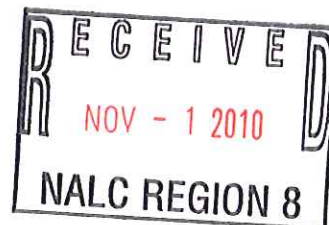


## STEP B DECISION

### STEP B TEAM

Paul D. Robbins, USPS  
Fred Qualls, NALC

District: Tennessee  
DRT Number: 485-10



Decision:	<b>IMPASSED</b>
USPS number:	H06N-4H-C 10366297
Grievant:	Class Action
Branch Grievance Number:	B4-00292-10
Branch:	4
Installation:	Nashville
Delivery Unit:	Installation
State:	Tennessee
Incident Date:	Ongoing
Date Informal Step A Initiated:	09/07/2010
Formal Step A Meeting Date:	10/08/2010
Date Received at Step B:	10/13/2010
Step B Decision Date:	10/27/2010
Issue Code:	19.2000, 05.0000, 34.000
NALC Code:	508099 100929

### **ISSUE**

1. Did Management violate Articles 5, 16, 19 and 34 of the National Agreement when they established a policy change for disciplinary action, which is inconsistent with the Collective Bargaining Agreement? If so, what is the appropriate remedy?

### **DECISION**

The Dispute Resolution Team (DRT) has decided to declare an **IMPASSE**. The NALC National Business Agent may appeal this grievance to arbitration within fourteen (14) days after receipt of this joint report.

The Step B team has considered all arguments and evidence in the case file and any of this material may be cited in the event of arbitration.

### **EXPLANATION**

#### **UNION'S POSITION:**

The union contends that management has violated multiple Articles of the National and/or Handbooks and Manuals when they threatened letter carriers with the implementation of a discipline policy change in which discipline would no longer be progressive/corrective, rather it would become single track, punitive and escalating for unrelated offenses.

Management cited a Regional Arbitration decision (A06M-1A-C 08194185), and quoted from the decision. The union notes:

1. The NPMHU decision cited by management is a Regional decision.
2. The decision is from the NPMHU union which does not have the NALC agreement with the Postal Service, the JCAM, the M-39 Handbook, nor same agreements, decisions and other rulings as does the NALC.

Again, the above decision clearly does not have any bearing on this instant grievance. It was for the NPMHU union (craft). Additionally, it is a Regional Arbitration case (Kearney, New Jersey).

**Management** also erroneously attempted to claim two other decisions had relevance in this grievance. The union notes:

1. These APWU decisions cited by management are Regional decisions.
2. These decisions are from the union APWU which does not have the NALC agreement with the Postal Service, the JCAM, the M-39 Handbook, nor same agreements, decisions and other rulings as does the NALC.

Clearly, this instant grievance must be decided utilizing the National Association of Letter Carriers (NALC) agreement, the JCAM, M-39 Handbook along with all other appropriate Handbooks, Manuals and other agreements between the NALC and the USPS.

Other unions' regional arbitration decisions are irrelevant to this grievance.

Management has made the claim they sent a letter from Greg Gamble (signed by Kevin J. Augustine), dated February 12, 2010 concerning a "one track system" for discipline to six Postal Unions. Management has presented **no evidence that the NALC was sent the letter that was "supposedly" written on February 12, 2010.** The union contends the letter was not received by the NALC.

District Manager Gamble did, at a later date, declare his intention to implement a single track of discipline in the TN district. This instant grievance file contains statements from fifty one Letter Carriers describing being intimidated by the declaration by Mr. Gamble (which was passed along to the workroom floor via a "Service Talk"). Those statements also disclosed that in the extended time they had worked at the Postal Service, many approximately 30 years, there had never been a "single track" for discipline.

A letter from **Mr. Gamble dated June 8, 2010** reads in part as follows:

"Effective Saturday, July 10, 2010, the Tennessee District will implement a single tract of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies..."

Accompanying the above letter was a "Service Talk" entitled "Policy Change for Disciplinary Action" which has been given in several Knoxville Stations. It states in part the following:

"Effective Saturday, July 10, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies..."

On June 17, 2010, NALC Region 8 National Business Agent Lew Drass sent a letter to Mr. Gamble, which reads as follows:

"Dear Greg,

I am in receipt of your letter dated June 8, 2010 regarding a single track of discipline for unrelated infractions.

First of all, neither I nor anyone else who works in my office has any record or recollection of receiving a letter from you dated February 12, 2010. It is also significant to note that you and I met on April 8, 2010...but never even brought this issue up.

That aside, your letter recognizes that you are attempting to change the current system of discipline as stated in the National Agreement. For instance, Article 16, Section 1 of the National Agreement states in relevant part,

**"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive."**

Further, Section 115.1 of the M-39 Handbook states in relevant part,

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

The M-39 Handbook is also part of the National Agreement via Article 19.

It is the position of the NALC that the announcement of a change to the current system of discipline would attempt to change the unambiguous language in the National Agreement referenced above and violates the past practice provisions as it relates to clarification of contract language as considered in Article 5 of the National Agreement. The JCAM at page 5-3 states:

**"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."**

Therefore any such change would have to be negotiated at the National Level during National Negotiations.

It is also the position of the NALC that the current system of discipline is a work standard. Therefore, any notification of change/changes in this work standard would have to be made at the National Level via the provisions contained in Article 34 of the National Agreement.

In closing, I must say that it is regrettable that you would attempt to use the financial situation of the Postal Service to justify circumventing the provisions of the National Agreement as described in your letter.

It seems to me we should be working together to both generate revenue and reduce the costs of disputes. It is my opinion that any attempt to implement the change to the current disciplinary system as stated in your letter will have the opposite effect.

If you have any questions, or would like to discuss this matter, please feel free to contact me."

**On June 28, 2010** Mr. Gamble sent a letter to the NALC and other unions which reads in part as follows:

"The Tennessee District is considering implementation of a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies..."

The June 28 letter also contains the following:

"...All previous correspondence relating to this issue is hereby rescinded..."

**On July 6, 2010**, NALC Region 8 National Business Agent Lew Drass sent a certified letter to Mr. Gamble pointing out the same contractual violations as Mr. Drass' letter of June 17, 2010."

**On July 29, 2010** District Manager Gamble sent a letter which reads in part as follows:

"...it is my decision to implement a single track of discipline for unrelated infractions in the Tennessee District effective September 1, 2010. The current system of using three (3) tracks (performance, attendance, conduct) has not been successful in correcting employee deficiencies..."

**On August 2, 2010**, Mr. Gamble prepared the 2<sup>nd</sup> **Service Talk** entitled: Policy change for Disciplinary Action". The Service talk was given at all the stations in the Knoxville Installation and was posted at all the stations. Mr. Gamble was in effect changing the policy on discipline, thus changing Article 16 of the National Agreement and Section 115 of the M-39 Handbook.

Note that the Service Talk of June and the Service Talk of August are almost identical. The only difference in the two is the implementation date and the removal of, "*With the current financial state of the Postal Service, declining mail volume and economic crisis nationwide*". Mr. Gamble didn't change anything, despite the NALC's efforts to inform him of the various contractual violations.

On page 15-10 of the JCAM, the parties agreed to the following:

"The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end".

**On August 30, 2010** NALC National Business Agent Lew Drass sent the following letter to District Manager Gamble which reads as follows:

"Dear Greg,

I am in receipt of your letter dated July 29, 2010 regarding your decision to change the current system of using 3 tracks (performance, attendance, conduct) to administer Article 16 of the National Agreement, to a single track of discipline for unrelated infractions.

You are (or should be) well aware that the current system used by the Postal Service to decide and issue discipline in the Tennessee District has been in existence for decades and has been the source of great debate via the grievance-arbitration procedure for that same period of time.

The notion of changing the system referenced above that has been in place for decades to a one-track system for unrelated infractions takes this debate to a whole new level.

I must inform you that the National Agreement as currently written does not permit you to make such a decision.

First and foremost, Article 5 of the National Agreement was not applied correctly here. I tried to explain this to you in my letter dated June 17 and July 6, 2010 to no avail, but I'll try again.

Page 5-1 - 5-4 of the JCAM (enclosed) represents the National Parties' general agreement on the subject of past practice. On p. 5-3, the National Parties break the definition and rules to change "Past Practice" issues into three categories. They are:

1. To Implement Contract Language
2. To Clarify Unambiguous Language
3. To Implement Separate Conditions of Employment

In the NALC's view, the practice of using a 3 track system to decide and issue discipline over a period of decades is clearly a practice designed "To Implement Contract Language" such as that contained in Article 16, Article 19, Section 115 of the M-39 Handbook, and Article 34 for starters.

If the argument is that the language in the above stated provisions of the National Agreement is ambiguous, then the practice at issue here would fall into the "To Clarify Unambiguous Language" category.

Either way, the contractual path to attempt to change the current discipline system to a single track of discipline for unrelated infractions is shown in the JCAM on p. 5-3 where it states in relevant part,

"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."

The decision to treat the established past practice of using a multiple track discipline system as falling into the "To Implement Separate Conditions of Employment" category fatally flawed your attempts to make this change from the beginning.

The notion that the contract is silent on the issue of deciding, determining the level, issuing discipline, and resolving disputes that arise when discipline is issued is absurd.

However, just for the record, Article 5 wasn't even complied with had you been trying to change a past practice where the contract was silent.

The first letter I received regarding this matter was to inform me that you had already made your decision and the change would be implemented July 10, 2010. It is interesting that you had already begun to implement service talks to announce this change to all employees. I responded to your letter on June 17, 2010 and informed you that what you were doing was a violation of the National Agreement and I had never been informed about any of this.

I received a letter from you in early July rescinding the previous actions and announcing the same exact change. I responded to your letter by letter dated July 6, 2010 and once again informed you that what you were doing is a violation of the National Agreement.

I also met with you via the telephone to discuss this matter. I explained to you that in the NALC's view, what you were doing was a clear violation of the National Agreement. We talked about the matter for a few minutes, but that was it.

Despite the fact that the approach you took to attempt to change the past practice at issue was misplaced, there was certainly no "good faith" bargaining efforts made on the part of the Postal Service. As a matter of fact, there was no bargaining effort of any kind made by the Postal Service in this situation.

It is quite clear that your final decision was made before you neglected to send me the letter announcing the change back in February. The rest of this was merely a formality, and therefore, nothing more than a sham.

In addition to the multiple violations of Article 5, the decision to change from a 3 track discipline system to a single track discipline system for unrelated infractions violates several other provisions of the National Agreement such as, but not limited to,

Article 16, Section 1 of the National Agreement states in relevant part,

**"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive."**

Further, Section 115.1 of the M-39 Handbook states in relevant part,

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

The M-39 Handbook is also part of the National Agreement via Article 19. Article 19 requires that any changes to handbooks must be made at the National Level.

It is also the position of the NALC that the current system of discipline is a work standard. Therefore, any notification of change/changes in this work standard would have to be made at the National Level via the provisions contained in Article 34 of the National Agreement.

In closing, I must say that it is regrettable that you would attempt to use the financial situation of the Postal Service to justify circumventing the provisions of the National Agreement as described in your letter.

This situation mirrors the Postal Service's misguided attempt to implement the National Reassessment Process (NRP) in the Tennessee District in such a way as to completely ignore your contractual obligations as agreed to by The United States Postal Service and the National Association of Letter Carriers.

