

ACTIVIST

NALC

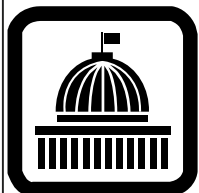
A NEWSLETTER FOR BRANCH LEADERS OF THE NATIONAL ASSOCIATION OF LETTER CARRIERS
VOL. 24, NO. 1 Winter 2011

The food drive is coming!

The NALC Stamp Out Hunger Food Drive is the outgrowth of a tradition of community service exhibited by members of the NALC over the last 122 years. Carriers, who go into neighborhoods in every town six days a week, have always been involved when something needed to be done. Whether it is collecting funds for the Muscular Dystrophy Association (MDA), watching over the elderly through the Carrier Alert Program, assisting victims of natural disasters, or rescuing victims of fires, crime, and other mishaps, letter carriers are the eyes, ears, and often life savers, in the community.

Historically, a number of branches had collected food for the needy as part of their community service effort. Discussions were held by the NALC, USPS, and AFL-CIO to explore a more coordinated effort. A pilot drive was held in October 1991. It proved so successful that the parties worked to take it nationwide.

Food banks and pantries suggested that late spring would be the best time for the drive, since most of their food donations are received over the Thanksgiving and Christmas holidays.



The new players on Capitol Hill. See page 4.



In addition, school breakfast and lunch programs are not available during the summer.

A revamped drive was organized for the second Saturday in May 1993, with the goal of at least one NALC local branch participating in each of the 50 states. The results were astounding. Over 11 million pounds of food were collected by over 220 union branches - a one day record in the United States. From Alaska to Florida and Maine to Hawaii letter carriers did double duty - delivering the mail and picking up dona-

(Continued on page 10)

Job offers under NRP

Imagine this scenario. You are an injured letter carrier and you are called to the manager's office with your shop steward. You arrive at the office to find a room full of managers from the District National Reassessment Process (NRP) Team. The NRP Team provides you with a limited duty job offer that you have concerns about. You tell the NRP Team that some of the duties on the job offer may be beyond your medical restrictions and you would like to discuss the job offer with your attending physician before you sign it. The NRP Team tells you that you have 15 minutes to sign the job offer or you will be sent home without pay.

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Non-Compliance . . .

A Study in Persistence

Non-Compliance is a term of art meaning the refusal to comply with an agreed-upon grievance settlement, or other settlement such as a memorandum. For our purposes here, we will focus on management's failure to adhere to an agreed upon grievance settlement. This can occur at any step of the grievance

Article 15 grievance is unenforceable and that the National Agreement does not provide for remedy, Arbitrator Dilts states:

In 'Management Contention' (Joint Exhibit 5) at Formal Step A, Management makes the assertion that: "Management further contends that the union

or any local Memorandum of Understanding not in conflict with this Agreement.

The clear language of Section 1 of Article 15 unambiguously states that 'compliance' matters are properly grievances....

The key argument in any non-compliance grievance is the above cited portion of Article 15, Section 1. All non-compliance grievances must include Article 15, Section 1.

Additional provisions in the National Agreement need to be considered as well. Article 15, Section 2 - Informal Step A (b) [see Box 1] allows the parties to resolve a grievance at Informal Step A, and once done the parties are normally bound by the settlement. While the cited language states that such a settlement shall not be precedent,

Box 1

Article 15. Section 2. Grievance Procedure—Steps Informal Step A

(b) In any such discussion the supervisor shall have authority to resolve the grievance. The steward or other Union representative likewise shall have authority to resolve the grievance in whole or in part. The local parties are not prohibited from using the Joint Step A Grievance Form to memorialize a resolution reached at an Informal Step A Meeting. No resolution reached as a result of such discussion shall be a precedent for any purpose.

procedure from Informal Step A to an arbitration award. In a Regional Arbitration Case, No. E01N-4E-C 07023009 (C-27011), Arbitrator David A. Dilts deals with the issue of an employee awarded back pay and management's failure to comply. In addition to the merits of the case before Arbitrator Dilts, the Postal Service argued the case was not arbitrable. Arbitrator Dilts defined management's argument on arbitrability as follows:

Management contends that the Union complaint is beyond the scope of the definition of a grievance under Section 1 of Article 15, and that nothing in the 2001 National Agreement provides authority for the findings and remedy requested by the Union.

In dispelling management's assertion both that a non-compliance -

is misquoting the contract and the ELM 436." From this point in the Formal A contentions of management, the Service's advocate at the hearing argued that there is no contractual authority for a remedy as requested by the Union in this matter, nor is the grievance for purposes of Article 15 of the 2001 National Agreement. However, the clear language of Article 15, at Section 1 states:

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 the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement

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that does not prevent the settlement agreement from being cited to enforce itself.

