UNITED STATES POSTAL SERVICE

STEP B DECISION

STEP B TEAM:
Tennessee

Monica Lucas, USPS
Paul F Glavin, NALC

District Grieving:
Tennessee

Decision:	**RESOLVED**
USPS Number:	C16N-4C-C 19456618
Grievant:	Class Action
Branch Grievance #:	B4-00497-19
Branch:	4
Installation:	Nashville
Delivery Unit:	Citywide
State:	Tennessee
Incident Date:	09/09/2019
Informal Step A Initiated:	09/23/2019
Formal Step A Meeting Date:	10/11/2019
Date Received at Step B:	10/17/2019
Step B Decision Date:	12/04/2019
Issue Code:	05.0000
NALC Code:	508099

ISSUE:

Did Management violate Articles 5 and 19 of the National Agreement when Nashville Installation Management refused Rebecca Madsen, and stated Nashville Stewards, will be prohibited to continue a long standing past practice of performing union duties (steward work) at the union office? If so, what is the appropriate remedy?

DECISION:

The Dispute Resolution Team (DRT) has **RESOLVED** this grievance. The DRT agrees Management violated Article 5 of the National Agreement when they unilaterally ending the established past practice of Stewards performing union duties at the Branch office. The DRT agrees Management will allow Stewards in the Nashville Installation to perform union duties at their local Branch 4 office.

EXPLANATION:

The Union contends Management violated the National Agreement when they unilaterally disallowed the established and existing past practice for years in the Nashville Installation of Shop Stewards being allowed to perform steward time at the local Branch office. This was established years ago due to the resources readily available to assist stewards in the performance of their duties. There can be no greater clarity and consistency than an accepted practice of well over 11 years. Management cannot show where over the past 11 years this practice has been vague, ambiguous or contradicted and there has been longevity and repetition. While Supervisors and Managers may come and go, the accepted past practice in the Nashville Installation has always been that Stewards have been allowed to perform this time at the Branch office. Management in the Nashville Installation and specifically Judy Ratton, spoke on behalf of Sharon Bowers, Manager of Customer Service Operations, and unilaterally and arbitrarily changed the long standing past practice of Nashville Installation Stewards performing Union duties at the Branch office. Management never gave notice of a change or engaged in any good faith bargaining. Page 5-4 of the JCAM clearly states that Management **MUST** provide notice. Management failed in this obligation. The statements submitted by the Union go uncontested

and unrebutted. The Union requests this grievance be sustained and that Management continue the long standing practice and that Management abide by Article 5 when attempting to do away with an accepted past practice.

Management contends they did not violate any of the alleged articles, provisions and/or manuals listed in this grievance and Management did not affect wages or hours of the grievant as alleged. Management contends this is not a grievance. It is a grip[e] wherein the Union alleges Management at East Station refused to allow Steward Madsen to perform her union duties at the union hall. Article 17 states a steward may leave his/her work area to investigate and adjust grievances or to investigate a specific problem. Article 17 also gives a Steward the right to leave his/her work area not to leave the building to perform such duties. Management did not deny the Steward time on the clock but denied the Steward's request to leave the facility and go to the Union hall. Steward Madsen wants to be paid on the clock to travel to the Union hall. Management is under no obligation to allow a Steward time at the Union hall during working hours. They are required to approve requested time at the station. Management contends they are not obligated to allow steward time at the Union hall. Management does have to allow a steward the right to time, which has been done and will continue. Management does not agree with any remedy requested or proposed by the Union.

The parties agreed to the following language on pages 5-2 through 5-4 of the JCAM:

> **Defining Past Practice**
> In a paper given to the National Academy of Arbitrators, Arbitrator Mittenthal described the elements required to establish a valid past practice:
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> • First, there should be clarity and consistency. A course of conduct which is vague and ambiguous or which has been contradicted as often as it has been followed can hardly qualify as a practice. But where those in the plant invariably respond the same way to a particular set of conditions, their conduct may very well ripen into a practice.
>
> • Second, there should be longevity and repetition. A period of time has to elapse during which a consistent pattern of behavior emerges. Hence, one or two isolated instances of certain conduct do not ordinarily establish a practice. Just how frequently and over how long a period something must be done before it can be characterized as a practice is a matter of good judgment for which no formula can be devised.
>
> • Third, there should be acceptability. The employees and supervisors alike must have knowledge of the particular conduct and must regard it as the correct and customary means of handling a situation. Such acceptability may frequently be implied from long acquiescence in a known course of conduct. Where this acquiescence does not exist, that is, where employees constantly protest a particular course of action through complaints and grievances, it is doubtful that any practice will be created.
>
> • One must consider, too, the underlying circumstance which give a practice its true dimensions. A practice is no broader than the circumstances out of which it has arisen, although its scope can always be enlarged in the day-to-day administration of the agreement. No meaningful description of a practice can be made without mention of these circumstances. For instance, a work assignment practice which develops on the afternoon and midnight shifts and which is responsive to the peculiar needs for night work cannot be automatically extended to the day shift. The point is that every practice must be carefully related to its origin and purpose.
>
> • Finally, the significance to be attributed to a practice may possibly be affected by whether or not it is supported by mutuality. Some practices are the product, either in their inception or in their application, of a joint understanding; others develop from choices made by the employer in the exercise of its managerial discretion without any intention of a future commitment.

This grievance was initially filed when Steward Madsen was not allowed to perform steward duties at the Union hall and she submits a statement which reads in relevant part as follows:

On the morning of Monday, September 9th while casing route 609, I was approached by Management Judy Ratton and Supervisor Shaun and informed I would not be carrying my route but would receive one of my requested union days. Manager Ratton had previously stated the week prior that my Union Hall access would be determined on a case by case basis...I was appointed steward at the East Station on September 13th of 2018 and in the year I've been steward I've been permitted every time to go to the Union Hall, with the exception of one occasion where I could complete what little work I had within the office. When I inquired as to why this change has occurred I was never given an answer, I was simply told, "You're not allowed."

Branch 4 President Dave Clark submits the following statement:

I have been President for NALC Branch 4 since 2006. There are 16 offices in the Nashville PO Installation and 15 Associate offices under Branch 4's jurisdiction. It has been a long standing past practice for stewards certified to the Nashville P O and some of the closer AOs to conduct some of their steward duties at the Branch office. They have access to computers and other resources they do not have at the office they are assigned to. The steward has to obtain permission from management for time to investigate and prepare grievances. It would be in the USPS best interest to permit the stewards to conduct their official union duties where the resources needed are readily available to them. Working at the Branch office should assist them to get their work done faster. This is in everyone's best interest as the steward's union time will be minimized an allow them to focus back on their letter carrier duties.

The case file contains several additional statements from Stewards within the Nashville Installation which read in relevant part as follows:

From 2008 to approximately 2011, I was the Formal Step A Representative for the Nashville installation; the Nashville installation covers 16 stations. During my time as the Formal Step A Rep, local shop stewards were permitted to use their requested Union time at the Union hall to research and prepare grievances. This is due to the resources readily available to assist those stewards. Not one time, in my years as Formal Step A Rep, did I have a steward inform me that Management refused to let them go to the Union hall to research or prepare grievances while on requested Union time. ~Corey L. Walton

In December 2016 I began representing Glenview Station as the shop steward. During the time I was the steward, I was given permission to go to the union office to work on grievances while on the clock. I am now the alternate steward and am still given permission to work at the union office on grievances. This morning I was given permission to come to the union hall to work on open grievances. I have heard our manager and supervisor give Genie Kinsey, our shop steward, permission several times to work at the union hall. ~ Michael J. McCall

I was the shop steward at East Post Office from 2011 until 2017. During that time, I was approved to work on grievances at the union hall. I was approved anytime I requested it and management suggested I work on grievances at the union hall on occasion. Genie Kinsey was the alternate steward from 2011 until she bid to another station in 2017. When I would go on vacation, she took the grievances over and worked at the union hall on some cases. To my knowledge management never had any problem allowing her to go to the union hall either. ~Anthony Lauderdale

I Chad Jones have been the shop steward at the Green Hills Station since 2008. During that time as shop steward management has always allowed me to go to the Branch 4 Union office for my requested time. I've had different managers and supervisors during my time as shop steward at Green Hills but never once have they not permitted this or had a problem allowing this. ~ Chad T. Jones

Since 2013, I have been a union steward and alternate in the Nashville Installation. I have always done my union work at the union office where resources are available to me. During 2017 Nashville started conducting route inspections which required at the union office more frequently and I observed many stewards at the union office working on grievances. Since 2013, I have never heard of any stewards not being allowed to do their union time at the union office. ~ Danna Chambless

I, Duane Kinnard, have been the Union Steward at the Woodbine station since the 1st quarter of 2017. I have been allowed to go to my local Union Branch 4 to do official work due to the resources there. Due to limited access at the Station such as internet, computer, printer and union forms. I have always granted union steward time whenever scheduled to go do that work at the local branch. ~ Duane Kinnard

I have served as a Shop Steward for the NALC branch 4 area for the past four years, at stations Green Hills (37215), and Donelson (37214). I have always had the option of going to the branch office when needing to work on large grievances such as the quarterly overtime equitability, to have access to the printer, and internet. In fact, on 10/9/2019 I needed access to the internet for an information request that management fulfilled through an email concerning a grievance, I had utilized the union hall for this purpose. ~ Jason Crosby

The case file also contains an email from Steward Hartley which states as follows:

I, Angelia Hartley, have been a Union Steward at the Melrose Station for 5 years. In that time, I have requested union time to go to the Branch office or Postal Installation to perform union business, permission has been granted.

Pages 5-3 through 5-4 of the JCAM reads as follows:

Functions of Past Practice
In the same paper, Arbitrator Mittenthal notes that there are three distinct functions of past practice:

To Implement Contract Language. Contract language may not be sufficiently specific to resolve all issues that arise. In such cases, the past practice of the parties provides evidence of how the provision at issue should be applied. For example, Article 15, Section 2, Step 3 of the 1978 National Agreement (and successor agreements through the 2000 National Agreement) required the parties to hold Step 3 meetings. The contract language, however, did not specify where the meetings were to be held. Arbitrator Mittenthal held that in the absence of any specific controlling contract language, the Postal Service did not violate the National Agreement by insisting that Step 3 meetings be held at locations consistent with past practice (N8-NAT-0006, July 10, 1979, C-03241).