I'm requesting that you reconsider your decision and adhere to the agreed to provisions in the National Agreement with respect to this situation instead of just making things up as you go along like the Tennessee District did with NRP.

It seems to me that we should be working together to both generate revenue and reduce the cost of disputes. It is my opinion that any attempt to implement the change to the current disciplinary system as stated in your letter will have the opposite effect.

I want to thank you in advance for your consideration in this matter. If you have any questions, or would like to discuss this matter, please feel free to contact me."

In the case at bar, the NALC National Business Agent initially **attempted twice to point out the contractual violations of District Manager Gamble's actions** to avoid numerous grievances from being filed. **District Manager Gamble ignored Mr. Drass' letters** and consequently numerous grievances are likely to be filed throughout the Tennessee district. **The NALC NBA tried a third time to convince District Manager Gamble to do the right thing** and rescind this absurd policy change.

The grievance file contains statements and interviews from twenty two letter carriers (many having over 30 years of Postal Service) who feel intimidated by Mr. Gamble's change in policy. Those statements describe the multiple tracks of discipline and show concern with management changing the "past practice" (interpretation of the language in Article 16 of the National Agreement). The union contends the twenty two statements and interviews are legitimate, given willingly, **recorded accurately** and clearly show the past practice of the use of multiple tracks of discipline.

Additionally:

The NALC Region 8 NBA addressed Article 5 in all three of his letters to District Manager Gamble. In his letter of August 30, 2010, the NBA significantly elaborated on the violations of Article 5 of the National Agreement.

Based on the letters District Manager Gamble has sent to the union and the content of the associated service talks, the union contends that District Manager Gamble's interpretation of Article 5 of the National Agreement is incorrect. The letters and service talk indicate District Manager **Gamble is implying a "silent contract"**. This is why he sent notification to the union(s). The contract, specifically; **Article 16.1 is not silent** regarding the administration of discipline. Neither is Section 115 of the M-39 Handbook. Both documents specifically state that discipline is to be corrective. **District Manager Gamble's implementation of single track discipline is not corrective**. In fact it is **entirely punitive**.

The Tennessee District's newest attempt to implement a local policy which violates the National Agreement and Postal Handbooks/Manuals shows a **willful disregard for the National Agreement, Memorandums, Handbooks and Manuals**.

The implementation of single track discipline **does vary** from established handbooks and manuals; and the National Agreement. Management violated Article 19 of the **National Agreement and the National Arbitrator Aaron Award cited in Article 19**. Article 19 also incorporates Postal Handbooks and Manuals such as the M-39 Handbook and ELM into the National Agreement and makes them just as enforceable as the National Agreement.

Postmaster General John Potter wrote a Postal Directive dated February 23, 2009 which reads as follows:

"Our bond with our employees has never been more important than it is today. That bond is represented by the collective-bargaining agreements with our unions...but one thing cannot change. Our adherence to the provisions of our labor agreements. They are our word. They are our pledge of fairness to our employees.

It is up to each one of us to make sure that the changes we bring to the organization are changes for the better. Respecting and protecting the provisions of the collective bargaining agreements will help us do that".

The union contends management is in direct violation of **PMG Potter's Policy Letter**. Management knew the Union's position regarding single track discipline via the three letters from NALC Region 8 NBA Lew Drass cited above. Mr. Drass' pleas for contract compliance were ignored as management implemented the new policy anyway.

Section 665.16 of the ELM reads as follows:

"Employees are expected to maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment".

Section 665.24 of the ELM reads as follows:

"Similarly, there must be no tolerance of harassment, intimidation, or bullying by anyone at any level".

The union also contends this new policy violates Sections 665.16 and 665.24 of the ELM.

The union's contentions contain a statement from the NALC Branch 4 President describing the manner in which discipline has previously been issued. Supporting documentation included statements from past NALC Branch 4 Presidents and Business Agent. The Branch 4 President's statement reads in relevant part as follows:

"I'm the President of NALC Branch 4, and I offer this statement in an attempt to place some order to the unfolding of events that lead to the union filing grievance # (B4-00292-10).

First, I would like to go on record bolstering our Business Agent, Lew Drass's reply to the District Manager's move to change/implement a "one-track" method of issuing discipline. I would like to support the Business Agent's comment that he made to the D M; concerning the longevity (from 1972 to present) that Branch 4 has been addressing management's past administering of discipline as provided in Article 16 of the National Agreement. Every time that management didn't administer discipline in a progressive manner with like infractions, the union was successful in getting that discipline rescinded and removed from the employee's files. The union has included in this grievance file, statements from past Presidents, Business Agent and other union officials that have been involved in the grievance procedure in Branch 4, reinforcing the fact that when dealing with discipline grievances in the past, discipline not issued in a progressive nature, were always rescinded. Secondly, Branch 4 has a retired member that served as business agent for several years and his statement reveals that he served at the National Level representing the NALC in negotiations concerning Article 16 on more than one occasion to insert the one-track discipline in to the National Agreement, only to be rejected by the union and then they (management) would remove it from the table."

The statement from Former NBA Ben Johnson reads specifically as follows:

"My name is Ben Johnson, Retired National Business Agent for the National association of Letter Carriers, AFL-CIO. I was elected National Business Agent in 1980 and I retired in 2002.



I was president of Branch 4NALC from 1973 to 1978 and President of the Tennessee State Association of Letter Carriers from 1976 to 1980.

I was a member of the NALC Executive Board and a member of the National Negotiating Team from 1981 to 2002.

**I was a member of the NALC team that accomplished the NALC Agreement with the USPS in 1981, 1984, 1987, 1990, 1994, 1998 and 2001.**

During the time that I was a member of NALC negotiating team (1981-2001) the Postal Service **made several unsuccessful attempts** to modify Article 16 to include a **single track discipline procedure**. The USPS was never successful in their attempts.

If the USPS wants to modify Article 16 to include a single track disciplinary procedure, it must be done at the National Bargaining Table during the next Contract Negotiations.

It has been an established past practice since 1973 to follow the provisions of Article 16 of the National Agreement, which reads as follows: "In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause." **(Emphasis added at DRT)**

Management is aware this existing policy **can be changed only** at the National Level. Mr. Johnson's above statement clearly describes management's attempt at the National Level **on multiple occasions**. Now the Tennessee district is **attempting to change the policy which can only be changed by the National parties**.

The union quoted the following from management's Handbook EL 921:

"E. Investigation

As previously discussed, when an employee commits an offense which seems to warrant discipline, the supervisor must avoid rushing into a disciplinary action without first investigating. **The need for an investigation to meet our just cause and proof requirements is self-evident.** However, the employee's past record must also be checked before any disciplinary action is considered. **This is obviously necessary if we are to abide by the principle of progressive discipline.** Failure to investigate before taking a disciplinary action can result in some awkward situations for the Postal Service.

Examples:

**One employee who worked for many different supervisors on a relief assignment was involved in discussions at separate times within one year by different supervisors for similar infractions.** When discussion did not correct the employee's irregularity, progressive discipline should have been imposed at an early stage.

In another instance, an employee bid into a new section and immediately became a tardiness problem. During the first 10 days under the new supervisor, the employee was tardy six times. The supervisor held a discussion with the employee without investigating the past record, which would have revealed that the employee had been a continuing problem and had recently returned from a 30-day suspension for tardiness. Obviously, a discussion was not the correct action in this instance." **(Emphasis added)**

The union contends that management has failed to adhere to their own guidelines as provided in EL 921 (quoted above), addressing the progressive issuance of discipline.

The following is the relevant portion of the National Agreement concerning Article 3.

"While postal management has the right to "manage" the Postal Service, it must act in accordance with applicable laws, regulations, contract provisions, arbitration awards, letters of agreement, and memoranda".

**The union has clearly shown the contractual provisions management has violated, along with Postal Handbook and Manual provisions. The union has also shown a National Arbitrator Aaron Award management violated and two Step B Decisions. The Union has shown memoranda from Postmaster General Potter which was violated. Management violated Article 3 of the National Agreement.**

Article 16.1 of the National Agreement reads in part as follows:

"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive."

Section 115.1 of the M-39 Handbook was quoted above in the NALC NBA Drass' letter to District Manager Gamble. Section 115.2 reads as follows:

"Managers can accomplish their mission only through the effective use of people. How successful a manager is in working with people will, to a great measure, determine whether or not the goals of the Postal Service are attained... Let the employee know what is expected... Let the employee explain his/her problem—listen if given a chance, the employee will tell you the problem..."

**District Manager Gamble has effectively removed local management's ability to be successful with working with their employees.**

Section 115.3 of the M-39 Handbook reads as follows:

"The manager has the responsibility to resolve as many problems as possible before they become grievances. If the employee's stand has merit, admit it and correct the problem. You are the manager, you must **make decisions**; don't pass this responsibility on to someone else". **(Emphasis added)**

With the District Manager's implementation of single track discipline for unrelated infractions, **local managers cannot "make decisions"**. The decision has already been made; by the Tennessee District Manager.

Section 115.4 of the M-39 Handbook reads as follows:

The National Agreement sets out the basic rules and rights governing management and employees in their dealings with each other, but it is the front-line manager who controls management's attempt to maintain an atmosphere between the employer and employee which assures mutual respect for each other's rights and responsibilities".

In this instant case, it is not the front-line manager who determines anything regarding discipline; it is the Tennessee District Manager. The statements in this grievance file from 22 letter carriers show they believe this new disciplinary policy is not conducive to

maintaining a mutual respect atmosphere. The union contends documentation contained in this grievance file shows the new policy creates a hostile work environment.

The union also contends the implementation of this new policy violates the provisions of Article 34 of the National Agreement.

Management asserted that Manager Gamble's actions were proper because Section 665.6 of the ELM permits management to "*take appropriate disciplinary measures to correct violations of the regulations referred to in 665*". This does not describe the terms or conditions by which the discipline must be administered. The union refers to **Article 16 of the National Agreement** and **Section 115 of the M-39 Handbook-Management of Delivery Services**. These documents **apply specifically to Letter Carriers/NALC**. The ELM includes all employees and all crafts. This is why it refers to discipline in such broad terms. The parties in this instant case are not dealing with the APWU, NPMHU Collective Bargaining Unit Agreements, but with the National Agreement between the **NALC and USPS which specifically addresses the terms and conditions under which discipline must be administered**. As the union has pointed out, the new single track discipline for unrelated infractions policy from the Tennessee District Manager violates this, among other provisions.

The final three pages in this decision to **impassé this grievance**, management used the following expressions:

the Tennessee District devolved into some convoluted

an unachieved bargaining demand

trying to impose a system on TN

firewall between each

stove pipe

unachieved bargaining demand

system has failed

in the private sector

morale of those employees who are

must pick up the slack

disrupts family commitments

every operations manager (myself included)

severe financial crisis

economic meltdown

in the red seven billion dollars

practices... must change

endlessly retrain

disrupt operations  
unacceptable conduct  
no longer suffer  
ship is sinking  
need all hands on deck

As is obvious, the **final three pages** containing the above do not even attempt to address **management's flagrant violations** of the National Agreement with the implementation of this policy of: "single track" discipline.

The **three pages** are "loaded" with "*buzz words*", "*aggressive expressions*" and "*writer's opinions*"; none of which answer their (management's) violations.

Once the **appropriate**: facts, circumstances, history, agreements between the parties and etc are considered, the union contends the single track will be considered in violation of the National Agreement.

