days of the date of the decision.

This is why you should never submit the union's disputed facts and contentions (block 17) or requested remedy (block 19) to management on the PS Form 8190 or attachments before the Formal Step A meeting. You can, and usually should, have all of this information prepared prior to the meeting but do not fill out PS Form 8190 until you have met with the Formal Step A management representative.

The National Agreement calls for each party to exchange their written positions **on the day of the Formal Step A meeting** if the grievance is not resolved. This is part of jointly filling out blocks 14-22 on PS Form 8190 on the day of the meeting or at the next meeting if the time limits have been extended. If you follow this sound advice, and anyone tries to tell you there is something wrong with it, just point them to Article 15, Section 2, Formal A (f) in the contract as shown above.

## USPS/NALC Joint Step A Grievance Form (PS Form 8190)

As discussed previously in the [Informal Step A](#) chapter of this guide, a document of extreme importance to all grievance files is [PS Form 8190](#). This form consists of three pages and it documents very important information relevant to the grievance file. In the event that a grievance is not settled at any level of the DRP, this form is appealed with the grievance at every step of the process. Every grievance file must contain this form and you must have this form when you meet at the Formal Step A meeting. The Informal Step A union representative should have appealed this form with his or grievance and it should already be a part of the grievance file before you. Blocks 1 through 13b should have already been filled out by the Informal Step A representatives. The most current version of the form should always be used and a fill-in-the-blank version of [PS Form 8190](#) is available for your use on the [NALC website](#). You should reference this document now as you read the following explanations of each portion of PS Form 8190 that you will need to fill out at the Formal Step A level. Keep this in mind as you read the following.

## Filling out Blocks 14-22 of the PS Form 8190

The parties must jointly fill out blocks 14 through 22d at the Formal Step A meeting and exchange written positions on the day of the Formal Step A meeting unless the time limits to do so have been mutually extended.

**Block 14—Grievance Arbitration Tracking System (GATS) Number:** This is the Postal Service’s grievance tracking number. It will be provided by management at the Formal Step A meeting. This is the first thing you should ask for when the meeting starts if you don’t already have a GATS number for the grievance you are meeting on. If management does not provide a GATS number at the Formal Step A meeting, continue to process the grievance without a GATS number, and follow these four simple steps before you send your appeal to Step B:

1. Frame another issue in block 15 on the PS Form 8190 (or attachment) for the Article 15 violation that has just occurred. Here is an example:

*Did management violate Article 15 of the National Agreement when they failed to provide a GATS number at the Formal Step A meeting for local grievance # \_\_\_\_\_, and if so, what should the remedy be?*

2. Make the additional contention that you were not provided a GATS number at the Formal Step A meeting.
3. Request an appropriate remedy.
4. Include any history (previous grievance settlements) on the same issue from your installation.

If management makes a habit of not providing GATS numbers at the Formal Step A meeting and you follow these four steps each time and stay persistent, you will have the best chance of getting management to provide GATS numbers as required by Article 15 of the National Agreement.

**Block 15—Issue Statement:** This is where the steward normally writes or frames the issue of the grievance.

Sometimes the parties cannot agree on an issue statement. If that happens, complete the issue statement and encourage management to address it in their contentions. As the mover of the file, we are the custodians of the PS Form 8190. If you encounter problems with issue statements, contact your branch officers or branch president for guidance.

Issue statements are stated or “framed” in the form of a question, such as: Did an action by management violate the contract, and if so, what should the remedy be? Was discipline issued for just cause, and if not, what should the remedy be? The issue statement itself should identify the relevant contractual or handbook provisions involved. If it is a disciplinary grievance, always indicate the type of discipline (letter of warning, 7 or 14 day suspension, indefinite suspension, etc.) in the issue statement. Here is an example of an issue statement for a discipline case:

*Did management violate Article 16 and Section 115 of the M-39 Handbook via Article 19 of the National Agreement when a letter of warning was issued to the grievant dated 8/08/2013 for unsatisfactory work performance, and if so, what should the remedy be?*



You could use this example for almost any discipline case. You just need to change the level of discipline, the date, and the charge.

Here is an example of an issue statement for a contract case:

*Did management violate Article 8, Section 5.G when the grievant was required to work overtime on 8/08/2013, and if so, what should the remedy be?*

If you have multiple contract violations, it may be appropriate to frame multiple issue statements in the same case. For instance, you may have an overtime grievance in an office where you also have precedent-setting Formal Step A settlements or Step B decisions where management was told repeatedly to stop violating the contract. This leaves you with an issue for the Article 8 violation and an issue for the non-compliance with a previous grievance settlement. In this situation, each issue should have its own issue statement. The thing to remember is if you are going to frame multiple issues, you should have facts, contentions, documentation (proof), and a remedy request for each issue statement you frame.

**Note:** Blocks 16 – 19—Attachments are usually necessary for blocks 16, 17, 18, and 19 on the PS Form 8190, so avoid attempting to squeeze too much information into any one block. Indicate the number of pages attached in the space provided in block 17 on the PS Form 8190. You should also create a table of contents for these attached pages and all other documents, statements, etc. in the case file. This will make it easy if the case is appealed to Step B for the Dispute Resolution Team to determine if they have all of your documentation.

**Block 16—Undisputed Facts:** Block 16 is used by the parties to record facts that both parties agree are true and neither party plans to challenge in their respective disputed positions (blocks 17 and 18). For instance, if the parties agree that time limits were met in a case, you may want to write something like:

*All time limits have been met at each step of the grievance procedure for this case.*

Or:

*This grievance is timely at all steps of the grievance procedure.*

Normally, the more information that both parties agree is undisputed in a grievance file, the more likely the grievance will be resolved at the Formal Step A meeting. However, you should **never** agree that something is an undisputed fact if you are not sure about it. Jointly initialing the undisputed facts is not required but can be helpful later in the grievance process if management tries to back out of an undisputed fact.

If you and the management Formal Step A representative do not agree on any undisputed facts in a particular grievance, don't let that stall the Formal Step A meeting. Be sure all relevant facts are made a part of the union's full, detailed statement of disputed facts and contentions in block 17.

**Block 17—Union's full, detailed statement of disputed facts and contentions:** In block 17 on the PS Form 8190 or in an attachment is where the union should explain our position for the grievance.

You should write down all the facts of the case, restate the contract provisions involved, and explain how the facts of the case constitute the violation of the National Agreement you are claiming in your

contentions. Remember that you have to prove what you say in block 17. You can have the greatest set of facts and contentions in the world, but without documentation, your chances to be successful in the grievance procedure are very low.

Documenting your case file isn't as difficult as it may seem. All you have to do is provide information such as a copy of a document, statement, photograph, etc. to prove each fact that is part of your case. Just don't take anything for granted regardless of how insignificant or obvious you think the fact is. Remember that you must show the claims you make are factual.

It can be helpful to have your typed or written disputed facts and contentions ready to present when the Formal Step A meeting takes place, but never fill out block 17 of PS Form 8190 prior to the meeting. You should also never share this information with the Formal Step A management representative until the meeting takes place. As previously stated, if you do not have written disputed facts and contentions ready prior to the meeting then at least make an outline of the points you want to raise at the Formal Step A meeting. This will make your contentions flow in an orderly manner. As stated above, it is also advisable to make a list or a table of contents of all of your exhibits (supporting documents, statements, etc).

**Block 18—Management's full, detailed statement of disputed facts and contentions:** Block 18 on the PS Form 8190 or in an attachment is where management should explain their position for the grievance. Management must provide you with their written position and any supporting documentation **on the day of the Formal Step A meeting.**

**Block 19—Remedy Requested:** When considering a remedy request, think about what would have happened if the violation had not occurred. The requested remedy should relate directly to the violation. Here are two examples. For a discipline grievance challenging a removal:

*Rescind the notice of removal and remove it from all employee records and files and make the grievant whole for all wages and benefits lost as a result of this action to include interest at the federal judgment rate, or whatever remedy the Step B team or an arbitrator deems appropriate.*

For an overtime grievance where the grievant missed an overtime opportunity:

*Pay the grievant two hours at the regular/penalty (specify appropriate rate) overtime rate for the hours of the missed overtime opportunity, or whatever remedy the Step B team or an arbitrator deems appropriate.*

Sometimes you might want to request a lump sum per letter carrier as opposed to a certain number of hours for convenience. Why? Management can process lump sum payments in GATS in less time than adjusting employee hours for payment. You might also request a lump sum remedy for a violation where there is not a set remedy based on hours worked.

Remember, if you want the remedy reached at Formal Step A to establish precedent to dispose of similar violations in the future, you have to specifically say so in your settlement agreement. For more information on this subject, see the [Remedies](#) section of this guide on [page 101](#).

**Block 20—Disposition and Date:** Block 20 on the PS Form 8190 provides three (3) check boxes: you will only check one of the boxes. Your choices are simple: Resolved, Withdrawn, and Not Resolved. If the union withdraws a grievance, check the appropriate box. If the grievance is "Resolved"

check the appropriate box and indicate the agreed upon resolution in block 19 or in an attachment. If the grievance is “Not Resolved” then mark the appropriate box.

The “Date of Formal A Meeting” is also required in block 20. **Always make sure the grievance is appealed to Step B within 7 calendar days of whatever date you write in block 20.** This will avoid any claim by management that the grievance was appealed to Step B untimely. The only exception is when you have a written time limits extension signed by both parties extending the appeal to Step B. In that case, delay the completion of blocks 20-22 until the Formal Step A meeting is completed.

**Blocks 21(a-d) and 22(a-d) —Representative's Name and Signature:** Regardless of the disposition of the grievance, blocks 21(a-d) and 22(a-d) on the PS Form 8190 must be completed by the parties’ representatives at the Formal Step A meeting. Always appeal a grievance within the time limits even if the management Formal Step A representative refuses to sign the PS Form 8190. The refusal of management’s Formal Step A representative to sign block 21 after a meeting is a serious violation. If this happens, carefully document the exact circumstances and send the information along with the appeal to Step B and frame an additional issue in the grievance.

The representatives should also initial each page of the case file and make copies of the file for their records. The union’s Formal Step A representative will take the complete original case file because it is the union’s responsibility to forward it to the Step B Dispute Resolution Team.

## Time Limit Extensions

For whatever reason, an extension may be needed during the processing or appeal of the grievance at the Formal Step A. A time limit extension is a mutual agreement between the union and management to extend the normal time limitations outlined earlier to process and move grievances through the DRP. Time limit extensions must be jointly agreed to and should be in writing.

Three basic types of time limit extensions would be:

1. To extend the time until the Formal Step A meeting is held.
2. To extend the continuance of the Formal Step A meeting to a later date.
3. To extend the time for the appeal to the next step in the grievance procedure.

Some examples of why a time limit extension may be necessary are that you or the management representative has a leave situation which will not allow you to meet the timelines for meeting or appeal to the next step. You or the management representative may also need some time to consider a settlement offer. Or, something may have arisen during a meeting that requires you or the management representative to further investigate the situation. There are many legitimate reasons that would require the union or management, or both, to need an extension of the time limits.

If you or your management counterpart needs a time limit extension, document the extension in writing and be sure to place a jointly signed copy of the time limit extension in the case file. Just remember to balance being reasonable with following the principle that time limit extensions should be the exception, not the rule. A sample [Time Limits Extension Form](#) is provided in the [Sample Forms for Stewards](#) chapter starting on [page 107](#) of this guide for use by you and the Formal Step A management representative if you mutually agree to do so.

## Management Fails to Meet

If you are not contacted about a Formal Step A meeting, it is up to you to appeal the grievance to Step B without a meeting within 7 calendar days from when the Formal Step A meeting should have taken place. This is why knowing when management received the Formal Step A appeal is important. If we document when management received the Formal Step A appeal, we will have evidence of when management received it for time limit purposes. Documenting when management received the Formal Step A appeal can be as simple as including USPS Tracking if the union mails the appeal or if the union hand delivers the appeal, the Formal A management representative can be asked to sign or initial a statement that they received the appeal. In some instances, a simple email to the management representative can confirm their receipt of the appeal. This can also avoid a debate at Step B over whether or not the union appealed the grievance to Step B too early which can lead to the grievance being remanded (sent back to the Formal Step A level). A remanded decision simply puts the grievance back at Formal Step A with the 7 calendar days to meet at that level starting over again, sometimes with specific instructions from Step B on further development of the file.

But wait, there's more!

If management does not hold a Formal Step A meeting with you, follow these four simple steps before you send your appeal to Step B:

1. Frame another issue in block 15 on the [PS Form 8190](#) (or attachment) for the Article 15 violation that has just occurred. Here's an example:

*Did management violate Article 15 of the National Agreement when they failed to schedule a Formal Step A meeting for local grievance # \_\_\_\_\_, and if so, what should the remedy be?*

2. Make the additional contention that you were not contacted for a Formal Step A meeting. Include any notes you have on your efforts to meet in good faith with management.
3. Request an appropriate remedy.
4. Include any history (previous grievance settlements) on the same issue from your installation.

If management makes a habit of not meeting with you at Formal Step A and you follow these four steps each time and stay persistent, you will have the best chance of getting management to meet with you at Formal Step A as required by the National Agreement.

## After the Formal Step A Meeting

After the Formal Step A meeting, you must determine if you will appeal the grievance to the Step B level of the DRP if you were unable to reach a resolution to the grievance you presented. As described earlier, Article 15, Section 2 (f) of the National Agreement gives you the right to appeal the grievance to the next step.

Before you appeal a grievance to Step B, you should re-examine the merits of the grievance. Once again, go back and make sure you can answer “yes” to each of the questions below to make sure your grievance has the best chance of success:

1. **Is there a violation of the National Agreement?**
2. **Did we properly frame the issue?**
3. **Did we determine all the facts of the case and document each one?**
4. **Do our contentions clearly explain the documented facts and how the National Agreement was violated?**
5. **Did we request an appropriate remedy for the contract violation?**

If nothing at the Formal Step A meeting surfaced to change your opinion that the grievance has merits, then you should appeal the grievance to the Step B level of the DRP, which we will discuss next. If something did surface to change your opinion of the merits of the grievance, then you should immediately contact your branch president for guidance if you are unsure what to do.

When deciding whether or not to appeal a grievance to Step B, consider the fact that decisions reached at Step B of the DRP are precedent-setting in the installation from which the grievance arose. This provision is one of the reasons why the union should not appeal grievances to Step B that clearly have no merit. When the union appeals a grievance that has no merit to Step B, it risks receiving a precedent-setting decision with language that does more harm than good for the entire installation. So, don't pass the buck!

## Additions and Corrections

The union has the right to submit additions and corrections to the Formal Step A record **on the clock**. This is another function that is part of processing grievances at Formal Step A of the DRP. The only thing to remember is that management has the right to respond to the union's additions and corrections by sending additional information to the Step B team. However, the National Agreement allows management to respond **only to issues the union raises in their additions and corrections**. It's really important that you understand this concept. It controls the answer to whether or not it is wise to submit additions and corrections in a given case and, if so, what issue should be raised.

If you decide to submit additions and corrections to the Formal Step A record, they must be submitted by the union **with** the Formal Step A grievance file as the case is appealed to Step B. A copy of the union's additions and corrections to the Formal Step A record must be sent to the management Formal Step A representative at the same time the case file is sent to Step B.

There is no additional time granted in the grievance procedure to submit additions and corrections to the Formal Step A record. Therefore, this must all be done within the time frame for initiating the Step B appeal, 7 calendar days from the Formal Step A meeting unless the time limits have been mutually extended. The contractual language that governs additions and corrections to the Formal Step A record is shown below.

Article 15, Section 2, Formal Step A (g):

**(g)** Additions and corrections to the Formal Step A record may be submitted by the Union with the Step B appeal letter within the time frame for initiating the Step B appeal with a copy to the management Formal Step A official. Any such statement must be included in the file as part of the grievance record in the case.