As an example, the parties at Informal A resolve a disciplinary letter of warning by reducing the time the letter is in force to six months. At the end of the six month period management refuses to expunge the letter of warning. Even though the Informal Step A settlement is not a precedent it may still be cited to enforce its own terms.

Additional language in the National Agreement provides guidance on the issue of compliance. Again, although the precedent language is present in Article 15, Section 2, Formal Step A [see Box 2 below], the parties are free to make the decision precedent setting if they so choose. Even if they do not, the settlement agreement may be cited to enforce its own terms. The National Agreement provisions for Step B contain no language concerning precedent because all cases at Step B are considered precedent setting unless the parties at Step B disclaim such in their joint decision. Article 15, Section 4.A.6 makes the decision of an arbitrator final and binding:

All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in

no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. Unless otherwise provided in this Article, all costs, fees, and expenses charged by an arbitrator will be shared equally by the parties.

is a common occurrence, you may consider filing a complaint with the National Labor Relations Board (NLRB). Information on how to file a complaint with the NLRB can be found on their website at www.nlr.gov.

In your bag of tricks, you should also carry a Supreme Court deci-

All non-compliance grievances must include Article 15, Section 1.

For the first time in Article 15, Section 4 the parties use the term “final and binding” in describing a resolution to a grievance. The lack of final and binding language in other sections of Article 15 does not imply that either party may refuse to recognize an agreed upon resolution, but does recognize that on occasion the decisions at lower steps of the grievance may be wrong or need clarification. Once a decision is rendered at the arbitration level, that decision is final and both parties are bound by that decision.

So what do you do when management refuses to abide by a settlement agreement? In addition to filing a grievance under Article 15 of the National Agreement, if this

decision, *Steelworkers v. Enterprise Corp.*, 363 U.S. 593 (1960). This is one of three cases that became known as the Steelworkers Trilogy. This particular case involved employees who were discharged while covered by a collective bargaining agreement. The arbitration was held after the collective bargaining agreement had expired so management refused to honor the arbitrators award putting the employees back to work. The court’s decision in this case reaffirmed the rights of arbitrators even after a collective bargaining agreement had expired. The court reemphasized the arbitrator’s right to make the final determination on grievances and limited the court’s powers on those matters.

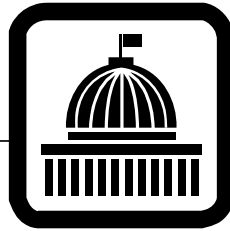
Arbitrator Jonathan S. Monat in Case No. F06N-4F-C 08137234 (C-28416) dealt with a failure by management to adhere to a Step B decision. Arbitrator Monat found that the Step B decision was enforceable, and management failed to enforce the parties’ settlement. In his award, Arbitrator Monat states:

(Continued on page 10)

Box 2

Article 15, Section 2, Formal A (e) Formal Step A

(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.



Who's who in the . . .

112th Congress

A new Congress brings new players in the all-important political arena. Five-day delivery and USPS overpayments for retiree healthcare costs are just two of the crucial issues confronting our union in 2011. It is crucially important for NALC activists to know exactly who holds seats on the Congressional committees and subcommittees with oversight of the Postal Service. The lists for both House and Senate committees and subcommittees

House Committee on Oversight and Government Reform

Republicans

Rep. Darrell E. Issa *Chairman*
(CA-49) <http://issa.house.gov>

Rep. Dan Burton (IN-05)

Rep. John L. Mica (FL-07)

Rep. Todd Platts (PA-19)

Rep. Michael Turner (OH-03)

Rep. Patrick T. McHenry (NC-10)

Rep. Jim Jordan (OH-04)

Rep. Jason Chaffetz (UT-03)

Rep. Connie Mack (FL-14)

Rep. Tim Walberg (MI-7)

Rep. James Lankford (OK-5)

Rep. Justin Amash (MI-3)

Rep. Ann Marie Buerkle (NY-25)

Dr. Paul Gosar (AZ-1)

Rep. Raul Labrador (ID-1)

Rep. Pat Meehan (PA-7)

Dr. Scott DesJarlais (TN-4)

Rep. Joe Walsh (IL-8)

Rep. Trey Gowdy (SC-4)

Rep. Dennis Ross (FL-12)

Rep. Frank Guinta (NH-1)

Rep. Blake Farenthold (TX-27)

Rep. Mike Kelly (PA-3)