Page 5 of the union's contentions describe/break down the new policy into a scenario that clearly describes one (of the many reasons shown in this file) why this new policy declared for the Tennessee District is unfair, a change of policy and is in violation of multiple Articles of the National Agreement.

For all the reasons stated above and all the reasons and issues the union raised at Formal Step A of the grievance procedure, the union believes this grievance should be sustained in its entirety and the remedy requested should be granted.

#### **MANAGEMENT'S POSITION:**

The Management Formal A representative effectively presented the Facts and Contentions. All of the arguments raised by Management at the Informal and Formal Step A meetings are brought forward to Step B and at Arbitration. The Step B representative would like to add the following:

Management contends that under the one track disciplinary process, discipline will continue to be corrective in nature and that there is no violation of Article 3 and/or 5 and/or 16 and/or 19 and/or 34 of the National Agreement and/or Section 115 of the M-39 Handbook and/or Section 665 of the ELM, via Article 19 of the National Agreement.

The grievance file contains a copy of the August 2, 2010, Service Talk given to TN District employees explaining the change:

AUGUST 2, 2010

#### **\*\*\*SERVICE TALK\*\*\***

#### **Policy Change for Disciplinary Action**

Effective Wednesday, September 1, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. The current system of multiple single tracks

for related infractions has not been successful in correcting employee deficiencies. It is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently. This does not change the guidelines set forth in Article 16. Any currently active discipline may be cited in future disciplinary action request. (Emphasis added)

All Postal employees are required to comply with the rules of conduct outlined in Section 660 of the Employee and Labor Relations Manual (ELM). Employees may reference the Postal Service Standards of Conduct (Section 665) that require employees to:

1. Discharge their assigned duties conscientiously and effectively.
2. Obey the instructions of their Supervisors.
3. Maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment.
4. Be regular in attendance and report as scheduled.

These are just a few examples of requirements. In addition, the ELM states that Postal officials may take appropriate disciplinary measures to correct violations of the regulations referred to in Section 665.

The Employee and Labor Relations Manual (ELM) is available on the Postal Service website at [www.usps.com](http://www.usps.com). Please contact your immediate Supervisor or Manager if you have any questions.

**\*PLEASE POST\***

In this, and in all subsequent communications, management has clearly stated that this change "does not change the guidelines set forth in Article 16." Corrective action will remain corrective.

Article 16.1 of the National Agreement between United States Postal Service and National Association of Letter Carriers (NALC), AFL-CIO, reads as follows:

**ARTICLE 16 DISCIPLINE PROCEDURE**

**16.1 Section 1. Principles**

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

This language exists verbatim in the National Agreement for each of the craft unions addressed in the letters from Tennessee District Manager, Greg Gamble. The Employee and Labor Relations Manual (ELM) is also applicable to National Postal Mail Handlers Union (NPMHU), American Postal Workers Union (APWU), National Rural Letter Carriers Association (NRLCA) and National Association of Letter Carriers. Although specific to NALC Letter Carriers, Section 115.1 of Handbook M-39 simply paraphrases the language in Article 16.1 and 16.2.

These facts are particularly important as consideration is given to previous arbitration decisions on this subject.

On page 12 through 13 of Arbitrator Benn's decision in USPS Case No. C0C-4R-D 5111, 5614, the following is stated in part:

"...Article 16.1 states that discipline must be "corrective in nature, rather than punitive". It does not state that the parties have agreed that separate disciplinary tracks are to be followed for attendance problems, insubordination, unacceptable conduct, etc. The logical extent of the Union's argument is that before an employee could be given a 14 day suspension for unacceptable conduct, there must be a letter of warning and a seven day suspension for that particular misconduct, even though, as here, the employee had a substantial prior disciplinary record with a letter of warning, seven day suspension and another 14 day suspension. **Under the Union's theory, an employee could engage in different areas of misconduct and, notwithstanding the existence of prior lengthy suspensions, only expect to receive a letter of warning if that is the first time that employee delved into that particular area of misconduct.** Absent clear direction from the Agreement that the parties intended such a result, I am unwilling to apply that notion of progressive discipline to this case.

**The basic function of progressive discipline is to rehabilitate the errant employee through the imposition of increasing amounts of discipline in order to get the message through to the employee that failure to comply with an employer's rules will not be tolerated..." (Emphasis added)**

On page 25 of Arbitrator Dobranski's decision in USPS Case No. C7C-4R-D 19906 and 20107, the following is stated in part:

"...In reaching my conclusion in this case, I did not rely upon the Postal Service argument that it need not follow separate pillars of progressive discipline for each category of offense. **Although the Postal Service correctly asserts that it is not required to do this..." (Emphasis added)**

Management's Formal Step A correctly states in part the following:

"...None of the requirements of Article 16 change with the implementation of this policy. The JCAM page 16-2 (M-3) reads "it means that for most offenses management must issue discipline in a 'progressive' fashion, issuing lesser discipline for a first offense and a pattern of increasingly severe discipline for succeeding offenses. The basis of this principle of 'corrective' or 'progressive' discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution.' These principles will still apply under the new policy. In addition, in reading this section of the JCAM, nowhere does it state that discipline should be progressive only for related infractions. The JCAM states that lesser discipline be issued for a first offense and increasingly severe discipline for succeeding offenses, it does not state that the offenses have to be related..."

Article 5 of the National Agreement between United States Postal Service and National Association of Letter Carriers (NALC), AFL-CIO, reads in its entirety as follows:

### **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 Transitional Employees.)

The underlined language above also exists verbatim in the National Agreement for each of the craft unions addressed in the letters from Tennessee District Manager, Greg Gamble.

On page 5-1 of the USPS-NALC Joint Contract Administration Manual (JCAM), April 2009, the national parties agreed to the following:

“...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...”

On page 5-2 of the USPS-NALC Joint Contract Administration Manual (JCAM), April 2009, the national parties agreed that **unilateral change** to a valid past practice may also be restricted:

“...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...”

In a paper given to the National Academy of Arbitrators, Arbitrator Mittenthal described the elements required to establish a valid past practice. In the same paper, Arbitrator Mittenthal noted that there are three distinct functions of past practice:

- To Implement Contract Language
- To Clarify Ambiguous Language
- **To Implement Separate Conditions of Employment**

Management maintains, and arbitrators have agreed, that the change proposed in this instant grievance is correctly defined as a separate condition of employment. It is indisputable that the parties did not include specific language to require that separate disciplinary tracks be followed for attendance, conduct and performance in the National Agreement or any postal manual. Nor is there any evidence to support that the national parties intended such a result.

Once established that the past practice of multiple disciplinary tracks is a separate condition of employment, the principal question becomes; did management act unilaterally?

Page 5-4 of the USPS-NALC JCAM, states the following:

**“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.”

Management contends, and the evidence shows, that the Unions were provided advance notice and that management engaged in good faith bargaining through the exchange of letters and phone conversations between TN District Manager, Greg Gamble and Region 8, National Business Agent, Lew Drass.

In the letter from Mr. Gamble dated June 8, 2010, he clearly addresses changes to the nature of the business and the inefficiency of the current practice (items 2 and 3 above). In addition, he speaks to prior efforts to notify and negotiate in good faith prior to implementation of the policy change, in part as follows:

“... The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies. With the current financial state of the Postal Service, declining mail volume and economic crisis nationwide, it is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently.

... You were notified in a letter dated February 12, 2010, of Management's **proposal** to change the policy regarding corrective action. Management provided the Unions with prior notice and an opportunity to present questions or comments by February 26, 2010. APWU was the only union to respond but declined to bargain prior to implementation...” **(Emphasis added)**

In the letter from Mr. Gamble dated June 28, 2010, he again addresses changes to the nature of the business and the inefficiency of the current disciplinary practice, as well as, efforts to notify and negotiate. The letter reads in part as follows:

“... The current system of using three (3) tracks (performance, attendance, conduct) has not been successful in correcting deficiencies. With the current financial state of the Postal Service, declining mail volume and economic crisis nationwide, it is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently.

... In a letter dated February 12, 2010, Management **proposed** to change the policy regarding corrective action. Prior to implementation, several union officials stated they did not receive the previous notice. Please be advised of Management's intent to bargain in good faith. All previous correspondence relating to this issue is hereby rescinded. This is your written notification of Management's **proposed** change to administer Article 16 in accordance with the National Agreement by using a single track of discipline...” **(Emphasis added)**

*Note: The grievance file contains evidence via USPS-Track & Confirm, that this letter and subsequent correspondence to the Unions was delivered.*

In the letter from Mr. Gamble dated June 29, 2010, he again addresses the reason for changing the current practice (items 2 and 3 above), efforts to notify and negotiate in good faith and his intent to proceed with implementation effective September 1, 2010.



The fact that the parties were unable to agree to this change or fashion an acceptable compromise, does not negate the reality that proper notification took place and that management engaged in good faith negotiations prior to implementation.

On page 5 of Arbitrator Holden's Award in USPS Case No. A06M-1A-C 08194185, the following is stated in part:

"Arbitrator Talmadge's award found that the offending aspect of the grievance before her was that Management did not provide the Union with notice or a change to negotiate a change in the discipline practice. 'The Plant Manager unilaterally changed a twenty-nine year practice of applying single line discipline to attendance, behavior and performance infractions without providing the Union with an opportunity to negotiate prior to changing the disciplinary process, a mandatory subject of bargaining.' **She did not find that Management cannot change its discipline procedure.**

...The focus in the instant case is on Article 5 which prohibits management from taking unilateral action that affects 'wages, hours and other terms and conditions of employment....' Arbitrator Talmadge found in her case that Management had acted unilaterally in violation of Article 5. She directed Management to return to the status quo ante with **the clear finding that if the changes sought by Management were done with prior notice to the Union and with opportunity for the Union to bargain prior to implementation, such changes would be possible under the CBA...** (Emphasis added)

Any assertion that this change is merely an effort to terminate employees faster or easier is not supported in fact.

The union presented that argument in USPS Case No. A06M-1A-C 08194185 before Arbitrator Holden. The decision reasoned this issue in part as follows:

"...Thus, it appears in practice most disciplinary cases because of their very nature look more like single line than progressive (as defined above) procedures. The Union's argument that Management wants to implement progressive discipline to get people out more quickly is, thus, not substantiated by the parties' experience..."

Management maintains that the policy change in this instant grievance is directed toward correcting employee deficiencies; not complement reduction.

To the Union's allegation that this change is a new work standard and thus a violation of Article 34, the management Formal Step A states the following in part:

"...It is management's position that the Union's allegation that the current system of discipline is a work standard has no merit and must be dismissed... Article 34 has not only not been violated in this grievance; it is not even applicable..."

The management member of this Formal Step B team is also unclear as to how Article 34 is relevant to this policy change beyond item A., which reads as follows:

### **ARTICLE 34 WORK AND/OR TIME STANDARDS**

A. The principle of a fair day's work for a fair day's pay is recognized by all parties to this Agreement.

Management maintains that this change is entirely consistent with this agreement.

Among the Articles cited as violated in the circumstance is Article 19. Article 19 incorporates all Postal Service handbooks and manuals that directly relate to wages, hours and working conditions as part of the National Agreement itself. In regard to this dispute, the Employee and Labor Relations Manual (ELM) does, in fact, clarify.