Page 15-7 of the 2014 *JCAM* explains this provision as follows:

**Additions and Corrections.** The union may submit written additions and corrections to the Formal Step A record with the Step B appeal within the time limit for filing an appeal to Step B. The filing of any corrections or additions does not extend the time limits for filing the appeal to Step B. At the same time, a copy of the additions and corrections must be sent to the management Formal Step A official. Management may respond by sending additional information to the Step B team which is directly related to the union's additions and corrections provided that it is received prior to the Step B decision. At the same time, a copy must be sent to the union Formal Step A representative. Any statement of additions and corrections must be included in the file as part of the grievance record in the case. A steward is entitled to time on-the-clock to write the Union's statement of corrections and additions (Step 4, A8-S-0309, December 7, 1979, [M-01145](#)).

As stated above, management may respond to the union's additions and corrections. A copy of management's response must also be sent to the union's Formal Step A representative at the same time the response is sent to Step B.

There are no provisions in the National Agreement for the union's Formal Step A representative to answer management's response. Thus, management now has the final word on whatever issues the union raises in their additions and corrections, but as previously stated, they are limited to only what was addressed. If you discover that management has went further than what was brought forward in additions and corrections, contact the Step B parties and let them know.

The union's right to file additions and corrections is a valuable tool when used correctly. Use it only when appropriate. So when is it appropriate? Here is some general advice: Start by carefully reading management's written position in block 18 on the [PS Form 8190](#) (or attachment). If management raises an issue that you didn't already address in the union's written position in block 17 on the PS Form 8190 (or attachment), you should address this issue in additions and corrections. A good example would be if management claims the grievance is untimely in their written Formal Step A position and you had not addressed this issue in the union's written Formal Step A position. This could happen because either this issue didn't come up until the Formal Step A meeting or it was never even discussed at the Formal Step A meeting.

There are other times when there is no need to file additions and corrections. Once again, be sure to read management's written Formal Step A position very carefully. Don't do additions and corrections just to restate an argument you already made in the union's written position at Formal Step A. Filing additions and corrections when it is not necessary just gives management a second chance to respond to parts of the union's written position in a grievance.

The time limits for appealing a case to Step B (7 calendar days from the Formal Step A meeting) allow the union's Formal Step A representative time to consult with other union officials, such as the chief steward, branch officers, or branch president for advice if needed. Just remember that additions and corrections must be submitted **along with** the appeal to Step B and, as with any step in the grievance procedure, strict time limits apply.

While you are studying management's written Formal Step A position, you should expect them to be reading the union's written position and consulting with other managers. If you file additions and corrections, the grievance record is still considered open and management may respond to any issue the union raises in our additions and corrections at any time prior to the Step B decision.

The union's right to file additions and corrections should be exercised carefully using these general principles:

1. File additions and corrections only if necessary.
2. If you file additions and corrections, keep on point with what was argued by management that you had not previously addressed.
3. Send your additions and corrections to Step B along with the Formal Step A grievance file in a timely manner.
4. Send a copy of your additions and corrections to management's Formal Step A representative at the same time you send the entire case file to Step B.

## Appeal to Step B

The appeal to Step B does not have to be on the day of the Formal Step A meeting. Again, it is important to emphasize that the union is responsible for moving the grievance to the next step of the DRP (Step B) within 7 calendar days of the Formal Step A meeting date recorded in block 20 of [PS Form 8190](#), unless the date to appeal to Step B has been mutually extended.

Once you have determined that you will appeal a grievance to the Step B level of the DRP, you will now need to know how to appeal the grievance and who is responsible for making additions and corrections and appealing the grievance. In some branches it is the responsibility of the Formal Step A representative to actually make the appeal and make additions and corrections to the grievance file, but in other branches, the branch president or another union officer designated by the branch president performs these duties. Other places may actually have the Formal Step A representative forward their grievance to a designated representative in their branch who handles all of the appeals and then forwards the grievance to a different person who appeals the grievance to Step B and makes any necessary additions and corrections. The important thing to realize though is that you must familiarize yourself with the appeal process in your branch so you can make your appeal to Step B in a smooth and timely fashion. If you are not sure of the process in your branch then ask your branch president about the proper appeal procedures. The 7 day time limits for appeal still must be met and you don't want to waste time by not knowing how the appeal process works. How to appeal the grievance to the Step B level may change from branch to branch, but the contractual rules remain the same. The following are some tips for preparing a grievance to send to Step B. These tips will help lead you through the process:

- The union is entitled to prepare grievances to send to Step B on the clock. This function is part of processing grievances at Formal Step A of the DRP.
- Each case file should be complete, organized, and legible.
- Make sure all attachments, supporting documents, and other papers are arranged in an orderly manner.
- Make sure that photocopied material is legible. Pay particular attention to ensure that highlighted text or color documents are still legible when copied.
- Remember to make sure that any pages with information (or statements written) on both sides (front and back) of a sheet of paper are each copied on separate sheets of paper.

- Use 8-1/2” by 11” sheets of paper for all documents in your case file when possible. If you have documents such as routing slips (buck slips) that are smaller pieces of paper, tape them to a standard size piece of paper so they can be easily copied at the later steps of the grievance procedure if copies of the file are needed.
- Don’t staple documents you send to Step B. Instead, use clips to keep the case file together and in the proper order.
- Make sure all the pages in the grievance file are initialed. As stated before, this should be done jointly at the Formal Step A meeting.
- If you don’t know the address for your Step B team, contact your branch officers, branch president, or national business agent’s office for guidance.
- Always be sure to send grievances to Step B of the DRP with delivery confirmation or another special service or method that documents the appeal date. This way you will be in a position to prove when you mailed each grievance that you appeal to Step B in the event any questions regarding timeliness are raised by the Postal Service. The union has the right to appeal grievances to Step B using “penalty envelopes” with the G-10 endorsement provided by the Postal Service. However, if the union desires to use extra services such as USPS Tracking or Certified Mail then the full cost of the postage and extra services must be paid by the union. Usage of “penalty envelopes” is only an option; it is not required. If you have any questions about the “penalty envelopes” or if management gives you any problems regarding the usage of them, then please refer to question #52 of [M-01569](#) in the *Materials Reference System*.

The following chapters of this guide will give you an explanation of what happens at Step B of the DRP as well as what happens at arbitration. This will give you a better understanding of the process and it will also enable you to keep the letter carriers in your branch well informed of what to expect next regarding the grievance that you just handled for them.

As a Formal Step A representative in the DRP, your responsibilities in representing the letter carriers of your branch are of the utmost importance. By following the strategies outlined in this *NALC Shop Steward’s Guide* though, you are certain to have great success. Good luck to you and thank you for all of your efforts!



## VI. Step B—Dispute Resolution Teams

The next step after Formal Step A of the DRP is Step B. The Step B teams each consist of two representatives, one appointed by the NALC and the other by the Postal Service. Just like the Informal Step A and the Formal Step A of the DRP, the Step B team is required by the National Agreement to attempt to settle any grievances at the lowest step possible. Also, like the previous steps of the DRP, the Step B team looks at the issue, facts, and contentions of the union and management to determine if the grievance has merit and attempts to reach a decision. Formal Step A representatives should contact one of their branch officers, branch president, or national business agent's office for the mailing address of the Step B team for their district. This will ensure that all appeals to Step B are timely. This chapter will give you a good understanding of how the Step B team operates so you will understand the decisions you receive from them and you can also advise the letter carriers in your branch what to expect in regards to timelines of a possible resolution to their grievances if they go past the Formal Step A process of the DRP.

As discussed in the previous chapter, the union may appeal any unresolved case from Formal Step A to Step B of the DRP within 7 calendar days of the date of the Formal Step A meeting as outlined in Article 15, Section 2, Formal Step A (f) of the National Agreement:

**(f)** The Formal Step A decision is to be made and the Joint Step A Grievance Form completed the day of the meeting, unless the time frame is mutually extended. The Union may appeal an impasse to Step B within seven (7) days of the date of the decision.

The appeal must be in writing and it must include the Joint Step A Grievance Form ([PS Form 8190](#)) and it must specify the reasons for the appeal. The supporting language for this is found in the National Agreement in Article 15, Section 2, Step B (a) and it reads as follows:

**(a)** Any appeal from an unresolved case in Formal Step A shall be in writing to the Step B team at the appropriate Step B office, with a copy to the Formal Step A representatives, and will include a copy of the Joint Step A Grievance Form, and shall specify the reasons for the appeal.

The appeal from Formal Step A to Step B of the DRP should include:

- Joint Step A Grievance Form (PS Form 8190).
- The complete **original** joint case file.
- If filed, the union's additions and corrections.

The parties at the national level have agreed that any arguments and facts documented by the parties at the Informal or Formal Step A levels are automatically considered part of the Step B decision. This means that any of this material may be cited in the event of arbitration and this is another reason why all grievance files should be well thought out, documented, and supported by relevant information.

Just like at the previous steps of the DRP, the National Agreement requires the Step B team to jointly review the *JCAM* when discussing grievances. After they have reviewed all of the documentation, arguments, and contract or *JCAM* language for a grievance, the Step B team will issue a joint written decision. The decision should be made within 14 calendar days of receipt of the appeal from Formal Step A, unless the parties agree to an extension of time limits.

Article 15, Section 2, Step B (b) of the National Agreement is the controlling language that specifies this time limit:

**(b)** The Step B team will review the appeal and issue a joint report of the decision and any supporting findings within fourteen (14) days of receipt of the appeal at Step B unless the parties mutually agree to extend the fourteen (14) day period. The Step B team will give priority consideration to discussion and decision of removal cases.

Although the case file should be complete when it arrives at Step B, it is the responsibility of both Step B team members to make sure the facts and contentions surrounding the issue presented in the grievance are fully developed. Their job is to resolve grievances based on the documentation contained in the case file. In some cases, a Step B team may not come to agreement on a resolve for a grievance. This is called an impasse decision. In such cases, the Step B team's job is to make sure the contentions and arguments are fully developed. Impasse decisions are explained in detail on the following page.

The Step B team may agree to restate or change the issue statement of the grievance. They can also make joint calls for specific information or clarification.

After the Step B team has reached a decision, the written Step B decision must state the reasons for the decision in detail and should explain why the parties reached that decision. The Step B representatives should cite the contractual language, supporting documentation, and contentions they relied upon to reach their decision. The written decision is intended to educate the parties in case they are faced with similar situations in the future.

A Step B decision establishes precedent only for the city from which the grievance arose. The theory behind this rule is that precedent-setting decisions will help the local parties avoid repetitive grievances within their city. Precedent means the decision is relied upon in dealing with subsequent similar cases to avoid the repeat of disputes on issues previously decided in that installation.

The Step B team has four options when reaching a decision:

- Resolve
- Impasse
- Hold
- Remand

Descriptions of the four options are listed below. As you read these descriptions, keep in mind that the only unilateral option (meaning either union or management can make the decision on their own) available to the Step B team is the option to impasse. The other three options must be mutually agreed to by both parties.

- **Resolve:** A resolved Step B decision may be a compromise settlement, a decision to uphold the grievance in its entirety, or a decision that there is no basis for the grievance. There are times when a Step B decision will resolve part of a grievance and impasse part of it. For example, a Step B team could agree there was a contract violation, but not agree on the appropriate remedy and impasse only the remedy portion of the grievance.

- **Impasse:** If the Step B team cannot resolve a grievance, the parties will write an impasse decision. A Step B impasse decision must state in detail the reasons for the impasse and also must include a statement of any additional facts and contentions not included in the Formal Step A appeal. The members of the Step B team cannot unilaterally add additional documents to the case file. The Step B team will attach a list of all documents included in the file.
- **Hold:** Grievances may be held pending resolution of a representative case selected by the NALC national business agent (NBA) on the same issue. Grievances may also be held pending a national interpretive case on the same issue. Either party at the national level can claim an issue to be interpretive. Once that happens, all cases on the issue can be held at Step B while the matter is being discussed at the national level.
- **Remand:** The Step B team may agree to remand a grievance to the Formal Step A parties for several reasons. One example would be if the Step B representatives find they need additional documentation to reach a contractually sound decision. Another example would be if there is a question as to when the Formal Step A appeal was received by management.

In a remand decision, the Step B team explains what information is needed and why that information could help resolve the grievance. The Formal Step A parties are then directed to meet again within 7 calendar days of receipt of the remand in an attempt to settle the grievance using the additional information. If the Formal Step A parties resolve the dispute, a copy of the resolution should be sent to the Informal Step A parties. If the parties still cannot reach a decision and the grievance needs to be appealed once again to Step B, the union must do so within 7 calendar days of the Formal Step A meeting or the date the Formal Step A meeting should have been held (whichever comes first).

As stated in the Formal Step A section, the grievance file is officially closed on the day of the Formal Step A meeting, unless the Formal Step A parties agree to a time limit extension (which should be in writing and signed by both parties), the union files additions and corrections, or the Step B team remands the case to the Formal Step A parties. If the case is remanded to Formal Step A, additional documentation and contentions can be entered into the case file by either party.

In order to prevent a remand decision and avoid giving management an opportunity for a second bite of the apple, the NALC Formal Step A representative should ensure the file is completely developed prior to sending the appeal to Step B. This is one of the reasons why your investigation and preparation prior to the Formal Step A meeting is extremely important.

The idea of a remand decision is to make an attempt to help resolve the grievance. The Step B team has a responsibility though to cure any underlying problems that they may see happening that cause continual remands. For instance, if a branch or unit is frequently having their grievances remanded back to them for further development then a joint discussion between the Step B team and the Formal Step A representatives may be necessary to detail and resolve the issues that are creating the remands. A further action by the Step B team may involve requesting or recommending an intervention by the national business agent and by the USPS district labor relations department for that area to solve any problems.

Once a decision has been reached at the Step B level, a copy of that decision will be sent to at least the

Formal Step A parties, the NALC national business agent, and the USPS area manager of labor relations (AMLR). The Formal Step A parties should send a copy of the decision to both Informal Step A parties.

The Step B decision contains the Step B representatives' names and signatures, the GATS number, the branch's grievance number, and the district, installation, and unit where the grievance arose. The decision will also list the following pertinent dates: incident date, Informal Step A and Formal Step A appeal and meeting dates, the date the appeal was received at Step B, and the Step B decision date.

The Step B parties' written decision will also include:

- The issue presented in the grievance file.
- A summary of both the union's and management's positions.
- An educational explanation of the basis for each decision.
- The remedy decided by the parties.
- A table of contents that includes a list of all documents in the file.

## After Step B

When a grievance is impasse at Step B, the original case file is forwarded to the appropriate national business agent's office and a copy of the file is maintained by the Step B team. At that point, the national business agent has 14 calendar days upon receipt of the grievance file from Step B to decide whether or not to appeal the case to final and binding arbitration in accordance with the procedure set forth in Article 15, Section 2, Step B (d) of the National Agreement which reads:

(d) The Union's National Business Agent (NBA) or designee may appeal an impasse directly to arbitration at the Grievance/Arbitration Processing Center within fourteen (14) days after the receipt of the Step B impasse in accordance with the procedure hereinafter set forth.

The national business agent's office is tasked with reviewing each and every impasse decision from the Step B representatives before determining whether or not to appeal the case to arbitration. When reviewing impasse grievances, the national business agent's office will ask the same questions that should be answered through the case file at the previous steps of the grievance procedure. NALC representatives after Step B should be able to answer "yes" to each of the questions below to make sure your grievance has the best chance of success at arbitration:

- 1. Is there a violation of the National Agreement?**
- 2. Did we properly frame the issue?**
- 3. Did we determine all the facts of the case and document each one?**
- 4. Do our contentions clearly explain the documented facts and how the National Agreement was violated?**
- 5. Did we request an appropriate remedy for the contract violation?**

If the national business agent can answer yes to all of the above questions, then they will appeal the grievance to arbitration. There are times though when national business agents appeal grievances to arbitration prior to a thorough review in order to preserve time limit requirements. By doing this, it gives the union more time to examine the grievance. In the end, the grievance can always be withdrawn from arbitration if the national business agent decides it is not in the union's best interest to go forward.