Democrats

Rep. Elijah Cummings *Ranking Member* (MD-7)
<http://cummings.house.gov>

Rep. Edolphus Townes (NY-10)
<http://townes.house.gov>

Rep. Carolyn Maloney (NY-14)

Rep. Eleanor Holmes Norton (DC)

Rep. Dennis Kucinich (OH-10)

Rep. John Tierney (MA-6)

Rep. Wm. Lacy Clay (MO-1)

Rep. Stephen Lynch (MA-9)

Rep. Jim Cooper (TN-5)

Rep. Gerald Connolly (VA-11)

Rep. Mike Quigley (IL-5)

Rep. Danny Davis (IL-7)

Rep. Bruce Braley (IA-1)

Rep. Peter Welch (VT-At Large)

Rep. John Yarmuth (KY-3)

Rep. Christopher Murphy (CT-5)

Rep. Jackie Speier (CA-12)

Subcommittee on Federal Workforce, U.S. Postal Service and Labor Policy

Republicans

Rep. Dennis Ross *Chairman*
(FL-12)

Rep. Justin Amash *Vice Chair*
(MI-3)

Jim Jordan (OH-4)

Jason Chaffetz (UT-3)

Connie Mack (FL-14)

Tim Walberg (MI-7)

Trey Gowdy (SC-4)

Democrats

Stephen Lynch (MA-9) *Ranking Member*

Eleanor Holmes Norton (DC)

Gerald E. Connolly (VA-11)

Danny Davis (IL-7)

For information on the full committee, go to <http://oversight.house.gov/>. The website of an individual congressional representative can be found at <http://<lastname>.house.gov>. For fact sheets on issues and congressional bills important to letter carriers, check the NALC website (www.nalc.org) or contact your Regional Field Coordinator.


**BOOK
NOOK**

Better Union Meetings

None of us likes to waste time at a badly run meeting. The two books briefly discussed below can help both experienced branch leaders and newly inspired activists get more out of their monthly branch meetings.

Robert's Rules in Plain English. Doris P. Zimmerman. 2nd edition. Collins, 2005. \$7.99.

Using parliamentary procedure shouldn't overshadow carrying out your meeting's agenda. This practical guide provides clear explanations of the most common motions that a leader is likely to encounter when running a meeting. Examples demonstrate how the rules are used in practice. Summaries, outlines, charts and forms make the information easily accessible.

Parliamentary Procedure and Effective Meetings. Gene Davis and Larry Casey. Labor Education Service, University of Minnesota. 2001. \$15.

This workbook goes beyond mere parliamentary procedure to offer suggestions on handling real-world dilemmas such as establishing effective committees or shutting up the member who won't stop talking. It covers everything about union meetings, from setting an agenda to taking minutes, from why meetings fail to a checklist for meeting preparation. The material includes quizzes and discussion questions, so that you can assess your progress.

Both these books can be obtained from Union Communication Services: 1-800-321-2545; www.unionist.com

Senate Committee on Homeland Security and Governmental Affairs

Democrats

Joseph I. Lieberman *Chairman*
(ID) (CT)
<http://Lieberman.senate.gov>

Carl Levin (MI)

Daniel K. Akaka (HI)

Thomas R. Carper (DE)

Mark L. Pryor (AR)

Mary L. Landrieu (LA)

Claire McCaskill (MO)

Jon Tester (D-MT)

Mark Begich (D-AK)

Republicans

Susan M. Collins *Ranking Member* (ME)
<http://Collins.senate.gov>

Tom Coburn (OK)

Scott P. Brown (MA)

John McCain (AZ)

Ron Johnson (WI)

John Ensign (NV)

Rob Portman (OH)

Rand Paul (R-KY)

Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security

Democrats

Thomas R. Carper *Chairman* (D-DE)

Carl Levin (D-MI)

Daniel K. Akaka (D-HI)

Mark L. Pryor (D-AR)

Claire McCaskill (D-MO)

Mark Begich (D-AK)

Republicans

Scott P. Brown *Ranking Member* (R-MA)

Tom Coburn (R-OK)

John McCain (R-AZ)

Ron Johnson (R-WI)

Rob Portman (R-OH)

For more information on the committee, go to <http://hsgac.senate.gov/public/>. The website of an individual senator can be found at <http://<lastname>.senate.gov>. For fact sheets on issues and congressional bills important to letter carriers, check the NALC website (www.nalc.org) or contact your Regional Field Coordinator.

ATTENTION !!!

To ease the transition to the new *Activist* mailing list, this issue was sent out using both the old and new lists. Those included in the new list also received an insert to

return. If the insert applies to you, please fill it out and send it back. Contact Nancy Dysart (dysart@nalc.org) with any questions. Thanks for your help.