The language found in ELM Section 665, Postal Service Standards of Conduct, supports the concept that whether it's addressing attendance, work performance or conduct, it all falls under the umbrella of employee standards of conduct, and is subject to possible disciplinary action **without distinction**. Sub-section 665.13 covers work performance. Sub-section 665.16 covers standards of conduct in the work place. Sub-section 665.41 covers the requirement for all employees to be regular in attendance. Significantly, sub-section 665.6., **Disciplinary Action**, states:

"Postal officials may take appropriate disciplinary measure to correct violations of **the regulations referred to in 665.**"

(Note that the word regulations is plural, and it refers to **all** the regulations in ELM Section 665.)

There is no language found in ELM 665 that for disciplinary purposes, management must address and correct different violations separately, or in isolation of one from another. This language is now part of the Agreement. The fact that Tennessee District may have, over time, devolved into some convoluted, ineffective, multi-track system does not obviate this contract language, nor does it bar them from changing their system to conform with the original intent and language of the ELM. There is a well reasoned arbitration award that held if management has failed in the past to exercise some right that is granted to them under the Agreement, that does not mean they forever precluded from exercising that right. Tennessee District is conforming with the prerogatives outlined in ELM 665.

The language found in ELM, Section 370, Performance Evaluation, reinforces this point. Sub-section 371 indicates employees are expected to maintain good conduct and perform their duties efficiently. Sub-section 375.2., Unsatisfactory Performance, **defines unsatisfactory performance** in its many aspects across the board i.e., **reliability, attendance, quality and quantity of work, attendance, ability to get along with others, etc.** It goes on to state that if corrective measures fall short, and if discipline must be taken, the appropriate procedures will be followed. Again, there is no language found in this section of the ELM that different aspects of unsatisfactory performance must be addressed separately. What the Union is seeking in this grievance is actually an unachieved bargaining demand – trying to impose a system on TN District that is not contractually required.

Under the multi-track system of "stove piping" and separately addressing attendance, performance and conduct deficiencies **independent of each other**, one could have a marginal employee on the rolls with **nine separate, serious, "live" disciplinary actions on the record**. For example, there could be a LOW and two suspensions for unsatisfactory attendance, the same three pieces of discipline for disrupting the work room floor with obnoxious behavior, and three for unsatisfactory work performance. This does not even take into consideration that prior to discipline being issued, there would have been three additional forewarnings in the form of private discussions. The Union argument is that management must forever maintain a permanent "firewall" between each disciplinary "stove pipe" for such an employee, and that under no circumstances

can these disciplinary actions **be considered together**. On its face, such a system and requirement is patently absurd, and not required under the ELM language. It's an unachieved bargaining demand. It's no wonder that the multi-track discipline system has failed to correct marginal employees in Tennessee District.

On page 5 of the union's Formal Step A contentions an overly simplified scenario is outlined that attempts to demonstrate the contractual inconsistencies of a single track system. The scenario suggests that it would be, or is, common practice to issue discipline for a single incident of unauthorized overtime or missed scans which is untrue. It further fails to acknowledge that each of the examples provided are performance related deficiencies as defined in ELM 665, without distinction. In addition, the sample scenario fails to consider that each progressive, corrective, disciplinary action would remain subject to the basic elements of just cause. Such as:

- Is there a rule?
- If so, was the employee aware of the rule?
- Was the employee forewarned of the disciplinary consequences for failure to follow the rule?
- Is the rule a reasonable rule?
- Is the rule consistently and equitably enforced?
- Was a thorough investigation completed?
- Was the severity of the discipline reasonably related to the infraction itself?
- Is the discipline in line with that usually administered?
- Was the disciplinary action taken in a timely manner?
- Was the discipline corrective rather than punitive?

If all these elements, and others, are correctly communicated, considered and investigated, management must be able to provide sufficient evidence to prove these things were done. These requirements only begin to address the obstacles and challenges managers must overcome to address deficient employee performance under any system. Under such contractual constraint, the union's one-dimensional example is not representative.

In the private sector, how many employers are required to control their employees' conduct under such an outlandish system? How many warnings on the need for an employee to correct his /her conduct on the job is reasonable? Four? Nine? Twelve? What sort of impact does retaining such a marginal employee have on the costs to their assigned unit (unplanned payment of overtime to covered unscheduled absences), to its efficiency and service commitments (delayed mail) or the morale of those employees **who are dependable and productive**, and must pick up the slack, often with unwanted, mandatory overtime which disrupts family commitments. If we are being honest here, every operations manager (myself included) has received employee complaints over the years, more than once, about having to cover for marginal employees or had the question posed to them, "when are you going to do something about \_\_\_\_\_?" There is a general belief that nothing can really be done by management to address these problem employees.

The Postal Service is currently in a severe financial crisis as alluded to by DM Gamble, due, in large part, to the economic meltdown and the continuing diversion of communications to the Internet. Mail volumes have plunged 22% over the last two years. Postal revenues have dropped precipitously. One hundred thousand jobs have been eliminated in the past two and a half years. Hundreds of Postal facilities have been closed or consolidated to save money. Thousands of employees have been excessed from their former facilities and reassigned to new locations. In fiscal year 2009, the

Postal Service lost close to \$ 4 billion dollars. In FY 2010, the Postal Service will be in the red \$ 7 billion dollars, despite all of the above efforts. The Postal Service is fighting for economic survival as an ongoing concern. The **nature of the business** and the current economic environment in which the Postal Service must operate **has fundamentally changed**. Business as usual will no longer suffice. Practices that are no longer efficient of economical must change if the organization is going to survive. In such a business environment, the Postal Service can ill afford to endlessly retain employees who chronically fail to report to work, perform unsatisfactorily or disrupt operations with unacceptable conduct. We can no longer suffer and permit such employees. The ship is sinking; we need all hands on deck, and productively working together. That expectation is no greater than any other business enterprise. The Postal Service should not be held to a different standard.

In conclusion, management contends there is no violation of Article 5, 16, 19 and 34 of the National Agreement.

For all the reasons stated above and all the reasons and issues at Informal and Formal Step A of the grievance procedure, management is of the opinion that this grievance should be denied in its entirety and that the remedy requested should not be granted.


This grievance file contained the following documents:

- (1) PS Form 8190 for H06N-4H-C 10366297
- (2) Union Contentions/Requested Remedy, 6 pages
- (3) Greg A. Gamble letter to unions dated July 29, 2010
- (4) Service Talk: Policy Change for Disciplinary Action dated August 2, 2010
- (5) Reba Mickel statement dated 09/17/2010, 2 pages
- (6) Undated letter from Dave Clark
- (7) Undated letter from Ray Winters
- (8) Undated letter from Thomas L. Rollins
- (9) Letter from Ben Johnson dated 10/05/2010
- (10) Article 16 exerts July 21, 1973 thru 2011, 22 pages
- (11) Undated letter from Corey L. Walton, 4 pages
- (12) Lew Drass letter dated August 30, 2010, 4 pages
- (13) Lew Drass letter dated July 6, 2010, 2 pages
- (14) Lew Drass letter dated June 17, 2010, 2 pages
- (15) Greg A. Gamble letter to unions dated June 8, 2010
- (16) Greg A. Gamble letter to unions dated June 28, 2010
- (17) Greg A. Gamble letter to unions dated July 29, 2010
- (18) John E. Potter letter dated February 23, 2009
- (19) Page 5-1 thru 5-4 of the USPS/NALC Joint Contract Administration Manual
- (20) Page 16-1 and 16-2 of the USPS/NALC Joint Contract Administration Manual
- (21) Page 19-1 and 19-2 of the USPS/NALC Joint Contract Administration Manual
- (22) Page 34-1 and 34-2 of the USPS/NALC Joint Contract Administration Manual
- (23) Page 4 and 5 of Handbook M-39
- (24) Management Contentions, 25 pages
- (25) Management's Additions, 3 pages
- (26) Email correspondence from Renee Cannon dated September 20, 2010
- (27) Kevin J. Augustine for Greg Gamble letter dated February 12, 2010
- (28) Greg A. Gamble letter to unions dated June 8, 2010
- (29) Greg A. Gamble letter to unions dated June 8, 2010 w/Track & Confirm Results, 3 pages
- (30) Lew Drass letter dated June 17, 2010, 2 pages

- (31) M-3: Greg A. Gamble letter to unions dated June 28, 2010 w/Track & Confirm Results, 3 pages
- (32) Formal Step A Resolution for H06N-4H-C 10261795
- (33) Copy of Formal Step A Resolution for H06N-4H-C 10261795 printed from GATS
- (34) Management Contentions, 2 pages
- (35) Greg A. Gamble letter to unions dated July 29, 2010 w/Track & Confirm Results, 3 pages
- (36) Service Talk: Policy Change for Disciplinary Action dated August 2, 2010
- (37) Service Talk #2: Policy Change for Disciplinary Action dated August 30, 2010
- (38) Employee and Labor Relations Manual, Section 665, 3 pages
- (39) TN District Performance Reports, 6 pages
- (40) Email correspondence from Renee Cannon dated September 24, 2010
- (41) Blank PS Form 630, March 2006
- (42) Arbitrator Gamser Award in USPS Case No. NB-N-4 298-D, 5 pages
- (43) Step B Decision H06N-4H-C 10314794, 17 pages
- (44) October 2008 letter from John E. Potter, Postmaster General/Chief Executive Officer and Alan C. Kessler, Chairman Board of Governors, 2 pages



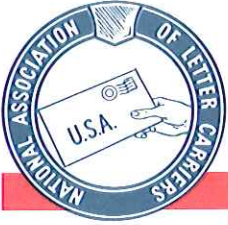
Paul D. Robbins  
USPS Step B Representative



Fred Qualls  
NALC Step B Representative

DRT grievance # 485-10

- Cc:
- Mr. Lew Drass, NALC NBA
  - Annette Poole, Southeast Area Labor Relations Office
  - Mark Sullivan, Southeast Area Labor Relations Office
  - Monica Lucas, USPS Step A Representative
  - Leman D. Clark, NALC Step A Representative
  - George Adkisson, District Manager Labor Relations
  - J. Renee Cannon, District Manager Labor Relations (A)
  - Greg Gamble, District Manager
  - Patty Frederick, District Manager HR
  - Tracy Mofield, District Manager Operations Support (A)



# National Association of Letter Carriers

Fredric V. Rolando, President

## Lew Drass

National Business Agent  
NALC Region 8  
160 Commissioner Drive  
Meridianville, AL  
35759-2038  
256.828.8205  
Fax: 256.828.8613

November 8, 2010

Dave Clark, President  
Branch 4  
National Association of Letter Carriers  
P.O. Box 140816  
Nashville, TN 37214-0816

Re: H06N-4H-C 10366297 - Class Action (B4-00292-10) 08-180063

**Fredric V. Rolando**  
President

**Gary H. Mullins**  
Executive Vice President

**George C. Mignosi**  
Vice President

**Jane E. Broendel**  
Secretary-Treasurer

**Nicole Rhine**  
Asst. Secretary-Treasurer

**Dale P. Hart**  
Director, City Delivery

**Brian E. Hellman**  
Director, Safety & Health

**Myra Warren**  
Director, Life Insurance

**Timothy C. O'Malley**  
Director, Health Insurance

**Ernest S. Kirkland**  
Director, Retired Members

## Board of Trustees:

**Larry Brown Jr.**  
Chairman

**Randall L. Keller**  
**Michael J. Gill**


Dear Dave:

Attached is the Step B decision for the above referenced case. As you will note, the grievance has been impassed.