Just because a grievance is appealed to arbitration doesn't mean it will actually be heard by an arbitrator. The national business agent or his or her designee will normally try to resolve the case with a management representative at the district or area level prior to it being scheduled for a hearing. These pre-arbitration discussions can lead to a full settlement, partial settlement, or withdrawal of the grievance by the union.

If a settlement cannot be reached and the union feels the case should go forward, it will be scheduled for arbitration. Once that happens, an NALC advocate will be assigned by the national business agent's office to represent the union at the arbitration hearing. The NALC advocate will make another attempt to settle the grievance with management, as he or she is directed to do by the National Agreement. Article 15.4.A.4. provides in relevant part:

The designated advocates will discuss the scheduled cases at least thirty (30) days prior to the scheduled hearing date, if possible.

The advocates are contractually required to discuss the case at least 30 days prior to the hearing. If the grievance is settled through pre-arbitration discussions, the settlement agreement is final and binding on both parties. If the grievance is not settled, it moves forward to arbitration for a final and binding decision.

The arbitration advocate will spend hours studying the case file, researching, and interviewing witnesses scheduled to testify in order to present the best case possible to an arbitrator. It must be understood that all decisions by an arbitrator are final and binding and it is the last step of the grievance procedure. Neither management nor the union has any further avenues in which to take their dispute.

The next chapter of the *NALC Shop Steward's Guide* will discuss arbitration, the final step of the DRP. Here we will develop a further understanding of the timelines associated with arbitration and how decisions are reached at that step of the DRP.

## VII. Arbitration

Arbitration is the final step in the joint grievance-arbitration procedure established by the NALC and the Postal Service. The parties jointly select panels of impartial third party neutral arbitrators in each region across the country. The parties have agreed in advance that decisions of arbitrators will be final and binding, an extremely important phrase. This means all decisions made by an arbitrator will be the final resolution to the dispute.

Arbitrators come from a variety of backgrounds, including lawyers, economists, and professors. Almost all arbitrators have experience in labor-management relations and dispute resolution. The NALC and the USPS jointly select the arbitrators that decide our cases in order to ensure their neutrality.

Arbitration hearings take place in the city where the grievance arises. In other words, everyone comes to your town for the hearing. Arbitration hearings are conducted similar to a case in a courtroom setting. The arbitrator acts as a judge and runs the hearing. The parties participate through advocates presenting evidence and testimony in the hearing much like lawyers would do in a court case. Arbitration hearings have opening statements, the presentation of evidence, witness testimony, and closing statements for each case. While there are similarities to a courtroom setting in an arbitration hearing, arbitration rules are not as formal as in a court of law.

When the arbitration hearing is over, the arbitrator will review all the information and issue a final and binding decision. Decisions will seldom be made at the hearing, but are expected to be issued approximately 30 days after the arbitrator declares the hearing record closed. Sometimes the parties jointly agree to write briefs as opposed to making closing arguments at the hearing which may delay the closing of the arbitration record.

Not all grievances impassed from Step B are heard in arbitration. The national business agent, a regional administrative assistant, or the assigned NALC arbitration advocate will often resolve grievances pending arbitration with a labor relations representative from the USPS by reaching a pre-arbitration settlement.

The NALC has negotiated an extremely successful and effective grievance procedure. The fact that we will advance grievances with merit all the way to arbitration forces the Postal Service to resolve most grievances at one of the previous steps. Arbitration is also the battleground where we fight out our most difficult and contentious issues.

## Overview of the Arbitration Process

The NALC pursues arbitration in cases where it has failed to resolve disputed issues through the earlier stages of the grievance procedure. Article 15, Section 4 of the National Agreement establishes three types of arbitration panels.

### 1. Regional Level Arbitration—Expedited:

Expedited arbitration is an arbitration forum where the parties' representatives present their case in a less formal manner than a regular arbitration hearing. In expedited arbitration, no briefs are filed, no transcripts are made, and the arbitrator has no study days after the hearing. The arbitrator should render a written decision within 48 hours after the hearing. Any decision rendered under the expedited procedure is final and binding, but shall not be regarded as a precedent or be cited in any future

proceeding. Cases appealed to arbitration by national business agents are normally heard in expedited arbitration if they involve the following issues:

- Disciplinary grievances for issues of fourteen (14) day suspensions or less.
- Requests for medical certification.
- Restricted sick leave.
- Individual requests for annual leave, sick leave, advanced sick leave, leave without pay, or court leave.
- Individual holiday scheduling issues.
- Article 25, higher level assignments.
- Employee claims.
- Employer claims of less than \$1000 dollars.
- Hold-down assignments.

However, just because a grievance pending arbitration involves one of the topics listed above does not mean that it has to be scheduled for expedited arbitration.

Article 15.4.C.2 of the National Agreement clarifies that if either party believes the case should be heard at a more formal hearing because of the fact circumstances surrounding the individual case it is agreed such a change will be allowed, and the case will be heard in regular arbitration. That language from the National Agreement reads as follows:

If either party concludes that the issues involved are of such complexity or significance as to warrant reference to the Regular Arbitration Panel, that party shall notify the other party of such reference at least seven (7) days prior to the scheduled time for the expedited arbitration.

### **2. Regional Level Arbitration—Regular:**

If the grievance that the national business agent appeals to arbitration contains issues not on the expedited list, that grievance will receive a more formal hearing. For example, regular arbitration hearings differ from expedited hearings in that either party may file a post-hearing brief which is similar to a written closing argument. Two other examples are; transcripts of the hearing may be requested by either party at the national level and regional arbitrators have study days after the hearing is concluded where they will review the whole case, including testimony from the hearing, and the citations offered by the parties. The arbitrator for a regular arbitration hearing is required to render a written decision within 30 days of the hearing or within 30 days of receipt of the parties' written briefs.

Unlike expedited arbitration, regular arbitration decisions can be cited for persuasive value in future grievances within and outside the installation from which they arose.

### **3. National Level Arbitration:**

National level arbitration involves grievances that either the NALC or the USPS at the national level has determined contain "issues of interpretation under the agreement or supplements thereto of general application." Only the parties at the national level have the authority to determine if a case is interpretive. Such cases are brought by the union under the authority of the NALC national president. Decisions and settlements made in national level cases set precedent for the entire country.

## Interest Arbitration

Unlike the other three types of arbitration hearings discussed, interest arbitration is a specialized form of arbitration. Interest arbitration is used to set the terms of a contract when the parties have failed to reach agreement through collective bargaining. The terms of our National Agreement have been set in interest arbitration six times since 1970, when we earned the right to collectively bargain.

Interest arbitration is also used when the parties reach impasse when negotiating their Local Memorandum of Understanding (LMOU) provisions. The rules regarding these provisions are covered under Article 30 of the National Agreement.

## Witness Testimony

During arbitration hearings, NALC advocates may present several witnesses, each having a different role. The NALC advocate will determine who the witnesses will be for the union's case and the order in which they will be called. However, arbitrators may refuse to hear testimony from one or more witnesses from either side if the testimony is deemed to be irrelevant to the matter at hand or if the testimony is deemed as new evidence or argument.

The grievant is generally the main witness, testifying about his or her contractual rights being violated or answering charges in a disciplinary case. A grievant at an arbitration hearing is the most important witness when it comes to showing the harm caused by management's actions.

Often, there will be third party witnesses. These are postal employees or other people who witnessed the "who, what, where, when, why, or how" of the dispute but who are not directly involved in the dispute.

The steward or NALC Formal Step A representative may also serve as witnesses confirming how the dispute moved through the earlier steps of the grievance process, the contractual issues involved, or how they discovered relevant facts during their investigation.

## Steward Testimony

The NALC arbitration advocate will decide if it is necessary to have you testify before the arbitrator as to what was in your written statement or to explain other documents in the case file. Occasionally your testimony may not be needed, but you should always expect to be called upon to testify in every grievance you prepare. The NALC advocate assigned to the grievance will meet with you and prepare your testimony prior to the day of hearing.

Before you meet with the NALC advocate, you should again familiarize yourself with the grievance file. Your overall knowledge of the file will make it easier to provide testimony on the matter. This also assists the arbitrator in understanding the union's arguments as the file comes to life through testimony.

As a steward, it is important to understand that witness preparation is critical and serves three distinct purposes:

- It prepares the witnesses to testify, making them as comfortable as possible before testifying.
- Helps the advocate develop the details of the case.
- Provides the advocate an opportunity to evaluate the credibility and competency of the witness to give effective and persuasive testimony.



Understanding how the arbitration process works will help you build better files. Remember, each grievance you process is important and any grievance you prepare for appeal as the Informal or Formal Step A representative could be the one that ends up going to arbitration.

## VIII. Special Topics

### Special Exceptions – Safety and Health

The subject of safety and health is addressed in Article 14 of the National Agreement. Safety and health of employees is very important to the Postal Service and the NALC for obvious reasons and contractual provisions throughout Article 14 outline procedures that have been negotiated and put into place to promote a safe and healthy work environment. To ensure this safe and healthy environment, some special exceptions to the normal rules of the DRP have been negotiated to address unsafe and unhealthy situations in a timely manner. The focus of this section of the guide will be to discuss these special exceptions to the DRP as well as the procedures for reporting and correcting unsafe and unhealthy conditions.

Article 14, Section 2 of the National Agreement provides the controlling language that outlines the proper procedures for reporting and correcting unsafe conditions or unsafe procedures in the workplace. That section of the National Agreement reads as follows:

#### **Article 14, Section 2. Cooperation**

The Employer and the Union insist on the observance of safe rules and safe procedures by employees and insist on correction of unsafe conditions. Mechanization, vehicles and vehicle equipment, and the work place must be maintained in a safe and sanitary condition, including adequate occupational health and environmental conditions. The Employer shall make available at each installation forms to be used by employees in reporting unsafe and unhealthful conditions. If an employee believes he/she is being required to work under unsafe conditions, such employee may:

- (a) notify such employee's supervisor who will immediately investigate the condition and take corrective action if necessary;
- (b) notify such employee's steward, if available, who may discuss the alleged unsafe condition with such employee's supervisor;
- (c) file a grievance at Formal Step A of the grievance procedure within fourteen (14) days of notifying such employee's supervisor if no corrective action is taken during the employee's tour; and/or
- (d) make a written report to the Union representative from the local Safety and Health Committee who may discuss the report with such employee's supervisor.

Upon written request of the employee involved in an accident, a copy of the PS Form 1769 (Accident Report) will be provided.

Any grievance which has as its subject a safety or health issue directly affecting an employee(s) which is subsequently properly appealed to arbitration in accordance with the provisions of Article 15 may be placed at the head of the appropriate arbitration docket at the request of the Union.

Article 14, Section 2 provides a special priority for the handling of safety and health issues, providing for cooperative correction of unsafe conditions and enforcement of safety rules, and requiring special handling of individual safety issues as they arise. Documenting the unsafe condition, notifying the su-

supervisor, and following up to see if any action is taken to correct the situation is vital to resolving the problem.

A few examples of unsafe or unhealthy conditions in the workplace which should be corrected under the guidelines of Article 14, Section 2 are:

1. A fire extinguisher on the workroom floor which is being blocked by the staging of empty equipment.
2. Ungrounded electrical outlets.
3. Frayed or exposed wiring on a letter carrier's case.
4. The staging of mail or equipment which creates a tripping hazard.
5. A delivery point which requires an unsafe backing situation.
6. An unsanitary situation in your office.
7. Unsafe park points.

Obviously these examples do not include all instances of unsafe or unhealthy conditions, but they give you an idea of what types of incidences should be reported to USPS management by letter carriers or stewards for immediate corrective action.

An employee who believes that he or she is being required to work under unsafe conditions may notify the supervisor or the employee's steward. Alternatively, a written report of the problem may be given to the union representative from the local Safety and Health Committee, who may discuss the report with the supervisor. Notifying the supervisor of an unsafe condition can be done in a variety of ways but it should be done in writing. Document how you informed him or her. While it is not required, a good way to do so is via a PS Form 1767, Report of Hazard, Unsafe Condition or Practice. These forms are displayed in your office in a manner which employees can have easy or anonymous access to the form to report any hazard, unsafe condition, or practice. They have a section for the employee to fill out and then give to his or her immediate supervisor. From there, the supervisor is required to investigate the specified condition within the tour of duty of the report being filed. The supervisor must take immediate corrective action on the safety issue or make appropriate recommendations on the PS Form 1767, forward the PS Form 1767 to the responsible manager, and send a copy to the safety office. Using PS Form 1767 to document safety issues can also help you prove the facts of your case in a safety-related grievance. A copy of PS Form 1767 is provided for your review on the following page.

**REPORT OF HAZARD, UNSAFE CONDITION OR PRACTICE**

**I. Employee's Action**

Area (Specify Work Location)		
Describe Hazard, Unsafe Condition or Practice. Recommended Corrective Action.		
Employee	Signature	Date and Time

**II. Supervisor's Action**

Recommend or Describe Specific Action Taken to Eliminate the Hazard, Unsafe Condition or Practice. (If Corrective Action Has Been Taken, Indicate the Date of Abatement.)		
Supervisor	Signature	Date

**III. Approving Official's Action**

*(Check One and Complete)*

	The Following Corrective Action was Taken to Eliminate the Hazard, Unsafe Condition or Practice (Indicate Date of Abatement):		
	A Work Order Has Been Submitted to the Manager, Plant Maintenance, to Effect the Following Change:		
	There Are No Reasonable Grounds to Determine Such a Hazard Exists. This Decision is Based Upon:		
Approving Official	Signature	Date	Date Employee Notified

**IV. Maintenance Action (Complete If Necessary)**

Maintenance Supervisor	Signature	Date	Date Hazard Abated
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Article 14, Section 2 also provides that safety grievances may be filed directly at Formal Step A of the grievance procedure. If no action is taken to correct the problem after notification of the supervisor, the matter may be grieved directly at Formal Step A within 14 calendar days of such notification. However, if a grievance for one of these subjects is filed at Informal Step A instead, it is not procedurally defective for that reason.

**Caution:** This does not mean that health or safety grievances can be grieved directly to Formal Step A to bypass an employee's supervisor. It only means that a grievance can be filed directly to Formal Step A if, after notifying an employee's supervisor, "no corrective action is taken during the employee's tour." When in doubt about what to do with cases involving safety and health issues, seek advice from branch officers or your branch president. In the meantime, you may file the grievance at Informal Step A as you would with any other grievance. This may give you time to gather more evidence for your grievance file.

Another special exception to the normal DRP regarding grievances involving safety and health disputes involves the arbitration procedure. Grievances with this subject may receive priority arbitration scheduling. Article 14, Section 2 of the 2014 JCAM on [page 14-2](#) explains this provision as such:

**Priority Arbitration Scheduling.** Any grievance which has as its subject a safety or health issue directly affecting an employee(s) which is subsequently properly appealed to arbitration may be placed at the head of the appropriate arbitration docket at the request of the union. The Postal Service will not refuse to schedule a case in accordance with Article 14.2 based solely upon the belief that no safety issue is present. However, placement of a case at the head of the arbitration docket does not preclude the Postal Service from arguing the existence of the alleged "safety" issue or that the case should not have been given priority (Prearbitration Settlement F94N-4F-C 97024971, February 20, 2001, [M-01433](#)).

Remember, the provisions of Article 14, Section 2 were put into the National Agreement to help create a safe and healthy environment in which letter carriers can work. One of your roles as a steward is to make sure that these procedures are followed and therefore ensure a workplace free of unsafe conditions.

## Special Exceptions – Discrimination

Article 2 of the National Agreement forbids discrimination against employees because of race, color, creed, religion, national origin, sex, age, marital status, or physical handicap where the employee can be reasonably accommodated. Article 2 also gives letter carriers the contractual right to object to and remedy alleged discrimination by filing a grievance.