To Clarify Ambiguous Language. Past practice is used to assess the intent of the parties when the contract language is ambiguous, that is, when a contract provision could plausibly be interpreted in one of several different ways. A practice is used in such circumstances because it is an indicator of how the parties have mutually interpreted and applied the ambiguous language. For example, in a dispute concerning the meaning of an LMOU provision, evidence showing how the provision has been applied in the past provides insight into how the parties interpreted the language. If a clear past practice has developed, it is generally found that the past practice has established the meaning of the disputed provision.

To Implement Contract Language. Contract language may not be sufficiently specific to resolve all issues that arise. In such cases, the past practice of the parties provides evidence of how the provision at issue should be applied. For example, Article 15, Section 2, Step 3 of the 1978 National Agreement (and successor agreements through the 2000 National Agreement) required the parties to hold Step 3 meetings. The contract language, however, did not specify where the meetings were to be held. Arbitrator Mittenthal held that in the absence of any specific controlling contract language, the Postal Service did not violate the National Agreement by insisting that Step 3 meetings be held at locations consistent with past practice (N8-NAT-0006, July 10, 1979, C-03241).

Changing Past Practices
The manner by which a past practice can be changed depends on its purpose and how it arose. Past practices that implement or clarify existing contract language are treated differently than those concerning the "silent contract."

Changing Past Practices that Implement Separate Conditions of Employment.
If the Postal Service seeks to change or terminate a binding past practice implementing conditions of employment concerning areas where the contract is silent, Article 5 prohibits it from doing so unilaterally without providing the union appropriate notice. **Prior to making such a change unilaterally, the Postal Service must provide notice to the union and engage in good faith bargaining over the impact on the bargaining unit. If the parties are unable to agree, the union may grieve the change.**

Article 5 of the National Agreement prohibits Management from changing established past practices without providing the Union with notice and engaging in good faith bargaining over the impact on the bargaining unit. The DRT notes there is no contention provided by Management to dispute there has been an established Past Practice in the Nashville Installation which allows the Union stewards to perform their steward duties in the Union Office when requested.

The file contains a statement provided by Steward Madsen which reads in relevant part as follows:

> When I asked Manager Ratton if I was being permitted to go to the Union Hall on this day she stated, "No, that's no longer allowed. Sharon Bowers said no one can do that anymore." I reminded Manager Ratton that this had been a past practice within the city and I'd be permitted to do it consistently in the year I'd been steward. She stated, "No other stewards do it." I told her they did. **I asked Management Ratton if I could have access to a computer and printer in the station and was told no. When I told her I wouldn't be able to complete my work without access to the tools and materials I needed, Manager Ratton said, "That's not the Post Office's problem."**

Article 17.3.3 of the National Agreement reads in relevant part as follows:

> The steward, chief steward or other Union representative properly certified in accordance with Section 2 **above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours.** Such requests shall not be unreasonably denied.

The DRT notes Steward Madsen contends she was informed by Manager Ratton she would be denied access to review files and other records pursuant to being necessary to processing or determining if a grievance existed at the Nashville East Station. The Step B Team reminds Manager Ratton of her responsibility to remain in compliance with the above referenced contractual obligation.

The Dispute Resolution Team (DRT) has **RESOLVED** this grievance. The DRT agrees Management violated Article 5 of the National Agreement when they unilaterally ending the established past practice of Stewards performing union duties at the Branch office. The DRT agrees Management will allow Stewards in the Nashville Installation to perform union duties at their local Branch 4 office.

This grievance file contained the following documents:

(1) PS Form 8190 and Union's Contentions, 7 pages
(2) Steward's Statements, Screenshots and E-mails, 13
(3) Arbitration Award for C16N-4C-C 18118340, 17 pages
(4) JCAM Pages, 7 pages
(5) Request for Time to discuss grievance at Informal A
(6) Management's Contentions, 2 pages

In reaching the above decision, the DRT carefully reviewed each of the documents and placed the appropriate value to each as it applied to the issue in this grievance.

Monica Lucas
USPS Step B Representative

Paul F Glavin
NALC Step B Representative

USPS Number: C16N-4C-C 19456618

Cc: Steve Lassan, NALC NBA
Jill Miniard, Eastern Area Labor Relations Manager
Lee Zysk, Eastern Area Labor Relations Specialist
Melissa McCurry, USPS Step A Representative
Jason Leath, NALC Step A Representative
Christopher Alexander, District Manager
Barbara Kirchner, District Human Resources Manager
Lani Lownsbery, District Labor Relations Manager (A)

UNITED STATES POSTAL SERVICE

Date Received at Step B (MM/DD/YYYY)

USPS-NALC Joint Step A Grievance Form

INFORMAL STEP A — NALC Shop Steward Completes This Section (Use Attachments or Page 2)

1 Grievant's Name (Last, first, middle initial)
Class Action

2 Grievant's Telephone No. (Include area code)
615-589-4249

3 Seniority Date (MM/DD/YYYY)
02/20/2018

4 Status (Check one)
☑ FT ☐ FTF ☐ PTR ☐ PTF ☐ CCA

5 Grievant's Employee Identification Number (EIN)
04379547

6 District, Installation, Work Unit, ZIP Code
TN/Nashville/East Station/TN/37206

7 Finance No
41-6753

8 NALC Branch No
4

9 NALC Grievance No
B4-00497-19

10 Incident Date (MM/DD/YYYY)
09/09/2019

11 Date Discussed With Supervisor (Filing date)
09/23/2019

12a Companion MSPB Appeal? ☐ Yes ☐ No

12b Companion EEO Appeal? ☐ Yes ☐ No

13a Supervisor's Printed Name, Initials, and Telephone No
Judy Ratton, 615-650-6442

13b Steward's Printed Name, Initials, and Telephone No
Rebecca Madsen, RSM, 615-589-4249

FORMAL STEP A — Grievant, Steward, and Supervisor Complete This Section (Use Attachments or Page 2)

14 USPS Grievance No. Obtain prior to Formal Step A meeting.

15 Issue Statement. Provide contract provision(s) and frame the issue(s).
See Attachment.

16 Undisputed Facts. List and attach all supporting documents. Use additional paper if necessary. Attachments? ☐ No ☐ Yes Number:

17 **UNION'S** full, detailed statement of disputed facts and contentions. List and attach all supporting documents. Use additional paper if necessary. Attachments? ☐ No ☑ Yes Number: 44

18 **MANAGEMENT'S** full, detailed statement of disputed facts and contentions. List and attach all supporting documents. Use additional paper if necessary. Attachments? ☐ No ☑ Yes Number: 2

19a Union Representative. Enter the remedy requested by the union.
See Attachment.

19b Settlement Offer. List any settlement offers by either party on page 3.

20 Disposition (Check one) ☐ Resolved ☐ Withdrawn ☐ Not Resolved. Date of Formal Step A Meeting (MM/DD/YYYY) 10/11/19

21a USPS Representative's Name
Melissa McCann

21b Telephone No. (Include area code)
615 321 0172

21c USPS Representative's Signature
Melissa McCann

21d Date (MM/DD/YYYY)
10/11/2019

22a NALC Representative's Name
Jason Leath

22b Telephone No. (Include area code)
615-587-3816

22c NALC Representative's Signature

22d Date (MM/DD/YYYY)
10/11/19

PS Form 8190, March 2015 (Page 1 of 3) PSN 7530-06-000-8158

UNION CONTENTIONS
B4-00497-19
CLASS ACTION
PAST PRACTICE
NASHVILLE CITY

Did management violate Articles 5 and 19 of the National Agreement when Management in the Nashville Installation refused Rebecca Madsen and stated Nashville Stewards will be prohibited to continue a long standing past practice of performing union duties (steward work) at the union office? If so, what is the appropriate remedy?

The Union has established that there was an existing past practice for years in the Nashville Installation that Shop Stewards have been allowed to perform requested union time (steward time) at the local Branch 4 office. This was established years ago due to the resources readily available to assist those stewards in the performance of their duties.

On page 5-2 of the Joint Contract Administration Manual both parties have agreed to the following language:

Defining PastPractice

In a paper given to the National Academy of Arbitrators, Arbitrator Mittenthal described the elements required to establish a valid past practice:

> • First, there should be clarity and consistency. A course of conduct which is vague and ambiguous or which has been contradicted as often as it has been followed can hardly qualify as a practice. But where those in the plant invariably respond the same way to a particular set of conditions, their conduct may very well ripen into a practice.

The Union contends that there can be no greater clarity and consistency than an accepted practice of well over 11 years. Management cannot show where over the past 11 years this practice has been vague, ambiguous or contradicted.

> • Second, there should be longevity and repetition. A period of time has to elapse during which a consistent pattern of behavior emerges. Hence, one or two isolated instances of certain conduct do not ordinarily establish a practice. Just how frequently and over how long a period something must be done before it can be characterized as a practice is a matter of good judgment for which no formula can be devised.

The union contends that over eleven (11) years of an accepted past practice surely shows longevity and repetition. While supervisor's and manager's may come and go the accepted past practice in the Nashville Installation has always been stewards have been allowed to perform

requested union time (steward time) at the local Branch 4 office. This was established years ago due to the resources readily available to assist those stewards in the performance of their duties.

> • Third, there should be acceptability. The employees and supervisors alike must have knowledge of the particular conduct and must regard it as the correct and customary means of handling a situation. Such acceptability may frequently be implied from long acquiescence in a known course of conduct. Where this acquiescence does not exist, that is, where employees constantly protest a particular course of action through complaints and grievances, it is doubtful that any practice will be created.

