Vol. 31, No. 2 Spring 2024
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NALC Activist

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

Continuing to prepare for local negotiations

As NALC continues pursuing a National Agreement that rewards all letter carriers for their hard work serving the American public, NALC branches should also continue their preparations for local negotiations. That way they will be ready once a new National Agreement is finalized and the subsequent period for local negotiations begins.

In the Winter 2024 edition of the *NALC Activist*, we discussed what branch leaders can do to form Local Memorandum of Understanding (LMOU) committees and negotiating teams, as well as gather information needed to develop local bargaining strategies. This issue will cover the drafting of bargaining proposals and advance preparation and ideas for when it comes time to meet with management.

Drafting contract proposals

There are two important factors when it comes to drafting your proposals: the tactics you will use and the actual language you will propose.

Tactically, you will need to consider how the bargaining process works. In many ways, it's like other types of negotiations, whether you are buying (or selling) a car or home, or haggling over the price of an item at a yard sale. There are the initial proposals (the list price and a much lower counteroffer), a concessionary phase where each side may give a little ground (there may be several rounds of this) and finally the part where the parties reach an agreement. With this in mind, it is wise to develop an initial opening position that aims high, an intermediate proposal that is more in line with what you hope to achieve, and a bottom-line proposal that represents the minimum you would be willing to accept.

Continued on page 2

A sign welcoming carriers to one of the first S&DCs

The Sorting and Delivery Center memos M-01990 and M-01991

As the Postal Service moves forward with its Delivering for America Plan, the 10-year initiative aimed at reorganizing the processing, transportation, retail and delivery networks, city letter carriers may find themselves being affected by implementation of a Sorting and Delivery Center (S&DC). An S&DC is created when the Postal Service moves letter carriers from their current office into a larger facility. While there are several different methods USPS uses to move carriers from one location to another, the most common one occurs when all city delivery routes, and all city letter carrier craft employees, are moved from one installation into an S&DC. When this happens, the movement is governed by two separate agreements that were negotiated by the parties at the national level.

The first agreement is the Memorandum of Understanding (MOU) Re: Movement of City Letter Carrier Assignments from an Independent Installation to a Sorting and Delivery Center. This MOU is M-01990 in NALC's Materials Reference System (MRS), which is available on the NALC website at nalc.org/mrs. This MOU spells out the specific rules and regulations dealing with items such as seniority and relative standing; bid assignments; and route evaluations and adjustments. The process in M-01990 is like the Delivery Unit Optimization (DUO) process, which has been happening for several years. Under DUO agreements, like M-01990, all the routes and carriers were moved from one installation to another. A copy of the MOU Re: Delivery Unit Optimization can be found on page 12-24 of the 2022 USPS-NALC *Joint Contract Administration Manual (JCAM)*.

Where the DUO MOU and M-01990 differ is how city carrier assistants (CCAs)

Continued on page 4

INSIDE THIS ISSUE

Preparing for local negotiations (continued)

Continued from page 1

You must also give some serious thought to what management will try to achieve. They may have already tipped you off to this by things they have said previously in grievance or labor-management meetings or in past rounds of local negotiations. Just like any other negotiation, the more you know about your counterpart's goals and objectives, the better prepared you will be for the negotiations that take place. So, ask yourself, what do they want? Then think about whether this would be acceptable to you and whether you could concede this to them in order to achieve what you want. If it is unacceptable to you, then what facts or information are you going to need to counter their proposal and what arguments are you going to make against it?

The actual contract language you propose is another important factor when drafting proposals. The best contract language should be clear and concise, easy to understand and definite in the way it applies in certain circumstances. Vague language that can be interpreted in different ways may lead to the provision being misunderstood or misapplied.

Choose your words carefully. Words like "can," "may" and "should" imply a choice and allow for discretion, where words like "shall," "must" and "will" are directive and leave no room for alternatives.

Developing talking points

Once you have drafted your proposals, you should develop talking points for each one. You want to prepare persuasive arguments for each issue or proposal you discuss. It's not a good idea to just "wing it"; things can get fuzzy in the heat of negotiations, so you want to have some notes written down to help you stay on track. For each issue, you should identify the problem and explain how your proposal would address it—how it would work. You will want to give some specific examples so there is no misunderstanding of the intent of the proposal.

Show how your proposal would benefit both parties and ask management if it has any questions about what you've said. You will need to determine what documentation you will need to support each proposal (e.g., seniority rosters, leave charts, workhour/workload reports, prior LMOUs) and prepare copies to give to management during negotiations.

Notify management of intent to bargain

Once the National Agreement is finalized, either through negotiation and ratification or through the decision of an arbitrator, a time frame for a 30-day local negotiations period will be determined. This generally takes place a couple of months after the National Agreement is ratified or awarded by an arbitrator. Prior to that local negotiations period, branch representatives should notify local management as soon as possible if they intend to conduct local negotiations. An early notice will enable you to begin negotiations promptly when the negotiations period begins.

Once the negotiations period opens, it's best to get your discussions started as soon as possible. You might think you will be done in a few bargaining sessions but soon realize you need much more time but it's too late. Sometimes bargaining meetings get postponed; other times you may get bogged down on one or two important items. You don't want to find yourselves rushing to finish negotiations before the bargaining period runs out.

It is strongly recommended that you mail a written notice to the installation head and keep a copy. It is a good idea to notify management even if they have already notified the branch of its own intention to conduct local negotiations.

You should also notify management even if you only intend to extend your current LMOU through the term of the new contract. In that case, you should discuss the matter with management and execute a written extension signed by both parties. It is recommended that as part of this document, you indicate what minor editorial changes (for example, changes in dates) the parties have agreed to in order to bring the old LMOU up to date.

Ground rules

Your first meeting with management should be to establish the ground rules for the bargaining sessions. If possible, this meeting should occur well before the actual implementation period to allow you and your negotiating team time to make any arrangements they may need to make to be available for the sessions. If not done in advance, ground rules should be the first order of business at your first negotiating session with management. Setting the ground rules before bargaining actually begins will help clarify how the parties expect to conduct negotiations and prevent later disputes over the process.

Meeting with management

You should present and explain your initial proposal for each item at your first meeting. If management is not willing to

agree to your initial proposal on an item, you should ask management if they have a counterproposal to offer. If they make a counterproposal, you should consider what they offer within your negotiating committee before your next meeting. If they do not offer a counterproposal, this fact should be documented by your note-taker. This process should be repeated at each meeting as you submit alternate proposals during the 30-day negotiating period.

If management is unwilling to agree to a proposal you offer, you should listen carefully to their reasoning. Sometimes you can figure out a way to achieve what you seek and take care of their concerns with a subtle change to your proposal.

It is advisable to begin by discussing items that are normally easier to reach agreement on to set a good tone before trying to tackle more difficult items. When you come to agreement on an item, both parties should initial copies of the proposal with the agreed-upon language.

If you need time to consider a proposal within your negotiating committee during a meeting, you should call a caucus and go to a private place to discuss the matter with your bargaining team. Caucuses also can be used as a cooling-off period if the negotiations become heated.

Article 30 of the National Agreement lists 22 items that are subject to discussion in local negotiations. It is fine to submit proposals for items that are outside the 22 items, but if management is not interested in discussing such items, do not waste a lot of time or energy in pressing these matters.

If you come to the point where it becomes obvious that you are getting nowhere on a proposal for one of the items that fall within the scope of the 22 items listed in Article 30 of the National Agreement, it is a good idea to table the item and come back to it later in the meeting or wait until your next meeting. Just be sure to ask management if they have a counterproposal, as discussed above.

Do not give up on the prospect of reaching agreement. Just keep on negotiating until the 30-day local negotiations period has ended. Oftentimes, agreements can be reached before the end of the 30-day negotiating period. This is especially true for the most difficult items, even though it appears that you are at a total impasse and the end of the negotiating period is drawing near.

What if the union and management can't agree?

An impasse occurs when the parties fail to reach agreement on a subject in local negotiations. Depending on the situation, either the union or management may decide to "impasse" one or more negotiating items, by appealing the dispute to a higher level for settlement discussions. If those discussions are not successful, the matter may be taken before a neutral arbitrator, who hears evidence from both sides and decides what the language of the disputed provision will be.

Further guidance and training

Creating or modifying an LMOU that best serves the needs of our members can be a very challenging task for local NALC representatives. To further assist branch officers in achieving such an LMOU, once a National Agreement is negotiated and ratified, or awarded by an arbitrator, NALC will provide the updated NALC Local Negotiations Guide to the regional national business agent (NBA) offices for distribution to the branches.

Additionally, prior to the beginning of the local negotiations period, NBA offices will conduct specialized training on all aspects of local negotiations. While this training and guidance will be of the utmost importance to branch representatives in local negotiations, planning ahead using the information in this and previous *NALC Activist* articles will put you ahead of the game.