An exception to the normal steps of the DRP is also contained in Article 2 of the National Agreement. This exception to the DRP provides that grievances alleging discrimination may be filed directly at Formal Step A of the grievance procedure, rather than being initiated at Informal Step A. It is not a requirement to go directly to the Formal Step A level of the grievance procedure in discrimination grievances; it is an option. However, if a grievance concerning discrimination is filed at Informal Step A, it is not procedurally defective for that reason. The contractual language governing this exception to the rules can be found in Article 2, Section 3 of the National Agreement which states the following:

### Section 3. Grievances

Grievances arising under this Article may be filed at Formal Step A of the grievance procedure within fourteen (14) days of when the employee or the Union has first learned or may reasonably have been expected to have learned of the alleged discrimination, unless filed directly at the national level, in which case the provisions of this Agreement for initiating grievances at that level shall apply.

**Caution:** Discrimination grievances can be filed under Article 2, but when you do so this is a contract case which requires the union to bear the burden of proof. Remember, grievances with Article 2 discrimination violations should always have evidence to show the alleged discrimination occurred. Do not cite Article 2 in disciplinary grievances. Disciplinary grievances should be filed under Article 16 which requires management to bear the burden of proof.

Various USPS handbooks and manuals also contain provisions that deal with Postal Service policy regarding discrimination in the workplace. Often these handbook and manuals will provide another avenue to consider for addressing an issue. If you represent a letter carrier who feels they may have been discriminated against, you should also refer them to posters and literature in every Post Office which have Equal Employment Opportunity Commission (EEOC) filing information. If you need further guidance concerning discrimination or if you need further clarification, then you should immediately seek assistance from your union officers and branch president.

The provisions of Article 2, Section 3 were put into the National Agreement to help create a timely process to address alleged instances of discrimination and to facilitate a discrimination free work environment in which letter carriers can work. One of your roles as a steward is to assist the letter carriers you represent when they feel they are being discriminated against. Although the burden of proving discriminatory actions by the Postal Service can be very daunting at times, this role is of the utmost importance to the letter carriers you represent and it is very rewarding to know that you are ensuring that everybody is afforded the same opportunities.

# Special Exceptions—MSPB Appeal Rights

## Background

The Veterans' Preference Act guarantees "preference eligible" employees certain special rights concerning their job security. A preference eligible employee may file both a grievance and a Merit System Protection Board (MSPB) appeal on a proposed removal or suspension of more than 14 days. The rights of preference eligible employees to appeal certain adverse actions to the MSPB or through the grievance arbitration procedure are the subject of Article 16, Section 9 of the National Agreement which provides the following:

### Section 9. Veterans' Preference

A preference eligible is not hereunder deprived of whatever rights of appeal are applicable under the Veterans' Preference Act. If the employee appeals under the Veterans' Preference Act, however, the time limits for appeal to arbitration and the normal contractual arbitration scheduling procedures are not to be delayed as a consequence of that appeal; if there is an MSPB appeal pending as of the date the arbitration is scheduled by the parties, the grievant waives access to the grievance-arbitration procedure beyond Step B.

Page 16-10 of the 2014 *Joint Contract Administration Manual* provides the following explanation of Article 16.9:

**MSPB Dual Filings.** The Veterans' Preference Act guarantees "preference eligible" employees certain special rights concerning their job security. (Federal law defines a "preference eligible" veteran at Title 5 United States Code Section 2108; see [EL-312, Section 483](#)). A preference eligible employee may file both a grievance and an MSPB appeal on a removal or suspension of more than fourteen days. However, Article 16.9 provides that an employee who exercises appeal rights under the Veterans' Preference Act waives access to arbitration when they have an MSPB appeal pending as of the date the grievance is scheduled for arbitration by the parties. The date of the arbitration scheduling letter is considered "the date the arbitration is scheduled by the parties" for the purposes of Article 16.9.

This language has been modified to reflect the parties' agreement that an employee should receive a hearing on the merits of an adverse action. It supercedes the 1988 Memorandum of Understanding on Article 16.9. While a preference eligible city letter carrier may appeal certain adverse actions to the MSPB, as well as file a grievance on the same action, the employee is not entitled to a hearing on the merits in both forums. This provision is designed to prevent the Postal Service from having to defend the same adverse action in an MSPB hearing as well as in an arbitration hearing. If a city letter carrier has an MSPB appeal pending on or after the date the arbitration scheduling letter is dated, the employee waives the right to arbitration.

The parties agree that the union will be permitted to reactivate an employee's previously waived right to an arbitration hearing if that employee's appeal to the MSPB did not result in a decision on the merits of the adverse action, or the employee withdraws the MSPB appeal prior to a decision on the merits being made. It is understood that this agreement does not preclude the parties from raising other procedural issues from the original arbitration appeal. Additionally, the Union is not precluded from

raising as an issue in arbitration whether any Postal Service backpay liability should include the period between the time the right to arbitration was waived by the employee and the time the Union reactivated the arbitration appeal.

**EEO and EEO/MSPB Mixed Cases—Dual Filings.** Article 16.9 does not bar the arbitration of a grievance where a grievant has asserted the same claim in an Equal Employment Opportunity (EEO) complaint. Nor does it apply where a preference eligible grievant has appealed the same matter through the EEOC and then to the MSPB under the “mixed case” federal regulations (National Arbitrator Snow, D90N-4D-D 95003945, January 1, 1997, [C-16650](#)).

Keep in mind that the provisions of Article 16.9 apply to all “adverse actions,” as defined by 5 USC §7512, otherwise appealable to the MSPB. This includes involuntary resignation or involuntary retirement, which have been defined as constructive removal, and enforced leave (in excess of 14 days) which has been defined as constructive suspension. See [C-18158](#), National Arbitrator Das, November 12, 1997 and USPS Policy Memorandum [M-01154](#).

Article 16.5 of the National Agreement provides preference eligible employees with certain rights governing special procedures in the issuance of suspensions greater than 14 days or removal. [Page 15-6](#) of the 2014 *Joint Contract Administration Manual* provides the following explanation in Article 15.2 of these special procedures for preference eligible employees:

**Preference Eligible Employees.** Grievances concerning proposed removal actions which are subject to the thirty day notification period in Article 16.5 will be held at Formal Step A of the grievance procedure until the decision letter is issued.

Consistent with the Dispute Resolution Process Memorandum, the employee will remain on the job or on the clock until after the Step B decision has been rendered or 14 days after the appeal is received at Step B, except for emergency or crime situations as provided for in Articles 16.6 and 16.7.

The union does not file a separate grievance on the decision letter. Rather, the union may make additions to the file based on the decision letter at either Step A or Step B. This does not preclude any arguments by management regarding the relevance of the additions.

Grievances concerning proposed removal actions which are not subject to the thirty day notification period in Article 16.5 are not held at the Formal A step pending receipt of the decision letter. Rather, the union may later add the decision letter to the proposed removal grievance. This does not preclude any arguments by management regarding the relevance of the additions.

## The Basic Rule

Cases involving “preference eligible” employees who have MSPB appeal rights can raise confusing issues because they receive both a letter of “proposed” action and a “final decision” letter. These issues are discussed below.

For the purposes of Informal Step A of the grievance procedure, treat a letter of “proposed” removal **exactly the same** as any other discipline. Observe the same time limits and do not wait for a “final



decision” letter to initiate the grievance at Informal Step A or to appeal a grievance to Formal Step A. Just pretend the word “proposed” doesn’t exist.

### **Proposed Discipline v. Decision Letter**

As noted above, under the MSPB procedures, preference eligible employees must first be issued a letter of proposed discipline and then a final decision letter after they have been given the opportunity to respond to the charges. A grievance should be filed at the time a preference eligible employee receives a Letter of Proposed Discipline. It is not necessary to file a separate grievance concerning the Decision Letter. **Stewards should never wait until receipt of the decision letter to file a grievance on a proposed disciplinary action.**

As previously stated, here is an easy way to remember it:

**Anytime you see a discipline notice that has the word “proposed” in the type of discipline, just pretend the word “proposed” isn’t there. For instance, if you have a “proposed removal” case, treat it the same as you would if it were a regular removal case. File a grievance within 14 calendar days of the day the proposed removal is received by the grievant. This same rule applies to any “proposed” adverse action. If you just pretend the word “proposed” isn’t there, you’ll never go wrong.**

The NALC **does not** represent letter carriers in MSPB proceedings. Furthermore, letter carriers who choose to appeal an adverse action to the MSPB lose some of the procedural protections provided by the National Agreement. For example:

- **Expired Discipline.** Article 16, Section 10 provides that the records of a disciplinary action against an employee shall not be considered in any subsequent disciplinary action if the grievant has no disciplinary action(s) in their record for a period of two years. This contractual protection does not apply to the MSPB proceeding. In fact, the Postal Service routinely relies upon discipline that cannot be considered in the grievance-arbitration procedure when defending adverse actions in MSPB cases.
- **Unadjudicated Discipline.** Under the National Agreement, an arbitrator may not consider past discipline that has been grieved but not yet resolved or adjudicated. See [JCAM Article 16](#) and [C-03910](#), National Arbitrator Fasser, June 18, 1977. This contractual protection does not apply to MSPB proceedings which have different procedural rules (United States Supreme Court *United States Postal Service v. Gregory*, 534 U.S. 1, 122 S. Ct. 431 (2001)).

If you are unsure about an MSPB-related issue, seek guidance from a branch officer or your branch president. The Postal Service employs a large number of preference eligible veterans in the letter carrier craft. As a steward you will undoubtedly have a chance to put the skills you learned here to work for them.

## Time Limits

Every step of the grievance-arbitration procedure has firm time limits. These time limits are absolute. See the [Grievance Procedure Chart](#) on [page 24](#) of this guide to further understand these time limits. It is the union's responsibility to make sure the time limits are met at each step of the procedure.

Stewards should make sure the letter carriers they represent understand the importance of contacting the union immediately if they receive any discipline—including letters of warning. All letter carriers should understand that the time limits begin when they receive the discipline, not when they notify the union. They should also understand that if discipline, such as a letter of warning or no-time-off suspension, is not grieved when it is received, then it will not be possible to challenge it later if it is cited as a prior element of discipline in a future disciplinary action.

### Informal and Formal Step A

Article 15, Section 2 of the National Agreement establishes a 14 calendar day time limit for filing a grievance at Informal Step A. Fourteen days means 14 calendar days, not 14 work days. For example: if a grievant receives a letter of warning, day one of the 14 calendar days is the day after the letter of warning is received. This is true even if, for example, the fourteenth day falls on a Sunday. In that case Sunday would be the last day that a timely grievance could be filed. It is never a good idea to wait until the last day to file a grievance because errors in counting days or other problems can easily result in a grievance being untimely. The language from the National Agreement reads as follows:

**Article 15.2. Informal Step A (a)** Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (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. This constitutes the Informal Step A filing date.

The responsibility to meet time limits continues past the Informal Step A meeting. If a grievance is not resolved at the Informal Step A meeting, the union has **7 calendar days** to appeal the grievance to Formal Step A. Management then has 7 calendar days from the date they received the Formal Step A appeal to schedule a meeting with the union and meet at Formal Step A. If the case is not resolved at the Formal Step A meeting or no meeting is scheduled, the union has 7 calendar days from the date the meeting took place (or should have taken place) to appeal the case to Step B. You should consider keeping copies of postmarks or meter strips as well as receipts to make sure you can prove that time limits were adhered to in an appeal to Formal Step A.

[Page 15-2](#) of the 2014 *JCAM* explains this Section as follows:

An employee or union representative must discuss the grievance with the employee's immediate supervisor within fourteen calendar days of when the grievant or the union first learned, or may reasonably have been expected to learn, of its cause. The date of this discussion is the Informal Step A filing date.

**Time Limits.** The fourteen days for filing a grievance at Informal Step A begin the day after the occurrence or the day after the grievant or the union may reasonably have been expected to have learned of the occurrence. For example, if a grievant receives a letter of warning, day one of the fourteen days is the day after the letter of warning is received.

[Page 15-2](#) of the 2014 *JCAM* continues to explain an exception to this rule in regards to continuing vi-

olations. In H1N-5D-C 297, June 16, 1994 (C-13671), National Arbitrator Mittenthal explained the theory of continuing violations as follows:

Assume for the moment, consistent with the federal court rulings, that the Postal Service incorrectly calculated FLSA overtime for TCOLA recipients under the ELM. Each such error would have been a separate and distinct violation. We are not dealing here with a single, isolated occurrence. Management was involved in a continuing violation of the ELM. The affected employees (or NALC) could properly have grieved the violation on any day the miscalculation took place and such grievance would be timely provided it was submitted within the fourteen-day time limit set forth in Article 15. This is precisely the kind of case where a "continuing violation" theory seems applicable. To rule otherwise would allow an improper pay practice to be frozen forever into the ELM by the mere failure of some employee initially to challenge that practice within the relevant fourteen-day period.

### Extension of Time Limits

The parties may, by mutual agreement, agree to extend the time limits for filing or processing a grievance. It is not contractually required that such extensions be in writing, but the NALC Contract Administration Unit strongly recommends that any extensions of time limits be **in writing and signed by both parties**. See the sample [Time Limits Extension Form](#) in the [Sample Forms for Stewards](#) chapter starting on [page 107](#) of this guide. All too often, disputes arise concerning oral extensions of time limits. Sometimes these disputes arise because of misunderstandings about exactly what grievance was involved or how long the time limits were extended. You can avoid these kinds of problems by putting your time limit extensions in writing. Time limit extensions should be the exception rather than the rule. You will see this over and over throughout this guide. This is because it is normally in the best interests of the grievant and the union to process grievances within the prescribed time limits instead of delaying justice for the grievant by extending time limits.

If you do not meet the time limits outlined in the National Agreement when you are processing and meeting on grievances, then the National Agreement further explains that failure shall be considered a waiver of the grievance. That means the merits of the grievance could no longer be heard, because the time limits to meet on the grievance had not been met. Article 15, Section 3.B addresses this as such:

**Article 15.3.B.** The failure of the employee or the Union in Informal Step A, or the Union thereafter to meet the prescribed time limits of the Steps of this procedure, including arbitration, shall be considered as a waiver of the grievance. However, if the Employer fails to raise the issue of timeliness at Formal Step A, or at the step at which the employee or Union failed to meet the prescribed time limits, whichever is later, such objection to the processing of the grievance is waived.

[Page 15-11](#) of the 2014 *JCAM* explains the waiver of time limits mentioned above as follows:

If management fails to raise the issue of timeliness, in writing, at Formal Step A, 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 at a later time. Management's obligations depend upon the step at which it asserts the grievance was untimely.

- If management asserts that a grievance is untimely filed at Informal Step A, it must raise the issue in the written Formal Step A decision (because Formal Step A is "later" than Informal Step A) or the objection is waived. It is not sufficient to assert during the Informal Step A meeting that a grievance is untimely.

- If management asserts that a grievance is untimely at Formal Step A or later, it must raise the objection in the written decision at the step at which the time limits were not met.

The union is responsible for ensuring that the time limits outlined in the National Agreement have been met throughout the DRP. In other words, the union is the moving party and must maintain the time limits and appeal unresolved disputes to the next step of the DRP. This does not mean that management can interfere with this process though by failing to schedule a grievance meeting or failing to give the union a decision within the prescribed timelines. Article 15, Section 3.C addresses this with the following:

**15.3.C** Failure by the Employer to schedule a meeting or render a decision in any of the Steps of this procedure within the time herein provided (including mutually agreed to extension periods) shall be deemed to move the grievance to the next Step of the grievance-arbitration procedure.

Page 15-11 of the 2014 *JCAM* further clarifies this Section as follows:

**Warning.** Article 15.3.C can easily be misunderstood. It *does not* mean that grievances are automatically appealed if management fails to issue a timely decision. Rather, if management fails to 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 management's decision was due.

## Time Limits and Preference Eligible Employees

The rights afforded to preference eligible employees under the Merit System Protection Board (MSPB) have a tendency to complicate the understanding of time limits for stewards from time to time. Under the MSPB procedures, preference eligible employees who are issued discipline exceeding a 14 calendar day suspension must first be issued a letter of proposed discipline and then a final decision letter after they have been given the opportunity to respond to the charges. This can raise issues about time limits, which are discussed under [MSPB Appeal Rights](#) on [page 75](#) of this guide. You should familiarize yourself with the MSPB section now.