The grievance case file includes statements from Nashville Installation Union Representatives which reads as follows:

> When I asked Manager Ratton if I was being permitted to go to the Union Hall on this day she stated "No, that's no longer allowed. Sharon Bowers said no one can do that anymore." I reminded Manger Ratton that this had been a past practice within the city and I'd been permitted to do it consistently in the year I'd been steward. She stated, "no other stewards do it." I told her they did. I asked Manager Ratton if I could have access to a computer and printer in the station and was told no. When I told her I wouldn't be able to complete my work without access to the tools and materials I needed, Manager Ratton said, "That's not the Post Office's problem."
> I was appointed steward at the East Station on September 13th of 2018 and in the year I've been steward I've been permitted every time to go to the Union Hall, with the exception on one occasion where I could complete what little work I had within the office. When I inquired as to why this change had occurred I was never given an answer, I was simply told, "You're not allowed."
>
> East Station Shop Steward, Rebecca Madsen

The grievance case file contains a statement from Branch 4 President Dave Clark which reads as follows:

> I have been President for NALC Branch 4 since 2006. There are 16 offices in the Nashville P O Installation and 15 associate offices under Branch 4's jurisdiction. It has been a long standing past practice for stewards certified to the Nashville P O and some of the closer AO's to conduct some of their steward duties at the Branch office. They have access to computers and other resources they do not have at the office they are assigned to. The steward has to obtain permission from management for time to investigate and prepare grievances. It would be in the USPS best interest to permit the stewards to conduct their official duties where the resources needed are readily available to them. Working at the Branch office should assist them to get their work done faster. This is in everyone's best interest as the stewards union time will be minimized an allow them to focus back on their letter carrier duties.
>
> NALC Branch 4 President, Dave Clark

> In December 2016 I began representing Glenview Station as the shop steward. During the time I was the steward, I was given permission to go to the union office to work on grievance while on the clock. I am now the alternate steward and am still given permission to work at the union office on grievances. I have heard our manager and supervisor give Genie Kinsey our shop steward, permission several times to work at the union hall.
>
> Glenview Station Shop Steward, Michael J, McCall

I have served as a shop steward for the NALC Branch 4 area for the past four years, at stations Green Hills (37215) and Donelson (37214). I have always had the option of going to the branch office when needing to work on large grievance such as the quarterly overtime equitability, to have access to the printer, and the internet. In fact, on 10/09/2019 I needed access to the internet for an information request that management fulfilled through an email concerning a grievance, I had to utilize the union hall for this purpose.

Donelson Station Shop Steward, Jason Crosby

I, Angelia Hartley, have been a Union Steward at the Melrose Station for 5 years. In that time, I have requested union time to go to the Branch office or Postal Installation to perform union business, permission has been granted.

Melrose Station Shop Steward, Angelia Hartley

I Duane Kinnard, have been the Union Steward at the Woodbine Station since the 1st quarter of 2017. I have been allowed to go to my local Union Branch 4 to do official work due to the resources there. Due to limited access at the Station such as internet, computer, printer, and union forms. I have always been granted union steward time whenever scheduled to go do that work at the local branch.

Woodbine Station Shop Steward, Duane Kinnard

October 1, 2019

I was the shop steward at East Post Office from 2011 until 2017. During that time, I was approved to work on grievances at the union hall. I was approved anytime I requested it and management suggested I work on grievances at the union hall on occasion. Genie Kinsey was the alternate steward from 2011 until she bid to another station in 2017. When I would go on vacation, she took the grievances over and worked at the union hall on some cases. To my knowledge management never had any problem allowing her to go to the union hall either.

Former East Station Shop Steward, Anthony Lauderdale

From 2008 to approximately 2011, I was the Formal Step A Representative for the Nashville Installation; the Nashville Installation covers 16 stations. During my time as the Formal Step A Rep, local shop stewards were permitted to use their requested Union time at the Union hall to research and prepare grievances. This is due to the resources readily available to assist those stewards. Not one time, in my years as Formal Step A Rep, did I have a steward inform me that Management refused to let them go to the Union Hall to research or prepare grievances while on requested Union time.

Belle Meade Station Shop Steward, Corey L. Walton

I Chad Jones have been the shop steward at the Green Hills Station since 2008. During that time as shop steward management has always allowed me to go to the Branch 4 Union office for my requested union time. I've had different managers and supervisors during my time as shop steward at Green Hills but never once have they not permitted this or had a problem allowing this.

Green Hills Station Shop Steward, Chad Jones

The union contends management in the Nashville Installation have always permitted and allowed Station Stewards the capability to perform their union representative shop steward duties at the Branch 4 office. The Union contends carriers' statements show that over 11 years management has allowed, honored, and accepted Nashville Installation Shop Stewards to conduct union business on requested union time at the Branch office for the needs of resources readily available for them and Management will not be able to produce a single honest statement from any Manager, Supervisor, or Postmaster to rebut this practice.

> • One must consider, too, the underlying circumstance which give a practice its true dimensions. A practice is no broader than the circumstances out of which it has arisen, although its scope can always be enlarged in the day-to-day administration of the agreement. No meaningful description of a practice can be made without mention of these circumstances. For instance, a work assignment practice which develops on the afternoon and midnight shifts and which is responsive to the peculiar needs for night work cannot be automatically extended to the day shift. The point is that every practice must be carefully related to its origin and purpose.

The grievance file contains page 5-4 of the Joint Contract Administration Manual (JCAM), which reads in relevant part as follows:

Functions of Past Practice In the same paper, Arbitrator Mittenthal notes that there are three distinct functions of past practice:

> To Implement Contract Language. Contract language may not be sufficiently specific to resolve all issues that arise. In such cases, the past practice of the parties provides evidence of how the provision at issue should be applied.
>
> To Clarify Ambiguous Language. Past practice is used to assess the intent of the parties when the contract language is ambiguous, that is, when a contract provision could plausibly be interpreted in one of several different ways.

The union contends the practice of shop stewards performing their requested steward time at the Branch 4 office has been well established in the Nashville Installation. The union contends many resources computers, printers, internet, union documents, research material, paper, and etc... are needed for shop stewards to perform their representative duties. The union contends the stations in the Nashville Installation aren't equipped or furnished with the necessary resources for stewards to perform their duties. The union contends nothing is ambiguous or left unclear, in fact the long standing practice in the Nashville Installation is very clear how that the stewards in the Nashville Installation have and always been allowed to utilize the Branch office on requested union time and it has been accepted year after year in the Nashville Installation.

> Changing Past Practices that Implement Separate Conditions of Employment. If the Postal Service seeks to change or terminate a binding past practice implementing conditions of employment concerning areas where the contract is silent, Article 5 prohibits it from doing so unilaterally without providing the union appropriate notice. Prior to making such a change

unilaterally, the Postal Service must provide notice to the union and engage in good faith bargaining over the impact on the bargaining unit. If the parties are unable to agree, the union may grieve the change.

The below is a statement from Formal A Representative Jason Leath for the Nashville Installation and Bellevue Station Shop Steward which states:

In January of 2016 I was elected and became the Bellevue Station Shop Steward. Over the past 3 ½ years I was always permitted to perform my requested union time (steward time) at the Branch 4 office. This was accepted by previous management and current management. Since 2017 I have been serving the NALC as the Formal Step A Representative for all Nashville Installation which is constructed of 16 city stations. The stewards in the Nashville Installation week after week have always been allowed by management to come to the Branch office on requested union time for the readily available resources needed to perform the necessary duties of grievance handling. I meet weekly over at the Metro Station Post Office, which is also where the Postmasters office is located, every Friday to discuss grievances at the Formal Step A meeting. During my time I have worked with three (3) different Postmasters of Nashville or their designees. Not one single time have I ever been questioned or asked to change the long standing past practice of shop stewards being allowed to go to the union hall to prepare grievances and conduct union business. I have met with Postmaster's designee's Kim Oliver, Dannett Hemingway, Sharon Bowers, Melissa McCurry and never not one time have we had one single conversation about doing away with the practice of shop stewards being allowed to conduct union business, investigate, and prepare grievances at the Branch office. To me it was just simply understood due to the fact so many resources needed that the Post Office doesn't provide stewards in the stations needed to effectively represent letter carriers.

Arbitrator Glenda August decision C16N-4C-C 18118340 dated July 13, 2018 for the Nashville Installation reads in relevant part as follows:

In the case at bar, the Union argued that Management made no attempt to notify them that there would be a change to the practice of allowing multiple choice vacation period selections by Letter Carriers at Green Hill Station. Instead, Management Unilaterally made a change to this valid past practice in violation of Article 5 of the National Agreement between the parties. In case number JI1N-4J-C 17364079 provided by the Union, Arbitrator JoAnn Nixon, reviewed the existence of a past practice, changed in violation of Article 5 and opined:

In examining the aforementioned case, I reviewed the decision of National Arbitrator Carlton Snow in case number H7N-5 8-R-C316, where Arbitrator Snow addressed the impact of past practice, stating:

The largest hurdle to overcome in using a "past practice" analysis is establishing the existence of a "practice." **When there is evidence the parties had mutually agreed that a practice existed/or a period of time (even if it is unclear which contractual provision was thought to have governed), the practice must be deemed established.** The point is that a collective bargaining agreement includes more than the written provision in a printed document as the United States Supreme Court has recognized. A labor contract also included understanding and mutually accepted practices which have developed between the parties during their relationship. In the grievances submitted to the arbitrator in this particular case, it was the mutually accepted practice of the parties, at least prior to mid-1987, to make temporary T-6 vacancies available/or opting by the senior-most-qualified employees (sic).

As I stated in that decision, while Arbitrator Snow addressed past practice, he emphasized the fact that it must be well established "When there is evidence the parties had mutually agreed that

> a practice existed for a period of time (even if it is unclear which contractual provision was thought to have governed), the practice must be deemed established."

The Union contends management in the Nashville Installation specifically for Judy Ratton speaking on behalf of MCSO Sharon Bowers unilaterally and arbitrarily changed the long standing past practice of Nashville Installation shop stewards being permitted to perform requested union time at the local Branch 4 union office. The Union contends management never gave notice of a change or engaged in any good faith bargaining. In relevance to page 5-4 it clearly states the Postal Service **MUST** provide notice, the Union contends management failed their obligation.

> Finally, the significance to be attributed to a practice may possibly be affected by whether or not it is supported by mutuality. Some practices are the product, either in their inception or in their application, of a joint understanding; others develop from choices made by the employer in the exercise of its managerial discretion without any intention of a future commitment.