USPS

BY THE NUMBERS

USPS Operations First Quarter, FY 2024	Number	Chg. from SPLY*
Total mail volume year-to-date (Millions of pieces)	30,503	-9.2%
Mail volume by class (YTD in millions)		
First Class	11,929	-5.6%
Marketing mail	15,522	-13.5%
Shipping and packages	2,035	5.1%
Periodicals	731	-8.6%
International	92	-12.4%

USPS Operations First Quarter, FY 2024 (millions)	Number	Chg. from SPLY*
Operating revenue	$21,614	0.5%
Operating expenses	$23,805	4.9%
Controllable operating income	$472	152.4%
Workers' comp adjustments	$1,603	356.7%
Net operating income	$(2,072)	101.6%

Employment 2024 - PP5	Number	Chg. from SPLY*
City carrier employment	176,496	3.4%
Full time	165,706	1.5%
PT regular	370	-1.3%
PTF	10,420	47.7%
City carrier assistant 1	32,099	-6.4%
City carrier assistant 2	12	-25.0%
City carriers per delivery supervisor	7.6	-10.5%
Career USPS employment	508,151	2.4%
Non-career USPS employment	111,348	-6.6%

*SPLY=Same Period Last Year
This information compiled by the NALC Research Department from USPS reports.

M-01990 and M-01991 (continued)

Continued from page 1

are addressed and the way routes are evaluated and adjusted. The DUO agreement is silent on the issue of CCAs, since this classification on non-career letter carrier did not exist when this MOU was signed. Since all letter carriers are being moved when an S&DC is created under M-01990, the parties had to make modifications to the relative standing rules found in Appendix B of the 2019 National Agreement. As stated in Appendix B, when a CCA voluntarily reassigns from one installation to another on a voluntary basis, their relative standing begins when they start in the new office. Since CCAs moved to an S&DC under M-01990 are being reassigned involuntarily, the national parties had to ensure that CCAs did not suffer a loss of relative standing when they were moved. Under M-01990, the relative standing is calculated as though the CCA worked in the S&DC beginning the same date as when they started in their current installation. This guarantees that no CCA will suffer a loss of relative standing solely due to being moved into an S&DC. Keep in mind that CCAs who voluntarily reassign outside of the provisions of M-01990 must still begin a new period of relative standing when they start in the new work location. The relative standing list at the S&DC is established by placing each CCA, whether they worked in the S&DC office previously or in an office that was moved, on the list based on their relative standing date.

New letter carrier case at S&DC

Another area where the DUO agreement and M-01990 differ is how the routes being moved into an S&DC are evaluated before the implementation date and the method for evaluating and adjusting them after the movement. Under the DUO agreement, there were no provisions to address the change in travel time when routes were moved from the current location to the new office. Also, this MOU did not have any provisions requiring routes to be evaluated and adjusted after they were moved. When assignments were moved under DUO, letter carriers assigned to the full-time routes had methods for ensuring their routes were adjusted to as close to eight hours as possible. These carriers had the right to request a special route inspection in accordance with Section 271.g of the *Handbook M-39, Management of Delivery Services*. Although this was an option, the route still had to qualify for a special inspection based on the criteria of Section 271.g. The other way in which the routes that were moved could be adjusted was when the Postal Service selected the delivery unit or zone for a full route count and inspection under Chapter 2 of the *M-39* and Chapter 9 of the *Handbook M-41, City Delivery Carriers Duties and Responsibilities*. If neither option was available, city letter carriers could be forced to work on overburdened routes or have consistent undertime if the route was less than eight hours. Under M-01991, all the routes being moved will be evaluated twice. First, the parties at the national level will estimate the change in travel time for each route being relocated. This is done by looking at the travel time from the S&DC to the first delivery on the route and time it takes to drive from the last delivery to the S&DC. The parties do not evaluate the travel time within the route since the line of travel should not be changed solely due to an assignment being moved to an S&DC. This evaluation is then sent to the local parties, the branch president and postmaster, so that they or their designees can meet with the regular carrier on each route and explain the change in travel time. If no regular is available, the parties can mutually agree to talk to a replacement carrier. After the S&DC is implemented, all the routes in the new installation will be evaluated and adjusted.

The second MOU that deals with situations where all the routes and letter carriers are moved from their installation into an S&DC is the MOU Re: Local Memorandums of Understanding(s) due to the Establishment of a Sorting and Delivery Center (M-01991). This agreement is like the DUO agreement found on page 12-25 of the 2022 *JCAM*, which deals with LMOU issues. Under M-01991, the local parties are required to discuss the LMOU in both the S&DC, or gaining installation, and the office being moved, which is the losing installation. During these discussions, the local parties are required to discuss differences between the LMOUs in the gaining and losing installation. When multiple NALC branches represent letter carriers in an S&DC, each branch should be involved in these discussions. If the local parties are unable to resolve the LMOU issues, the items in dispute are forwarded to the national business agent (NBA) who represents the S&DC for discussions with the Postal Service at the area level. If the NBA and area representatives cannot resolve the LMOU, it is sent to the national parties for discussion and resolution. While M-01991 allows for changes to the LMOU, the local agreement is not being opened under the provisions of Article 30 of the National Agreement. Local negotiations in accordance with Article 30 are only conducted following the completion of a new collective bargaining agreement.

Whenever an S&DC is being created, representatives from NALC Headquarters meet with the affected regions and branches to explain the process and answer questions about how the contractual provisions like M-01990 and M-01991 are applied. These meetings take place both virtually and in person as the process moves forward. The creation of an S&DC is a major event in the lives of the letter carriers being impacted, so fully understanding which provision applies will help activists at the local level keep their members informed.

Dual track of the grievance procedure and MSPB filings for veterans who are preference eligible

The Veterans' Preference Act guarantees "preference eligible" employees certain special rights concerning their job security. However, you should first know that not every veteran qualifies as a "preference eligible" employee. Federal law defines a "preference eligible" veteran in Title 5 United States Code of Federal Regulations (CFR) Section 2108 as well as Section 483 of *Handbook EL-312, Employment and Placement*. These rights, which originally applied only to war veterans, provided specific notice and appeal rights in matters of employee discipline. These rights have been subsequently expanded to protect other employees with veterans' preference, provided they have served one year of current, continuous service. A break in service of one workday during the year disqualifies an employee from these rights. This means city carrier assistants (CCAs) would not be protected unless they worked at least 365 days without a break in service.

A preference eligible employee may file both a grievance and a U.S. Merit Systems 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 can be found in Article 16, Section 9 of the National Agreement. The modifications to this language over the years became necessary because changes to Article 15 have made the grievance-arbitration procedure significantly faster than MSPB procedures. The contract language, which benefits letter carriers, provides the following:

> **16.9 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.*

This 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 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.

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. 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 an issue in arbitration whether any Postal Service back pay 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. Normally, while awaiting adjudication of an adverse action grievance, Postal Service employees are required to make reasonable efforts to obtain other employment in order to recover back pay in the event the adverse action is overturned. However, the instructions on PS Form 8038, Employee Statement to Recover Back Pay clarify that a preference eligible veteran who appeals the action through MSPB is not required to seek other employment.

Where a grievant has an Equal Employment Opportunity Commission (EEOC) complaint pending asserting the same claim, Article 16.9 does not apply and thus does not bar the arbitration of a grievance. 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, Jan. 1, 1997, C-16650).

Over the years there have been numerous national-level arbitration awards concerning the provisions of Article 16.9. Most of these awards are no longer applicable, since they concerned contract language which has now been changed. Note that Block 12 of the USPS-NALC Joint Step A Grievance Form (PS Form 8190) specifically asks whether there is a companion MSPB appeal. Be sure to fill it out accurately. Depending upon where the grievance is in the procedure, the branch officers, Step B team or national business agent should be notified if there are any changes. National business agents (NBAs) need to have the most current information when making arbitration scheduling decisions.

Under the MSPB procedures, preference-eligible employees facing a suspension of more than 14 days or a removal 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. If this happens, grievances should be filed on the letter of proposed discipline. **Do not wait for the decision letter to file a grievance.** NALC and USPS have agreed that grievances concerning proposed removal actions which are subject to the 30-day notification period in Article 16.5 will be held at the Formal Step A level of the grievance procedure until the decision letter is issued.

The *Joint Contract Administration Manual (JCAM)* provides on page 15-6 the following explanation of the special procedures to handle disciplinary grievances filed by 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 and Appendix B, 3.*

Continued on page 6

Veterans (continued)

Continued from page 5

Other Provisions, Section E. Article 16 – Discipline Procedure, 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 level 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.

Preference-eligible veterans also receive an additional, informal benefit with respect to emergency suspensions imposed pursuant to Article 16, Section 7 of the National Agreement, which provides in pertinent part:

16.7. Emergency Procedure

An employee may be immediately placed on an off-duty status (without pay) by the Employer...The employee shall remain on the rolls (non-pay status) until disposition of the case has been had.