## Untimeliness Arguments Made by Management

What happens when management claims a grievance was filed untimely and the grievance reaches arbitration?

First, management must justify its claim that the grievance was in fact filed untimely by the union. If management is successful in proving that the timelines outlined in the National Agreement were not adhered to, then Arbitrators generally will not consider or hear the merits of an untimely grievance. **However, arbitrators will decide in favor of hearing a grievance on its merits when there are improper claims by management that time limits were not met and the argument of untimeliness was not proven by management.** This is why it's important for you to document your adherence to grievance time limits outlined in the National Agreement. If there are any unusual circumstances that might explain a time limit argument made by management, explain them in detail by writing a steward's statement and including it in the grievance file. Never let an untimeliness argument by management go unanswered. Always tell your side of the story.

## **Supporting Cases—Presumption that Grievance was Timely**

The following arbitration decisions should be reviewed to give you a better understanding of time limits and for use by you in the event that management ever makes the claim that you failed to meet the time limits outlined in the National Agreement:

- [C-00005](#) Arbitrator Cohen, July 3, 1979
- [C-00009](#) Arbitrator Cohen, January 18, 1982
- [C-04494](#) Arbitrator Dworkin, October 24, 1984
- [C-05204](#) Arbitrator Rentfro, October 1, 1985
- [C-06464](#) Arbitrator Collins, September 5, 1986
- [C-08831](#) Arbitrator Nolan, May 17, 1989

Hopefully this Special Topics section has provided you with a better understanding of time limits and their importance to the DRP. You will hear numerous times throughout this guide the significance of meeting the DRP time limits. It cannot be overstressed though. The last thing you want to tell a letter carrier is that you lost their grievance because you failed to meet on or appeal their grievance in a timely manner.

## Information Requests

You will need to request information for almost every grievance you investigate or file because most of the documents needed to determine if a grievance exists and prove a contract violation are management records such as time records, work schedules, leave slips, curtail slips, reports, etc. Many times, you will also need to interview the grievant or someone that was a witness or involved in the matter you are investigating.

The best way to obtain any needed information such as documents, witness interviews, written statements, etc. is to simply request the information or interviews in writing.

As a steward, you have the right to request and obtain information by reviewing it, obtaining copies, or through interviews. Exercising these rights is an important part of your job as a steward. The information you include in a grievance file to document the facts of the case forms the foundation that will support your contentions and arguments as well as the remedy you are requesting. With a solid foundation you will be on your way to building a successful grievance.

When investigating to determine whether a grievance exists or when preparing to file a grievance, you will need to review information and evidence to determine exactly what happened. Articles 17 and 31 of the National Agreement give stewards the right to review and obtain copies of all relevant information needed to process a grievance.

In this section you will learn how to request information and interviews and what to do if management fails to grant your request in a timely fashion.

Article 31, Section 3 of the National Agreement gives stewards the right to request and receive information necessary to investigate and adjust grievances. That language reads:

### Section 3. Information

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or designee. All other requests for information shall be directed by the National President of the Union to the Vice President, Labor Relations.

Nothing herein shall waive any rights the Union may have to obtain information under the National Labor Relations Act, as amended.

That language from Article 31, Section 3 is explained on [page 31-2](#) of the 2014 *JCAM* as such:

**Information.** Article 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. Examples of the types of information covered by this provision include:

- attendance records
- payroll records
- documents in an employee's official personnel file
- internal USPS instructions and memorandums
- 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
- training manuals
- Postal Inspection Service Investigative Memoranda (IM)
- Office of Inspector General Report of Investigation (ROI)

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.

Settlements and arbitration awards have addressed the union's entitlement to information in certain specific areas. For example, the union has a right to any and all information which the employer has relied upon to support its position in a grievance (Step 4, H1C-3U-C-6106, November 5, 1982, [M-00316](#)). Note that the union also has an obligation to provide the Postal Service with information it relies upon in a grievance (Article 15). The union is also entitled to medical records necessary to investigate or process a grievance, even without an employee's authorization, as provided for in [Handbook AS-353](#), *Guide to Privacy, the Freedom of Information Act, and Records Management* and by Articles 17 and 31 of the National Agreement.

Our grievance procedure is document driven. The majority of grievances are settled based on documentary evidence and written statements alone. Without such evidence to support your facts and contentions, you are unlikely to be successful in your grievance.

Keep in mind that you are the best and often the only source of specific knowledge about the people involved and the day-to-day operations in your office. Make sure the information you include in the grievance file educates those who will handle the grievance after you. In other words, pretend you don't know anything about your office as you determine what information to include in your grievance file.

Documenting grievance files with information you request is even more important if a grievance reaches Step B of the grievance procedure. This is where a team made up of one union member and one management member reviews case files in an attempt to resolve disputes. The Step B team re-

views only the documents, statements, and the written facts and contentions contained in the grievance file submitted to them by the parties at the Formal Step A level of the grievance procedure.

The types and amount of information you need to document your facts and contentions will be determined by the nature of the specific case you are working on. You will be requesting information for both contractual and disciplinary grievances.

For example, consider the grievance of a full-time letter carrier not on the overtime desired list (ODL) required to work overtime when a letter carrier on the ODL was available. To properly investigate and document such a grievance, you should obtain at least:

1. A copy of the overtime desired list for the current quarter
2. Time records (Time and Attendance Control System (TACS) **Employee Everything Reports**)
3. History of previous grievance settlements on this issue (if applicable)

The TACS Employee Everything Report is a useful document for many different types of grievances. All stewards should be familiar with reading this form. It shows all the employee moves, who made the move, at what time, and to what operation (office time, street time, steward time, etc). For a detailed explanation on how to read the TACS Employee Everything Reports, see pages 26-33 of the [2011 NALC Letter Carrier Resource Guide](#).

Depending on the specific circumstances, you may need other documents such as the work schedules, PS Forms 3996, PS Forms 1571, statements from the letter carrier or management officials involved, etc. There is no specific list for what will be needed for each grievance so be sure to tailor your request around the facts of your case.

You will also need information from management when defending a letter carrier in a disciplinary case. For example, if the grievance concerns attendance-related discipline, you may need to request PS Forms 3971 and 3972, a copy of the investigative interview, to interview any witnesses, etc. Again, exactly what you need to request will depend on the specific charges against the grievant. If you don't know exactly what to ask for, seek the advice of those around you with more experience such as another shop steward, the NALC Formal A representative, or your branch president.

### **Requesting Information from Management**

Information requests should be submitted in writing to the appropriate supervisor. It is also recommended that you use the same format for all of your requests. This will make your job easier and you will be less likely to miss any key information. Some NALC branches and regions have produced information request forms for use by their stewards.

This publication contains sample information request forms in the [Sample Forms for Stewards](#) chapter starting on [page 107](#), one for [Disciplinary Cases](#) and one for [Contract Cases](#). Please feel free to use these forms and modify them for your own use.

The difference between the forms is the sample information request form for discipline cases contains the general catch-all request for “any and all documents, statements, records, reports, audio or video recordings, photographs, or other information learned, obtained, developed or relied upon by the Postal Service” when it issued the discipline.

You should include this language in every information request in discipline cases since you will not necessarily know every piece of information management had or relied upon when it made the decision to issue the



discipline. Even in circumstances where your request includes this “catch all” language, nothing precludes you from also including requests for specific information if you believe it exists. For example, you might know there is a police report relevant to your investigation. In that case you should ask for a copy of the police report in your information request. As the *JCAM* explanation of Article 31, Section 3 (shown at the beginning of this section) states, “To obtain employer information the union need only give a reasonable description of what it needs...” In this example, it is reasonable to tell management you need the police report as part of your investigation into the discipline case. This subject will be further explained later in the section.

Prepare your requests in duplicate. Sign and date both copies and have the receiving supervisor sign and date one of the copies for you to take for your records. Always keep a copy with both signatures in the grievance file. It will be a permanent record of what you requested, when you requested it, and to whom the request was made. This will be extremely helpful if management fails to provide any of the properly requested information. If management refuses to sign for your request, make sure you document the date and time of the request and provide a witness statement if anyone saw the request being made. This is an important step, so don't forget it.

Article 17, Section 3 of the National Agreement further states that stewards have a right to information using the following language:

The steward, chief steward or other Union representative properly certified in accordance with Section 2 above 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 and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.

Remember that your information requests are not limited to copies of documents, you can review them too. You can also request to interview anyone involved in the matter you are investigating in order to find out what they heard or saw and have them write a statement to add to the grievance file. This is another way to gather the information needed to be successful in the grievance procedure. Just include the request for the interview on your information request.

You should always submit an information request as soon as possible after you become aware of the need to investigate a particular matter. Management is required to provide the requested information and time on the clock to conduct requested interviews within a reasonable time period after receiving an information request. What is a reasonable time period can vary depending on the type and amount of information or number of interviews you request for a particular grievance. However, generally speaking, if the grievance procedure is working as it was intended, most information or interview requests should be fulfilled by management within a few working days of when your request is received. Remember to keep a copy of your information or interview request showing who received your request and the date it was received.

As stated above, if the supervisor refuses to sign your request, document the refusal. Write “refused to sign,” the date, and initial the request where the supervisor would normally sign. If anyone witnessed the refusal, this would be a good time to submit a written request to interview the witness. When the interview is granted, have the witness print and sign their name with the date they signed the form, and ask each witness for a written statement. This will provide the best evidence of the refusal.

Another problem that you may encounter is when management receives your information request, but doesn't provide what you requested. In either case, it boils down to a refusal to provide properly re-

requested information. If you run into either one of these problems, don't panic. Just follow four simple steps:

1. Keep the request form with your grievance file as it is now evidence of the refusal and part of your case.
2. Add a second issue statement to your case (on a separate sheet of paper if at Informal Step A) to address the violation of Articles 17 and 31 of the National Agreement.
3. Process your grievance within the time limits without the requested information.
4. Be sure to document and explain your attempts to obtain the requested information in your case file and point out what the information would have shown had it been provided by submitting a steward or Formal Step A representative statement to include in the case file being appealed to the next step of the DRP.

If this becomes a repetitive problem, continue to frame an additional issue in each case as advised above to address the violation and take two additional steps:

5. Request additional remedies to provide an incentive for future compliance (see the [Remedies](#) section on [page 101](#) in this guide).
6. Contact branch officers or your branch president as appropriate and report the repetitive problem.

Always remember that the failure on management's part to provide requested information or grant requested interviews does **not** change the time limits for initiating grievances at Informal Step A or appealing grievances to any other step of the grievance procedure.

You should also let management know how much time you think you will need to complete your investigation to determine whether or not a grievance exists. Remind them that you will need time to complete your investigation prior to the Informal Step A meeting and that the meeting must be held by a certain date in order to meet the 14 calendar day time limit.

The explanation of Article 17, Section 3 on [page 17-6](#) of the 2014 *JCAM* states in part:

Steward requests to review and obtain documents should state how the request is relevant to the handling of a grievance or potential grievance. Management should respond to questions and to requests for documents in a cooperative and timely manner. When a relevant request is made, management should provide for review and/or produce the requested documentation as soon as is reasonably possible.

You must have a valid reason whenever you request information from management. Your request to review and obtain documents should state how the request is relevant to the investigation or processing of a grievance. You do not have to lay your entire case out in a request. However, the union should give a reasonable description of what is needed and make the claim it is needed to enforce the contract.

For instance, if questioned as to the relevance of an information request, you might say you are investigating an alleged overtime or route inspection violation, improper disciplinary action, etc. That should be enough to justify requesting documents or interviews related to the matter.

Keep in mind that just because you requested information from management does not mean you must file a grievance. You may determine through your investigation that a grievance doesn't exist. If this happens, be sure to go back to the grievant as soon as possible and tell him or her there is no

grievance and explain why.

If after reviewing the information received you determine additional information is needed, put in another request. There is nothing stopping you from making additional requests for the same grievance. Make this additional request as soon as you realize more information is needed. Just remember, the original 14 calendar day time limit to meet at Informal Step A still applies.

In most cases it is understood that you would like copies of the information you are requesting. If copies are requested, the USPS must provide them. One thing to consider when making your requests is there may be a cost to the union associated with the request. The fees which management may charge the NALC for providing information are governed by *Handbook AS-353 [Guide to Privacy and Freedom of Information Act]* Section 4-6.5. Currently AS-353, Section 4-6.5 provides for a **waiver** of information fees for:

- The first two hours of manual search time
- The first two hours of computer search time
- The first 100 pages of duplication, \$0.15 per page thereafter (The Postal Service should not charge the union for fees that do not exceed \$10.00 after the first 100 page waiver- AS-353, Section 3-4.4)

The principles referenced above over computer search fees which management may charge the NALC were further reinforced in [M-01698](#). This agreement also provides that the Postal Service will not charge the union at a higher computer usage rate to produce copies of documents.

The information you request will frequently be available in digital format. If you know you will need a large amount of information and the Postal Service is going to charge you for hard copies, ask them to send the information to you electronically and print it out yourself. You could also try to use some type of removable media (flash drive, CDR, DVDR, etc). Make sure to check with your Formal Step A representative or branch president to be sure they will be able to view your electronic documentation if you are unable to resolve the grievance at your level.

Another way to handle a situation where there will be a charge for copies is to request to review the information you are looking for. Reviewing information can sometimes reduce the number of pages of information you need copies of to document the contract violation in your grievance file. Remember, you have a right to information needed to investigate a possible grievance. Do not let management off the hook simply because they threaten to charge you for the information. Information requests by the union should be fulfilled by management. You should consult your branch officers if you have any questions about management charging fees for information.

The National Agreement is clear that grievances are to be settled at the lowest possible level. To get the clearest picture of the case and have the best chance of settling the dispute, it is important to have all the information at hand. Do not leave it up to the next person who handles the grievance to ask for information that is needed to prove the union's case.

Management's right to deny information is extremely limited. Relevant information properly requested by the union must be provided. Refusals for reasons such as "the union could get the same information from its members, the request is too large, the grievance has no merit, the grievance is not arbitrable, or the materials are privileged" are in violation of Article 31 of the National Agreement and should be grieved. This is where the copy of your information request will come in handy. It will serve as your evidence of the request.

## The Privacy Act

Sometimes management refuses to provide requested information to the union claiming that the Privacy Act bars the USPS from disclosing medical records or other confidential information. Managers often tell NALC representatives they will not 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 does require federal agencies to restrict access to certain records that contain information about individuals, but the [AS-353](#) [*Guide to Privacy, the Freedom of Information Act and Records Management*] makes it clear that providing information to the union falls within the "routine" use category, and is, therefore, an authorized disclosure under the Privacy Act.

See also the article on "Steward's Right to Information" in the [Fall 2011 NALC Activist](#).

## Investigatory Interviews

One of the most important yet least understood roles of a shop steward is representing letter carriers in investigatory interviews.

Investigatory interviews are also called many other names, such as an I.I., pre-disciplinary interview (PDI), fact-finding interview, etc. These terms are interchangeable and all mean the same thing. They are referring to a required meeting between an individual letter carrier and a management representative, USPS Office of Inspector General (OIG) agent, or USPS Postal Inspector. While agents and inspectors may be involved in these interviews, management has an obligation to conduct their own independent investigation. This type of meeting usually occurs when management is considering issuing discipline to the letter carrier being interviewed.

Management is required by the contract and federal law to allow a letter carrier the opportunity to hear and answer any allegations that could lead to disciplinary action being taken against him or her **prior** to any notice of discipline being issued by management. A narrow exception to this rule would be when a letter carrier is placed on an “Emergency Suspension” pursuant to Article 16, Section 7 of the National Agreement.

These interviews can be conducted by managers, Postal Inspectors, or OIG agents. It is important for you to understand the rights of both the employee and the union in these situations. It is also critical that you have an understanding of the different types of warnings a postal inspector or an OIG agent may issue an employee when an investigatory interview crosses over into the realm of a possible criminal investigation. We will discuss those later in this section.