The Union contends that this past practice was affected by mutuality. Both parties have agreed to this practice for over 11 years now. The Union contends it has demonstrated through several uncontested and unrebutted statements that it has been a long standing past practice for management to allow Nashville Installation shop stewards to perform their requested union time duties at the Branch 4 local union office. The Union further contends that management violated Article 5 of the National Agreement when they unilaterally took it upon themselves to change the accepted past practice concerning the way shop stewards will be allowed to perform their duties. The union further contends that management did not provide the union with any notice about a proposed change, nor did they engage in good faith bargaining with the union over the impact that the change would have on the shop stewards at the station.

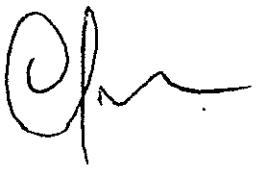
The Union request this grievance be sustained and management continue the long standing past practice for shop stewards in the Nashville Installation be permitted and allowed to conduct their requested union time (steward time) at the Branch 4 local union office, while management abide by Article 5 when attempting to do away with an accepted past practice, or whatever Step-B team or Arbitrator deems appropriate.

On the morning of Monday, September 9th while casing route 609, I was approached by Manager Judy Ratton and Supervisor Shaun and informed I would not be carrying my route but would receive one of my requested union days. Manager Ratton had previously stated the week prior that my Union Hall access would be determined on a case by case basis. When I asked Manager Ratton if I was being permitted to go to the Union Hall on this day she stated, "No, that's no longer allowed. Sharon Bowers said no one can do that anymore." I reminded Manager Ratton that this had been a past practice within the city and I'd be permitted to do it consistently in the year I'd been steward. She stated, "No other stewards do it." I told her they did. I asked Manager Ratton if I could have access to a computer and printer in the station and was told no. When I told her I wouldn't be able to complete my work without access to the tools and materials I needed, Manager Ratton said, "That's not the Post Office's problem."

I was appointed steward at the East Station on September 13th of 2018 and in the year I've been steward I've been permitted every time to go to the Union Hall, with the exception of one occasion where I could complete what little work I had within the office. When I inquired as to why this change had occurred I was never given a answer, I was simply told, "You're not allowed."

Shop Steward,

Rebecca Madsen



To whom it may concern:

I have been President for NALC Branch 4 since 2006.There are 16 offices in the Nashville P O Installation and 15 Associate offices under Branch 4's jurisdiction. It has been a long standing past practice for stewards certified to the Nashville P O and some of the closer AOs to conduct some of their steward duties at the Branch office. They have access to computers and other resources they do not have at the office they are assigned to. The steward has to obtain permission from management for time to investigate and prepare grievances. It would be in the USPS best interest to permit the stewards to conduct their official union duties where the resources needed are readily available to them. Working at the Branch office should assist them to get their work done faster. This is in everyone's best interest as the steward's union time will be minimized an allow them to focus back on their letter carrier duties.

NALC Branch 4 President

Dave Clark

Dave Clark

To whom it may concern,

From 2008 to approximately 2011, I was the Formal Step A Representative for the Nashville installation; the Nashville installation covers 16 stations. During my time as the Formal Step A Rep, local shop stewards were permitted to use their requested Union time at the Union hall to research and prepare grievances. This is due to the resources readily available to assist those stewards. Not one time, in my years as Formal Step A Rep, did I have a steward inform me that Management refused to let them go to the Union hall to research or prepare grievances while on requested Union time.

Corey L. Walton

10/9/19

In December 2016 I began representing Glenview Station as the shop steward. During the time I was the steward, I was given permission to go to the union office to work on grievances while on the clock. I am now the alternate steward and am still given permission to work at the union office on grievances. This morning I was given permission to come to the union hall to work on open grievances. I have heard our manager and supervisor give Genice Kinsey, our shop steward, permission several times to work at the union hall.

Michael J. McCall

October 1, 2019

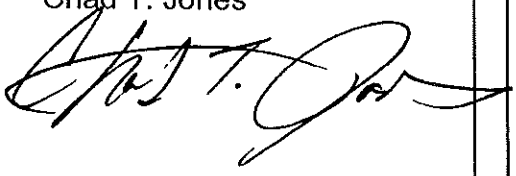
I was the shop steward at East Post Office from 2011 until 2017. During that time, I was approved to work on grievances at the union hall. I was approved anytime I requested it and management suggested I work on grievances at the union hall on occasion. Genie Kinsey was the alternate steward from 2011 until she bid to another station in 2017. When I would go on vacation, she took the grievances over and worked at the union hall on some cases. To my knowledge management never had any problem allowing her to go to the union hall either.

Anthony Lauderdale

To whom this may concern:

I Chad Jones have been the shop steward at the Green Hills Station since 2008. During that time as shop steward management has always allowed me to go to the Branch 4 Union office for my requested union time. I've had different managers and supervisors during my time as shop steward at Green Hills but never once have they not permitted this or had a problem allowing this.

Green Hills Shop Steward
Chad T. Jones



Genie

Hey Genie...I hope you had a happy 4th. I have a quick question. Has Judy ever said you could not go the union hall to work on grievances?

No. I never asked her to go the union hall, I think I only met on 2 or 3 with her while she was there. Why?

I think she is starting to have a problem with me going. She has not said no yet, I was just wondering.

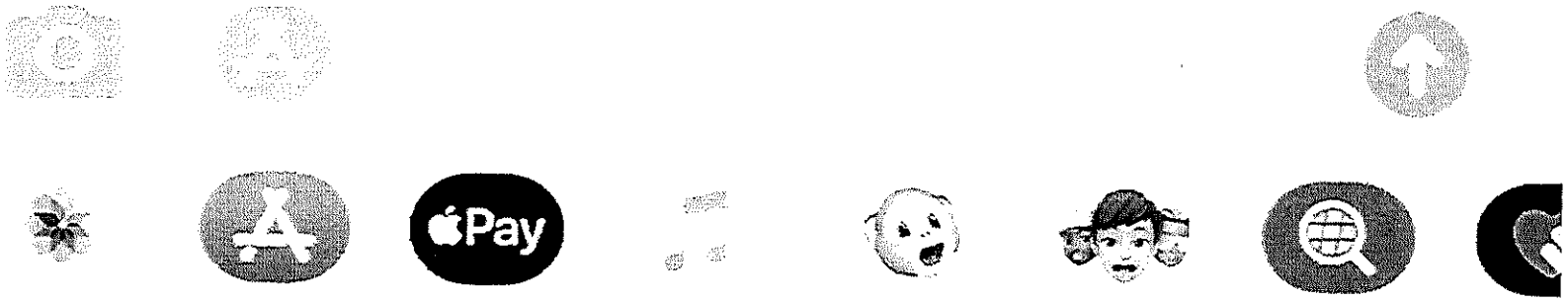
Lol. I have gone to the union hall to work on grievances before when I was there just not when Judy was the manager and Geneo did too, more than me.

I thought I remembered him going when David was here. I just could not remember.

I'm sure she is pissed about you filing grievances not where you are doing the work at. Management does not want a steward in the office anyway.

Nancy tries to get rid of me every chance she gets. She loves it when I'm at the union hall lol.

Ha ha. Yeah you are probably right. Thanks!



To whom it may concern:

Since 2013, I have been a union steward and alternate in the Nashville Installation. I have always done my union work at the union office where resources are available to me. During 2017 Nashville started conducting route inspections which required me at the union office more frequently and I observed many stewards at the union office working on grievances. Since 2013, I have never heard of any stewards not being allowed to do their union time at the union office.

Danna Chambless

Danna Chambless

10/9/19

Fwd: To Whom it Concern:

From: Jason Leath (jaboemma1020@yahoo.com)

To: jason.leath@yahoo.com

Date: Wednesday, October 9, 2019, 10:32 AM CDT

Begin forwarded message:

From: A <thatsnice593@hotmail.com>
Date: October 8, 2019 at 9:46:56 AM CDT
To: Jason Leath <jaboemma1020@yahoo.com>
Subject: To Whom it Concern:

To Whom it Concern:

I, Angelia Hartley, have been a Union Steward at the Melrose Station for 5 years. In that time, I have requested union time to go to the Branch office or Postal Installations to perform union business, permission has been granted.

I , Duane Kinnard, have been the Union Steward at the Woodbine station since the 1st quarter of 2017. I have been allowed to go to my Local Union Branch 4 to do official work due to the resources there. Due to limited access at the Station such as internet, computer, printer and union forms. I have always been granted union steward time whenever scheduled to go do that work at the local branch.

Duane J. Kinnard

To whom it may concern,

I have served as a Shop Steward for the NALC branch 4 area for the past four years, at stations Green Hills (37215), and Donelson (37214). I have always had the option of going to the branch office when needing to work on large grievances such as the quarterly overtime equitability, to have access to the printer, and internet. In fact, on 10/9/2019 I needed access to the internet for an information request that management fulfilled through an email concerning a grievance, I had utilized the union hall for this purpose.

Jason Crosby

Donelson 37214

10/11/2019

To Whomever this may concern

I, Duane Kinnard, have been the Union Steward at the Woodbine station since the 1st quarter of 2017. I have been allowed to go to my Local Union Branch 4 to do official work due to the resources there. Due to limited access at the Station such as internet, computer, printer and union forms. I have always been granted union steward time whenever scheduled to go do that work at the local branch.

Duane J. Kinnard

REGULAR ARBITRATION PANEL

In the Matter of Arbitration	GRIEVANT: Class Action
	POST OFFICE: Nashville, TN 37229
Between	
	CASE NO.: C16N-4C C 18118340
UNITED STATES POSTAL SERVICE	
	NALC NO.: B4-00036-18
and	
THE NATIONAL ASSOCIATION OF LETTER CARRIERS	

BEFORE: **Glenda M. August, Arbitrator**

APPEARANCES:

For the USPS:	Monica Lucas
For the NALC:	Corey Walton
Place of Hearing:	Nashville, TN. 37229
Date (s) of Hearing:	June 15, 2018
Date of Award:	July 13, 2018
Relevant Contract Provision:	Articles 5, 10 & 30
Contract Year:	2016-2019
Type of Grievance:	Contract

AWARD SUMMARY: The grievance is sustained. Management shall cease and desist limiting choice vacation leave to only two (2) selections for Carriers at Green Hills Station and restore the original choice vacation leave calendar wherein carriers picked additional selections for their choice leave.