As previously indicated, preference-eligible veterans are entitled to 30 days' advance notice for adverse actions, including suspensions of more than 14 days. Due to the immediate nature of a suspension in accordance with Article 16, Section 7, no advance notice is possible. Without 30 days' advance written notice, it would be a violation of the Veterans' Preference Act to retain a preference eligible veteran in a non-pay status longer than 14 days under this provision. Therefore, management usually returns veterans' preference eligible employees to a pay status after 14 days in a non-pay status.

If a preference eligible veteran is suspended under Article 16, Section 7 without 30 days' advance notice and is not returned to a pay status before 14 days have elapsed, the veteran should file an MSPB appeal in addition to a grievance. As stated earlier, while a letter carrier may file both a grievance and an MSPB appeal protesting an adverse action, the employee must choose which appeal to pursue by the date the grievance is scheduled for arbitration. Information on appeal rights and time limits for filing an MSPB appeal are found in Sections 1201.21 and 1201.22 of Title 5 of the CFR:

1201.21 Notice of appeal rights.

When an agency issues a decision notice to an employee on a matter that is appealable to the Board, the agency must provide the employee with the following:

(a) Notice of the time limits for appealing to the Board, the requirements of § 1201.22(c), and the address of the appropriate Board office for filing the appeal;

(b) A copy, or access to a copy, of the Board's regulations;

(c) A copy, or access to a copy, of the MSPB appeal form available at the Board's Web site (http://www.mspb.gov/), and

(d) Notice of any right the employee has to file a grievance or seek corrective action under subchapters II and III of 5 U.S.C. chapter 12, including:

(1) Whether the election of any applicable grievance procedure will result in waiver of the employee's right to file an appeal with the Board;

(2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board;

(3) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.155 of this part; and

(4) The effect of any election under 5 U.S.C. 7121(g), including the effect that seeking corrective action under subchapters II and III of 5 U.S.C. chapter 12 will have on the employee's appeal rights before the Board.

(e) Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission or to grieve allegations of unlawful discrimination, consistent with the provisions of 5 U.S.C. 7121(d) and 29 CFR 1614.301 and 1614.302.

(f) The name or title and contact information for the agency official to whom the Board should send the Acknowledgment Order and copy of the appeal in the event the employee files an appeal with the Board. Contact information should include the official's mailing address, email address, telephone and fax numbers.

[As amended at 77 FR 62364, Oct. 12, 2012; 78 FR 21518, Apr. 11, 2013]

1201.22 Filing an appeal and responses to appeals.

(a) Place of filing. Appeals, and responses to those appeals, must be filed with the appropriate Board regional or field office. See § 1201.4(d) of this part.

(b) Time of filing. (1) Except as provided in paragraph (b)(2) of this section, an appeal must be filed no later than 30 days after the effective date, if any, of the action being appealed, or 30 days after the date of the appellant's receipt of the agency's decision, whichever is later.

NALC does not represent letter carriers in MSPB proceedings. Furthermore, letter carriers considering the appeal of an adverse action to the MSPB should be aware that many of the procedural protections provided by the National Agreement do not apply to MSPB proceedings. 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 there has been no disciplinary action initiated against the employee for a period of two years. This contractual protection does not apply to MSPB proceedings. 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 that have different procedural rules (United States Supreme Court; United States Postal Service v. Gregory, 534 U.S. 1, 122 s. ct. 431 (2001)). C18158-Arbitrator Shyam Das-H7C-3R-C5691 (1997) National Award.

The Postal Service has incorporated this veterans' appeal process into Chapter 6 of the *Employee and Labor Relations Manual (ELM)*, which states:

> ***666.23 Adverse Action Appeals to the Merit Systems Protection Board***
>
> *All employees eligible for veterans' preference and certain other nonbargaining unit employees with one year of current continuous service in the same or similar position may appeal removals, reductions in grade or pay, suspensions of more than 14 days, or furloughs of 30 days or less. The appeal must be made to the Merit Systems Protection Board (MSPB) within 30 days of the effective date of the action. Preference eligible employees may also appeal reduction-in-force (RIF) actions to the MSPB.*

Preference-eligible veterans, in accordance with the above, have certain additional appeal rights through the MSPB. There is a lot of information out there to assist with representing an employee who has veterans' preference. Not only do they have certain appeal rights, but preference-eligible veterans are guaranteed additional rights and protections regarding job security as well.

The *NALC Veterans Guide*, the NALC publication *Defenses to Discipline*, the National Agreement and the *Joint Contract and Administration Manual (JCAM)* provide helpful information when dealing with any of the above situations.

On the NALC website, the *NALC Veterans Guide* can be found in the "NALC Veterans Group" section under "Community Service." *Defenses to Discipline*, the National Agreement and the *JCAM* can all be found in the "Resources" section under "Workplace Issues." For additional information or to ask questions, please reach out to your local branch officers or call the NBA's office.

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National-level arbitration awards

The purpose of this column is to give some insights into national-level arbitration awards. The goal is to not only educate union activists as to the outcome of a particular dispute and the precedent set, but also to explore the NALC's history and get a glimpse into the ways arbitrators explore questions of contract interpretation. Understanding how arbitrators analyze a dispute is an important aspect of any grievance handler. From the shop steward at the Informal A step to the advocate at arbitration, knowing what the arbitrator might consider will help when preparing evidence and arguments to be as persuasive as possible.

First, let's take a deep dive into a decision by National Arbitrator Neil N. Bernstein in case number H1N-5G-C 14964, dated March 11, 1987, (C-06858 in the NALC's Materials Reference System Index and Summaries). Portions of this decision are also contained on page 5-1 of the 2022 *Joint Contract Administration Manual (JCAM)*.

The original grievance in this case was filed over a dispute regarding the wearing of union buttons by letter carriers while in uniform in the South San Francisco facility in April of 1983. This dispute started when NALC Branch 1280 started a campaign to promote the branch. As a part of this effort, the branch purchased and distributed to its members 1,000 buttons displaying the branch logo.

A couple of months after the buttons were purchased, the postmaster saw a shop steward wearing the button while in uniform and issued instructions that prohibited the wearing of the union button. The carrier complied with the instruction; however, Branch 1280 filed a grievance protesting the postmaster's directive. This grievance was eventually appealed to the national level in accordance with Article 15, Section 4.D and Arbitrator Bernstein was appointed to adjudicate the case.

Arbitrator Bernstein's decision, like any decision, recounted the history of the dispute and the facts as they are known. He also explained the arguments made by both the NALC and the Postal Service. The NALC primarily relied on Article 5 of the National Agreement. The language of Article 5 remains the same today as it did in 1983, except to explicitly apply the article to city carrier assistant (CCA) employees when the classification was created in 2013. The language reads:

> *The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.*

The NALC argued that Article 5 incorporates all applicable federal and state statutes into the National Agreement and that violations "inconsistent with its obligations under law," including violations of the National Labor Relations Act (NLRA) were therefore grievable and arbitrators have the contractual authority to enforce them.

Under this basic premise, the union goes into the specifics of the NLRA, arguing that the wearing of union buttons is a protected activity that cannot be prohibited by the Postal Service in the absence of special circumstances. The union pointed out that USPS had allowed employees to wear other buttons and insignia on their uniforms and that the prohibition of the union button was discriminatory.

The Postal Service cited Article 3 when making its arguments. Like Article 5, the language in Article 3 has not changed since 1983 except to include CCAs. Article 3, Section E specifically provides the employer with the exclusive right, subject to the other provisions of the agreement and consistent with applicable laws and regulations, to prescribe a uniform dress to be worn by letter carriers and other designated employees. The Postal Service also relied on Section 583.32 of *the Employee and Relations Manual (ELM)*, which at the time stated:

> ***583.32 Other Insignia.***
>
> *Other insignia may not be worn with the uniform. Exception: An award emblem for safe driving or superior accomplishment, or other officially authorized insignia, may be worn on the cap (left side). Employees not required to wear caps may wear the insignia on the lapel of the jacket.*

The current language regarding letter carrier uniforms is found in Section 933 of the *ELM*.

The Postal Service argued that the NALC did not ask management to approve an exception as described in Section 583.32 of the *ELM*; therefore, the buttons were prohibited. Another important argument made by USPS related to the NLRA. They argued that the arbitrator did not have the authority to enforce NLRA provisions, and that only the National Labor Relations Board (NLRB), which enforces the NLRA, could do so. In other words, the Postal Service argued the grievance procedure was not a suitable avenue to dispute an alleged violation of the NLRA. If USPS had prevailed on this argument, it would have had serious impacts on the NALC far beyond this particular dispute regarding the union buttons.

The first component of Arbitrator Bernstein's analysis was to review the provisions that relate to uniforms and found that the Postal Service's position was strong. Between the language in Article 3 and the relevant *ELM* provision, management has a general authority to determine how letter carriers dress.