Most of the time, investigatory interviews do not involve a criminal situation. They normally involve management suggesting that a letter carrier violated a rule or regulation. As a steward, you have certain rights with respect to representing those letter carriers who find themselves in this type of situation. The following is an explanation of the rights afforded to the letter carrier and their shop steward.

### **Weingarten Rights**

The “*Weingarten*” rule gives employees the right to representation during investigatory interviews. Arbitrators almost universally find that a violation of *Weingarten* rights is an extremely serious matter. It not only tramples on an employee's individual rights, but also undermines the union's ability to exercise its representation responsibilities.

How do these rights play out in a real life situation? What do you do when management approaches you about a letter carrier whom they claim was driving with her door open and no seat belt on and they want to speak with her? What if a letter carrier calls you on the phone and tells you that management conducted a pre-disciplinary interview with him regarding the late delivery of an express mail piece even though he asked to have a shop steward present? Any of these scenarios could happen in your office and there are things you as a steward can do to effectively handle each one.

Let's use the example of management initiating an interview with a letter carrier whom they state was driving with her door open and with no seat belt on. If management approaches you as the steward, they probably intend to abide by her *Weingarten* rights and have you present at the interview. However, there may be times where this isn't the case. Some managers or supervisors will not even speak with the steward, but will just call the letter carrier into the office and start questioning him or her.

Unlike *Miranda* rights (explained later in this section), *Weingarten* does not require that a mandatory explanation of these rights be given to a letter carrier before the interview. Unless the letter carrier asks for union representation, the interview proceeds. You as a steward **cannot** invoke a letter carrier's *Weingarten* rights for him or her. Letter carriers must know to ask for representation on their own.

**Letter carriers may invoke their *Weingarten* rights and ask for union representation whenever they reasonably believe that a discussion with, or questioning by, management may lead to discipline. It's up to the letter carrier to make that determination and ask for representation.**

The meeting between the letter carrier and management does not have to be formally called an "investigative interview" or another term meaning the same thing. If the letter carrier has a reasonable belief that discipline could result from any conversation with management, he or she is entitled to union representation.

It is important for stewards and branch officers to educate their branch members of these critical rights afforded to them under *Weingarten*. Small cards designed to serve as a reminder of these rights are available from the [NALC Supply Department](#). Additionally, many branches have made small laminated cards for members. An example of such a reminder could read something like this:

**If called to a meeting with management, Postal Inspectors, or an OIG agent, read the following before the meeting starts:**

**"If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my union representative, officer, or steward be present at this meeting. Without my Union representation present, I respectfully choose not to answer any questions or participate in this discussion."**

Once a letter carrier asks for representation, management is required to provide him or her with a steward. If management fails to provide the representation, management has committed a violation of the letter carrier's *Weingarten* rights. This is a serious due process violation.

When discipline is issued after a *Weingarten* rights violation, you should write or frame an additional issue to raise this serious violation of the letter carrier's due process rights in any grievance protesting the discipline that was issued. When you raise this issue in a grievance, remember to explain the circumstances in the union's disputed facts and contentions (block 17 on PS Form 8190) and request an appropriate remedy for the *Weingarten* rights violation in addition to the remedy you would normally ask for in a discipline case. For example, you could ask for management to cease and desist from future *Weingarten* rights violations in addition to requesting that the discipline issued be rescinded, expunged from all employee records and files, and the letter carrier involved be made whole.

Let's go back to the letter carrier who is accused of driving with her door open and not wearing a seat belt. If the letter carrier invoked her *Weingarten* rights, you as a steward and the grievant have a right to know the purpose of the investigative interview before it begins. Additionally, you as a steward have the right to speak with the grievant alone **after** you know what the interview is going to be about and **before** it begins.

Once the interview begins, you as a steward are not just a silent party or witness to the interview. You have a right to participate in the interview. For example, you can ask questions if you have any or ask to take a break and speak with the letter carrier. Keep notes during the interview including the

questions management asks and the responses given by the letter carrier. You should also note any comments, questions, or objections you raised as well as any response from management or the letter carrier.

It is also important that you request a copy of management's notes as part of any grievance investigation related to the interview. The union has the right to request these notes through Articles 17 and 31 of the National Agreement. These notes may be helpful when investigating a potential grievance.

The *Weingarten* rights of letter carriers have been tried and tested throughout the years. This has resulted in numerous pre-arbitration and Step 4 (national-level) agreements along with many regional arbitration decisions. What follows is the *JCAM* language provided in Article 17 of the National Agreement. At the end of this section you will find a sampling of the resulting grievance resolutions.

Page 17-6 of the 2014 *JCAM* provides the following explanation of *Weingarten* rights:

### ***Weingarten* Rights**

Federal labor law, in what is known as the *Weingarten* rule, gives each employee the right to representation during any *investigatory interview which he or she reasonably believes may lead to discipline*. (*NLRB v. J. Weingarten, U.S. Supreme Court, 1975*) ([M-01789](#))

The *Weingarten* rule does not apply to other types of meetings, such as:

- **Discussions.** Article 16.2 provides that “for minor offenses by an employee ... discussions ... shall be held in private between the employee and the supervisor. Such discussions are not discipline and are not grievable.” So an employee does not have *Weingarten* representation rights during an official discussion (National Arbitrator Aaron, H1T-1E-C 6521, January 6, 1983, [C-03769](#)).
- Employees do not have the right to union representation during fitness-for-duty physical examinations.

The *Weingarten* rule applies only when the meeting is an *investigatory interview*—when management is searching for facts and trying to determine the employee's guilt or decide whether or not to impose discipline. The rule does not apply when management calls in a carrier for the purpose of issuing disciplinary action—for example, handing the carrier a letter of warning.

An employee has *Weingarten* representation rights only where he or she *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. Some cases are obvious, such as when a supervisor asks an employee whether he discarded deliverable mail.

The steward cannot exercise *Weingarten* rights on the employee's behalf. And unlike “*Miranda* rights,” which involve criminal investigations, the employer is not required to inform the employee of the *Weingarten* right to representation.

Employees also have the right under *Weingarten* to a pre-interview consultation with a steward. Federal Courts have extended this right to pre-meeting consultations to cover

Inspection Service interrogations. (*U.S. Postal Service v. NLRB*, D.C. Cir. 1992, M-01092).

In a *Weingarten* interview the employee has the right to a steward's *assistance*—not just a silent presence. The employer would violate the employee's *Weingarten* rights if it refused to allow the representative to speak or tried to restrict the steward to the role of a passive observer.

Although the ELM Section 665.3 requires all postal employees to cooperate with postal investigations, the carrier still has the right under *Weingarten* to have a steward present before answering questions in this situation. The carrier may respond that he or she will answer questions once a steward is provided.

It should be noted that Article 17, Section 3 also provides:

If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted. All polygraph tests will continue to be on a voluntary basis.

**Note:** This rule is generally less broad in scope than the *Weingarten* rule since it applies only to “interrogation by the Inspection Service,” whereas the *Weingarten* rule applies to investigatory interviews by any supervisor or management representative. Nevertheless, it should be cited in addition to the *Weingarten* rule whenever it is violated by management and Postal Inspectors are involved.

An important point that bears repeating is that stewards cannot exercise *Weingarten* rights for a letter carrier. A letter carrier must **ask** for a steward to be provided before being questioned. This is an important distinction between *Weingarten* rights and a *Miranda* warning.

### **Miranda Warnings**

The most common and well-known warning is a *Miranda* warning. Most people are familiar with this warning from watching television. The *Miranda* warning is:

“You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to have an attorney present before any questioning. If you cannot afford an attorney, one will be appointed to represent you before any questioning.”

*Miranda* warnings should not be confused with *Weingarten* rights. They derive from the landmark U.S. Supreme Court decision in *Miranda v. Arizona*, 384 U.S. 436 (1966) which concerned constitutional rights prior to an interrogation in criminal cases.

**It is critical for stewards to understand and recognize the difference between a normal investigatory interview and investigations that cross the threshold into criminal investigations.**

Postal Inspectors or other law enforcement officials cross the threshold into a criminal investigation when they read employees their *Miranda* rights. Once the warning is given, *anything the letter carrier says can be used against him or her in a court of law.*

A criminal investigation is underway when Postal Inspectors or OIG agents request that the employee sign any form that would waive their *Miranda* rights such as PS Form 1067, *United States Postal Inspection Service Warning and Waiver of Rights*. **Stewards should always advise letter carriers not to sign any form that would waive their *Miranda* rights.** If an employee does sign a form to waive their *Miranda* rights, any-



thing the employee says from that point forward can be used against the employee in a court of law.

Stewards should also remember that they are not attorneys and thus cannot offer legal advice to employees facing potential criminal charges. Stewards should immediately inform the employee that he or she may wish to seek legal advice should there be any possibility that the Postal Service will bring criminal charges against the employee. You should also advise the letter carrier not to answer any questions Postal Inspectors ask and that the interrogation should be suspended until the employee has had an opportunity to consult with an attorney.

When you are dealing with an issue that concerns both criminal law and the contract, here is the problem that you run into; ELM Section 665.3 requires all postal employees to cooperate with postal investigations. *Miranda* rights say that anything you say can be used against you in a court of law. This would appear to put the employee in an impossible position. Should an employee answer questions even if the answers may result in criminal charges, or should the employee refuse to answer questions risking the possibility of discipline for "failure to cooperate" in an investigation?

This problem was resolved by the federal courts in *Edward Garrity v. New Jersey* (385 U.S. 493) January 16, 1967 and *George Kalkines v. the United States* (473 F.2d 1391 Fed. Cir.) February 16, 1973, amended June 1, 1973.

### **Kalkines Warnings**

The *Kalkines* warning requires employees to make statements and cooperate even if it could lead to being disciplined or discharged, but provides **criminal immunity** for their statements. A *Kalkines* warning could read something like this (the exact wording may vary):

*"You are being questioned as part of an internal and/or administrative investigation. You will be asked a number of specific questions concerning your official duties, and you must answer these questions to the best of your ability. Failure to answer completely and truthfully may result in disciplinary action, including dismissal. Your answers and any information derived from them may be used against you in administrative proceedings. However, neither your answers nor any information derived from them may be used against you in criminal proceedings, except if you knowingly and willfully make false statements."*

This warning means the letter carrier must be truthful, but can do so without their answers being used against them in a criminal proceeding.

### **Garrity Warnings**

A *Garrity* warning advises suspects of their criminal and administrative liability for any statements made, but also advises suspects of their right to remain silent on any issues which may implicate them in a crime. A *Garrity* warning could read something like this (again the exact wording may vary):

*"You are being asked to provide information as part of an internal and/or administrative investigation. This is a voluntary interview and you do not have to answer questions if your answers would tend to implicate you in a crime. No disciplinary action will be taken against you solely for refusing to answer questions. However, the evidentiary value of your silence may be considered in administrative proceedings as part of the facts surrounding your case. Any statement you do choose to provide may be used as evidence in criminal and/or administrative proceedings."*

The *Garrity* warning helps to ensure a suspect's constitutional rights. It also allows federal agents to use statements provided by suspects in both administrative and criminal investigations. If a letter car-

rier is given a *Garrity* warning, shop stewards should always advise the letter carrier to consult with an attorney before answering any questions.

It is important you understand these rights and warnings so you are better prepared to represent letter carriers and to educate them on their rights during an investigatory interview.

Just remember these two things:

1. A letter carrier is always entitled to representation by the NALC when he or she has a reasonable belief that discipline could result from the conversation. This is true whether you have a *Weingarten*, *Miranda*, *Kalkines*, or *Garrity* situation.
2. You are not a lawyer. If the matter being investigated is a criminal matter, advise the letter carrier to consult with a lawyer.

### National Level Awards, Settlements

The following decisions will give you a better understanding of these topics and will give you some ideas to support any potential grievances that may arise regarding investigatory interviews and rights that letter carriers have during them.

- **M-01092 USPS v NLRB, No. 91-1373 D.C. Cir, June 30, 1992**  
Decision by the U.S. Court of Appeals for the D.C. Circuit upholding an NLRB decision concerning *Weingarten* rights (M-01093). The Board held that Postal Inspectors violated the *Weingarten* doctrine by refusing a request by a steward to consult with an employee prior to the employee's interrogation by the Postal Inspectors.
- **M-01668 NLRB Decision December 28, 2007, Case 25-CA-29340**  
National Labor Relations Board decision finding that a supervisor conducting an investigatory interview improperly prevented a steward from speaking when the steward sought to object to a "loaded" question asked of the letter carrier being interrogated.
- **M-00546 NALC Legal Memorandum November 30, 1981**  
Recent decisions of the National Labor Relations Board and the United States Court of Appeals for the Ninth Circuit established that: (1) when an employee being interviewed by an employer is confronted by a reasonable risk that discipline would be imposed, the employee has a right to the assistance of—not mere presence of—a union representative; and (2) that an employer violates the Act when it "refuses to permit the representative to speak, and relegates him to the role of a passive observer."
- **M-00645 Step 4 July 19, 1977, NC-S-4767**  
Supervisors may have work related discussions with employees under their jurisdiction without a steward's presence. However, in this specific instance, the supervisor wanted a witness present. This unusual action justifiably caused concern by the employee and as a consequence his request to have a steward present was not unreasonable.
- **M-01096 Prearbitration Settlement September 16, 1992, H7N-5N-C 31554**  
The parties at this level agree that under the *Weingarten* rule, the employer must provide a union representative to the employee during the course of its investigatory meeting where the employee requests such representation and the employee has a reasonable belief that discussions during the meeting might lead to discipline (against the employee himself).

Whether or not an employee reasonably believes that discipline will result from the investigatory interview is a factual dispute and is suitable for regional determination. See also [M-00436](#)

## Arbitration Case Examples—*Weingarten* Rights

- **C-15476 Regional Arbitrator DiLauro June 12, 1998**

“The reason rights have been established under the *Weingarten* case or under 5U.S.C. §7114 are to protect any employees from stating or agreeing to something in an investigatory interview which could incriminate them and result in disciplinary action against them. Therefore, once union representation is requested and granted, all questioning should cease until such representation arrives.”

“The Postal Service’s reliance on statements allegedly made during the Postal Inspector’s interview with the grievant is the ‘evidence’ the Postal Service points to as proving the grievant was guilty. The fact that such ‘evidence’ has been found to be tainted due to the Postal Inspector’s questioning of the grievant when union representatives were not present makes the evidence producing the chain of circumstances pointing to guilt weak and inconclusive and no probability of fact may be inferred from the combined circumstances. [South Penn Oil Co., 29LA718 (Hebert, 1957)] Consequently, the grievance must be sustained.”

- **C-10291 Regional Arbitrator Barker September 26, 1990**

“In the factual circumstances of this case, a valid request was made by the grievant to Sutton for representation by a steward during the course of the imminent investigatory meeting with the Postal Inspectors, which request was not granted.... Accordingly, the grievant was denied fundamental procedural due process rights and the disciplinary action imposed was not for just cause.”

- **C-09556 Regional Arbitrator Olson November 30, 1989**

“I conclude the interview of the grievant by management during the meeting on January 12, 1989 was investigatory and of the nature that it might reasonably result in discipline. The grievant requested union representation during this interview and that request was denied by management. This request sufficed for the entire interview which included the questioning of the grievant regarding the vandalism incident, the inspection of the contents of her locker, and the questioning of her regarding the four pieces of mail discovered in her locker. Management, in denying the grievant’s request for union representation, violated her *Weingarten* rights, and therefore her removal was flawed.”

“Accordingly, I conclude that the Postal Service did not have just cause to remove the grievant. Recognizing, however, the gravity of the offense which the grievant committed, her reinstatement shall not include back pay.”