Glenda M. August

GLENDA M. AUGUST
Arbitrator

I. ISSUE

Did Management violate Articles 5 and 30 of the National Agreement when they stopped a long standing past practice of carriers picking additional selections for the choice vacation leave calendar? If so, what is the appropriate remedy?

II. RELEVANT CONTRACT PROVISIONS

ARTICLE 5
PROHIBITION OF UNILATERAL ACTION

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 preceding Article, Article 5, shall apply to City Carrier Assistant Employees.)

ARTICLE 30
LOCAL IMPLEMENTATION

A. Presently effective local memoranda of understanding not inconsistent or in conflict with the 2011 National Agreement shall remain in effect during the term of this Agreement unless changed by mutual agreement pursuant to the local implementation procedure set forth below or, as a result of an arbitration award or settlement arising from either party's impasse of an item from the presently effective local memorandum of understanding (LMOU).

B. There shall be a 30-day period of local implementation to commence April 1, 2013 on the 22 specific items enumerated below, provided that no LMOU may be inconsistent with or vary the terms of the 2011 National Agreement:

7. Whether employees at their option may request two selections during the choice vacation period, in units of either 5 or 10 days.

C. All proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the National Union President or the Vice President, Labor Relations. The request for arbitration must be submitted within 10 days of the end of the local implementation period. However, where there is no agreement and the matter is not referred to arbitration, the provisions of the former LMOU shall apply. The parties may challenge a provision(s) of an LMOU as inconsistent or in conflict with the National Agreement only under the following circumstances:

1. Any LMOU provision(s) added or modified during one local implementation period may be challenged as inconsistent or in conflict with

the National Agreement only during the local implementation period of the successor National Agreement.

2. At any time a provision(s) of an LMOU becomes inconsistent or in conflict as the result of a new or modified provision(s) of the National Agreement.

3. At any time a provision(s) of an LMOU becomes inconsistent or in conflict as the result of the amendment or modification of the National Agreement subsequent to the local implementation period.

In such case, the party declaring a provision(s) inconsistent or in conflict must provide the other party a detailed written explanation of its position during the period of local implementation, but no later than seven (7) days prior to the expiration of that period. If the local parties are unable to resolve the issue(s) during the period of local implementation, the union may appeal the impasse to arbitration pursuant to the procedures outlined above. If appealed, a provision(s) of an LMOU declared inconsistent or in conflict will remain in effect unless modified or eliminated through arbitration decision or by mutual agreement.

[see Memo, page 216]

D. An alleged violation of the terms of an LMOU shall be subject to the grievance-arbitration procedure.

E. When installations are consolidated or when a new installation is established, the parties shall conduct a thirty (30) day period of local implementation, pursuant to Section B. All proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the National Union President or the Vice President, Labor Relations. The request for arbitration must be submitted within 10 days of the end of the local implementation period.

F. Where the Postal Service, pursuant to Section C, submits a proposal remaining in dispute to arbitration, which proposal seeks to change a presently-effective LMOU, the Postal Service shall have the burden of establishing that continuation of the existing provision would represent an unreasonable burden to the USPS.

III. FACTS

On January 18, 2018 the vacation schedule was posted at Green Hills Station in Nashville, Tennessee to allow only two (2) selections per carrier. When the Union questioned Management about this change to the long-standing practice of making multiple choice vacation selections, Management's response was that the (2) selections per carrier was based on the language of the

Local Memorandum of Understanding and the new Station Manager had instructed him to post the vacation schedule according to that language (LMOU). The Union filed the instant grievance alleging that Management unilaterally changed a long-standing past practice which allowed Letter Carriers at the Green Hills Station to make multiple choice vacation selections as long as the carrier had sufficient annual leave to cover the requested time off.

IV. UNION'S CONTENTIONS

The Union contended that in this case, the Station Manager at Green Hills Station unilaterally implemented a change to the choice vacation selection process in that unit without first bargaining in good faith with the Union. The Union further contended that Management acted without authority when they terminated a mutually acceptable procedure where carriers were allowed to take additional weeks during the choice vacation period. They asserted that Article 5 prohibits Management from unilaterally terminating a past practice and further asserted that the National Agreement requires Management to first engage in good faith bargaining with the Union prior to attempting to make any change to an accepted past practice.

The Union offered the arbitral opinion of National Arbitrator Richard Mittenthal in case number N8-NAT-006, dated July 10, 1976 which stated in pertinent part:

> **Past practice may serve to clarify, implement, and even amend contract language,** but these are not its only functions. Sometimes an established practice is regarded as a distinct and binding condition of employment, on which cannot be changed without the mutual consent of the parties. Its binding quality may arise either from a contract provision which specifically requires the continuance of existing practices or, absent such a provision from the theory that **long-standing practices which have been accepted by the parties become an integral part of the agreement with just as much force as any of its written provisions.**

The Union contended that Arbitrator Mittenthal's decision clearly determined that a past practice may serve to amend or alter or revise the contract language due to long standing acquiescence by both parties in these matters. In this case, they argued that the contractual language of the LMOU has been amended to allow the Letter Carriers in the Green Hills Station a method of choosing choice vacation periods which included making multiple selections beyond the 2 selections guaranteed by the language of the LMOU. The Union further argued Article 5 prohibits Management from unilaterally changing this Past practice without providing the Union with

appropriate notice and engaging in good faith bargaining with the Union over the impact the change would have in the Green Hills delivery unit.

The Union cited the language of the Nashville LMOU which states in relevant part that:

> **Item # 10**
>
> Assignment of vacation periods shall be **by delivery unit** seniority, and shall be completed and posted by January 31 of each year.

According to the Union, the language of the LMOU indicates that for the Nashville Installation, vacation periods are assigned by delivery unit so the past practice established at the Green Hills Post Office would not affect other delivery units in the Nashville Installation; contrary to the contentions of Management in the case at bar.

It was the position of the Union that Article 30 of the Joint Contract Administration Manual (JCAM) between the parties discussed the 22 items which the parties may negotiate during the period of local implementation and in the JCAM the parties agreed to the following language:

> The 22 items.
>
> Article 30.B lists 22 items which the parties may discuss during the period of local implementation. The local parties are required to discuss any of these items if they are raised by either party. This means that if one party raises one of the listed items, the other must discuss it in good faith. These are "mandatory subjects" of discussion if raised during the period of local implementation.

The Union contended that choice leave is one of the 22 items covered under Nashville's LMOU, and so being it is forbidden for the Greenville Hills Station Manager to attempt to change how language of that LMOU is interpreted outside of the local implementation period. The Union further contended that the Greenville Hills Station Manager is not authorized to interpret LMOU language nor is he authorized to attempt to change long-standing practices that have been in place based on LMOU language. The Union argued that those actions are the sole responsibility of the Postmaster of Nashville and the Local Branch President.

Finally, the Union argued that City Letter Carriers in the Green Hills Station have been allowed to make more than two (2) choices during the choice vacation period for over 30 years which makes it a binding past practice under Article 5; any attempt to change the practice outside of the local negotiation period is a clear violation of Article 30. The Union requested that the grievance

be sustained and that Management be ordered to cease and desist this practice and restore the original choice vacation leave calendar wherein the carriers at Green Hills Station can pick additional selections for their choice leave period.

V. MANAGEMENT'S CONTENTIONS

Management contended that the instant grievance is a contract grievance for which the Union bears the burden of proof. Management contended the Union here has not sufficiently evidenced that such a practice existed.

According to Management, the Union alleged that for at least 20, and possibly up to 30 years, there has been a past practice of city letter carries in the Nashville Green Hills Station selecting and receiving an unlimited number of choice vacation selections in direct contradiction to the parties' longstanding agreed upon language contained in the Local Memorandum of Understanding. Management argued that their actions to comply with the language of the LMOU also comply with Article 30 and further argued that the Union's requested remedy in the instant case would equate to a violation. Management cited the language of the Nashville LMOU where the parties agreed that City Letter Carriers may at their option request two (2) selections during the choice vacation period in units of 5 and 10 days.

Management argued that the way the carrier vacation selections were done was contractual and it is the same practice as other stations in the Nashville Installation. They further argued that the Union contended that Management at Green Hills Station violated Articles 5 and 30 of the National Agreement when Management stopped a long standing past practice of carriers picking additional selections for the choice vacation leave calendar. In defining past practice Management noted the Joint Contract Administration Manual (JCAM) at Page 5-2 which states:

> **Defining Past Practice**
>
> In a paper given to the National Academy of Arbitrators, Arbitrator Mittenthal described the elements required to establish a valid past practice:
>
> • **First, there should be clarity and consistency.** A course of conduct which is vague and ambiguous or which has been contradicted as often as it has been followed can hardly qualify as a practice. But where those in the plant invariably respond the same way to a particular set of conditions, their conduct may very well ripen into a practice.

> • **Second, there should be longevity and repetition.** A period of time has to elapse during which a consistent pattern of behavior emerges. Hence, one or two isolated instances of certain conduct do not ordinarily establish a practice. Just how frequently and over how long a period something must be done before it can be characterized as a practice is a matter of good judgment for which no formula can be devised.
>
> • **Third, there should be acceptability.** The employees and supervisors alike must have knowledge of the particular conduct and must regard it as the correct and customary means of handling a situation. Such acceptability may frequently be implied from long acquiescence in a known course of conduct. Where this acquiescence does not exist, that is, where employees constantly protest a particular course of action through complaints and grievances, it is doubtful that any practice will be created.

Management examined the Union's contentions and arguments and noted that it was argued by the Union that there can be no greater clarity and consistency than an accepted practice of over 20 years and that accepted practice shows longevity and repetition. Management contended that the Union argued that Managers and Supervisors have come and gone at Green Hills Stations yet the consistent pattern of carriers having been allowed additional selections for choice vacation leave calendar remained the same throughout the 20-30 year time frame.

Management argued that although the Union provided a copy of the (old) 2018 leave calendar which showed carriers with multiple selections of leave, they did not include any signed 3971s showing that this approved leave in the calendar was choice vacation leave. Management further argued that there is clear language in Item #7 of the Memorandum of Understanding between Branch 4 of the National Association of Letter Carriers, AFL-CIO and the United States Postal Service at Nashville, Tennessee that reads:

> Carriers at their option may request two selections during the choice vacation period in units of 5 and 10 days.