Fortunately, Arbitrator Bernstein said that this is not the whole story. His next analysis revolved around Article 3, and more directly the provisions in Article 5 provisions that incorporate the Postal Service's obligations under the law into the National Agreement. After reviewing Article 5, the arbitrator stated:

> *This language appears curious, because the service is barred from taking any actions that violate the Agreement or "its obligations under the law", even if Article 5 were totally absent. The only purpose the Article 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. Moreover, the specific reference to the National Labor Relations Act in the text of Article 5 is persuasive evidence that the parties were especially interested in utilizing the grievance and arbitration procedure spelled out in Article 15 to enforce the Service's NLRB commitments.*
>
> *In other words, if the Service has taken action which violated the National Labor Relations Act, it thereby violated Article 5. Consequently, the parties have given the Arbitrator jurisdiction to interpret and apply the National Labor Relations Act.*

In this analysis, the arbitrator is essentially going back in time and trying to understand why the parties drafted the language the way they did. What was the point of the parties explaining that the Service had to follow applicable laws? Whether or not the Postal Service and the NALC agree to such a provision, laws apply to the Postal Service and it must comply. The NLRB, for example, would be able to enforce its provisions even if Articles 3 and 5 did not exist. The logical conclusion is that the parties included this language so alleged violations could be disputed through the grievance-arbitration procedure contained in Article 15 of the National Agreement.

The arbitrator next looked at the history of employees wearing union buttons and whether this is considered protected activity

Continued on page 17

Resources: Materials Reference System

The life of a grievance enforcer is difficult and demanding. The NALC Materials Reference System or MRS has been developed to provide information and guidance for grievance activities relating to administration of the National Agreement. The MRS is a prime resource for all NALC representatives who enforce and administer the National Agreement. It contains a collection of contract administration materials assembled by the NALC Headquarters' Contract Administration Unit. Currently, the MRS contains summaries of many important national level materials, including Step 4 settlements, grievances, national level pre-arbitration settlements, memorandums, USPS policy statements, NALC publications and more.

The MRS was first published over twenty-five years ago and has been revised and updated many times since. It summarizes years of experience by NALC officers, national business agents, staff and arbitration advocates. The MRS should be used as a supplement to the *Joint Contract Administration Manual (JCAM),* which is authoritative and controlling in the case of any ambiguities or contradictions.

The MRS will never be complete, as many new settlements are signed every year. We expect it to continuously grow and improve as time goes on. In August 2023, the *MRS Index* received the latest update and a makeover with a new look and format. The new and improved version has been rolled out after a lot of hard work by all involved and allows the NALC to continuously update the publication and provide an easier search experience. This means that documents are frequently being added to be readily available for shop stewards, officers and NALC representatives.

If we take a walk down memory lane, many grievance enforcers had to create a reference library of hard paper copies of documents to effectively process grievances. Today, much of our processing is done online. The MRS gives the convenience of researching and finding helpful documents right at our fingertips.

The MRS is still located under the "Workplace Issues" tab and "Resources" section easily accessible from the main page of the website. This tab will display the most recent version of the guide. To find material and navigate around the document, it is usually simplest to go to the table of contents and click on the desired section, or you can simply search the document with a specific word, term or phrase by hitting Control + F.

The document text contains thousands of imbedded hyperlinks. The imbedded hyperlinks within the manual are blue in color and will take you to an external document in PDF format such as a national-level settlement or article in an NALC publication, for example: C-10635 or M-01476. Simply click on any link to go to the desired section or document.

The written text of this publication is more than three hundred pages in length. If necessary, it can be printed out, in whole or in part. However, it has been published as an electronic document since its real value is that it contains imbedded hyperlinks to assist navigating around the document and to access the referenced arbitration awards, national-level settlements, court cases and NALC publications totaling more than 10,000 pages. As often as the MRS is updated, if you print it, you will not have the latest information available in the hard copy format.

NALC contract enforcers should review, use and submit these source documents when enforcing the contract. The *MRS Index* summaries are not substitutes for copies of the actual Step 4 Settlement, settlements, arbitration decisions or other original source documents, which can be easily printed. Users should note that the materials collected in the MRS **do not necessarily reflect NALC's position.** To resolve doubts concerning the current applicability of any item, contact your NALC national business agent.

Using the MRS will allow shop stewards to make proper arguments and have better formulated case files. There are individual sections on topics such as discipline, the grievance procedure, handbooks and manuals, leave, letter carrier duties, overtime and more. The MRS, along with the *JCAM*, will give you everything you may need for grievance handling that is user-friendly. It is our hope that NALC representatives will put this material to good use, employing it to provide all of the nation's letter carriers with the best possible representation.

You can help us improve future editions by bringing any suggestions you have to the attention of the NALC Contract Administration Unit by calling NALC HQ at 202-393-4695, and ask to speak with someone in that department. The suggestions can be as simple as reporting typographical errors or broken hyperlinks. However, we would especially welcome your suggestions for additional material to include or sections that can be improved, clarified or expanded.

Records management

"I do solemnly promise on my honor that I will faithfully attend the meetings of the Branch, observe and faithfully execute the laws of the National Association of Letter Carriers and the By-Laws of this Branch. I will perform, to the best of my ability the duties of the office to which I have been elected, guard all property placed in my charge, and at the expiration of my term of office turn the same over to my successor. I will do everything in my power to promote the welfare of the National Association of Letter Carriers and its members."—*NALC Constitution*, Form of Installation Ceremony

When new branch leaders take office, they usually have a plan ready to take on all their required duties. But as Mike Tyson once said, "Everyone has a plan until they get punched in the face." The overwhelming mountain of day-to-day fires that union leaders must put out is steep. In the daily grind of defense of the contract, some of your other duties may fall by the wayside. One of those duties is managing branch records. Managing branch records is not what most people consider fun, but it is vitally important and can be achieved by carving out a small piece of time on a yearly, monthly, weekly and daily basis.

What is a record?

A record is all materials created or received, and then maintained for the official business of an office or organization. Records are unique to the *specific* body that creates them.

Most of the time, one would think of pieces of paper as a record. However, if you think in broader terms, digital items can also be records that need to be managed and maintained. There are some records that must be maintained forever, some that can be discarded after a period of time, and some that you can dispose of immediately. And just because something has "NALC" on it, does not always make it your responsibility. Knowing all of the rules is tough for anyone. That is why any good recordkeeper has a retention schedule.

Retention schedule

NALC has a retention schedule to help you and your branch manage your records. The retention schedule is a guide that has the specific amount of time that the branch needs to keep specific records. Following this retention schedule can make recordkeeping easier and keep you out of legal trouble.

To help your branch create a schedue, on pages 13-14 is the "Retention schedule for branch records," reprinted from the *Branch Financial Guide*.

Records management is important... For practical reasons

There are three main practical reasons for good records management: to be sure you have the documents you are legally required to keep and need to do your job, to be sure you can find the documents you need to do your job, and to make your union life easier over the long run.

For Philadelphia, PA Branch 157, finding documents, especially grievances, was getting harder and harder to find and store. "Our grievance storage system was overloaded. The number of grievances became untenable for the storage system we had," said Branch President Tim Mulvenna. The branch leadership decided they needed a system that could hold all their grievances. This was a few years back, before cloud storage was affordable and in everyday use. "We decided on a wall-mounted sliding filing system, like the kind you would see in a doctor's office," Mulvenna said. They received three estimates for the installation of the system and then presented the issue to the membership at a branch meeting. The membership voted "yes" on

Ten tips for good records management

1. **Follow the retention schedule**—The NALC retention schedule gives you an easy-to-follow list for the branch's records. If the type of record is on the retention schedule, keep it for the minimum amount of time listed—this will keep you out of trouble. If the document is not on the retention schedule, use your common sense—evaluate how/if you will use the document in the future, and what's the best way to keep it.
2. **Branches are responsible for branch records**—Don't rely on NALC Headquarters, the NBA's office, or anyone else to keep your branch documents. Your branch should have an easy-to-follow system to be able to access your records at a moment's notice. The branches bylaws, local memorandums of understanding (LMOUs), meeting minutes, selected financial statements, officers' bonds and historical items are all classes of records that should be kept permanently.
3. **All records belong to the branch**—Branch records do not belong to the person who produced them. Storing them in the trunk of your car, garage or home is a terrible idea. You have a responsibility to turn them over to your successor. They do not belong to you!
4. **When dealing with financial records for Department of Labor (DOL) filings, err on the side of caution**—If you are not sure if you need it, keep it for five years after the date of filing to be on the safe side. Be sure to record all income and expenses. Remember that income would include money raised for the Letter Carrier Political Fund, the Muscular Dystrophy Association and other charities, and expenses would cover the transfer of those funds to NALC Headquarters. Make sure meeting minutes record approval of payments and purchases. These rules apply to records of branches that have merged with yours.
5. **Organize your files, both paper and computer**—The branch needs to choose the appropriate format to store your records. If you choose a computer system, have a plan before you scan. Think about how you will organize your digital files before starting. If you choose to stay with paper, you need to know where all of your paperwork is and which filing cabinet it is in. The best practice is to keep an inventory of all records stored, whether in a box, in the cloud, or on a flash drive. You must be able to find things. The required LM forms ask if your records are kept at the mailing address listed. The branch is responsible for records no matter where they are stored.

a new system. "We let them understand that these weren't my files, they were the membership and the branch's files," the branch president said.