After reviewing this decision and the evidence contained in the file, it has been determined to request arbitration for this matter. Therefore, also attached is a copy of the request for arbitration.

If you have any questions regarding this matter, please feel free to contact me.

Fraternally,

  
Lew Drass  
National Business Agent  
Region 8

LD/sh

Attachment

CHRIS VERVILLE, *Vice President*  
EDWARD F. NAPPER, SR., *Treasurer*  
J. E. WOODARD, *Financial Secretary*  
LISA EHRHART, *Sergeant-At-Arms*  
GLENN WATTS, *Director of Retirees*

M. L. (Rip) MALONE  
BRANCH NO. 4

BOB KING, JR., *Health Benefits Representative*  
RAY RAYMER, *N.S.B.A. Clerk*  
ANDRE HINTON, *Trustee*  
DALE LYLES, *Trustee*  
JAMES BROWN, *Trustee*

# National Association of Letter Carriers

LEMAN D. CLARK, JR., *President*  
Suite 212, Bldg. C  
211 Donelson Pike  
P.O. Box 140816  
Nashville, TN 37214  
(615) 883-7687



PAUL GLAVIN, JR., *Secretary*  
Suite 212, Bldg. C  
211 Donelson Pike  
P.O. Box 140816  
Nashville, TN 37214  
(615) 883-7687

October 29, 2010

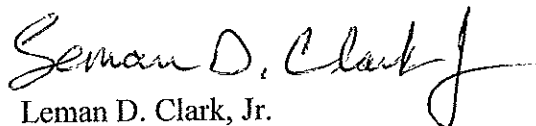
Corey Walton  
Belle Meade Post Office  
5421 Hwy. 100  
Nashville, TN 37205

RE: Grievance B4-00292-10 (CLASS ACTION)  
VIOLATIONS: Articles 5, 16, 19, and 34 of the National Agreement

Dear Brother Walton,

The above referenced grievance regarding a Policy Change was not resolved at the Step B-Discussion Level of the Dispute Resolution Process. Therefore, the grievance has been declared an Impasse. The NALC National Business Agent may appeal this grievance for arbitration.

Fraternally,

  
Leman D. Clark, Jr.  
President

LDC/dt



National Association of Letter Carriers (AFL-CIO)

## REQUEST FOR ARBITRATION

Certified No. 7009 2820 0003 5434 4683

DATE: November 09, 2010

TO: Labor Relations Processing Center  
United States Postal Service  
225 North Humphreys Boulevard  
Memphis, TN 38166-0841

FROM: NATIONAL BUSINESS AGENT  
Lew Drass  
160 Commissioner Drive  
Meridianville, AL 35759-2038

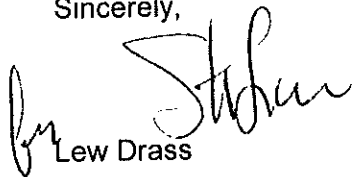
### DISPUTE RESOLUTION PROCESS REQUEST FOR ARBITRATION

USPS NO: H06N4HC10366297  
NALC DRT NO: 08-180063  
BRANCH GRIEV. NO: B4-00292-10  
CLASS ACTION  
NASHVILLE, TN  
DECISION RECEIVED: 11/01/2010  
VIOLATION: IMPROPER POLICY CHANGE FOR DISCIPLINARY ACTION

Dear Sir or Madam:

Pursuant to the provisions of the NALC/USPS Joint Dispute Resolution Process, I hereby appeal the above referenced grievance to arbitration.

Sincerely,



Lew Drass

NATIONAL BUSINESS AGENT

cc: Branch President, NALC  
Step B Team  
Postmaster





# National Association of Letter Carriers

Fredric V. Rolando, President

**Pete Moss**

National Business Agent

NALC Region 8

160 Commissioner Drive

Meridianville, AL

35759-2038

256.828.8205

Fax: 256.828.8613

April 14, 2011

Dave Clark, President

Branch 4

National Association of Letter Carriers

P.O. Box 140816

Nashville, TN 37214-0816

Re: H06N-4H-C 10366297 - Class Action (B4-00292-10) 08-180063

**Fredric V. Rolando**  
President

**Timothy C. O'Malley**  
Executive Vice President

**George C. Mignosi**  
Vice President

**Jane E. Broendel**  
Secretary-Treasurer

**Nicole Rhine**  
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**Lew Drass**  
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Director, Safety & Health

**Myra Warren**  
Director, Life Insurance

**Brian E. Hellman**  
Director, Health Insurance

**Ernest S. Kirkland**  
Director, Retired Members

**Board of Trustees:**

**Larry Brown Jr.**  
Chairman

**Randall L. Keller**  
**Michael J. Gill**

Dear Dave:

This is to advise you the above referenced arbitration case has been assigned for hearing before Arbitrator Clarke at 9:00 am on April 26, 2011 at the postal facility located on 525 Royal Parkway, Nashville, TN 37229.

Steve Vadorsky, Local Business Agent, will represent the National Association of Letter Carriers at this hearing.

Please notify the grievant of the time and place of the hearing and advise him that he should make arrangements to be present at the hearing.

In the meantime, if you have any questions please let me know.

In Solidarity,

Pete Moss  
National Business Agent  
Region 8

PM/sh

CHRIS VERVILLE, *Vice President*  
EDWARD F. NAPPER, SR., *Treasurer*  
J. E. WOODARD, *Financial Secretary*  
LISA EHRHART, *Sergeant-At-Arms*  
GLENN WATTS, *Director of Retirees*

M. L. (Rip) MALONE  
BRANCH NO. 4

BOB KING, JR., *Health Benefits Representative*  
RAY RAYMER, *N.S.B.A. Clerk*  
ANDRE HINTON, *Trustee*  
DALE LYLES, *Trustee*  
JAMES BROWN, *Trustee*

# National Association of Letter Carriers

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PAUL GLAVIN, JR., *Secretary*  
Suite 212, Bldg. C  
211 Donelson Pike  
P.O. Box 140816  
Nashville, TN 37214  
(615) 883-7687

October 12, 2010

Corey Walton  
Belle Meade Post Office  
5421 Hwy. 100  
Nashville, TN 37205

RE: Grievance B4-00292-10 (CLASS ACTION)  
VIOLATIONS: Articles 5, 16, 19, and 34 of the National Agreement

Dear Brother Walton,

The above referenced grievance regarding a Policy Change was not resolved at the Step A-Discussion Level of the Dispute Resolution Process. Therefore, the grievance has been escalated to the Step B Meeting Level of the Dispute Resolution Process.

Fraternally,

Leman D. Clark, Jr.  
President

LDC/dt



January 6, 2011

PETER CLARKE  
6001 SAVOY DR STE 305  
HOUSTON, TX 77036-3322

Pursuant to Article 15, section 4, B.2, of the 2006 National Agreement the following arbitration cases(s) has been scheduled before this arbitrator on the Regular Regional Arbitration Panel. The hearing will begin at 9:00am on April 26, 2011 at the postal facility located at 525 ROYAL PKWY NASHVILLE, TN 37229.

H06N-4H-C 10366297 B40029210 CLASS ACTION CNTR NASHVILLE P1

Where more than one case is scheduled at a location, cases will be heard in the order listed unless the parties mutually agree to present the cases in a different order.

This letter does not constitute a waiver by either party of any issues of arbitrability or timeliness as it relates to the processing of the grievances, as it merely serves to confirm to the arbitrator the location, date and time, pursuant to the terms of Article 15, Section 4, B.2 of the 2006 National Agreement and the back-up case(s) pursuant to Article 15, Section 4, A.4 of the 2006 National Agreement.

*Eloise Lance*

Eloise Lance  
Manager, Labor Relations

cc: Labor Relations, Tennessee  
NALC - P Moss

CERTIFIED NO: 7003 3110 0002 9581 8536

(ADVOCATE USE ONLY)

Management Advocate / Date

Union Advocate / Date

(Printed Name)

(Printed Name)

**SHOW EACH CASE DISPOSITION ABOVE**

## STEP B DECISION

### STEP B TEAM

Paul D. Robbins, USPS  
Fred Qualls, NALC

District: Tennessee  
DRT Number: 485-10

Decision:	<b>IMPASSED</b>
USPS number:	H06N-4H-C 10366297
Grievant:	Class Action
Branch Grievance Number:	B4-00292-10
Branch:	4
Installation:	Nashville
Delivery Unit:	Installation
State:	Tennessee
Incident Date:	Ongoing
Date Informal Step A Initiated:	09/07/2010
Formal Step A Meeting Date:	10/08/2010
Date Received at Step B:	10/13/2010
Step B Decision Date:	10/27/2010
Issue Code:	19.2000, 05.0000, 34.000
NALC Code:	508099 100929

### **ISSUE**

1. Did Management violate Articles 5, 16, 19 and 34 of the National Agreement when they established a policy change for disciplinary action, which is inconsistent with the Collective Bargaining Agreement? If so, what is the appropriate remedy?

### **DECISION**

The Dispute Resolution Team (DRT) has decided to declare an **IMPASSE**. The NALC National Business Agent may appeal this grievance to arbitration within fourteen (14) days after receipt of this joint report.

The Step B team has considered all arguments and evidence in the case file and any of this material may be cited in the event of arbitration.

### **EXPLANATION**

#### **UNION'S POSITION:**

The union contends that management has violated multiple Articles of the National and/or Handbooks and Manuals when they threatened letter carriers with the implementation of a discipline policy change in which discipline would no longer be progressive/corrective, rather it would become single track, punitive and escalating for unrelated offenses.

Management cited a Regional Arbitration decision (A06M-1A-C 08194185), and quoted

1. The NPMHU decision cited by management is a Regional decision.
2. The decision is from the NPMHU union which does not have the NALC agreement with the Postal Service, the JCAM, the M-39 Handbook, nor same agreements, decisions and other rulings as does the NALC.

Again, the above decision clearly does not have any bearing on this instant grievance. It was for the NPMHU union (craft). Additionally, it is a Regional Arbitration case (Kearney, New Jersey).

Management also erroneously attempted to claim two other decisions had relevance in this grievance. The union notes:

1. These APWU decisions cited by management are Regional decisions.
2. These decisions are from the union APWU which does not have the NALC agreement with the Postal Service, the JCAM, the M-39 Handbook, nor same agreements, decisions and other rulings as does the NALC.

Clearly, this instant grievance must be decided utilizing the National Association of Letter Carriers (NALC) agreement, the JCAM, M-39 Handbook along with all other appropriate Handbooks, Manuals and other agreements between the NALC and the USPS.

Other unions' regional arbitration decisions are irrelevant to this grievance.

Management has made the claim they sent a letter from Greg Gamble (signed by Kevin J. Augustine), dated February 12, 2010 concerning a "one track system" for discipline to six Postal Unions. Management has presented **no evidence that the NALC was sent the letter that was "supposedly" written on February 12, 2010.** The union contends the letter was not received by the NALC.

District Manager Gamble did, at a later date, declare his intention to implement a single track of discipline in the TN district. This instant grievance file contains statements from fifty one Letter Carriers describing being intimidated by the declaration by Mr. Gamble (which was passed along to the workroom floor via a "Service Talk"). Those statements also disclosed that in the extended time they had worked at the Postal Service, many approximately 30 years, there had never been a "single track" for discipline.