It was the position of Management that National Arbitrator Mittenthal, whose opinion is included on Page 5-3 of the JCAM, stated that there are three distinct functions of past practice:

> To Implement Contract Language wherein the parties' Past Practice provides evidence of how a provision at issue should be applied when the contract language is not sufficiently specific to resolve issues.

To Clarify Ambiguous Language wherein Past Practice is utilized to assess the intent of the parties; when a contractual provision could be interpreted in several different ways, or in other words the language is ambiguous.

To Implement Separate Conditions of Employment wherein Past Practice can establish a separate enforceable condition of employment concerning issues where the contract is "silent".

According to Management, none of the cited functions of Past Practice are represented in the instant case. Management contended that the clear and unambiguous language should have been sufficient to resolve the issue; however, according to Management, the Union is improperly applying Past Practice in an attempt to ignore the clear language agreed upon by the parties in order to gain a benefit for which they have failed to negotiate.

Management maintained that they had no requirement to notify the Union or to bargain over a right which was already afforded them. Management argued that it was incumbent upon the Union to request negotiations and the Union has not bargained in good faith, as evidenced by the parties' agreement on November 28, 2017 to extend the current LMOU language through the year 2019. Management noted that the Union filed this grievance less than two (2) full months after agreeing to extend the current LMOU and the Union has shown no attempt to bargain for the benefit of an unlimited amount of leave selections for the choice vacation period.

Article 10 Section 3 and 4 of the National Agreement were offered by Management to demonstrate that the Union can show no harm in Management's adherence to the LMOU as Article 10.4 of the National Agreement provides that the remainder of the employee's annual leave (after choice vacation selections have been made) may be granted at other times during the year as requested by the employee. Management added that simply because carriers at Green Hill Station can no longer make multiple choices for the choice vacation period, it does not prohibit them from requesting "incidental" leave.

Finally Management argued that arbitral history supports their position and their decisions in the Green Hills Station comply with the clear and unambiguous language contained in the National Agreement as well as in the Local Memorandum of Understanding between the parties. Management added that the current LMOU has been relied upon by the parties for the past 36 years but it was not until Management complied with the language of that LMOU that the Union no longer

approved of the language they agreed upon so many years ago, and that they stated is the definition of bad faith bargaining. Based on their contentions, and the evidence of record or lack thereof, Management requested that the instant grievance be denied in its' entirety.

VII. DISCUSSION AND OPINION

ARTICLE 5
PROHIBITION OF UNILATERAL ACTION

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 preceding Article, Article 5, shall apply to City Carrier Assistant Employees.)

ARTICLE 10

LEAVE

Section 3. Choice of Vacation Period

A. It is agreed to establish a nationwide program for vacation planning for employees in the **regular work force** with emphasis upon the choice vacation period(s) or variations thereof.

B. Care shall be exercised to assure that no employee is required to forfeit any part of such employee's annual leave.

C. The parties agree that the duration of the choice vacation period(s) in all postal installations shall be determined pursuant to local implementation procedures.

D. Annual leave shall be granted as follows:

1. Employees who earn 13 days annual leave per year shall be granted up to ten (10) days of continuous annual leave during the choice period. The number of days of annual leave, not to exceed ten (10), shall be at the option of the employee.

2. Employees who earn 20 or 26 days annual leave per year shall be granted up to fifteen (15) days of continuous annual leave during the choice period. The number of days of annual leave, not to exceed fifteen (15), shall be at the option of the employee.

3. **The subject of whether an employee may at the employee's option request two (2) selections during the choice period(s), in units of either 5 or 10 working days, the total not to exceed the ten (10) or fifteen (15) days above, may be determined pursuant to local implementation procedures.**

4. The remainder of the employee's annual leave may be granted at other times during the year, as requested by the employee.

E. The vacation period shall start on the first day of the employee's basic work week. Exceptions may be granted by agreement among the employee, the Union representative and the Employer.

F. An employee who is called for jury duty during the employee's scheduled choice vacation period or who attends a National, State, or Regional Convention (Assembly) during the choice vacation period is eligible for another available period provided this does not deprive any other any other employee of first choice for scheduled vacation.

Memorandum of Understanding
Between
The United States Postal Service
Nashville, Tennessee, and
The National Association of Letter Carriers
Branch 4

ITEM # 7: "WHETHER EMPLOYEES AT THEIR OPTION MAY REQUEST TWO SELECTIONS DURING THE CHOICE VACATION PERIOD, IN UNITS OF EITHER 5 OR 10 DAYS."

Carriers at their option may request two selections during the choice vacation period in units of 5 and 10 days.

The dispute in the instant case surrounds the selection of choice vacation at the Green Hills Station in Nashville, Tennessee. Until the selection of choice vacation in the Leave Year for 2018, the current choice leave period, City Letter Carriers at Green Hills Station in Nashville were allowed to make multiple selections during the choice vacation period. Effective with the current year's vacation calendar, Management instructed Carriers at Green Hills that their selection would be limited to two (2). The Union filed the instant grievance alleging a unilateral change, by Management, to a valid past practice; in violation of Article 5.

According to the Union for more than 20 years and possibly up to 30 years, carriers in the Green Hills Station have been allowed to make multiple selections for the choice vacation period as long as the carrier had sufficient leave to cover the requested time off. The Union contended that the Station Manager at Green Hills Station unilaterally implemented a change to the choice vacation selection process in that unit without first bargaining in good faith with the Union. Management

maintained that they had no requirement to notify the Union or to bargain over a right which was already afforded them. Management argued that it was incumbent upon the Union to request negotiations and the Union has not bargained in good faith, as evidenced by the parties' agreement on November 28, 2017 to extend the current LMOU language through the year 2019. The Union further contended that Management acted without authority when they terminated a mutually acceptable procedure where carriers were allowed to take additional weeks during the choice vacation period. Management argued that the language of the Nashville LMOU states that City Letter Carriers may at their option request two (2) selections during the choice vacation period in units of 5 and 10 days. They added that the current LMOU has been relied upon by the parties for the past 36 years but it was not until Management complied with the language of that LMOU that the Union no longer approved of the language they agreed upon so many years ago;, and that, they stated, is the definition of bad faith bargaining.

Article 5 provides guidance to the parties on past practice and states:

> **Prohibition on Unilateral Changes.** Article 5 prohibits management taking any unilateral action inconsistent with the terms of the existing agreement or with its obligations under law. Section 8(d) of the National Labor Relations Act prohibits an employer from making unilateral changes in wages, hours or working conditions during the term of a collective bargaining agreement.

In H1N-5G-C 14964, March 11, 1987 (C-06858) National Arbitrator Bernstein wrote concerning Article 5:

> 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 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.
>
> Not all unilateral actions are prohibited by the language in Article 5—only those affecting wages, hours or working conditions as defined in Section 8(d) of the National Labor Relations Act. Additionally, certain management decisions concerning the operation of the business are specifically reserved in Article 3 unless otherwise restricted by a specific contractual provision.

Past Practice

The following explanation represents the national parties' general agreement on the subject of past practice. The explanation is not exhaustive, and is intended to provide the local parties general guidance on the subject. The local parties must insure that the facts surrounding a dispute in which past practice plays a part are surfaced and thoroughly developed so an informed decision can be made.

Article 5 may also limit the employer's ability to take a unilateral action where a valid past practice exists. While most labor disputes can be resolved by application of the written language of the Agreement, it has long been recognized that the resolution of some disputes require the examination of the past practice of the parties.

Defining Past Practice

In a paper given to the National Academy of Arbitrators, Arbitrator Mittenthal described the elements required to establish a valid past practice:

• First, there should be clarity and consistency. A course of conduct which is vague and ambiguous or which has been contradicted as often as it has been followed can hardly qualify as a practice. But where those in the plant invariably respond the same way to a particular set of conditions, their conduct may very well ripen into a practice.

• Second, there should be longevity and repetition. A period of time has to elapse during which a consistent pattern of behavior emerges. Hence, one or two isolated instances of certain conduct do not ordinarily establish a practice. Just how frequently and over how long a period something must be done before it can be characterized as a practice is a matter of good judgment for which no formula can be devised.

• Third, there should be acceptability. The employees and supervisors alike must have knowledge of the particular conduct and must regard it as the correct and customary means of handling a situation. Such acceptability may frequently be implied from long acquiescence in a known course of conduct. Where this acquiescence does not exist, that is, where employees constantly protest a particular course of action through complaints and grievances, it is doubtful that any practice will be created.

• One must consider, too, the underlying circumstance which give a practice its true dimensions. A practice is no broader than the circumstances out of which it has arisen, although its scope can always be enlarged in the day-to-day administration of the agreement. No meaningful description of a practice can be made without mention of these circumstances. For instance, a work assignment practice which develops on the afternoon and midnight shifts and which is responsive to the peculiar needs for night work cannot be automatically extended to the day shift. The point is that every practice must be carefully related to its origin and purpose.

• Finally, the significance to be attributed to a practice may possibly be affected by whether or not it is supported by mutuality. Some practices are the product, either in their inception or in their application, of a joint understanding; others develop from choices made by the employer in the exercise of its managerial discretion without any intention of a future commitment.

Functions of Past Practice

In the same paper, Arbitrator Mittenthal notes that there are three distinct functions of past practice:

To Implement Contract Language. Contract language may not be sufficiently specific to resolve all issues that arise. In such cases, the past practice of the parties provides evidence of how the provision at issue should be applied. For example, Article 15, Section 2, Step 3 of the 1978 National Agreement (and successor agreements through the 2000 National Agreement) required the parties to hold Step 3 meetings. The contract language, however, did not specify where the meetings were to be held. Arbitrator Mittenthal held that in the absence of any specific controlling contract language, the Postal Service did not violate the National Agreement by insisting that Step 3 meetings be held at locations consistent with past practice (N8-NAT-0006, July 10, 1979, C-03241).

To Clarify Ambiguous Language. Past practice is used to assess the intent of the parties when the contract language is ambiguous, that is, when a contract provision could plausibly be interpreted in one of several different ways. A practice is used in such circumstances because it is an indicator of how the parties have mutually interpreted and applied the ambiguous language. For example, in a dispute concerning the meaning of an LMOU provision, evidence showing how the provision has been applied in the past provides insight into how the parties interpreted the language. If a clear past practice has developed, it is generally found that the past practice has established the meaning of the disputed provision.