Job offers . . .

(Continued from page 1)

Variations on this contractual violation occur all too frequently. When it happens, it often creates an intolerable dilemma for the employee, who is faced with a bleak choice: immediately accept and sign the job offer and risk adverse health consequences or decline to immediately sign the job offer and risk adverse financial consequences.

This article will provide background on NRP and regulations regarding signing limited duty job offers, discuss issues that should be communicated and documented during the job offer process, and offer guidance on filing a successful grievance on the issue.

who had reached maximum medical improvement (MMI is another way of saying that there are permanent work restrictions) and those who had not reached MMI. Postal managers reviewed all current job offers to ensure:

- The job offer on file matched the current duties of the injured worker, and
- The job offer the injured worker performed was within their medical restrictions.

Phase 2

After Phase 1 was completed, the Postal Service implemented a second phase of NRP, in February 2007. Phase 2 dealt with letter carriers who had reached MMI. 2 types of job offers The Postal Service provides two types of job offers to in-

jury are considered permanent and/or the employee has reached maximum medical improvement.

The EL-505 has separate chapters on each type of assignment. Chapter 7 deals with limited duty assignments; Chapter 11 deals with rehabilitation assignments.

The Postal Service is directed four times in EL-505 Chapter 11 to provide a rehabilitation carrier time to review a job offer [see Box 1]. In addition, Chapter 11 provides that an injured letter carrier who refuses a rehabilitation assignment may continue to work in the original assignment until OWCP determines whether the job offer is suitable.

This two-week period is mirrored in Phase 2 of NRP. Postal Service Phase 2 documentation provides that if an employee declines to sign and accept a job offer immediately, the employee will be given at least two weeks to decide. Under NRP Phase 2, injured carriers were provided the opportunity to discuss a job offer with the union, their family and their attending physician.

On June 18, 2009, the NALC and Postal Service settled the national level dispute on NRP. Less than two weeks after the settlement, on July 1, 2009, the Postal Service notified the NALC of a third phase of NRP, Phase 2 limited duty.

Phase 3

Even though the original Phase 2 applied to employees who had reached MMI, and even though the third phase was titled "Phase 2 – limited duty," in practice the Postal Service applies Phase 3 to both employees who have not reached MMI and employees who have reached MMI.

Under the third phase, limited duty job offers extended to letter carriers are handled much the same as the scenario at the beginning of

BOX 1: EL-505 Chapter 11**EL-505 11.8**

The date that a response to the job offer is required (usually 2 weeks from date of receipt).

EL 505 11.8.c Sample Letter: Rehabilitation Program Job Offer

Please review the attached job description, indicate your decision by signing in the appropriate space below, and return this letter within 10 days following receipt.

EL-505 11.9.b.5

Inform the employee of the time required for receipt of acceptance or declination of job offer before follow up action is initiated (usually 2 weeks)

EL-505 11.10 Extending the Job Offer

Allow the employee 2 weeks to respond to the package.

Phase 1

The Postal Service introduced the NRP in three phases. In December 2006, the PS implemented Phase 1. Postal managers reviewed the medical restrictions of all injured-on-duty employees, who were categorized into those

injured letter carriers. The distinction is outlined in ELM 546.141:

Limited duty assignments are provided to employees during the recovery process when the effects of the injury are considered temporary. A rehabilitation assignment is provided when the effects of the in-

this article. Some local managers give the employee 15 minutes to sign a job offer; others require immediate signature, still others say by the end of the workday. The 3rd phase documentation that was provided to the NALC from the Postal Service is ambiguous. On the one hand, it states:

Review and discuss the proposed PS Form 2499 with the employee:

Elicit feedback from the employee regarding his or her ability to perform the duties identified or other necessary tasks which may be available.

Based on the feedback from the employee, make adjustments to the PS Form 2499 if necessary. Give the PS Form 2499 to the employee for signature reflecting acceptance or refusal.

On the other hand, the third phase documentation states:

If refused or if employee refuses to sign the Supervisor/Manager must:

*Inform the employee that unless the employee elects to accept **and/or** sign the modified assignment, the employee will not be allowed to work. (emphasis added)*

In reality, letter carriers are brought into a manager's office,

presented a job offer and told that they have 15 minutes (or variations) to accept or reject the job offer and if they refuse to sign, they will be sent home in a non-pay status. So what does an injured letter carrier do if this happens?