- **C-20955 Regional Arbitrator Goldstein August 14, 2000**

“Here was a case that cried out for Removal; except that both the grievant’s rights to due process and union’s rights of representation were trampled, not just stepped upon. To begin with, the Employer’s entire case rested upon the efforts of the Postal Inspector’s Investigative Memoranda, yet, he was unavailable for testimony. In addition to the fact that all allegations regarding the altered document were hearsay; there were instances of ‘*Weingarten*’ type abuse, as well. Aside from testimony of the shop steward and grievant, it was the testimony of the former Postmaster which convinced me that union representation in his office was far less than anticipated. The evidence was clear and convincing that the union steward was, in effect, prohibited from any form of representation during at least one disciplinary meeting before the then Postmaster of grievant’s facility.”

“In conclusion, management did have reasonable basis to severely discipline this employee for her behavior generally, in regard to unsatisfactory conduct surrounding her request for injury related leave; including her action in delivering an altered document in support of that leave. The evidence in support of the charges was clear.”

“However, the handling of this matter was marked by serious procedural error; which like the grievant’s judgment, cannot be condoned either. For that reason, the Removal must be converted to a long term suspension, without back pay.”

- **C-24014 Regional Arbitrator Johnston January 31, 2003**

“There was at the arbitration hearing a conflict between Postal Inspector Smith’s version of what happened at these two meetings with Ms. McRae and Ms. McRae’s version of what happened at those two meetings. However, a reading of paragraph 8 of the Investigative Memorandum shows that Ms. McRae was not permitted to have a union representative present. She was accompanied by another Postal employee Rural carrier Sue Alsop, but Ms. Alsop is not a union official. Therefore, her due process rights, also known as the *Weingarten* rights, were improperly denied her by Postal Inspector Smith.”

“Having found that the Postal Service violated the Grievant’s due process rights as set out above, it is incumbent on me due to this lack of procedural due process, that the disciplinary action taken by the Postal Service cannot be upheld. My AWARD will set out the action to be taken due to this failure of procedural due process.”

“Had the Postal Service not violated her due process rights to such an extent as to cause the reversal of their decision to discharge the Grievant, or in other words, had I reached the merits of this case, I would have sustained the Postal Service’s action in terminating the employment of the Grievant.”

- **C-24702 Regional Arbitrator Nixon October 2, 2003**

“The Postal Service notes that the Service did not deny the right, but by an independent and separate entity, the United States Postal Inspectors. The United States Postal Inspectors are not under the jurisdiction of any authority of the United States Postal Service. As such, these inspectors were not ‘employers’ as contemplated by the *Weingarten* requirements. Even if *Weingarten* required the United States Postal Service to permit carrier Perkins to speak with his union representative, the United States Postal Inspectors were not.”

“The Arbitrator finds this distinction forced and inaccurate.”

“While the Postal Inspectors are a separate entity, at the time of November 13, 2002 investigations, they were gathering information that could be potentially, and in fact was used in a discipline of the Grievant. They were standing in the shoes of the employer. As such, they must be willing to follow all safeguards that would apply to the employer. Those safeguards included permitting the Grievant to meet privately with the union representative. The Postal Inspectors were clearly acting in part for the United States Postal Service. The information gathered was used by the United State Postal Service and other agencies. Because they were standing in the shoes of the Agency, they must follow the procedures employed by the Agency. The Postal Inspectors failed to do so in a critical respect. For that reason, the discipline cannot stand.”

“Because of the actions of the Postal Inspectors in the conduction of the investigation, the claim of procedural due process has sufficient merit to be sustained. Accordingly, the Arbitrator will sustain the grievance.”

- **C-27659 Regional Arbitrator Roberts June 19, 2008**  
The grievant's rights were violated when he was not allowed to consult with his representative prior to a pre-disciplinary interview. Removal action must be reversed and the grievant made whole.
- **C-27768 Regional Arbitrator Bahakel September 4, 2008**  
"The National Agreement between the parties reserves to an employee the right to a pre-interview consultation with a union steward and the right to have a union steward present at an investigative interview. Denying the Grievant these rights is clearly a violation of the contract between the parties as well as a violation of the Grievant's *Weingarten* rights. Management's actions prejudice the Grievant by denying him the right to consult with a union steward as to his rights before being questioned by management. Once a Grievant's request to confer with a steward about his rights is denied, and an investigative interview is improperly held, the moment has passed where the Grievant's rights can be restored simply by holding another interview in accordance with the proscribed procedures. Therefore, when management has conducted an investigative interview after denying the Grievant his right to a union steward, it cannot 'heal' or correct its actions by simply holding another interview with a union representative present."
- **C-28422 Regional Arbitrator Cenci September 3, 2009**  
"...denial of the grievant's *Weingarten* rights during the investigatory interview conducted by the OIG was not rendered harmless by a later PDI in which the grievant admitted to the conduct while represented by a steward. The investigation was fatally flawed when the grievant was not afforded his contractual rights during the investigatory interview conducted by the OIG. That meeting was the first time the grievant was questioned about his employment application and the denial of his rights at that stage could not be subsequently corrected. Management did not have just cause to issue the Notice of Removal dated April 16, 2009 because the investigation was fatally flawed by the denial of the grievant's *Weingarten* right to be represented by a union steward at an investigatory interview that could lead to discipline. The grievant is to be reinstated and made whole for all losses he incurred as a result of the removal."

### Supporting Cases—*Weingarten* Rights

- **C-09556** Regional Arbitrator Olson, Nov. 30, 1989
- **C-10291** Regional Arbitrator Barker, Sep.26, 1990
- **C-14117** Regional Arbitrator Shea, Nov. 30, 1994
- **C-15476** Regional Arbitrator DiLauro, June 12, 1998
- **C-20955** Regional Arbitrator Goldstein, Aug. 14, 2000
- **C-24014** Regional Arbitrator Johnston, Jan. 31, 2003
- **C-24702** Regional Arbitrator Nixon, Oct. 2, 2003
- **C-27659** Regional Arbitrator Roberts, June 19, 2008
- **C-27768** Regional Arbitrator Bahakel, Sept. 4, 2008
- **C-28422** Regional Arbitrator Cenci, Sept. 3, 2009

## Tips for Writing Statements

Written statements are extremely important in our dispute resolution process. This is especially true if the grievance is appealed to Step B. The Step B team will render a decision based on what is contained in the case file. The quality of the statements in the file can be the difference between success and failure in the grievance procedure.

A statement in a file serves as a snapshot of what happened in a particular event. It is up to the steward to ensure that the picture shown through the statements in each case file is clear and accurate. A grievance file may contain statements from a number of different people. The grievant should normally write a statement for the file and witness statements are often needed.

If you are a steward, you should also consider writing a steward statement to describe what happened at Informal Step A to include in the file as the grievance moves forward. Steward statements should explain the case completely so someone unfamiliar with the situation can fully understand it. Do not leave it up to the next person to try to piece the puzzle together.

Some statements are more effective than others. In this section, we will discuss a few easy-to-remember tips for writing an effective statement for a grievance file.

- Effective statements are clearly written and contain specific details about what was seen or heard. The best statements are usually written as soon as possible after an event occurs.
- If you write a statement, ask someone else to proofread it before you include it in the grievance file. An effective statement will contain thorough answers to as many of the following questions as possible:
  - Who was involved?
  - What happened?
  - Exactly what did you see and hear?
  - When did the event occur (date and time)?
  - Where did the event occur?
  - Exactly where were you when the event happened?

The best statements stay focused on answering the questions above with detailed facts and normally avoid expressing personal opinion. The reader should be able to get a clear picture of what happened.

Here are two examples of a statement from a grievant describing the same event. The event is an allegation of supervisor misconduct on the workroom floor.

### Grievant Statement #1:

I asked for a 3996 today and Supervisor X got in my face and harassed and intimidated me again. He has treated me like this for a long time. I am sick of it. I shouldn't have to put up with

treatment like this. Supervisor X always singles me out and treats me unfairly. He gets so angry that I feel threatened all the time. I can't take it anymore. I am a nervous wreck. This has to stop or I don't know what I'll do.

### **Grievant Statement: #2:**

I asked Supervisor X for a 3996 today (8-30-13) at 9 AM while I was casing my route. When I asked him for a 3996 he became very angry and started raising his voice screaming that I didn't need a 3996. He got up from his desk which is about 30 feet from my case and rushed toward me. His fists were clenched and his face was red. He stepped into my case and came within three (3) inches of my face. He kept yelling that I did not need any help to complete my route and that I had enough undertime to take half an hour from another route. I thought he was going to physically attack me. This isn't the first time he has behaved this way.

Consider the examples above. The first statement is full of the writer's emotions and opinions and is very vague about exactly what happened. The second statement is much more descriptive and focuses on the facts rather than emotion.

Effective statements don't take much more time or effort to write than ineffective statements. It's just a matter of getting the person writing the statement on the right path. One way to do this is to ask the writer some questions to draw out the detailed facts of the event before he or she writes a statement.

After someone has written a statement, make sure you read it carefully. Ask yourself some questions such as:

1. Does this statement help to prove the facts and contentions of my case?
2. Does this statement run on without providing what information was needed to be addressed by the witness?
3. Does the statement explain enough detail about the event it describes?

If the statement is ineffective or incomplete, either have the writer add to the statement or write a new one after asking some questions to draw out missing facts. You should consider not including a statement in the file that is ineffective or damaging to your case. This is a judgment call that you will sometimes have to make.

These are serious considerations you should make when evaluating statements you receive for a potential grievance. As you review statements, you should put yourself in the position of someone that doesn't know a thing about the people or particular circumstances in your office. With this in mind, do the statements you have tell the story of the event so it can be easily understood without local knowledge?

In summary, make sure any statements you gather and submit are:

- Legible
- Sufficiently detailed
- Relevant and helpful to the grievance

- Signed (including the printed name [no nicknames], title, and contact information for the person writing the statement)
- Dated

Just follow the advice offered in this section when gathering and writing statements, and with practice you will become a more effective steward as a result of your efforts.



## Remedies

Remedy requests are the bottom line of your efforts to represent letter carriers in the grievance procedure. Requesting appropriate remedies is one of the most important elements of a successful grievance. An inappropriate or insufficient remedy request for a contract violation in an otherwise well-written grievance can cause you to win the battle, but lose the war for obtaining justice for the letter carriers.

The appropriate remedy request will vary from case to case and grievant to grievant. The most important thing to remember is to balance not asking for too much with not asking for too little. This can be a difficult task. This section of the *NALC Shop Steward's Guide* will help you understand the difference.

Remember from the previous sections that you should prepare each case as if it will be heard by an arbitrator. Having an understanding of what remedies an arbitrator can legally and contractually award is a good starting point to requesting appropriate remedies for contract violations.

There is a saying that goes like this: Without remedies there are no rights. National Arbitrator Richard Mittenthal eloquently restated this point when he wrote, "*The grievance procedure is a system not only for adjudicating rights but for redressing wrongs.*" (C-03234) In his June 9, 1986 award C-06238, National Arbitrator Mittenthal explained the legal and contractual basis for remedies as follows:

*One of the inherent powers of an arbitrator is to construct a remedy for a breach of a collective bargaining agreement. The U.S. Supreme Court recognized this reality in the Enterprise Wheel case:*

*"...When an arbitrator is commissioned to interpret and apply the collective bargaining agreement he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency." United Steelworkers of America v. Enterprise Wheel & Car Corp.*

National Arbitrator Gamser also observed in his April 3, 1979 award as follows (C-03200):

*"...to provide for an appropriate remedy for breaches of the terms of an agreement, even where no specific provision defining the nature of such remedy is to be found in the agreement, certainly is found within the inherent powers of the arbitrator."*

Generally, an appropriate remedy for a contract violation is to restore the grievant to the status quo. This means to return the grievant to the position they would have been in if the violation of the contract had not occurred. This is commonly referred to as "making the grievant whole."

Below are two examples of a status quo (make whole) remedy request for a removal grievance.

Example # 1 is a remedy request for a grievant who was improperly removed, was not on the overtime desired list (OTDL) at the time of his removal, and had no plans to get on the OTDL in a future quarter while he was out on removal:

- a. Expunge the Notice of Removal dated \_\_\_\_\_, charging the grievant with \_\_\_\_\_, and remove it from all employee records and files.
- b. Make the grievant whole for all wages and benefits lost as a result of this action, to include interest at the federal judgment rate, or whatever remedies the Step B team or an arbitrator deems appropriate.

Example # 2 is a remedy request for a grievant who was improperly removed and was on the OTDL at the time of her removal or had plans to get on the OTDL in a future quarter while she was out on removal:

- a. Expunge the Notice of Removal dated \_\_\_\_\_, charging the grievant with \_\_\_\_\_, and remove it from all employee records and files.
- b. Make the grievant whole for all wages and benefits lost as a result of this action, **to include average overtime worked by letter carriers on the OTDL** and interest at the federal judgment rate, or whatever remedies the Step B team or an arbitrator deems appropriate.

As you can see, the appropriate status quo (make whole) remedy request can vary depending on the particular circumstances of the grievant. This is true even when you are filing the same type of grievance for two different letter carriers.

It is always a good idea to use the catch phrase “or whatever remedy the Step B team or an arbitrator deems appropriate” as shown at the end of the example remedy requests above. You should do this for every grievance you file. This gives the union a better opportunity to adjust the remedy requested in a case at the later steps of the grievance procedure, if needed.

You may be wondering why requesting interest at the federal judgment rate is part of a status quo (make whole) remedy request. The reason is that you are preparing each grievance as if it will be heard by an arbitrator. If you are preparing a removal grievance to be heard by an arbitrator, the Memorandum of Understanding Re: Interest on Back Pay (discussed on [page 16-4](#) of the 2014 JCAM) would apply. It states:

*Where an arbitration award specifies that an employee is entitled to back pay in a case involving disciplinary suspension or removal, the Employer shall pay interest on such back pay at the Federal Judgment Rate. This shall apply to cases heard in arbitration after the effective date of the 1990 Agreement.*

The parties don't always agree on what a make whole remedy entails.

An example would be an Article 8 grievance where a full-time employee not on the OTDL was required to work overtime instead of giving the overtime to a letter carrier on the list that was available to perform the work. The NALC position is that both the OTDL letter carrier who should have been given the work and the non-OTDL letter carrier who was improperly forced to work overtime were harmed, and therefore, both are due a remedy.

Management officials normally accept the notion that the letter carrier who should have worked the overtime was harmed, and thus, should be paid at the appropriate rate for the overtime hours they would have worked if it had not been for the contract violation. However, they don't always accept our position that the non-OTDL letter carrier who was forced to work overtime was harmed.

Management representatives often resist giving a remedy to the non-OTDL carrier who was forced to work the overtime. When this happens, they argue that the letter carrier who was improperly forced to work overtime was not harmed since he or she was fully compensated for the extra work at the contractual overtime rate.

The NALC position is that the harm to the letter carrier who was improperly forced to work the overtime was a loss of their time for personal business, family time, and recreation. Overtime desired lists are in place not only for letter carriers who want to work overtime, but also for the protection of those who do not.

The ultimate remedy achieved in almost any type of grievance can vary and is normally dependent on a combination of the particular fact circumstances involved, the quality of the case file, and history of the violation. It is also true that different arbitrators grant different remedies for the same contract violations based on the same three factors when grievances are heard in arbitration.

All too often, NALC stewards are successful in proving that management violated the contract, yet are unsuccessful in obtaining a remedy that makes the grievant whole. This can happen because stewards sometimes forget that remedies are not automatic once a violation is established. Rather, the union should demonstrate that the remedy request is appropriate through documentation and arguments in each case.

There are two main goals every steward should focus on when deciding what to request as a remedy:

1. Stop the violation from occurring in the future.
2. Make the grievant whole.

The following are some ideas to help formulate appropriate remedies so you can be successful in obtaining justice for our brother and sister letter carriers.

### **Lump Sum Remedies**

In your remedy request, you might want to ask for a lump sum remedy for a certain amount of money rather than asking for a specific amount of hours for letter carriers. Why? Management can process lump sum payments in GATS in less time than adjusting employee hours for payment. You can also request a lump sum remedy for a violation when there is not a monetary remedy to ask for that requires work hours to be paid.