To Implement Separate Conditions of Employment. Past practice can establish a separate enforceable condition of employment concerning issues where the contract is "silent." This is referred to by a variety of terms, but the one most frequently used is the silent contract. For example, a past practice of providing the local union with a file cabinet may become a binding past practice, even though there are no contract or LMOU provisions concerning the issue.

Changing Past Practices

The manner by which a past practice can be changed depends on its purpose and how it arose. Past practices that implement or clarify existing contract language are treated differently than those concerning the "silent contract."

Changing Past Practices that Implement or Clarify Contract Language. If a binding past practice clarifies or implements a contract provision, it becomes, in

effect, an unwritten part of that provision. Generally, it can only be changed by changing the underlying contract language, or through bargaining.

Changing Past Practices that Implement Separate Conditions of Employment. If the Postal Service seeks to change or terminate a binding past practice implementing conditions of employment concerning areas where the contract is silent, Article 5 prohibits it from doing so unilaterally without providing the union appropriate notice. Prior to making such a change unilaterally, the Postal Service must provide notice to the union and engage in good faith bargaining over the impact on the bargaining unit. If the parties are unable to agree, the union may grieve the change.

Management changes in such "silent" contracts are generally not considered violations if 1) the company changes owners or bargaining unit, 2) the nature of the business changes, or 3) the practice is no longer efficient or economical. The first of these has rarely arisen in Postal Service cases involving its numerous bargaining units.

A change in local union leadership or the arrival of a new postmaster or supervisor is not, in itself, sufficient justification to change or terminate a binding past practice, as noted in the previous paragraph.

Obviously, the National Agreement between the parties is not silent on choice vacation selections, nor is it ambiguous, as pointed out by Management in this case. Both the National Agreement at Article 10 Section 3 and the LMOU between the parties in Nashville at Item # 7 address choice vacation selections. At Green Hill Station, Management and the Union, by allowing Carriers to make multiple selections during the choice vacation period for some 20 to 30 years, were Implementing Contract Language as it existed in the National Agreement and LMOU. Only the parties at the time can determine how they were interpreting Article 10 of the National Agreement and Item 7 of the LMOU; however, whatever their interpretation of the specified language, the parties in Green Hill Station decided to allow multiple vacation selections during the choice vacation period to Carriers at that Station. In deciding whether this practice was a valid past practice we have to examine the parties' general agreement on the subject as discussed by National Arbitrator Mittenthal:

> **First, there should be clarity and consistency-** ***A course of conduct which is vague and ambiguous or which has been contradicted as often as it has been followed can hardly qualify as a practice.*** Here it is very clear what the practice was-multiple selections during choice vacation; and this practice was consistently applied, leave

year after leave year for 20 to 30 years, only in the Green Hill Station of the Nashville Installation.

• **Second, there should be longevity and repetition.** ***A period of time has to elapse during which a consistent pattern of behavior emerges.*** It is safe to say a reasonable person would find longevity in a 20-30 year practice. It was undisputed that multiple selections have been allowed in Green Hill Station for decades.

• **Third, there should be acceptability.** ***The employees and supervisors alike must have knowledge of the particular conduct and must regard it as the correct and customary means of handling a situation.*** Here again it was undisputed by the parties that there was acceptance by both the Union and Management since City Carriers made their multiple selections and Management acted on those selections by allowing them to be made. It is irrelevant whether the selections were approved or not, since this would have been governed by the percentage of Letter Carriers allowed off during that period; the issue is the termination of the ability to make the multiple selections.

• **One must consider, too, the underlying circumstance which give a practice its true dimensions.** ***A practice is no broader than the circumstances out of which it has arisen, although its scope can always be enlarged in the day-to-day administration of the agreement.*** In the instant case, the practice had to arise from the selections being made by Letter Carriers at Green Hill Station, and the action taken by Management to approve/disapprove the selections. The practice does not seem to have been enlarged in any manner; there was no evidence presented to demonstrate that the practice was extended to other offices in the Nashville Installation, or that other leave practices were undertaken in that office. It appears that Letter Carriers wished to make multiple selections and Management approved that practice by continuing to allow those selections to be made.

• **Finally, the significance to be attributed to a practice may possibly be affected by whether or not it is supported by mutuality.** ***Some practices are the product, either in their inception or in their application, of a joint understanding; others develop from choices made by the employer in the exercise of its managerial discretion without any intention of a future commitment.*** It would have been impossible for this type of practice to continue for some 20-30 years without it being supported by mutuality; and it was most likely borne out of a joint understanding of the Letter Carriers desire to have the multiple choices to selection vacation in order to provide rest and relaxation, and Management desiring to keep morale high, since it apparently did not affect operations in that office based on the number of years the practice continued to exist.

Since the Contract is not silent on choice period vacation scheduling, the function of the past practice in this case could only serve to Implement or Clarify Contract Language. The JCAM at Pages 5-3 and 5-4 and states in pertinent part:

> **Changing Past Practices**
>
> The manner by which a past practice can be changed depends on its purpose and how it arose. Past practices that implement or clarify existing contract language are treated differently than those concerning the "silent contract."
>
> **Changing Past Practices that Implement or Clarify Contract Language.** If a binding past practice clarifies or implements a contract provision, it becomes, in effect, an unwritten part of that provision. Generally, it can only be changed by changing the underlying contract language, or through bargaining.

In order for either party to change such a practice, "Generally it can only be changed by changing the underlying contract language, or through bargaining." In the case at bar, the Union argued that Management made no attempt to notify them that there would be a change to the practice of allowing multiple choice vacation period selections by Letter Carriers at Green Hill Station. Instead, Management Unilaterally made a change to this valid past practice in violation of Article 5 of the National Agreement between the parties. In case number J11N-4J-C 17364079 provided by the Union, Arbitrator JoAnn Nixon, reviewed the existence of a past practice, changed in violation of Article 5 and opined:

> In examining the aforementioned case, I reviewed the decision of National Arbitrator Carlton Snow in case number H7N-58-R-C316, where Arbitrator Snow addressed the impact of past practice, stating:
>
> > ***The largest hurdle to overcome in using a "past practice" analysis is establishing the existence of a "practice." When there is evidence the parties had mutually agreed that a practice existed for a period of time (even if it is unclear which contractual provision was thought to have governed), the practice must be deemed established. The point is that a collective bargaining agreement includes more than the written provision in a printed document as the United States Supreme Court has recognized. A labor contract also included understanding and mutually accepted practices which have developed between the parties during their relationship. In the grievances submitted to the arbitrator in this particular case, it was the mutually accepted practice of the parties, at least prior to mid-1987, to make temporary T-6 vacancies available for opting by the senior-most-qualified employes (sic).***

As I stated in that decision, while Arbitrator Snow addressed past practice, he emphasized the fact that it must be well established **"When there is evidence the parties had mutually agreed that a practice existed for a period of time (even if it is unclear which contractual provision was thought to have governed), the practice must be deemed established."** In the instant case there is no doubt the Past Practice existed and even Management in its Step B contentions conceded they made a unilateral change to the past practice.

The case at bar is very similar in the fact that there was no dispute that it was a long-standing practice to allow carriers to make multiple selections during the choice vacation period; and according to National Arbitrator Snow, when there is evidence the practice existed for a long time, the practice **must** be deemed established. Having been established, the only way to change this past practice, which was established to Implement or Clarify Contract Language (in this case Article 10 of the National Agreement and Item 7 of the LMOU), is generally through bargaining. In this case, Management did not notify, or attempt to bargain with, the Union; this was a violation of Article 5.

Based on the foregoing, the grievance is sustained.

AWARD

The grievance is sustained. Management shall cease and desist limiting choice vacation leave to only two (2) selections for Carriers at Green Hills Station and restore the original choice vacation leave calendar wherein carriers picked additional selections for their choice leave.

Glenda M. August

GLENDA M. AUGUST
Arbitrator

July 13, 2018

New Iberia, LA

ARTICLE 5 PROHIBITION OF UNILATERAL ACTION

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 preceding Article, Article 5, shall apply to City Carrier Assistant Employees.)

Prohibition on Unilateral Changes. Article 5 prohibits management taking any unilateral action inconsistent with the terms of the existing agreement or with its obligations under law. Section 8(d) of the National Labor Relations Act prohibits an employer from making unilateral changes in wages, hours or working conditions during the term of a collective bargaining agreement.

In H1N-5G-C 14964, March 11, 1987 (C-06858) National Arbitrator Bernstein wrote concerning Article 5:

> 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 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.

Not all unilateral actions are prohibited by the language in Article 5—only those affecting wages, hours or working conditions as defined in Section 8(d) of the National Labor Relations Act. Additionally, certain management decisions concerning the operation of the business are specifically reserved in Article 3 unless otherwise restricted by a specific contractual provision.

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The following explanation represents the national parties' general agreement on the subject of past practice. The explanation is not exhaustive, and is intended to provide the local parties general guidance on the subject. The local parties must insure that the facts surrounding a dispute in which past practice plays a part are surfaced and thoroughly developed so an informed decision can be made.

Article 5 may also limit the employer's ability to take a unilateral action where a valid past practice exists. While most labor disputes can be resolved by application of the written language of the Agreement, it has long been recognized that the resolution of some disputes require the examination of the past practice of the parties.

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In a paper given to the National Academy of Arbitrators, Arbitrator Mittenthal described the elements required to establish a valid past practice:

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- Third, there should be acceptability. The employees and supervisors alike must have knowledge of the particular conduct and must regard it as the correct and customary means of handling a situation. Such acceptability may frequently be implied from long acquiescence in a known course of conduct. Where this acquiescence does not exist, that is, where employees constantly protest a particular course of action through complaints and grievances, it is doubtful that any practice will be created.
- One must consider, too, the underlying circumstance which give a practice its true dimensions. A practice is no broader than the circumstances out of which it has arisen, although its scope can always be enlarged in the day-to-day administration of the agreement. No meaningful description of a practice can be made without mention of these circumstances. For instance, a work assignment practice which develops on the afternoon and midnight shifts and which is responsive to the peculiar needs for night work cannot be automatically extended to the day shift. The point is that every practice must be carefully related to its origin and purpose.
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Generally, it can only be changed by changing the underlying contract language, or through bargaining.