Document your concerns at the meeting

All limited duty job offers (as opposed to rehabilitation job offers) must be given to injured letter carriers on a PS Form 2499. [See Section III in Box 2 below.] Much like a letter carrier "consultation" in a route adjustment process, management is obligated to note any concerns an injured letter carrier may have about the job offer. If you can perform some of the duties on the job offer, let the manager know of your willingness to perform those duties and request that he document the duties you have issues with as well as your willingness to perform the work not at issue. Request that the manager document that you were only given 15 minutes to sign the job offer and that you would like to discuss the job offer with your treating physician before accepting it. If you would like a reasonable accommodation, ask the manager to write it down. If you are presently working a different job offer than the one presented, ask that you be allowed to continue it

until you have an opportunity to discuss the new job offer with your attending physician.

In addition, both the injured worker and the shop steward present at the NRP meeting where the job offer is presented should make careful notes of the meeting, including when, where, who was present, what was said by whom, etc.

Since the Postal Service provides very little time, the injured carrier is forced to make a precipitous decision. Refusal to sign the job offer as accepted should be a last resort. If an injured letter carrier strongly believes that some or all of the duties of the proposed job offer cannot be safely, medically performed, then and only then should he/she consider declining to immediately sign it. If a job offer is not signed, the injured carrier will probably be sent home and face the prospect of no pay and a considerable delay in payment of wage-loss compensation from OWCP, or even outright denial by OWCP.

The safest thing to do is accept the job "under protest," schedule an appointment with the treating physician as soon as possible, and file a grievance.

File a grievance

So what elements should be in the grievance?

The first thing to do is determine and document whether the grievant has reached MMI. This should be easy to do because Phase 1 of NRP requires the Postal Service to document whether MMI has been reached. Phase 1 also requires the Postal Service to create an NRP file on each individual. An Article 17/31 request should be made for a complete copy of the NRP file on the grievant.

(Continued on page 8)

BOX 2: PS Form 2499, Section III

Supervisor/manager should discuss this Offer of Modified Assignment (Limited Duty) and the duties of the assignment with the employee. If the employee has concerns (e.g., task, work location, or medical limitations) not addressed with this Offer of Modified Assignment (Limited Duty), the supervisor/manager should discuss the concerns with the employee and, if possible, suggest alternatives. If the employee raises additional medical issues such as a disability or seeks a reasonable accommodation, the supervisor/manager, must engage in an interactive discussion with the employee (See Handbook EL-307, "Reasonable Accommodation, An Interactive Process", for specific guidance). These discussions must be documented on page 2, Section IV of this form.

(Continued from page 7)

If the grievant has reached MMI, the grievance arguments are even more compelling than if not, because EL-505 Chapter 7 contains “Questions and Answers” at the end of the chapter that include the following: “*If medical documentation confirms that an employee has permanent physical restrictions, the employee must be officially reassigned, i.e., a Form 50, Notification of Personnel Action, is initiated to show a rehabilitation program classification (see Chapter 11, Rehabilitation Program).*” Thus, if the grievant has reached MMI, the Postal Service is prohibited from

offering a limited duty job. Such employees must be provided a rehabilitation job.

However, even if the grievant has not reached MMI, there are compelling arguments. Unlike the language in Chapter 11 of the EL-505 regarding two weeks for rehabilitation job offers, Chapter 7 is silent on affording an injured letter carrier a specified amount of time to sign a limited duty job. While there is no language in Chapter 7 that says “give the employee 2 weeks,” there is also no language that states, “do not allow the employee an opportunity to seek advice from their

attending physician prior to signing a job offer.”

Even though the four citations from Chapter 11 of the EL-505 listed in Box 1 on page 6 are related to rehabilitation employees (those who have reached MMI), this does not mean that they should not be included in a grievance for an injured carrier who has not reached MMI who was given 15 minutes to sign a job offer.

Phase 2 of NRP dealt with rehabilitation employees, yet in defense of their actions the Postal Service repeatedly argued in grievance files and at arbitration,

“the assignment should result in a tangible product and should not be a “make work” job.”

The flaw in this Postal Service argument is that this citation from EL-505 Section 7.1. Nowhere in chapter 11 is a tangible product or “make work” discussed. Nevertheless, the Postal Service used an EL-505 Chapter 7 citation as a fundamental basis in support of its NRP Phase 2 (MMI) program. The Postal Service thereby violates an arbitral precept that prohibits a party from blowing hot and cold on an issue as it suits its own interest. (See Arbitrator Snow, C-17270.)

ELM 546.611 establishes that work limitations are set by the employee’s treating physician or a physician selected by OWCP and afforded weight of medical evidence. Sections 545.32 and 545.33 of the ELM are also relevant. Although they do not provide a specific time period to sign a job offer, they imply a time period to consider the offer (see language in Box 3 to the left.)