Here are two examples of ways you can use lump sum remedies for certain issues:

Example 1: Sam the letter carrier is at home on sick leave for one day. Sam is called by his supervisor and told to get medical documentation for the absence of one day before he returns to work. Sam drove a total of 30 miles round trip to be examined by his doctor. He paid a \$25 co-payment for the visit. The steward in this case could request a \$41.50 lump sum payment (30 miles X \$0.55 and \$25 co-pay) for Sam as part of the remedy.

Example 2: Gina is a regular letter carrier on the overtime desired list (OTDL). On Tuesday, Gina is not given any overtime to carry while a non-OTDL regular letter carrier is instructed by management to carry 1 hour of overtime off another route. The steward in this grievance could calculate the rate of pay Gina would receive if she had worked the 1 hour of overtime and request a lump sum monetary remedy equal to the that same amount.

Before you request a lump sum remedy in any grievance, make sure the amount you request or agree to makes the grievant whole. Be sure to keep in mind when considering whether to agree to a lump sum payment that some grievances may require a letter carrier's work hours **and benefits** (annual/sick leave, retirement, etc.) to be paid in order to make the letter carrier whole.

Careful use of lump sum remedy requests can help to decrease the wait time for grievance payments to letter carriers.

### **Cease and Desist Language**

In cases where the violation has been repeated, ask for a "cease and desist" order in addition to the make whole remedy. This will reinforce stronger remedies in case of future violations. A "cease and desist" order may not seem very important, however, many NALC stewards have learned from experience how important they can be if the same violations are repeated over and over. Cease and desist language is naturally citable.

Most stewards will go through a period where they have met with local management and resolved grievances, yet management violates the same contractual provisions again and again. This is where previous cease and desist agreements are most valuable. An important goal of the DRP is to stop repetitive violations. That is why you should always include the phrase "cease and desist" as one of the elements of a "make whole" remedy request. Once the cease and desist language is agreed upon, it should be used as evidence that both parties have agreed a particular contract violation occurred in the past and should not occur again in the future.

For example, your installation may have been given a cease and desist order for a particular contract violation in a previous grievance settlement that is citable. This factor will help guide and strengthen your remedy request in future grievances for the same contract violation in your installation.

### **Show the Harm**

In order to get a meaningful remedy, even in cases where the contract was unquestionably violated, stewards should attempt to prove the extent of the harm suffered by the grievant to help justify the make whole remedy request in the grievance. A good way to demonstrate harm is to show a history of the same contractual violation where a "cease and desist" instruction was issued or an agreement was made at Formal Step A that the Postal Service would "cease and desist" from violating the contract. The more cease and desist orders or agreements you have as documentation in a grievance file, the more you have demonstrated the need for additional remedies to encourage future compliance with the contract provision you are currently grieving.

Another way to demonstrate harm is to show there are other elements involved in a letter carrier's particular circumstances that go beyond the fact that the contract was violated. For example, remember the letter carrier above who was not on the OTDL. Let's say that she is a single parent and needs to pick up a child at day care at a certain time or be charged extra for failing to do so. Make sure this fact is documented in the grievance file with a statement from the letter carrier and a receipt for the additional payment made. This should also be addressed in the union's disputed facts and contentions. If you do both of these things well (include documentation and an argument), the union will have a much better chance of persuading an arbitrator that the remedy you requested is a "make whole" remedy under the particular fact circumstances of the case.

Remember, it is important to be careful not to ask for too much when formulating your remedy. For example, if in your grievance there were four hours of overtime worked by non-OTDL letter carriers in

violation of the National Agreement, you should not be asking for four hours of overtime for 10 different letter carriers. Instead, you should determine which OTDL letter carriers were available to perform the work, and request to make them whole for their appropriate portion of the four hours involved. You should also ask that compensable time (time off with pay) be granted to the non-OTDL letter carriers for the portion of the four hours involved they were improperly forced to work overtime.

On the other hand, you will see in the next section that additional remedies are sometimes needed and advisable as an incentive for future compliance in cases where the documented history shows a pattern of repetitive violations.

### **Additional Compensatory Remedies**

There are times when additional remedies are needed to attain future compliance. However, it could be a mistake to refer to additional compensatory remedies as “punitive remedies,” “penalties,” or “punishing” management for violating the contract, no matter how egregious the violation. The idea of additional compensatory remedies is to ensure adherence, by management, to the National Agreement as well as previous grievance settlements. It does nothing for the union, the membership, or the sanctity of the National Agreement if we are continuously awarded cease and desist orders for violations but management continues to make the same violations again and again. In such an instance, the union would continue to ask for a cease and desist order, but an additional monetary remedy would be in order now to get management to stop violating the contract. As previously stated, an otherwise well-written and documented grievance can all be for naught if the wrong remedy is requested.

The NALC has been very successful in obtaining remedies in arbitration that fully compensate grievants and the union for contract violations. The secret is: in order to be successful, you have to build a foundation for your requested remedy, make the right arguments, and document the justification for the remedy you seek.

The union makes a strong case for additional compensatory remedies if it can demonstrate that the violations were deliberate, repeated, or egregious. Both the *JCAM* and national-level arbitration awards provide support for additional compensatory remedies in such situations.

The *JCAM*'s discussion of remedies for violating the opting provisions of Article 41.2.B is particularly helpful because it expresses the joint, agreed-upon position of both NALC and the Postal Service.

[Page 41-16](#) of the 2014 *JCAM* states:

**Remedies and Opting.** Where the record is clear that a PTF or city carrier assistant was the senior available employee exercising a preference on a qualifying vacancy, but was denied the opt in violation of Article 41.2.B.4, an appropriate remedy would be a “make whole” remedy in which the employee would be compensated for the difference between the number of hours actually worked and the number of hours he/she would have worked had the opt been properly awarded.

In those circumstances in which a PTF or city carrier assistant worked forty hours per week during the opting period (or forty-eight hours in the case of a six day opt), an instructional “cease and desist” resolution would be appropriate. This would also be an appropriate remedy in those circumstances in which a reserve letter carrier or an unassigned letter carrier was denied an opt in violation of Article 41.2.B.3.

In circumstances where the violation is egregious or deliberate or 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.

In other words, the *JCAM* specifically suggests and authorizes “compensatory” remedies beyond mere payment for lost hours and benefits in appropriate circumstances to encourage compliance with the National Agreement. However, the *JCAM* also cautions the parties to ensure remedies are corrective and not punitive.

Similarly, National Arbitrator Howard Gamser in [C-03200](#) discussed remedies for failure to distribute overtime equitably among full-time letter carriers on the OTDL. He held that in ordinary cases the appropriate make-whole remedy was simply to provide an equalizing make-up opportunity in the next immediate quarter. However, he went on to say that the Postal Service must pay employees deprived of “equitable opportunities” for the overtime hours they did not work if management’s failure to comply with its contractual obligations under Article 8.5.C.2 shows:

*“... a willful disregard or defiance of the contractual provision, a deliberate attempt to grant disparate or favorite treatment to an employee or group of employees, or caused a situation in which the equalizing opportunity could not be afforded within the next quarter.”*

Stewards should take this general principle and apply it to other areas of the contract when making their arguments for additional elements of a compensatory remedy request.

### **Seek Advice**

The appropriate remedy request in some cases is simple and straightforward. However, in other cases, the proper remedy request can raise complex issues. Whenever you have any questions about an appropriate remedy request, contact more experienced branch officers or your branch president for guidance.

Just remember this: The NALC negotiates with the Postal Service for a contract. Once agreed to, or imposed by an interest arbitrator, both parties are equally bound by the agreement. We have an absolute right to expect management to abide by the National Agreement!

## IX. Sample Forms for Stewards

This chapter of the *NALC Shop Steward's Guide* is dedicated to the various sample forms that have been created for you to use in your daily duties as a shop steward. These forms have been created by the NALC and they are referenced extensively throughout this guide. Each will be extremely helpful to you as you investigate, prepare, appeal, and resolve grievances.

Although these forms are not joint documents between the NALC and the USPS, they are proper for your use to help you document requests for information, requests for steward time, extensions of time limits, and any resolutions you may agree to at the Informal Step A level. The forms are included in this guide on the following pages and a brief description of each is below:

- **Request for Information:** This form is extremely valuable to you as a steward. You may use this form to request information from management when you are investigating a non-disciplinary dispute (requests for disciplinary disputes have a separate request form). This form documents the date of the request, the name and location of the person you are requesting the information from, what contractual or manual violation you are investigating, and the exact information you need or the individuals you need to interview. It even has a place for you to sign showing that you made the request and for the management representative to sign and date showing that they received the request.

The NALC recommends that all requests for information should always be documented in writing so management knows exactly what type of information you are requesting and also to prove that you requested the information, in the event that management refuses to provide it to you. After the form is completely filled out, always make a copy of it for your records and include it in your grievance file as a record of your request. If you are currently not using this form or a form similar to this one, then it is highly recommended you start using this form now for all of your requests for information.

- **Request for Information – Discipline:** Almost identical to the Request for Information form described above, the Request for Information – Discipline form also includes the “any and all” language that is needed to obtain any and all information that management relied upon to issue a disciplinary action to a letter carrier. This catch-all phrase is extremely important, because you may not know exactly what information to request from management to investigate and prepare a grievance that defends a notice of discipline.

By using this form, you will be able to document that you asked for everything that management utilized when they determined a certain disciplinary action was appropriate. Just fill the form out the same as the standard Request for Information form, but fill in the type of discipline (letter of warning, etc.), the name of the letter carrier that it was issued to, and the date the discipline was issued.

Again, always make a copy of this completed form for your records and include it in your grievance file as a record that you made your request. As with the standard Request for Information form, if you are currently not using this form or a form similar to this one to request information regarding disciplinary actions taken by management, then it is highly recommended you start using this form now.

- **Request for Steward Time:** Requesting steward time is important to ensure that you have the proper time to investigate and process grievances, but documenting that you made the

request is equally important to prove that you requested the time necessary to do your job. By using this form you can document when and who you submitted the steward time request to, why you need the time, how much time you need, who you may need to speak with, and when you need the time by. Like the Request for Information forms, the Request for Steward Time form has a space for you to sign and a space for the individual receiving the request to sign and date.

In the event that management refuses to give you the time that you requested or enough time to properly investigate and process your grievance, this completed form will be a helpful tool in any subsequent grievance concerning the denial of steward time or appeal to the next step of the DRP. Always make a copy of this completed form for your records and include it in your grievance file as a record that you made your request for steward time. If you need more steward time, then always fill out another Request for Steward Time form the same way you did the first one and give it to your supervisor. Just like the original Request for Steward Time form, include this form with your grievance file too.

- **Time Limits Extension:** At various times throughout the DRP you or the management representative may need an extension of the time limits for meeting on a grievance or for appealing it to the next step of the DRP. Extension of time limits are always a mutual agreement between the union and management and this form gives you the ability to document any such extension.

Filling out this entire form will show which part of the DRP you are agreeing to extend, when you are agreeing to extend the time limits until, who the grievance is being filed for, what the grievance concerns, and the grievance number you have associated with the grievance. This form also provides space for you and the management representative to sign and date the agreed upon extension of time limits. As described in the Informal Step A and Formal Step A chapters of this guide, the different types of time limits extensions for both steps are listed on this form for you to mark which step of the DRP you are agreeing to extend.

You should always make a copy of this time limit extension and include it with your grievance file as a record that the time limits for processing the grievance were extended. If additional extensions of time limits are agreed to by the parties at the Informal Step A or Formal Step A levels, then each extension should include another signed copy of this form detailing the additional extension. These additional extensions should be included as part of the grievance file as well.

- **Informal Step A Resolution Form:** Any resolution that you may reach with the Informal Step A management representative can be documented on this form. The form has a section to describe the issue that caused you to have the informal discussion as well as a section to write out the settlement that you and your management counterpart were able to agree to. Also, there is a space for you to both sign and date your newly documented settlement.

After this form has been completed, you should attach it to your grievance file and store it for future reference. All grievance settlements should always be in writing and this form gives you a professional-looking way to document them.

Each of these forms can be copied from this book for your day-to-day use or printed after clicking the green links if you are working from your computer. The following pages contain each of the forms described above, by order in which they were listed.





## National Association of Letter Carriers Request for Information

To: \_\_\_\_\_  
(Manager/Supervisor)

Date \_\_\_\_\_

\_\_\_\_\_  
(Station/Post Office)

Manager/Supervisor \_\_\_\_\_,

Pursuant to Articles 17 and 31 of the National Agreement, I am requesting the following information to investigate a grievance concerning a violation of \_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I'm also requesting time to interview the following individuals:

_____	_____
_____	_____
_____	_____

Your cooperation in this matter will be greatly appreciated. If you have any questions concerning this request, or if I may be of assistance to you in some other way, please feel free to contact me.

Sincerely,

\_\_\_\_\_  
Shop Steward  
NALC

Request  
received by: \_\_\_\_\_

Date: \_\_\_\_\_



## National Association of Letter Carriers Request for Information Discipline

To: \_\_\_\_\_  
(Manager/Supervisor)

Date \_\_\_\_\_

\_\_\_\_\_  
(Station/Post Office)

Manager/Supervisor \_\_\_\_\_,

Pursuant to Articles 17 and 31 of the National Agreement, I am requesting the following information to investigate a grievance concerning the \_\_\_\_\_ issued to \_\_\_\_\_ on \_\_\_\_\_:

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I am also requesting a copy of any and all documents, statements, records, reports, audio/video tapes, photographs, or other information learned, obtained, developed or relied upon by the Postal Service in the issuance of the above mentioned discipline.

I'm also requesting time to interview the following individuals:

_____	_____
_____	_____
_____	_____

Your cooperation in this matter will be greatly appreciated. If you have any questions concerning this request, or if I may be of assistance to you in some other way, please feel free to contact me.

Sincerely,

\_\_\_\_\_  
Shop Steward  
NALC

Request  
received by: \_\_\_\_\_

Date: \_\_\_\_\_



## National Association of Letter Carriers Request for Steward Time

To: \_\_\_\_\_  
(Manager/Supervisor)

Date \_\_\_\_\_

\_\_\_\_\_  
(Station/Post Office)

Manager/Supervisor \_\_\_\_\_,

Pursuant to Article 17 of the National Agreement, I am requesting the following steward time to investigate a grievance. I anticipate needing approximately \_\_\_\_\_ (hours/minutes) of steward time, which needs to be scheduled no later than \_\_\_\_\_ in order to ensure the timelines established in Article 15 are met.

In the event more steward time is needed, I will inform you as soon as possible.

Individuals to be interviewed:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Your cooperation in this matter will be greatly appreciated. If you have any questions concerning this request, or if I may be of assistance to you in some other way, please feel free to contact me.

Sincerely,

\_\_\_\_\_  
Shop Steward  
NALC

Request  
received by: \_\_\_\_\_

Date: \_\_\_\_\_



## National Association of Letter Carriers Time Limits Extension

The parties agree to extend the time limits established in Article 15 of the National Agreement for the following grievance(s) until this date \_\_\_\_\_.

Grievant(s) name: \_\_\_\_\_

This grievance concerns: \_\_\_\_\_

Local Grievance Number: \_\_\_\_\_

This agreement is for the purpose of extending:

The time until the Informal Step A meeting is held \_\_\_\_\_

The continuance of the Informal Step A meeting \_\_\_\_\_

The time for the appeal to Formal Step A \_\_\_\_\_

The time until the Formal Step A meeting is held \_\_\_\_\_

The continuance of the Formal Step A meeting \_\_\_\_\_

The time for the appeal to Step B \_\_\_\_\_

\_\_\_\_\_  
USPS Representative

\_\_\_\_\_  
NALC Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



## National Association of Letter Carriers Informal Step A Resolution

This Informal Step A discussion concerns:

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As a result of the Informal Step A discussion the parties agree to the following resolution of this grievance:

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\_\_\_\_\_  
USPS Representative

\_\_\_\_\_  
NALC Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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