Changing Past Practices that Implement Separate Conditions of Employment. If the Postal Service seeks to change or terminate a binding past practice implementing conditions of employment concerning areas where the contract is silent, Article 5 prohibits it from doing so unilaterally without providing the union appropriate notice. Prior to making such a change unilaterally, the Postal Service must provide notice to the union and engage in good faith bargaining over the impact on the bargaining unit. If the parties are unable to agree, the union may grieve the change.

Management changes in such "silent" contracts are generally not considered violations if 1) the company changes owners or bargaining unit, 2) the nature of the business changes, or 3) the practice is no longer efficient or economical. The first of these has rarely arisen in Postal Service cases involving its numerous bargaining units.

A change in local union leadership or the arrival of a new postmaster or supervisor is not, in itself, sufficient justification to change or terminate a binding past practice, as noted in the previous paragraph.

ARTICLE 19 HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. At the request of the Union, the parties shall meet concerning such changes. If the Union, after the meeting, believes the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Union upon issuance.

Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to CCA employees only to the extent consistent with other rights and characteristics of CCA employees provided for in this Agreement and otherwise as they apply to the supplemental work force. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to CCA employees pursuant to the same standards and procedures found in Article 19 of the National Agreement.

[see Memo, page 207]

This Memo is located on *JCAM* pages 19-2 and 19-3.

Handbooks and Manuals. Article 19 provides that those postal handbook and manual provisions directly relating to wages, hours, or working conditions are enforceable as though they were part of the National Agreement. Changes to handbook and manual provisions directly relating to wages, hours, or working conditions may be made by management at the national level and may not be inconsistent with the National Agreement. A challenge that such changes are inconsistent with the National Agreement or are not fair, reasonable, or equitable may be made only by the NALC at the national level.

A memorandum included in the 2011 National Agreement establishes a process for the parties to communicate with each other at the national level regarding changes to handbooks, manuals and published regulations that directly relate to wages, hours, or working conditions. The purpose of the memorandum is to provide the national parties with a better understanding of their respective positions in an effort to eliminate

unnecessary appeals to arbitration and clearly identify and narrow the issue(s) in cases that are appealed to arbitration under Article 19.

Local Policies. Locally developed policies may not vary from nationally established handbook and manual provisions (National Arbitrator Aaron, H1N-NAC-C-3, February 27, 1984, C-04162). Additionally, locally developed forms must be approved consistent with the *Administrative Support Manual* (ASM) and may not conflict with nationally developed forms found in handbooks and manuals.

National Arbitrator Garrett held in MB-NAT-562, January 19, 1977 (C-00427), that "the development of a new form locally to deal with stewards' absences from assigned duties on union business—as a substitute for a national form embodied in an existing manual (and thus *in conflict* with that manual)—thus falls within the second paragraph of Article 19. Since the procedure there set forth has not been invoked by the Postal Service, it would follow that the form must be withdrawn."

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

Re: Article 19

1. When the Postal Service provides the Union with proposed changes in handbooks, manuals, or published regulations pursuant to Article 19 of the National Agreement, the Postal Service will furnish a final draft copy of the **revisions** and a **document that identifies** the changes being made from the existing handbook, manual, or published regulation. When the handbook, manual, or published regulation is available in electronic form, the Postal Service will provide, in addition to a hard copy, an electronic version of the final draft copy clearly indicating the changes and another unmarked final draft copy of the changed provision with the changes incorporated.

2. The **document that identifies the changes will indicate** language that has been added, deleted, or moved, and the new location of language moved. Normally, the changes will be identified by striking through deleted language, underlining new language, and placing brackets around language that is moved, with the new location indicated. If another method of identifying the changes is used, the method will be clearly explained, and must include a means to identify which language is added, deleted, and moved, as well as the new location of any language moved.

3. When notified of a change(s) to handbooks, manuals, and published regulations, pursuant to Article 19 of the National Agreement, the Union will be notified of the purpose and anticipated impact of the change(s) on **city letter carrier** bargaining unit employees.

4. At the request of the Union, the parties will meet to discuss the change(s). If the Union requests a meeting on the change(s), the Union will provide the Postal Service with **notice identifying** the **specific** change(s) the Union wants to discuss.

5. Within sixty (60) days of the Union's receipt of the notice of proposed change(s), the Union will notify the Postal Service in writing of any change(s) it believes is directly related to wages, hours, or working conditions and not fair, reasonable or equitable and/or in conflict with the National Agreement. The Union may request a meeting on the change(s) at issue.

6. The Postal Service will provide the Union with a written response addressing each issue raised by the Union, **pursuant to paragraph 5, within thirty (30) days of receipt,** provided the Union identifies the issue(s) within sixty (60) days of the Union's receipt of the notice of proposed change(s).

7. If the Union, after receipt of the Postal Service's written response, believes the proposed change(s) violates the National Agreement, it may submit the issue to arbitration within sixty (60) days of receipt of the notice of proposed change or thirty (30) days after the Union receives the Postal Service's written response, whichever is later. **If the Postal Service fails to provide a response to the Union pursuant to paragraph 6, the Union may submit the issue(s) to arbitration provided it does so within thirty (30) days after the Postal Service's response was due.** The Union's appeal shall specify the change(s) it believes is not fair, reasonable or equitable and/or in conflict with the National Agreement, and shall state the basis for the appeal.

8. If modifications are made to the final draft copy as a result of meetings with employee organizations, the Postal Service will provide NALC with a revised final draft copy clearly indicating only the change(s) which is different from the final draft copy.

9. When the changes discussed **in paragraph 8** are incorporated into **the final** version of a handbook, manual, publication, or published regulation, and there is not an additional change(s) which would require notice under Article 19, the Union will be provided a courtesy copy. **In such case, a** new **Article 19** notice period is **not** necessary.

10. Lastly, in any case in which the Postal Service has affirmatively represented that there is no change(s) that directly relates to wages, hours, or working conditions pursuant to Article 19 of the National Agreement, time limits for an Article 19 appeal will not be used by the Postal Service as a procedural argument if the Union determines afterwards that there has been a change to wages, hours, or working conditions.

Nothing contained in this memorandum modifies the Postal Service's right to publish a change(s) in a handbook, manual or published regulation, sixty (60) days after notification to the Union.

Date: **January 10, 2013**

National Association of Letter Carriers

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211 Donelson Pike
P.O. Box 140816
Nashville, TN. 37214
(615) 883-7687

COREY WALTON, *Secretary*
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211 Donelson Pike
P.O. Box 140816
Nashville, TN. 37214
(615) 883-7687

REQUEST FOR TIME TO DISCUSS A GRIEVANCE AT THE INFORMAL STEP A DISCUSSION LEVEL

DATE 9/23/2019

East Station/TN/37204
Station

Dear Judy K. Ratton:

In accordance with Article 15, Section 2, of the National Agreement, I request time, during working hours to, discuss a grievance at the Informal Step A discussion level with you pertaining to:

Article 5 Violation (past practice)
(Today - or Extention)

Request received by: Judy Ratton

Date received: 9/23/2019

Date and time parties agreed to meet: 9/23/19 9:00 AM

Leman D. Clark, Jr., President
NALC Branch 4
Nashville, TN. 37214-0816

Management Contentions

Article 5: Prohibition of Unilateral Action, via Article 19: Handbooks and Manuals. Management contends it did not violate Article 5. Article 5, reads as follows:

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.

In H1N-5G-C 14964, March 11, 1987 (C-06858) National Arbitrator Bernstein wrote concerning Article 5:

"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 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."

Management did not violate any of the alleged articles, provisions, and/or manuals listed in this grievance. Management did not attempt to affect wages or hours of the grievant as alleged in this grievance.

This is not a grievance. This is a grip, which is alleging, Management at East Postal Station refused to let shop Steward Rebecca Madsen perform union duties at the union hall.

Article 17, section 3, states as follows:

Section 3. Rights of Stewards
When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and such request shall not be unreasonably denied.
In the event the duties require the steward leave the work area and enter another area within the installation or post office, the steward must also receive permission from the supervisor from the other area he/she wishes to enter and such request shall not be unreasonably denied. The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied. While serving as a steward or chief steward, an employee may not be involuntarily transferred to another tour, to another station or branch of the particular post office or to another independent post office or installation unless there is no job for which the employee is qualified on such tour, or in such station or branch, or post office. If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted. All polygraph tests will continue to be on a voluntary basis.

Article 17, states a steward may leave his/her work area to investigate and adjust a grievances or to investigate a specific problem.

Article 17 give a steward the right to leave his/her work area. Not to leave the building to perform such duties.

M-1

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

Again, management did not deny the steward time on the clock. Management denied the steward the request to leave the facility and go to the union hall.

*Although Article 17.4 provides that the grievant and a steward shall be paid for time actually spent in grievance handling and meetings with management, **there are no contractual provisions requiring the payment of travel time or expenses in connection with attendance at a Formal Step A meeting** (Step 4, N8-S-0330, June 18, 1980, M-00716). Nor does the National Agreement require the payment of a steward who accompanies an employee to a medical facility for a fitness-for-duty examination (Step 4 Settlement, NC-N-12792, December 13, 1978, M-00647).*

The grievant, Rebecca Madsen, wants to be paid on the clock to travel to the Union Hall. Management is under no obligation to allow a shop/union steward to time at the Union Hall during working hours. They are required to approve requested time at the station.

Article 3, Management Rights, states:

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:
A. To direct employees of the Employer in the performance of official duties;
B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
C. To maintain the efficiency of the operations entrusted to it;
D. To determine the methods, means, and personnel by which such operations are to be conducted;
E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and
F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.
(The preceding Article, Article 3, shall apply to City Carrier Assistant Employees.)

This grievance is not alleging management is or has violated the grievant union Representation rights, or have failed to bargain in good faith. This grievance is alleging management will not allow the grievant to perform union duties at the union hall. Management does not have to allow a union steward time at the union hall. Management does have to allow a steward the right to time, which NAS-East Station has and will continue to do.

Management does not agree with any remedy/request proposed by NALC Branch #4 as it relates to this grievance.

M-2