A letter from **Mr. Gamble dated June 8, 2010** reads in part as follows:

"Effective Saturday, July 10, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies..."

Accompanying the above letter was a "**Service Talk**" entitled "Policy Change for Disciplinary Action" which has been **given in several Knoxville Stations.** It states in part the following:

"Effective Saturday, July 10, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies..."

On June 17, 2010, NALC Region 8 National Business Agent Lew Drass sent a letter to Mr. Gamble, which reads as follows:

"Dear Greg,

I am in receipt of your letter dated June 8, 2010 regarding a single track of discipline for unrelated infractions.

First of all, neither I nor anyone else who works in my office has any record or recollection of receiving a letter from you dated February 12, 2010. It is also significant to note that you and I met on April 8, 2010... but never even brought this issue up.

That aside, your letter recognizes that you are attempting to change the current system of discipline as stated in the National Agreement. For instance, Article 16, Section 1 of the National Agreement states in relevant part,

**"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive."**

Further, Section 115.1 of the M-39 Handbook states in relevant part,

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

The M-39 Handbook is also part of the National Agreement via Article 19.

It is the position of the NALC that the announcement of a change to the current system of discipline would attempt to change the unambiguous language in the National Agreement referenced above and violates the past practice provisions as it relates to clarification of contract language as considered in Article 5 of the National Agreement. The JCAM at page 5-3 states:

**"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."**

Therefore any such change would have to be negotiated at the National Level during National Negotiations.

It is also the position of the NALC that the current system of discipline is a work standard. Therefore, any notification of change/changes in this work standard would have to be made at the National Level via the provisions contained in Article 34 of the National Agreement.

In closing, I must say that it is regrettable that you would attempt to use the financial situation of the Postal Service to justify circumventing the provisions of the National Agreement as described in your letter.

It seems to me we should be working together to both generate revenue and reduce the costs of disputes. It is my opinion that any attempt to implement the change to the current disciplinary system as stated in your letter will have the opposite effect.

If you have any questions, or would like to discuss this matter, please feel free to contact me."

**On June 28, 2010** Mr. Gamble sent a letter to the NALC and other unions which reads in part as follows:

"The Tennessee District is considering implementation of a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies..."

The June 28 letter also contains the following:

"...All previous correspondence relating to this issue is hereby rescinded..."

**On July 6, 2010**, NALC Region 8 National Business Agent Lew Drass sent a certified letter to Mr. Gamble pointing out the same contractual violations as Mr. Drass' letter of June 17, 2010."

**On July 29, 2010** District Manager Gamble sent a letter which reads in part as follows:

"...it is my decision to implement a single track of discipline for unrelated infractions in the Tennessee District effective September 1, 2010. The current system of using three (3) tracks (performance, attendance, conduct) has not been successful in correcting employee deficiencies..."

**On August 2, 2010**, Mr. Gamble prepared the 2<sup>nd</sup> **Service Talk** entitled: Policy change for Disciplinary Action". The Service talk was given at all the stations in the Knoxville Installation and was posted at all the stations. Mr. Gamble was in effect changing the policy on discipline, thus changing Article 16 of the National Agreement and Section 115 of the M-39 Handbook.

Note that the Service Talk of June and the Service Talk of August are almost identical. The only difference in the two is the implementation date and the removal of, "*With the current financial state of the Postal Service, declining mail volume and economic crisis nationwide*". Mr. Gamble didn't change anything, despite the NALC's efforts to inform him of the various contractual violations.

On page 15-10 of the JCAM, the parties agreed to the following:

"The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end".

**On August 30, 2010** NALC National Business Agent Lew Drass sent the following letter to District Manager Gamble which reads as follows:

"Dear Greg,

I am in receipt of your letter dated July 29, 2010 regarding your decision to change the current system of using 3 tracks (performance, attendance, conduct) to administer Article 16 of the National Agreement, to a single track of discipline for unrelated infractions.

You are (or should be) well aware that the current system used by the Postal Service to decide and issue discipline in the Tennessee District has been in existence for decades and has been the source of great debate via the grievance-arbitration procedure for that same period of time.

The notion of changing the system referenced above that has been in place for decades to a one-track system for unrelated infractions takes this debate to a whole new level.

I must inform you that the National Agreement as currently written does not permit you to make such a decision.

First and foremost, Article 5 of the National Agreement was not applied correctly here. I tried to explain this to you in my letter dated June 17 and July 6, 2010 to no avail, but I'll try again.

Page 5-1 - 5-4 of the JCAM (enclosed) represents the National Parties' general agreement on the subject of past practice. On p. 5-3, the National Parties break the definition and rules to change "Past Practice" issues into three categories. They are:

1. To Implement Contract Language
2. To Clarify Unambiguous Language
3. To Implement Separate Conditions of Employment

In the NALC's view, the practice of using a 3 track system to decide and issue discipline over a period of decades is clearly a practice designed "To Implement Contract Language" such as that contained in Article 16, Article 19, Section 115 of the M-39 Handbook, and Article 34 for starters.

If the argument is that the language in the above stated provisions of the National Agreement is ambiguous, then the practice at issue here would fall into the "To Clarify Unambiguous Language" category.

Either way, the contractual path to attempt to change the current discipline system to a single track of discipline for unrelated infractions is shown in the JCAM on p. 5-3 where it states in relevant part,

"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."

The decision to treat the established past practice of using a multiple track discipline system as falling into the "To Implement Separate Conditions of Employment" category fatally flawed your attempts to make this change from the beginning.

The notion that the contract is silent on the issue of deciding, determining the level, issuing discipline, and resolving disputes that arise when discipline is issued is absurd.

However, just for the record, Article 5 wasn't even complied with had you been trying to change a past practice where the contract was silent.

The first letter I received regarding this matter was to inform me that you had already made your decision and the change would be implemented July 10, 2010. It is interesting that you had already begun to implement service talks to announce this change to all employees. I responded to your letter on June 17, 2010 and informed you that what you were doing was a violation of the National Agreement and I had never been informed about any of this.



I received a letter from you in early July rescinding the previous actions and announcing the same exact change. I responded to your letter by letter dated July 6, 2010 and once again informed you that what you were doing is a violation of the National Agreement.

I also met with you via the telephone to discuss this matter. I explained to you that in the NALC's view, what you were doing was a clear violation of the National Agreement. We talked about the matter for a few minutes, but that was it.

Despite the fact that the approach you took to attempt to change the past practice at issue was misplaced, there was certainly no "good faith" bargaining efforts made on the part of the Postal Service. As a matter of fact, there was no bargaining effort of any kind made by the Postal Service in this situation.

It is quite clear that your final decision was made before you neglected to send me the letter announcing the change back in February. The rest of this was merely a formality, and therefore, nothing more than a sham.

In addition to the multiple violations of Article 5, the decision to change from a 3 track discipline system to a single track discipline system for unrelated infractions violates several other provisions of the National Agreement such as, but not limited to,

Article 16, Section 1 of the National Agreement states in relevant part,

**"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive."**

Further, Section 115.1 of the M-39 Handbook states in relevant part,

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

The M-39 Handbook is also part of the National Agreement via Article 19. Article 19 requires that any changes to handbooks must be made at the National Level.

It is also the position of the NALC that the current system of discipline is a work standard. Therefore, any notification of change/changes in this work standard would have to be made at the National Level via the provisions contained in Article 34 of the National Agreement.

In closing, I must say that it is regrettable that you would attempt to use the financial situation of the Postal Service to justify circumventing the provisions of the National Agreement as described in your letter.

This situation mirrors the Postal Service's misguided attempt to implement the National Reassessment Process (NRP) in the Tennessee District in such a way as to completely ignore your contractual obligations as agreed to by The United States Postal Service and the National Association of Letter Carriers.

I'm requesting that you reconsider your decision and adhere to the agreed to provisions in the National Agreement with respect to this situation instead of just making things up as you go along like the Tennessee District did with NRP.

It seems to me that we should be working together to both generate revenue and reduce the cost of disputes. It is my opinion that any attempt to implement the change to the current disciplinary system as stated in your letter will have the opposite effect.

I want to thank you in advance for your consideration in this matter. If you have any questions, or would like to discuss this matter, please feel free to contact me."

In the case at bar, the NALC National Business Agent initially **attempted twice to point out the contractual violations of District Manager Gamble's actions** to avoid numerous grievances from being filed. District **Manager Gamble ignored Mr. Drass' letters** and consequently numerous grievances are likely to be filed throughout the Tennessee district. The NALC **NBA tried a third time to convince District Manager Gamble to do the right thing** and rescind this absurd policy change.

The grievance file contains statements and interviews from twenty two letter carriers (many having over 30 years of Postal Service) who feel intimidated by Mr. Gamble's change in policy. Those statements describe the multiple tracks of discipline and show concern with management changing the "past practice" (interpretation of the language in Article 16 of the National Agreement). The union contends the twenty two statements and interviews are legitimate, given willingly, **recorded accurately** and clearly show the past practice of the use of multiple tracks of discipline.

Additionally:

The NALC Region 8 NBA addressed Article 5 in all three of his letters to District Manager Gamble. In his letter of August 30, 2010, the NBA significantly elaborated on the violations of Article 5 of the National Agreement.

Based on the letters District Manager Gamble has sent to the union and the content of the associated service talks, the union contends that District Manager Gamble's interpretation of Article 5 of the National Agreement is incorrect. The letters and service talk indicate District Manager **Gamble is implying a "silent contract"**. This is why he sent notification to the union(s). The contract, specifically; **Article 16.1 is not silent** regarding the administration of discipline. Neither is Section 115 of the M-39 Handbook. Both documents specifically state that discipline is to be **corrective**. District **Manager Gamble's implementation** of single track discipline is **not corrective**. In fact it is **entirely punitive**.

The Tennessee District's newest attempt to implement a local policy which violates the National Agreement and Postal Handbooks/Manuals shows a **willful disregard for the National Agreement, Memorandums, Handbooks and Manuals**.

The implementation of single track discipline **does vary** from established handbooks and manuals; and the National Agreement. Management violated Article 19 of the **National Agreement and the National Arbitrator Aaron Award cited in Article 19**. Article 19 also incorporates Postal Handbooks and Manuals such as the M-39 Handbook and ELM into the National Agreement and makes them just as enforceable as the National Agreement.

Postmaster General John Potter wrote a Postal Directive dated February 23, 2009 which reads as follows:

"Our bond with our employees has never been more important than it is today. That bond is represented by the collective-bargaining agreements with our unions... but one thing cannot change. Our adherence to the provisions of our labor agreements. They are our word. They are our pledge of fairness to our employees.

It is up to each one of us to make sure that the changes we bring to the organization are changes for the better. Respecting and protecting the provisions of the collective bargaining agreements will help us do that".

The union contends management is in direct **violation of PMG Potter's Policy Letter**. Management knew the Union's position regarding single track discipline via the three letters from NALC Region 8 NBA Lew Drass cited above. Mr. Drass' pleas for contract compliance were ignored as management implemented the new policy anyway.

Section 665.16 of the ELM reads as follows:

"Employees are expected to maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment".

Section 665.24 of the ELM reads as follows:

"Similarly, there must be no tolerance of harassment, intimidation, or bullying by anyone at any level".

The union also contends this new policy violates Sections 665.16 and 665.24 of the ELM.