The NALC’s position is also supported by the implementing regulations of the Federal Employ-

BOX 3: ELM 545.32 and 545.33

ELM 545.32 Suitable Work:

To be considered suitable by OWCP, the job offer must include the following:

- a. A description of the duties of the position.
- b. A description of the specific physical requirements of the position and any special demands of the workload or unusual working conditions.
- c. The organizational and geographical location of the job.
- d. The effective date of the position.
- e. The date the employee must accept or refuse the job offer.

Pay rate information for the offered position.

The job offer may be made verbally, as long as a written job offer is provided to the employee within 2 business days of the verbal job offer.

(emphasis added)

ELM 545.33 Employee Responsibility

The employee is responsible for the following:

- a. Ensuring that the treating physician specifies work limitations and provides them to the control office or control point.
 - b. Providing the treating physician with a description of any specific alternative positions offered.
 - c. Ensuring a prompt response from the treating physician with an opinion on whether and how soon the employee can be expected to return to work in any capacity, either an offered position or offered modified duties.
 - d. Seeking and accepting suitable work.
- (emphasis added)*

ees' Compensation Act, 20 CFR 10.507 (c) & (d) (see Box 4 below).

According to the language included in Box 4, there must be some reasonable period between the date a job offer is presented to an employee and the date by which the employee must decide to accept or refuse. The cited provisions establish that an employee has an obligation to provide a copy of a job offer to the attending physician for an opinion. In addition, they give the Postal Service the right to make a job offer verbally in advance of a written job offer, clearly establishing that job offers may be verbally accepted and work performed in advance of a signature by the employee.

Regulation support

In addition to the basic grievance argument, another compelling argument in these cases is that regulations require the Postal Service to give an employee a reasonable opportunity to seek opinion from the attending physician about a job offer prior to deciding whether to sign it accepted or declined.

Even if the Postal Service had the right to require an employee to sign a job offer immediately, or within 15 minutes, or other unreasonable period, it has no right to punish a declination to do so by effectively issuing an emergency suspension with no written notice. If an employee indicates a willingness to perform all or part of the work offered, ELM 546.142 requires the Postal Service to provide that work. If the Postal Service believes that the employee is violating a contractually and legally valid order to sign a job offer immediately, it has the usual Article 16 procedures at its disposal. It does not have the right to punish a declination to immediately sign a job offer, by placing the employee in a

non-duty, non-pay status. Any Postal Service argument that it is prohibited from allowing an employee to work limited duty without a signature on the job offer is belied by the regulations that permit the Postal Service to offer and provide work in advance (two days) of a written job offer. Obviously, there can be no employee signature on a verbal job offer.

Arbitration support

A Regional Arbitrator has weighed in on the 15 minute issue in case C-28787. In her decision, Arbitrator Cohen provided insightful language:

Management's decision to provide the Grievant with only 15 minutes to accept or reject an Offer of Modified Assignment was arbitrary and capricious.

Management's narrow view that the Grievant's signing of the 2499 was insignificant because it was just a temporary job offer

fails to take into consideration that his health and career are the issues at stake for him.

Arbitrator Cohen then discussed the difference between a permanent limited duty job and a temporary job and stated:

...management's inconsistent leap from a two-week acceptance period for a limited duty permanent job offer to a fifteen minute acceptance period for a temporary limited duty offer is not supported by any contractual language, handbook policy or usual practice.

and concluded with:

Management's inflexible requirement that the Grievant sign the 2499 within fifteen minutes appears to carelessly support the expediency of the NRP's process rather than its rational goal of compliance with, national laws, union contracts, Postal regula-

(Continued on page 10)

Box 4: Federal Employees' Compensation Act

CFR 10.507(c):

The employer must make any job offer in writing. However, the employer make a job offer verbally as long as it provides the job offer to the employee in writing within two business days of the verbal job offer.

20 CFR 10.507(d):

The offer must include a description of the duties of the position, the physical requirements of those duties, and the date by which the employee is either return to work or notify the employer of his decision to accept or refuse the job offer. The employer must send a complete copy of any job offer to OWCP when it is sent to the employee.

20 CFR 10.515(c):

If the employer has advised an employee in writing that specific alternative positions exist within the agency, the employee shall provide the description and physical requirements of such alternative positions to the attending physician and ask him or her to specify the limitations imposed by the injury. The employee is responsible for advising the employer immediately of these limitations. (emphasis added)

Food drive . . .*(Continued from page 1)*

tions. In 2010 NALC branches collected 77.1 million pounds of food for a cumulative total of one billion pounds - an awesome achievement.