For union reasons

The aforementioned oath that all union leaders take requires them to "guard all property placed in my charge, and at the expiration of my term of office to turn the same over to my successor." Think about when you replaced someone in a branch position. Were their files and records nice and neat? Did they have a system that only they could understand? Was it just a bunch of papers in a few dusty boxes that had no rhyme or reason? Treat the records in your charge in the same way you would want them handed over to you.

If you are unsure of the rules, check the retention schedule. If you are still unsure after that, check with the secretary-treasurer's office. "I am available to talk you through any questions you have about branch records. You can always call my office for help," said Nicole Rhine, our national secretary-treasurer. Branch records are branch property, just like desks and computers. Treat them as such. Keeping branch records in the trunk of your car or your garage because it is convenient does not make it right by the branch.

York, PA Branch 509 decided to electronically store its files. "Our grievance filing system wasn't as efficient as it could have been or should have been," said Branch President Kayla Quinlan. "It seemed like each person who came behind the next would slightly alter the filing naming system, which made it harder to find things when we needed them." Twenty-minute searches add up and slow down the entire process. There is never enough time in the day for a union leader, and searching for mislabeled files can make it worse.

"We looked into a cloud storage system. Our branch is not huge, so finances were a big issue. We were able to find a system that was big enough to hold our data without breaking the bank," Quinlan said. "We were able to start a filing system that the stewards could use, and all the files would be recorded using a universal filing code. It has saved the stewards time in their busy day. Electronic files provide a record of which union official accessed the document and when. It has been a lifesaver for the branch."


Branch 157 sliding file cabinets

For legal reasons

No one is above the law, including union leaders. There are strict rules and regulations that each branch must follow. Follow the retention schedule! The Labor-Management Reporting and Disclosure Act (LMRDA) has specific requirements as to what records the branch is legally required to keep.

The Department of Labor (DOL) has its own rules and offers best practices. DOL's Electronic Recordkeeping Compliance Tip can be found at dol.gov/sites/dolgov/files/olms/regs/compliance/catips/comptipelecrecordkeeping_2019.pdf

Good recordkeeping also follows Internal Revenue Service statutes and Federal

Continued on page 12

6. **Saving something electronically is only the first step**—Unlike with paper, you must take steps on a regular basis to ensure you can access your computer files. A migration strategy is needed to avoid obsolescence due to format and software changes. Having multiple formats and devices can make access for everyone in the branch more complicated. If opting for cloud storage, know the details of what your provider does or doesn't do. Opting for electronic storage, the DOL imposes clear responsibilities. Documents must be indexed and easy to retrieve. Documents must be legible, whether on the screen or printed out. Software and hardware must be maintained to ensure access for the entire period of storage.
7. **Computer records can degrade over time**—Thumb drives do not last forever. Know the limitations of your storage media. If you are using a thumb drive for storage, start with a new one. Store your electronic databases carefully. If it is not automatic, remember to back up your electronic files and keep your backup records up to date.
8. **Identify and protect the branch's vital records**—Keep a paper copy of all important records. Paper is always accessible, and good quality paper has a long shelf life, if it is stored properly. Keep a set of vital records away from the branch office and set up a system to keep them up to date. This would be a duplicate set used as a backup in case of some type of disaster. Vital records include banking information, insurance policies, membership rosters, emergency contact lists and financial statements.
9. **Protect your members' privacy**—When handling, storing and disposing of branch records, be aware of Personally Identifiable Information (PII). PII includes street addresses, email addresses, phone numbers, Social Security numbers and credit card numbers.
10. **It's OK to throw things out**—Keeping everything, whether digitally or in hard copy, is not records management, it's hoarding. Make sure to dispose of materials appropriately. Throw away routine items. Shred or burn completely financial documents or anything with PII. Destroy old hard drives, CDs and thumb drives—don't just throw them out. Cloud storage raises other issues. Did the provider make backup copies? How do they destroy those backups?

Remember—The goal is to turn the branch's records over to the next person in better shape than you received them in.

Records management (continued)

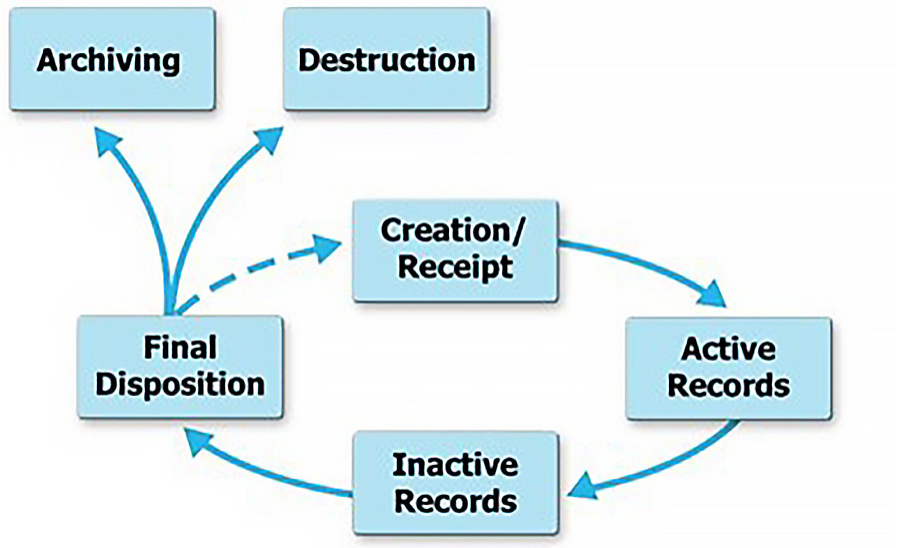
Continued from page 11

Election Commission regulations. There could be fines for you or the branch, and possible jail time, if you do not follow the rules of records management.

Managing disaster

On March 22, 2020, Branch 9 in Minneapolis, MN, members had the unthinkable happen to them when a fire broke out at their branch hall. Thankfully, nobody was hurt, but everything inside was lost. Samantha Hartwig, now a regional workers' compensation assistant, was sworn in as president the day after the fire. It was a real learning curve for her and the branch. Luckily, they kept copies of their financial records in a safe deposit box at their bank. Every year, the branch trustees made an office inventory list and a video inventory. It really helped when they were dealing with the insurance company. "We had a Norman Rockwell painting hanging in the hall. Having a video inventory proved to the insurance company that we had the painting," said Hartwig.

The treasurer worked with their accountants to rebuild their financial records and has now switched over to a digital version of QuickBooks. All the grievances were lost in the filing cabinets. With the help of postal management, they were able to rebuild their grievance files. Now, they scan their grievances and save them on the cloud. "The thing that breaks your heart was the historical items we lost," Hartwig said. "Our branch hall has been around since 1893. We cannot go back in time and fix things, but we can make sure that we are prepared, as best as we can, if we have a disaster in the future."



Sense of pride

Not all records are paperwork. The historic materials need to be taken care of just as much.Omaha, NE Branch 5 Vice President Andrea Malena had always wondered about a bookcase in her branch hall that was piled up with all kinds of things. "It was an eyesore for anyone that walked into our office," she said. After taking a records management class at the NALC Leadership Academy, she decided to tackle the bookshelf as a project. "It was a no-go zone," Malena said. "I found many hidden gems in that bookcase—a duplicate of our charter, a convention pin in mint condition from when Omaha hosted the national convention in 1915, and an invitation to the second annual ball from Dec. 31, 1891, are a few of the items I found."

They had old uniforms and letter carriers' caps. "I brought up my project at our monthly meeting and told the members what I found. I asked for funds for a display case, a few shadow boxes, and a mannequin to display the uniform," Malena said, adding that the branch hall now has a display right when you walk in. "It brings a sense of pride and knowing that we belong to something bigger than ourselves. Preserving our history was a wise investment for the branch."

Records cycle

The records cycle starts with the creation or receipt of a record. The record is active if the branch is using it. The record becomes inactive after it is not being actively used and is being retained for the specific amount of time that that record needs to be held. You then must decide what becomes of the record between the choice of archiving the record, like in key-case grievances or arbitration awards the branch receives, or destroying the record. Remember, when destroying records with Personal Identifiable Information (PII), extra measures must be taken to protect personal privacy and it cannot simply be thrown out in the garbage.

The record cycle and records management only works when it is a routine system or process that the branch continues. Remember the oath you made and your duty to upkeep it.


The fire at Branch 9's office


Branch 9 members attempt to recover files from the fire site.