The union's contentions contain a statement from the NALC Branch 4 President describing the manner in which discipline has previously been issued. Supporting documentation included statements from past NALC Branch 4 Presidents and Business Agent. The Branch 4 President's statement reads in relevant part as follows:

"I'm the President of NALC Branch 4, and I offer this statement in an attempt to place some order to the unfolding of events that lead to the union filing grievance # (B4-00292-10).

First, I would like to go on record bolstering our Business Agent, Lew Drass's reply to the District Manager's move to change/implement a "one-track" method of issuing discipline. I would like to support the Business Agent's comment that he made to the D M; concerning the longevity (from 1972 to present) that Branch 4 has been addressing management's past administering of discipline as provided in Article 16 of the National Agreement. Every time that management didn't administer discipline in a progressive manner with like infractions, the union was successful in getting that discipline rescinded and removed from the employee's files. The union has included in this grievance file, statements from past Presidents, Business Agent and other union officials that have been involved in the grievance procedure in Branch 4, reinforcing the fact that when dealing with discipline grievances in the past, discipline not issued in a progressive nature, were always rescinded. Secondly, Branch 4 has a retired member that served as business agent for several years and his statement reveals that he served at the National Level representing the NALC in negotiations concerning Article 16 on more than one occasion to insert the one-track discipline in to the National Agreement, only to be rejected by the union and then they (management) would remove it from the table."

The statement from Former NBA Ben Johnson reads specifically as follows:

"My name is Ben Johnson, Retired National Business Agent for the National association of Letter Carriers, AFL-CIO. I was elected National Business Agent in 1980 and I retired in 2002.

I was president of Branch 4NALC from 1973 to 1978 and President of the Tennessee State Association of Letter Carriers from 1976 to 1980.

I was a member of the NALC Executive Board and a member of the National Negotiating Team from 1981 to 2002.

**I was a member of the NALC team that accomplished the NALC Agreement with the USPS in 1981, 1984, 1987, 1990, 1994, 1998 and 2001.**

During the time that I was a member of NALC negotiating team (1981-2001) the Postal Service **made several unsuccessful attempts** to modify Article 16 to include a **single track discipline procedure**. The USPS was never successful in their attempts.

If the USPS wants to modify Article 16 to include a single track disciplinary procedure, it must be done at the National Bargaining Table during the next Contract Negotiations.

It has been an established past practice since 1973 to follow the provisions of Article 16 of the National Agreement, which reads as follows: "In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause." **(Emphasis added at DRT)**

Management is aware this existing policy **can be changed only** at the National Level. Mr. Johnson's above statement clearly describes management's attempt at the National Level **on multiple occasions**. Now the Tennessee district is **attempting to change the policy which can only be changed by the National parties**.

The union quoted the following from management's Handbook EL 921:

"E. Investigation

As previously discussed, when an employee commits an offense which seems to warrant discipline, the supervisor must avoid rushing into a disciplinary action without first investigating. **The need for an investigation to meet our just cause and proof requirements is self-evident.** However, the employee's past record must also be checked before any disciplinary action is considered. **This is obviously necessary if we are to abide by the principle of progressive discipline.** Failure to investigate before taking a disciplinary action can result in some awkward situations for the Postal Service.

Examples:

**One employee who worked for many different supervisors on a relief assignment was involved in discussions at separate times within one year by different supervisors for similar infractions.** When discussion did not correct the employee's irregularity, progressive discipline should have been imposed at an early stage.

In another instance, an employee bid into a new section and immediately became a tardiness problem. During the first 10 days under the new supervisor, the employee was tardy six times. The supervisor held a discussion with the employee without investigating the past record, which would have revealed that the employee had been a continuing problem and had recently returned from a 30-day suspension for tardiness. Obviously, a discussion was not the correct action in this instance." **(Emphasis added)**

The union contends that management has failed to adhere to their own guidelines as provided in EL 921 (quoted above), addressing the progressive issuance of discipline.

The following is the relevant portion of the National Agreement concerning Article 3.

"While postal management has the right to "manage" the Postal Service, it must act in accordance with applicable laws, regulations, contract provisions, arbitration awards, letters of agreement, and memoranda".

The union has clearly shown the contractual provisions **management has violated**, along with Postal Handbook and Manual provisions. The union has also shown a **National Arbitrator Aaron Award management violated and two Step B Decisions**. The Union has shown memoranda from Postmaster General Potter which was **violated**. Management violated Article 3 of the National Agreement.

Article 16.1 of the National Agreement reads in part as follows:

"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive."

Section 115.1 of the M-39 Handbook was quoted above in the NALC NBA Drass' letter to District Manager Gamble. Section 115.2 reads as follows:

"Managers can accomplish their mission only through the effective use of people. How successful a manager is in working with people will, to a great measure, determine whether or not the goals of the Postal Service are attained... Let the employee know what is expected... Let the employee explain his/her problem—listen if given a chance, the employee will tell you the problem..."

**District Manager Gamble has effectively removed local management's ability to be successful with working with their employees.**

Section 115.3 of the M-39 Handbook reads as follows:

"The manager has the responsibility to resolve as many problems as possible before they become grievances. If the employee's stand has merit, admit it and correct the problem. You are the manager, you must **make decisions**; don't pass this responsibility on to someone else". (Emphasis added)

With the District Manager's implementation of single track discipline for unrelated infractions, **local managers cannot "make decisions"**. The decision has already been made; by the Tennessee District Manager.

Section 115.4 of the M-39 Handbook reads as follows:

The National Agreement sets out the basic rules and rights governing management and employees in their dealings with each other, but it is the front-line manager who controls management's attempt to maintain an atmosphere between the employer and employee which assures mutual respect for each other's rights and responsibilities".

In this instant case, it is not the front-line manager who determines anything regarding discipline; it is the Tennessee District Manager. The statements in this grievance file which are in violation of this new disciplinary policy is not conducive to

maintaining a mutual respect atmosphere. The union contends documentation contained in this grievance file shows the new policy creates a hostile work environment.

The union also contends the implementation of this new policy violates the provisions of Article 34 of the National Agreement.

Management asserted that Manager Gamble's actions were proper because Section 665.6 of the ELM permits management to "take appropriate disciplinary measures to correct violations of the regulations referred to in 665". This does not describe the terms or conditions by which the discipline must be administered. The union refers to Article 16 of the National Agreement and Section 115 of the M-39 Handbook-Management of Delivery Services. These documents apply specifically to Letter Carriers/NALC. The ELM includes all employees and all crafts. This is why it refers to discipline in such broad terms. The parties in this instant case are not dealing with the APWU, NPMHU Collective Bargaining Unit Agreements, but with the National Agreement between the NALC and USPS which specifically addresses the terms and conditions under which discipline must be administered. As the union has pointed out, the new single track discipline for unrelated infractions policy from the Tennessee District Manager violates this, among other provisions.

The final three pages in this decision to impose this grievance, management used the following expressions:

the Tennessee District devolved into some convoluted

an unachieved bargaining demand

trying to impose a system on TN

firewall between each

stove pipe

unachieved bargaining demand

system has failed

in the private sector

morale of those employees who are

must pick up the slack

disrupts family commitments

every operations manager (myself included)

severe financial crisis

economic meltdown

in the red seven billion dollars

disrupt operations

unacceptable conduct

no longer suffer

ship is sinking

need all hands on deck

As is obvious, the **final three pages** containing the above do not even attempt to address **management's flagrant violations** of the National Agreement with the implementation of this policy of: "single track" discipline.

The **three pages** are "loaded" with "*buzz words*", "*aggressive expressions*" and "*writer's opinions*"; none of which answer their (management's) violations.

Once the **appropriate**: facts, circumstances, history, agreements between the parties and etc are considered, the union contends the single track will be considered in violation of the National Agreement.

Page 5 of the union's contentions describe/break down the new policy into a scenario that clearly describes one (of the many reasons shown in this file) why this new policy declared for the Tennessee District is unfair, a change of policy and is in violation of multiple Articles of the National Agreement.

For all the reasons stated above and all the reasons and issues the union raised at Formal Step A of the grievance procedure, the union believes this grievance should be sustained in its entirety and the remedy requested should be granted.

#### **MANAGEMENT'S POSITION:**

The Management Formal A representative effectively presented the Facts and Contentions. All of the arguments raised by Management at the Informal and Formal Step A meetings are brought forward to Step B and at Arbitration. The Step B representative would like to add the following:

Management contends that under the one track disciplinary process, discipline will continue to be corrective in nature and that there is no violation of Article 3 and/or 5 and/or 16 and/or 19 and/or 34 of the National Agreement and/or Section 115 of the M-39 Handbook and/or Section 665 of the ELM, via Article 19 of the National Agreement.

The grievance file contains a copy of the August 2, 2010, Service Talk given to TN District employees explaining the change:

AUGUST 2, 2010

**\*\*\*SERVICE TALK\*\*\***

Policy Change for Disciplinary Action

District will implement a single

for related infractions has not been successful in correcting employee deficiencies. It is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently. **This does not change the guidelines set forth in Article 16.** Any currently active discipline may be cited in future disciplinary action request. (Emphasis added)

All Postal employees are required to comply with the rules of conduct outlined in Section 660 of the Employee and Labor Relations Manual (ELM). Employees may reference the Postal Service Standards of Conduct (Section 665) that require employees to:

1. Discharge their assigned duties conscientiously and effectively.
2. Obey the instructions of their Supervisors.
3. Maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment.
4. Be regular in attendance and report as scheduled.

These are just a few examples of requirements. In addition, the ELM states that Postal officials may take appropriate disciplinary measures to correct violations of the regulations referred to in Section 665.

The Employee and Labor Relations Manual (ELM) is available on the Postal Service website at [www.usps.com](http://www.usps.com). Please contact your immediate Supervisor or Manager if you have any questions.

**\*PLEASE POST\***

In this, and in all subsequent communications, management has clearly stated that this change "does not change the guidelines set forth in Article 16." Corrective action will remain corrective.

Article 16.1 of the National Agreement between United States Postal Service and National Association of Letter Carriers (NALC), AFL-CIO, reads as follows:

### **ARTICLE 16 DISCIPLINE PROCEDURE**

#### **16.1 Section 1. Principles**

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

This language exists verbatim in the National Agreement for each of the craft unions addressed in the letters from Tennessee District Manager, Greg Gamble. The Employee and Labor Relations Manual (ELM) is also applicable to National Postal Mail Handlers Union (NPMHU), American Postal Workers Union (APWU), National Rural Letter Carriers Association (NRLCA) and National Association of Letter Carriers. Although specific to NALC Letter Carriers, Section 115.1 of Handbook M-39 simply paraphrases the language in Article 16.1 and 16.2.

These facts are particularly important as consideration is given to previous arbitration



On page 12 through 13 of Arbitrator Benn's decision in USPS Case No. C0C-4R-D 5111, 5614, the following is stated in part:

"...Article 16.1 states that discipline must be "corrective in nature, rather than punitive". It does not state that the parties have agreed that separate disciplinary tracks are to be followed for attendance problems, insubordination, unacceptable conduct, etc. The logical extent of the Union's argument is that before an employee could be given a 14 day suspension for unacceptable conduct, there must be a letter of warning and a seven day suspension for that particular misconduct, even though, as here, the employee had a substantial prior disciplinary record with a letter of warning, seven day suspension and another 14 day suspension. **Under the Union's theory, an employee could engage in different areas of misconduct and, notwithstanding the existence of prior lengthy suspensions, only expect to receive a letter of warning if that is the first time that employee delved into that particular area of misconduct.** Absent clear direction from the Agreement that the parties intended such a result, I am unwilling to apply that notion of progressive discipline to this case.