This year, the USDA announced that more than 50 million Americans were food insecure. That's one in every six. For children, the figure is even worse: one in four. Food banks in the Feeding America network tell us that NALC's Stamp Out Hunger Food Drive has become



the single most important source of food that they receive.

Of course, work on the food drive starts long before the second Saturday in May. NALC members donate countless hours of time in addition to our designated food drive day. Al Friedman (Branch 2008, Clearwater FL) begins his work with Publix Grocers months in advance to provide plastic collection bags for the states of Florida and Georgia. As a direct result of their letter carrier days, retired members Larry Gunkel (Branch 201, Wichita KS) and Steve Riggs (Branch 458, Oklahoma City OK) now work with state-wide food banks. Region 1's Food Drive Coordinator, Paula Miller, works with the USPS and all

of the branches in California, Nevada, Hawaii, and Guam to ensure that every city participates and has the support needed to deliver for the needy on May 14.

All NALC branches are encouraged to participate in the Food Drive. Branches can register to receive a Food Drive Coordinator's Manual, which includes public service announcements, a food drive DVD, an opportunity to order post cards for customers announcing the drive, along with ideas to help make the Stamp Out Hunger Food Drive a success.

The NALC has received a number of accolades over the years, including two Presidential Certificates of Achievement, a special appreciation award in 2003 from America's Second Harvest food bank network, the annual Humanitarian of the Year award in 2003 from Bon Appetit/Food network, and the annual World Hunger/Chapin Award in 2004. These awards attest to the importance of the work we do every year on the 2nd Saturday in May.

For more information on the NALC Food Drive please contact Community Services Coordinator Linda Giordano at 202-662-2489 or giordano@nalc.org.

Index Available

An index for the Activist, from 1986-2010, is available in either hard copy or digital format. Please contact Nancy Dysart (202-662-2879 or dysart@nalc.org) if you would like a copy. Be sure to specify which format you prefer.

Job offers . . .*(Continued from page 9)*

tions, medical restrictions, and operation necessity.

Whenever local Postal Service management implements the third phase of NRP, letter carriers with on-the-job injuries should remain alert to the potential problem of an immediate signature requirement. Arbitrator Cohen got it right when she noted that an employee's health and career are the issues at stake for an employee. When the Postal Service presents a job offer to an injured worker and insists that he or she sign it immediately, the safest financial course is to sign it, grieve it, and quickly make an appointment with the attending physician to discuss the duties and physical requirements listed in the offer.

Shop stewards and other contract enforcers should also remain alert to this potential problem and grieve it whenever the problem surfaces, in accordance with the guidance provided in this article.

Non-compliance . . .*(Continued from page 3)*

The Step B team entered a cease-and-desist order because the Employer violated the Steward's rights. The Employer continued to violate these rights after the order was issued including egregious and persistent conduct in refusing to allow Mr. Pablo (shop steward) to investigate this matter on or off the clock. In sum, the Arbitrator finds that by clear and convincing the evidence that the Management of the Guam Post Office violated the cease-and-desist orders issued by the Step B team...

Remember, in cases of non-compliance be persistent. Management hopes you will give up the fight. When you do, they win.

Training Seminars & State Conventions

Listed below are the training sessions, educational seminars, and state conventions scheduled for April—July 2011. For more information, contact your business agent. Regions not listed have not reported any training scheduled for this time period.

Region 1—NBA Chris Jackson, (714) 750-2982
California, Hawaii, Nevada, Guam

April 28 Region 1 Training, San Diego CA
April 29-30 CSALC State Convention, San Diego CA
May 28 Region 1 Training, Honolulu HI
May 29-30 HI State Convention, Honolulu HI
June 23 Region 1 Training, Reno NV
June 24-25 NV State Convention, Reno NV

Region 2—NBA Paul Price, (360) 892-6545
Alaska, Utah, Idaho, Montana, Oregon, Washington
April 17-21 ID Shop Steward College, Pocatello, ID
April 22-24 ID Convention, Pocatello, ID
May 16-19 UT Shop Steward College, Heber, UT
May 17-19 UT Convention, Heber, UT
June 3-5 WA Convention, Pasco, WA
June 2-16 MT Shop Steward College, Helena, MT
Jun 17-19 MT Convention, Helena, MT

Region 4—NBA Roger Bledsoe, (501) 760-6566
Arizona, Arkansas, Colorado, Oklahoma, Wyoming
April 15-16 AZ State Convention, Yuma AZ
April 29-30 OK State Convention, Lawton, OK
May 20-21 CO State Convention, Pueblo CO
May 20-21 WY State Convention, Cheyenne, WY
June 10-11 AR State Convention, Hot Springs, AR