RETENTION SCHEDULE FOR BRANCH RECORDS

Type of Record	Retention Period	Notes
General Branch Files		
By-Laws and Amendments	Permanent	
Local Memoranda of Understanding	Permanent	
Minutes of Meetings (branch and executive board)	Permanent	LMRDA [29 USC 436] requires that minutes be retained for 5 years, since they record authorization for branch expenditures. NALC recommends that they be kept permanently, for historical and research purposes.
Branch history documentation	Permanent (if the branch has a historical collection)	Includes such things as photographs, videos, buttons, uniform items, posters, and news clippings of significant branch events.
Branch publications	Permanent	Retain an annual back-up of website (more frequently if major changes are made).
Subject Files	3 years	Includes community activities, political information and other items monitored by branch.
Election Records	1 year	LMRDA [29 USC 481(e)] requires that election records and all related materials be kept for 1 year
Correspondence		
General	3 years	Recommendation for routine correspondence; important items should be kept as long as needed.
Membership	3 years	Recommendation for routine correspondence; important items should be kept as long as needed.
Financial	5 years	LMRDA [29 USC 436] requires that records supporting DOL filings (LM-1, LM-2, LM-3 and LM-4) be kept for 5 years after year of filing.
Membership		
Dues Deduction forms	3 years	
Data re: dues deduction	Permanent	NALC policy: Keep a list of all members who sign a Form 1187; include the "date of delivery to employer" from each form. Keep a list of all members who sign a Form 1189; include the date each form was signed. If applicable, note date dues deductions stop.

RETENTION SCHEDULE FOR BRANCH RECORDS (continued)

Type of Record	Retention Period	Notes
Grievances and Related Records		
EEO Case Files [full files]	5 years*	CAU policy.
Moving Papers only	7 years*	CAU policy.
Grievance Case Files [full files]	5 years*	CAU policy.
Moving Papers only	7 years*	CAU policy.
Merit System Protection Board Case Files [full files]	5 years*	CAU policy.
Moving Papers only	7 years*	CAU policy.
Workers' Compensation Case Files	5 years*	If branch handles workers compensation cases for its members.
	*after case is completed	
Financial Records		
Branch books	Permanent	Includes cash journals, equipment records, etc.
Financial Statements and Reports	Permanent	Annual reports after satisfying LMRDA requirement that records supporting DOL filings (LM-1, LM-2, LM-3 and LM-4) be kept for 5 years after year of filing.
Officers' bonds	Permanent	
Direct-Pay Per Capita Tax Rosters	5 years	LMRDA [29 USC 436] requires that records supporting DOL filings (LM-1, LM-2, LM-3 and LM-4) be kept for 5 years after year of filing.
Dues Reimbursement Listings	5 years	LMRDA [29 USC 436] requires that records supporting DOL filings (LM-1, LM-2, LM-3 and LM-4) be kept for 5 years after year of filing.
IRS returns and forms	5 years	Federal tax law mandates that tax records be kept at least 3 years [29 CFR 1600-1]. Since some IRS records support DOL filings, all should be kept for the 5 years required under LMRDA.
Labor Department Reports	5 years	LMRDA [29 USC 436] requires that filings and their supporting documentation be kept for 5 years after year of filing.
Members' dues payment records	5 years	LMRDA [29 USC 436] requires that supporting documentation for DOL filings be kept for 5 years after year of filing.

Stewards' corner

The rights and responsibilities of a steward during postal interviews—Some do's and don'ts

Management bears the burden of proof in any disciplinary action against city letter carriers. The NALC steward is the first line of defense in ensuring that a carrier's due process rights are not violated. Representing letter carriers by participating in investigative interviews (II), pre-disciplinary interviews (PDI), or questioning by postal inspectors and Office of Inspector General (OIG) agents is one of the most important duties a steward has. A steward's ability to know when to speak or take action and when not to can be just as important as the letter carrier's participation in the interview itself. When participating in these interviews, there are some dos and don'ts to remember in order to successfully represent letter carriers.

How it starts

It starts with ensuring that letter carriers are aware of their rights when questioned or interviewed by local managers, postal inspectors and OIG agents. The most common rights afforded to letter carriers during an investigative interview are "Weingarten rights." Weingarten rights, also referred to as the "Weingarten rule," were established in the Supreme Court ruling *NLRB v. J. Weingarten Inc.* in 1975. The ruling provides that carriers have the right to union representation during an investigatory interview in which the employee reasonably believes may lead to discipline. Stewards should make carriers aware that before any interview they believe may lead to discipline starts, they should read the following statement to the person they are meeting with: *"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."* Keep in mind, there is no obligation or contractual provision for management to inform letter carriers of their Weingarten rights or to provide union representation unless the letter carrier requests it. That's why it's important that carriers are aware of these rights before the need for Weingarten representation arises.

It is also important to know that not all occasions on which management brings a letter carrier into the office are subject to the *Weingarten* rule. An investigatory interview is usually defined as questioning by management to search for facts that will be used to determine an employee's guilt or decide whether or not to impose discipline. The *Weingarten* rule does not apply to other types of meetings between management and carriers, such as fitness-for-duty physical examinations and "official discussions." Often, management will attempt to gather information from carriers under the guise of an "official discussion." This tactic, when applied by management, is usually for the purpose of preventing the steward or other union representative from being present during an investigative interview and providing representation. Management will sometimes tell the carrier this a "job discussion" so union representation is not necessary. Once in the office, they will ask questions regarding a carrier's performance, or an event that they might feel warrants discipline. Any information gathered in an "official discussion" that management includes as an element of an employee's past record should be grieved under Article 16.2 (Discussion). In addition to the Article 16.2 argument under this scenario, if the carrier invoked their Weingarten rights during the discussion and was denied representation, then stewards should add the violation of Article 17.3 (Rights of Stewards) into their issue statement. These potential violations may be grieved individually or together even if no disciplinary action was taken by management. If disciplinary action was taken, then they may be included as part of the grievance challenging the issuance of discipline under Article 16.

Under the Weingarten rule, management is required to inform a union representative as to the subject matter of the investigation prior to the interview beginning. This affords the steward a basic understanding of what the meeting is about and helps them to prepare for the meeting itself. A steward should get as much advanced information from management as possible in order to provide the best advice to the letter carrier during the pre-interview consultation and the interview itself. Don't be reluctant to ask the person conducting the interview for information prior to consulting with the carrier.

Pre-interview consultation

Once notified of a carrier's need for representation during an investigatory interview, stewards should have a pre-interview consultation with the letter carrier. This right to consult with a union representative before management begins their questioning is also afforded under the Weingarten rule, as well as M-01092, when it involves postal inspectors. M-01092 was the result of a decision in 1992 by the D.C. Circuit Court (*US Postal Service v. NLRB),* which established that pre-interview consultations extended to interrogation by postal inspectors. Postal inspectors and OIG agents are representatives of management, and therefore Weingarten rights apply in the same way when interviews are conducted by these individuals.

The pre-interview consultation is your opportunity to prepare the letter carrier for what is to come. Explain to the letter carrier that they should answer questions to the best of their ability and give direct answers to direct questions. In other words, don't give more than what is asked for unless advised to do so. The pre-interview consultation is also the steward's opportunity to explain to the letter carrier their role in the interview, as well as gather background information from the letter carrier on their side of the story. Often, management will suggest or attempt to limit or deny the letter carrier's right to pre-interview consultations. Don't allow management to determine whether or

Continued on page 16

Stewards' corner

Postal interviews (continued)

Continued from page 15

not a pre-interview consultation is needed or the duration of such consultation. The consultation is controlled by the steward or other union representative. When dealing with management's attempted control of the pre-interview consultation, stewards should refer to Step 4, H1C-3W-C 44345, May 9, 1985, (M-00303), which explains that an employee must be given reasonable time to consult with their steward and such reasonable time may not be measured by a predetermined factor.. Any such attempt by management to limit or deny a pre-interview consultation should be grieved under Article 17.3 (Rights of Stewards).

The interview begins

Stewards are not just passive observers. An active role is required and should not be denied by the person conducting the interview. This right is also governed under the Weingarten rule and Article 17.3. During an investigative interview, stewards serve as advisors to the carrier being interviewed as well as a witness to what occurred in the meeting itself. The steward may ask the person conducting the interview to clarify questions, give advice to carriers on how to answer questions (within limits), and provide information to the person conducting the interview, such as contractual language or relevant facts pertaining to the subject. A steward should object to any questions that are badgering, intimidating, or offensive.

Caution should be taken when interjecting during the interview. The steward should remain civil and not interfere with the interviewer's legitimate attempt to conduct an investigation. Being overzealous in objecting, disruptive, or hostile may result in the steward's removal from the interview and adversely affect the representation of the letter carrier. Know when to act and when to show reservation. Also, the steward should be cautious in advising a carrier as to how to answer a question. Don't tell the carrier what to say, but rather advise on how to say it so that the interviewer understands (clarification) and never advise or encourage the carrier to lie.

Stewards ask questions, too. A good example of this would be if the interviewer asks: "You have had three unexcused absences where you requested sick leave in the last six months. Why have you exceeded three unexcused absences in a six-month period?" The steward in this case should interject and ask the interviewer what regulation they are referring to. "Is there a regulation or contract provision that limits an employee to three unexcused absences in six months?" Or the steward may ask: "How many times can a carrier be sick in six months before disciplinary action is taken?" In this scenario, the steward is establishing that management is unfairly attempting to limit the carriers use of sick leave and employs the threat of discipline as a control measure. By asking such questions, the steward has now made this part of the record of the interview should it need to be referenced in grievance procedure.

Stewards should also be prepared to react to management going off subject with their questioning during the interview. An example might be that management has informed the steward that the topic of the interview is the carrier's alleged violation of safety rules and regulations while operating a postal vehicle. Management asks a series of questions relating to the alleged safety violation that occurred the day before. After realizing the carrier is not providing the responses that support their suspicions, the question is asked: "Were you drinking at Joe's Bar last Friday night?" The steward in this case should interject and ask the interviewer what the relevance is to this question in regard to vehicle safety. If management uses this type of approach, then a steward may insist on another private consultation with the carrier to discuss the new subject introduced by management during the interview. This allows the steward to inform management that the question may be inappropriate and advise the carrier on an appropriate response before continuing the interview. Remember, the steward is an active participant who has every right to advise and consult during an investigative interview.

Taking notes during the interview

During any interview, it is critical that the steward takes accurate notes. The interviewer often has questions pre-typed or written and will simply read through the list of questions and write their understanding of the carrier's responses. A steward, in most cases, will not have an advance copy of the questions that will be asked, so it is important that each question be documented in the steward's notes along with the carrier's responses. Management will often want to conclude the interview as quickly as possible, so it is important to remember to take the time needed to write notes. Management does not dictate how much time is afforded to take notes. If the steward did not get a question written down before the carrier starts giving a response, then the steward should inform the interviewer to wait until the question is written. Likewise, the steward may ask the carrier to wait until the question is written down before responding. Control the flow so that management does not run over you in the interview.

Document everything. Stewards should ensure that they document every question, every response, any objections by the steward and any responses to the steward's questions as well. The steward's notes may not match the responses to questions or other notes that management has taken in the interview. A steward's notes are a matter of record and may be included in a grievance case file or used by the steward in the event that they are asked to testify at hearing about the investigative interview. Don't be afraid to verify your notes in the interview. As an example, a steward may ask the interviewer: "Just to make sure I have the correct notes, did you ask if the carrier curbed their wheels when parking at 100 E. Main St.?" If the response from the interviewer is "yes," then you may follow up with asking the carrier: "Was your response: 'I believe I did, I usually do'?" Your notes must be accurate; don't depend on management to take accurate notes.

It is also important to document times and dates. The steward should include in their notes the date and time at which the interview began and the time it concluded. Additionally, the steward may record the date and time representation was requested, provided, and when the pre-interview consultation was done with the carrier. These facts may prove vital in disputing dates or timelines provided

by management and support a potential argument of management's failure to complete a thorough investigation.

Local management vs. postal inspectors and the OIG

Postal inspectors and the OIG act as agents of management. Postal inspectors and OIG agents are federal law enforcement officers and have the authority to investigate incidents, and the power of arrest, where criminal prosecution may result. Regardless of whether it is local management, postal inspectors or OIG agents who conduct investigative interviews, the carrier's Weingarten rights or the Weingarten rule applies the same in guaranteeing representation by union officials when requested. There are, however, additional rights and warnings that may be involved when the postal inspectors or OIG agents are involved. These are: Miranda rights (Miranda warning), Kalkines warnings and Garrity warnings.

In cases where any of these rights or warnings are presented to carriers and there is reason to believe that the carrier may be subject to criminal prosecution, the steward should advise the carrier of their rights to consult with an attorney before answering questions. This does not, however, waive the carrier's rights to representation by a union representative. Stewards should be cautious in these types of interviews that could potentially lead to criminal prosecution. Stewards are not attorneys and cannot provide protection under attorney-client privilege. Stewards should never attempt to give legal advice in a potential criminal investigation other than to recommend consulting with an attorney. Stewards should stay with the carrier throughout the interview and take notes and provide advice. In the event that a grievance is filed in which postal inspectors or OIG agents are involved, the steward may need to interview the investigating agents or request investigative notes in preparing a defense of the carrier. This is why stewards should remain in the interview, under any circumstance, so they have a clear understanding of how the interview was conducted and any potential violations of the carrier's rights that may have occurred.

Following any interview by postal inspectors or OIG agents, local management is still obligated to conduct an independent investigation before issuing discipline. This means that another investigative interview by local management will be conducted after interviews by postal inspectors and OIG agents. This is normally where management questions a carrier based on information obtained from the previous interview by postal inspectors or the OIG as well as any other information obtained locally. In this interview, the steward's notes from the previous interview will be helpful representing and advising the letter carrier in the follow-up interview by local management.

For more detailed information on Miranda, Kalkines or Garrity rights and warnings, please see the 2023 *Letter Carrier Resource Guide*, pages 23 through 27, at nalc.org. Information about letter carrier rights during an investigation is also available in the October 2023 *Postal Record* in the Contract Talk article, pages 35 and 36.

Conclusion of the interview

Before allowing management to end the interview, the steward should make sure that all notes are complete, and the account of the interview has been clearly documented. After management has concluded its questioning, this is a good time for the steward to follow up with any questions that support the carrier's defense that may not have been asked earlier in the interview. Once the interview is concluded, the steward should advise the carrier to immediately inform the union if any discipline is issued as a result of management's investigation.

National-level arbitration awards (continued)

Continued from page 9

under the NLRA. He explained that employees have a presumptive right to wear union buttons, and any employer rule to prohibit the buttons would be presumptively invalid unless special circumstances exist. These special circumstances might be to maintain production, discipline, or to ensure safety.

Then there is the question of applying the provisions of NLRA to the specific facts of the case in front of him. Arbitrator Bernstein found that the Postal Service's attempt to "project a certain type of image to the public" would be a successful defense if this case were being heard in the circuit court of appeals. Bernstein reasoned that Section 583.32 of the *ELM* does not violate the Postal Service's obligations under the NLRA.

Finally, the arbitrator analyzed how the regulations were applied in the South San Francisco office. The evidence showed that USPS had allowed other buttons and insignia that did not comport to the claim of trying to project a certain image to the public. He found that the Postal Service was regulating the content of the buttons, by allowing much larger and gaudier buttons with content it approved of, while disallowing those buttons with content that failed to meet its approval.

In the award, Arbitrator Bernstein sustained the grievance filed by Branch 1280 and directed the Postal Service to refrain from prohibiting the wearing of union buttons whenever it permits the wearing of any items other than "stars and bars, safe driving awards, or other insignia which recognizes special accomplishments."

Decisions in national-level awards set precedent for the entire country and are controlling when similar issues arise. As explained in the Step 4 settlement in case number B94N-4-B-C 97024116, dated Jan. 13, 1999, (M-01372) dated Jan. 13, 1999:

> *The whole purpose of the national arbitration scheme is to establish a level of definitive rulings on contract interpretation questions of general applicability. National decisions bind the regional arbitrations, and not the reverse.*

While the award resolved the question of union buttons in this case, it more importantly clarified or reaffirmed the meaning of Article 5 as it incorporates laws into the agreement and allows the grievance-arbitration procedure to be utilized. This decision has far-reaching effects and influences many grievances, well beyond union buttons. Grievance handlers who support their arguments with Article 5, when applicable, will prepare better grievances and more readily respond to management's arguments.

Stewards' corner

Interviewing witnesses

Most of us have seen enough episodes of "Law and Order" or one of its spinoffs, to know that every episode follows pretty much the same pattern: A heinous crime is discovered sometime in the first minute or two. The next 28 minutes or so track the detectives as they interview witnesses and gather physical and documentary evidence to make an arrest. The last 30 minutes of the show follow the district attorney's office as they prepare for and conduct the trial. If the detectives did a thorough job in the first half, the prosecutor wins in the second half. However, if the detectives miss something, the prosecutor loses the case in the second half...and walks dejectedly down the courthouse steps in the final scene.

In grievance investigations, shop stewards are like the detectives in the first half of "Law and Order." If the steward doesn't conduct a thorough investigation or misses something, the union probably won't prevail in the second half of the show—the grievance. Interviewing witnesses is one of the most challenging and important tasks of a grievance investigator. Many grievances are won because the steward conducted thorough interviews of the witnesses; many are lost because a witness was missed, or the right questions were not asked. Knowing who to interview and what questions to ask is not an easy skill to learn, but with some guidelines and practice, anyone can improve.

Let's start with what a thorough interview is not: It is not simply asking the witness to write a statement. For the most part, witnesses don't know what to write. They don't know what's important and what's not. They don't know the difference between direct, circumstantial and hearsay evidence. Unknowingly, witnesses often write things down that are detrimental to the case or are just plain wrong. Sometimes witnesses have difficulty expressing themselves in writing or may have poor grammar skills or bad handwriting. Before putting a witness statement in the file, the steward should review it for accuracy, completeness, legibility, relevance and tone. The steward may have to ask the witness to rewrite it several times to get it right, which will not make the witness happy. Even so, while written witness statements may be helpful to a case, they are no substitute for a thorough and probing interview that is documented by copious note taking.