Region 5—NBA Dan Pittman, (314) 872-0227
Missouri, Iowa, Nebraska, Kansas
April 15-17 NE State Convention, Fremont NE
April 29-30 KS State Convention, Kansas City KS
May 1-3 IA State Convention, Clinton IA
June 3-5 MO State Convention, Lake of the Ozarks MO

Region 7—NBA Chris Wittenburg, (612) 378-3035
Minnesota, North Dakota, South Dakota, Wisconsin
April 8-9 SD State Convention, Sioux Falls, SD
April 15-16 ND State Convention, Grand Forks, ND
April 25-29 Regional Training Seminar, Minneapolis, MN
May 21-22 WI State Training Seminar, Waupaca, WI

Region 8—NBA Pet Moss (256) 828-8205
Alabama, Louisiana, Mississippi, Tennessee
April 17-19 Mississippi State Convention, Biloxi MS
June 1-4 Louisiana State Convention, Houma LA
June 17-18 Tennessee State Convention Memphis TN
June 23-25 Alabama State Convention Birmingham AL

Region 9—NBA Judy Willoughby, (954) 964-2116
Florida, Georgia, North Carolina, South Carolina
May 19 SC Stewards Training, Charleston, SC
May 20-21 SC State Convention, Charleston, SC
June 11-12 GA State Training Seminar, Atlanta, GA
June 17-18 NC State Convention, Asheville, NC
July 28-29 FL State Convention, St. Petersburg, FL
July 29-30 FL Training Seminar, St. Petersburg, FL

Region 10—NBA Kathy Baldwin, (281) 540-5627
New Mexico, Texas
June 9-11 NM State Convention, Albuquerque, NM
June 15-17 TX 106th State Convention, Tyler, TX

Region 11—NBA Dan Toth, (440) 282-4340
Upstate New York, Ohio
April 12-14 NY State Congressional Reception/Rap Session, Washington DC
July 6-8 NY State Convention, Saratoga Springs, NY
July 22-24 OH State Convention, Cincinnati, OH

Region 12—NBA Bill Lucini, (215) 824-4826
Pennsylvania, Central and South New Jersey
June 26-28 NJ State Convention, Atlantic City, NJ

Region 13—NBA Tim Dowdy, (757) 934-1013
Delaware, Maryland, Virginia, West Virginia, Washington DC
June 5-7 Branch Officer Training and Regional Rap Session, Morgantown, WV

Region 14—NBA John Casciano, (617) 363-9299
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont
April 9-10 VT State Convention, South Burlington, VT
April 10 RI State Convention, Cranston, RI
April 16-17 Region 14 Training & Rap Session, Providence, RI
May 1-2 CT State Convention, New Haven, CT
May 21-22 ME State Convention, Portland, ME
June 3-5 NH State Convention, Attitash, NH

ACTIVIST

**A NEWSLETTER FOR BRANCH LEADERS
NATIONAL ASSOCIATION OF LETTER CARRIERS
100 Indiana Ave. NW
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USPS BY THE NUMBERS

Operations

	Number	Change from SPLY*
FY 2011 - January		
Total mail volume YTD (Millions of pieces)	60, 102	0.9%
Mail volume by class (YTD in millions)		
First-Class	26,605	-5.2%
Periodicals	2,393	-1.4%
Standard (bulk mail)	30,132	7.0%
Packages	245	1.4%
Shipping Services	536	2.5%
Workhours (YTD in thousands)		
City Delivery	135,268	-1.7%
Mail Processing	76,722	-4.5%
Rural Delivery	58,573	0.7%
Customer Service/Retail	52,038	-5.8%
Other	69,066	-1.3%
Total Workhours	391,667	-2.4%

*SPLY=Same Period Last Year

Finances

FY 2011 through January (millions)

Operating Revenue	\$23,344	-2.5%
Controllable Operating Expenses	\$23,096	0.4%
Controllable Operating Income	\$248	
PSRHBFB Expenses	\$1,833	
Workers' Comp adjustments	-\$856	
Net operating loss	-\$729	

Employment

FY 2011 —Pay Period 2

	Number	Change from SPLY*
City carrier employment	189,746	-4.2%
Full Time	170,216	-3.7%
PT Regular	800	-7.5%
PTF	18,730	-8.3%
Transitional	6,403	2.7%
MOU Transitional	7,567	5.4%

City carriers per delivery supervisor 17.5

Career USPS employment	575,482	-3.6%
Non-career employment	92,545	1.6%