Skilled interviewing is an important investigatory tool. It's not just asking the witness to recall what they saw or heard; stewards must know what's important and relevant and what's not. However, the importance of a witness's testimony may not be evident right away, so it's crucial the interview be detailed, complete and documented. Keep in mind that witness descriptions often include error-prone perceptions during the event and (unintentional) selective recall afterward.

Generally, the purpose of the interview is to find out what the witness has experienced, knows, or believes to establish a preliminary direction for the investigation or complement other phases of the investigation (fill in the blanks). Witnesses should be interviewed as soon as possible after you become aware there's a possible grievance. As time passes, memories fade; important information may be forgotten, or perceptions distorted. The human mind tends to fill in gaps of memory with logic or past experiences, so the more time witnesses have to reconsider events, the more they tend to do this. As a general rule, interview witnesses at their convenience, not yours. This is not an interrogation, so there's no sense making them hostile.

It is important to prepare for the interview. Don't just grab a pen and paper and start asking questions. Taking time to prepare will

Information to elicit during witness interviews

1. General Information
- A. Name, nickname
- B. Home address
- C. Contact information, phone numbers (home, mobile, work), email address
- D. Employee ID
- E. Seniority dates, postal and craft
- F. Work/pay locations
- G. Current position, level step
- H. Veteran status

2. Postal Experience
- A. Where hired, which craft, what position
- B. Positions held, City Carrier, Carrier Tech, OJI, Safety Captain, DLT, etc.
- C. Awards: Safe Driver, Attendance, Merit or Performance
- D. Management experience: 204-B, supervisor, when, how long, why no longer?

3. Union Experience
- A. Current position
- B. Other offices held, when, how long
- C. Specialized training: Advocacy, OWCP, TIAREAP, Safety, etc.
- D. Grievance handling: How many, what steps, etc.?
- E. Local negotiation experience, when, what role, etc.

4. Other Experience that may be relevant
- A. Prior employment
- B. Armed Forces
- C. Outside interests

5. Prior Adverse Actions
- A. Discipline: LOWs, suspensions, removals
- B. Administrative: restricted sick leave, suspension/revocation of driving privileges, Letter of Demand
- C. When? Why? Was it grieved or appealed? Why or why not? What was the outcome?

6. Qualification to Testify
- A. I saw... I heard... I was issued... I was told... I felt...
- B. Expert qualifications: my experience, curriculum vitae

7. What Happened
- A. Date, time, location, (how did you know it was a specific time?)
- B. Where witness was, what the witness was doing at the time
- C. Where others were, what they were doing
- D. What the witness saw
- E. What the witness heard
- F. What the witness felt, perceived or understood
- G. How the witness reacted
- H. What the witness said
- I. How others reacted
- J. How the witness now feels about the incident

8. Aftermath
- A. Was there a meeting, a discussion, an investigation by management?
- B. When, where, who else was there
- C. What was said or done
- D. Management's response to incident
- E. Witness's response to incident
- F. Witness's hoped for outcome

Interviewing a witness

help keep you on course and increase the chances that you will cover what you want to cover. Start by reviewing the issues involved in the case. For example, if it's a disciplinary case, take time to review the principles of just cause in the *JCAM* and *Defenses to Discipline*. If the case is about improper assignment of overtime, review the rules regarding overtime in the *JCAM*. The more you understand about Article 8, the better prepared you will be to know what information to seek and which witnesses to interview.

Develop a game plan for asking questions and writing down the answers. There are two basic ways to do this. Some stewards like to write out their questions beforehand, leaving space on the page to fill in the answers. Newer stewards seem to prefer this style as they feel it helps them make sure they have covered everything and won't get off track. The problem with this style is that it's difficult to anticipate every question that needs to be asked and important details can be missed if the interview is not allowed to go in unanticipated directions. A second method is to simply prepare a list of topics you want to cover and ask questions about them. This allows the interview to flow more freely while at the same time covering the areas you know you need to cover. So, instead of writing this:

Q: Did you take the Red Plums out on Friday, May 4?

A: No.

Q: Why not?

A: Because we had a lot of mail and I guess I just forgot.

Write this:

I didn't take the R Ps on Fri 5/4 - We had a lot of mail and "I forgot."

This is less tedious than writing down verbatim question-answer, question-answer. In this method you record the essence of what the witness told you in a way that also suggests the questions that you asked. Use quotation marks to indicate the witness's exact words when necessary. You may also use abbreviations for recurring words so long as you are consistent. However, write the word out the first time you use it followed by your abbreviation in parentheses. For example: Red Plums (RP) or Letter of Warning (LOW).

The box on page 18 outlines some of the information that should be elicited during interviews with the grievant and other witnesses. Not all of the information noted there will be needed from every witness in every case. What you cover will vary depending on the particular circumstances of the case and each person's part in it. A good interviewer will ask questions in a way that doesn't feel like an interrogation but more like a conversation. A witness at ease will be more forthcoming. Questions should be clear, so the witness understands them. Don't read them from a list; just blend them into the conversation.

Here are some important tips for interviewers:

- Don't interrupt witnesses; they may forget to return to an important point.
- Ask one question at a time and allow the witness to answer. If you have a thought, jot it down and come back to it later.
- Pause between questions; make sure the witness is finished answering.
- Ask open-ended questions and avoid those that only require a "yes" or "no" answer. More information is obtained that way, and it's in the witness's words, not yours. The answers are more precise and can often lead to other questions. Here are some examples of open-ended questions: *"Tell me in your own words what happened?" "And what was his response?" "What did you do next?" "... How did that make you feel?"*
- Encourage witnesses to volunteer information without prompting by pausing, or looking at them quizzically, "Hmmmm."
- Ask the witness to report all the details, no matter how trivial they may seem.
- Don't signal, by body language or by stopping your note taking, that what they are saying is not important. They will sense this and be less forthcoming.
- Ask them to mentally recreate the circumstances of the event, not only what happened but what they thought and how they felt at the time.
- When possible, take them to the location of the incident. This will likely

Continued on back cover

Basic note-taking tips

- Use one side of 8½ x 11-inch paper. This will make it easier for photocopying.
- Write in ink; pencil can be erased. If you make a mistake, line out and initial the error—don't obliterate it.
- Use wide margins and spaces between lines to leave room for adding details and reminders to yourself.
- Use colored pens and highlighters to mark important info.
- Use abbreviations for common terms.
- Remember, others may have to rely on your notes, so write legibly.

Vol. 31, No. 2 Spring 2024
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Interviewing witnesses (continued)

Continued from page 19

generate more information. Encourage witnesses to draw rough diagrams or maps showing where people were, what directions they moved, what other objects were in the area, etc. Ask them to use gestures to demonstrate actions.

Taking Notes

You can be the best interviewer around, but all will be for naught if you don't document what the witness said. Don't rely on your memory. As an old Chinese proverb says: "The faintest ink is brighter than the sharpest memory."

Good note-taking is essential to being a good investigator. It's a skill that can be improved with practice. There are a variety of methods for taking notes including some of the new electronic note-taking applications. Keep in mind when choosing your preferred method, notes that are included in the grievance file need to be signed, dated, and authenticated by the witness. Your notes will need to be easily accessible and reproduceable. Sometimes, electronic note-taking applications may be challenging to use or off-putting to the witness being interviewed. It may be more difficult to highlight, color, strike out, or add information while maintaining the original text. If you are using an electronic method to record your notes, make sure you practice with the app ahead of time and are comfortable with it so that it doesn't disrupt the flow of the interview.

For newer investigators, writing notes may conflict with your need to listen, so separate these tasks. Have a witness tell the story, and then go back over the story chronologically, writing down and double-checking details. Ask for clarification or review parts that seem unclear or don't make sense. When you believe you are finished, review your notes with the witness to make sure you recorded everything correctly. This may also stimulate even more information. Ask the witness if you recorded what was said accurately. Record the response. Sign and date your notes.

As soon as possible after the interview, write up a report or summary of the interview. Date it. The longer you wait, the less reliable your report is seen to be. If you add something to the report that was not in your notes, point this out and explain it. Remember that your notes and summary may become part of the official grievance file and may become an essential element proving the union's case. Should the case go to arbitration, you may be called as a witness to testify about what's in your notes. This could be many months after the interview; if your notes are unreadable or incomplete, they will be of little value to you or to your case. Remember these interviewing tips and hone your skills; interviewing witnesses is crucial to being a union detective and successful grievance investigations.


Vol. 31, No. 1 Winter 2024
NALC Activist
A NEWSLETTER FOR BRANCH LEADERS OF THE NATIONAL ASSOCIATION OF LETTER CARRIERS
Getting ready for local negotiations
The steward's right to information

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