**The basic function of progressive discipline is to rehabilitate the errant employee through the imposition of increasing amounts of discipline in order to get the message through to the employee that failure to comply with an employer's rules will not be tolerated..." (Emphasis added)**

On page 25 of Arbitrator Dobranski's decision in USPS Case No. C7C-4R-D 19906 and 20107, the following is stated in part:

"...In reaching my conclusion in this case, I did not rely upon the Postal Service argument that it need not follow separate pillars of progressive discipline for each category of offense. **Although the Postal Service correctly asserts that it is not required to do this..." (Emphasis added)**

Management's Formal Step A correctly states in part the following:

"...None of the requirements of Article 16 change with the implementation of this policy. The JCAM page 16-2 (M-3) reads "it means that for most offenses management must issue discipline in a 'progressive' fashion, issuing lesser discipline for a first offense and a pattern of increasingly severe discipline for succeeding offenses. The basis of this principle of 'corrective' or 'progressive' discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution." These principles will still apply under the new policy. In addition, in reading this section of the JCAM, nowhere does it state that discipline should be progressive only for related infractions. The JCAM states that lesser discipline be issued for a first offense and increasingly severe discipline for succeeding offenses, it does not state that the offenses have to be related..."

Article 5 of the National Agreement between United States Postal Service and National Association of Letter Carriers (NALC), AFL-CIO, reads in its entirety as follows:

### **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

with the preceding Article, Article 5, shall apply to Transitional

The underlined language above also exists verbatim in the National Agreement for each of the craft unions addressed in the letters from Tennessee District Manager, Greg Gamble.

On page 5-1 of the USPS-NALC Joint Contract Administration Manual (JCAM), April 2009, the national parties agreed to the following:

“...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...”

On page 5-2 of the USPS-NALC Joint Contract Administration Manual (JCAM), April 2009, the national parties agreed that **unilateral change** to a valid past practice may also be restricted:

“...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...”

In a paper given to the National Academy of Arbitrators, Arbitrator Mittenthal described the elements required to establish a valid past practice. In the same paper, Arbitrator Mittenthal noted that there are three distinct functions of past practice:

- To Implement Contract Language
- To Clarify Ambiguous Language
- **To Implement Separate Conditions of Employment**

Management maintains, and arbitrators have agreed, that the change proposed in this instant grievance is correctly defined as a separate condition of employment. It is indisputable that the parties did not include specific language to require that separate disciplinary tracks be followed for attendance, conduct and performance in the National Agreement or any postal manual. Nor is there any evidence to support that the national parties intended such a result.

Once established that the past practice of multiple disciplinary tracks is a separate condition of employment, the principal question becomes; did management act unilaterally?

Page 5-4 of the USPS-NALC JCAM, states the following:

“**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 with the union. If the parties are

“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.”

Management contends, and the evidence shows, that the Unions were provided advance notice and that management engaged in good faith bargaining through the exchange of letters and phone conversations between TN District Manager, Greg Gamble and Region 8, National Business Agent, Lew Drass.

In the letter from Mr. Gamble dated June 8, 2010, he clearly addresses changes to the nature of the business and the inefficiency of the current practice (items 2 and 3 above). In addition, he speaks to prior efforts to notify and negotiate in good faith prior to implementation of the policy change, in part as follows:

“... The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies. With the current financial state of the Postal Service, declining mail volume and economic crisis nationwide, it is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently.

... You were notified in a letter dated February 12, 2010, of Management’s **proposal** to change the policy regarding corrective action. Management provided the Unions with prior notice and an opportunity to present questions or comments by February 26, 2010. APWU was the only union to respond but declined to bargain prior to implementation...” **(Emphasis added)**

In the letter from Mr. Gamble dated June 28, 2010, he again addresses changes to the nature of the business and the inefficiency of the current disciplinary practice, as well as, efforts to notify and negotiate. The letter reads in part as follows:

“... The current system of using three (3) tracks (performance, attendance, conduct) has not been successful in correcting deficiencies. With the current financial state of the Postal Service, declining mail volume and economic crisis nationwide, it is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently.

... In a letter dated February 12, 2010, Management **proposed** to change the policy regarding corrective action. Prior to implementation, several union officials stated they did not receive the previous notice. Please be advised of Management’s intent to bargain in good faith. All previous correspondence relating to this issue is hereby rescinded. This is your written notification of Management’s **proposed** change to administer Article 16 in accordance with the National Agreement by using a single track of discipline...” **(Emphasis added)**

*Note: The grievance file contains evidence via USPS-Track & Confirm, that this letter and subsequent correspondence to the Unions was delivered.*

In the letter from Mr. Gamble dated June 29, 2010, he again addresses the reason for

The fact that the parties were unable to agree to this change or fashion an acceptable compromise, does not negate the reality that proper notification took place and that management engaged in good faith negotiations prior to implementation.

On page 5 of Arbitrator Holden's Award in USPS Case No. A06M-1A-C 08194185, the following is stated in part:

"Arbitrator Talmadge's award found that the offending aspect of the grievance before her was that Management did not provide the Union with notice or a change to negotiate a change in the discipline practice. 'The Plant Manager unilaterally changed a twenty-nine year practice of applying single line discipline to attendance, behavior and performance infractions without providing the Union with an opportunity to negotiate prior to changing the disciplinary process, a mandatory subject of bargaining.' **She did not find that Management cannot change its discipline procedure.**

... The focus in the instant case is on Article 5 which prohibits management from taking unilateral action that affects 'wages, hours and other terms and conditions of employment...' Arbitrator Talmadge found in her case that Management had acted unilaterally in violation of Article 5. She directed Management to return to the status quo ante with **the clear finding that if the changes sought by Management were done with prior notice to the Union and with opportunity for the Union to bargain prior to implementation, such changes would be possible under the CBA...** (Emphasis added)

Any assertion that this change is merely an effort to terminate employees faster or easier is not supported in fact.

The union presented that argument in USPS Case No. A06M-1A-C 08194185 before Arbitrator Holden. The decision reasoned this issue in part as follows:

"... Thus, it appears in practice most disciplinary cases because of their very nature look more like single line than progressive (as defined above) procedures. The Union's argument that Management wants to implement progressive discipline to get people out more quickly is, thus, not substantiated by the parties' experience..."

Management maintains that the policy change in this instant grievance is directed toward correcting employee deficiencies; not complement reduction.

To the Union's allegation that this change is a new work standard and thus a violation of Article 34, the management Formal Step A states the following in part:

"... It is management's position that the Union's allegation that the current system of discipline is a work standard has no merit and must be dismissed... Article 34 has not only not been violated in this grievance; it is not even applicable..."

The management member of this Formal Step B team is also unclear as to how Article 34 is relevant to this policy change beyond item A., which reads as follows:

### **ARTICLE 34 WORK AND/OR TIME STANDARDS**

A. The principle of a fair day's work for a fair day's pay is recognized by all parties to

Among the Articles cited as violated in the circumstance is Article 19. Article 19 incorporates all Postal Service handbooks and manuals that directly relate to wages, hours and working conditions as part of the National Agreement itself. In regard to this dispute, the Employee and Labor Relations Manual (ELM) does, in fact, clarify.

The language found in ELM Section 665, Postal Service Standards of Conduct, supports the concept that whether it's addressing attendance, work performance or conduct, it all falls under the umbrella of employee standards of conduct, and is subject to possible disciplinary action **without distinction**. Sub-section 665.13 covers work performance. Sub-section 665.16 covers standards of conduct in the work place. Sub-section 665.41 covers the requirement for all employees to be regular in attendance. Significantly, sub-section 665.6., **Disciplinary Action**, states:

“Postal officials may take appropriate disciplinary measure to correct violations of **the regulations referred to in 665.**”

(Note that the word regulations is plural, and it refers to **all** the regulations in ELM Section 665.)

There is no language found in ELM 665 that for disciplinary purposes, management must address and correct different violations separately, or in isolation of one from another. This language is now part of the Agreement. The fact that Tennessee District may have, over time, devolved into some convoluted, ineffective, multi-track system does not obviate this contract language, nor does it bar them from changing their system to conform with the original intent and language of the ELM. There is a well reasoned arbitration award that held if management has failed in the past to exercise some right that is granted to them under the Agreement, that does not mean they forever precluded from exercising that right. Tennessee District is conforming with the prerogatives outlined in ELM 665.

The language found in ELM, Section 370, Performance Evaluation, reinforces this point. Sub-section 371 indicates employees are expected to maintain good conduct and perform their duties efficiently. Sub-section 375.2., Unsatisfactory Performance, **defines unsatisfactory performance** in its many aspects across the board i.e., **reliability, attendance, quality and quantity of work, attendance, ability to get along with others, etc.** It goes on to state that if corrective measures fall short, and if discipline must be taken, the appropriate procedures will be followed. Again, there is no language found in this section of the ELM that different aspects of unsatisfactory performance must be addressed separately. What the Union is seeking in this grievance is actually an unachieved bargaining demand – trying to impose a system on TN District that is not contractually required.

Under the multi-track system of “stove piping” and separately addressing attendance, performance and conduct deficiencies **independent of each other**, one could have a marginal employee on the rolls with **nine separate, serious, “live” disciplinary actions on the record**. For example, there could be a LOW and two suspensions for unsatisfactory attendance, the same three pieces of discipline for disrupting the work room floor with obnoxious behavior, and three for unsatisfactory work performance. This does not even take into consideration that prior to discipline being issued, there would have been three additional forewarnings in the form of private discussions. The Union

can these disciplinary actions **be considered together**. On its face, such a system and requirement is patently absurd, and not required under the ELM language. It's an unachieved bargaining demand. It's no wonder that the multi-track discipline system has failed to correct marginal employees in Tennessee District.

On page 5 of the union's Formal Step A contentions an overly simplified scenario is outlined that attempts to demonstrate the contractual inconsistencies of a single track system. The scenario suggests that it would be, or is, common practice to issue discipline for a single incident of unauthorized overtime or missed scans which is untrue. It further fails to acknowledge that each of the examples provided are performance related deficiencies as defined in ELM 665, without distinction. In addition, the sample scenario fails to consider that each progressive, corrective, disciplinary action would remain subject to the basic elements of just cause. Such as:

- Is there a rule?
- If so, was the employee aware of the rule?
- Was the employee forewarned of the disciplinary consequences for failure to follow the rule?
- Is the rule a reasonable rule?
- Is the rule consistently and equitably enforced?
- Was a thorough investigation completed?
- Was the severity of the discipline reasonably related to the infraction itself?
- Is the discipline in line with that usually administered?
- Was the disciplinary action taken in a timely manner?
- Was the discipline corrective rather than punitive?

If all these elements, and others, are correctly communicated, considered and investigated, management must be able to provide sufficient evidence to prove these things were done. These requirements only begin to address the obstacles and challenges managers must overcome to address deficient employee performance under any system. Under such contractual constraint, the union's one-dimensional example is not representative.

In the private sector, how many employers are required to control their employees' conduct under such an outlandish system? How many warnings on the need for an employee to correct his /her conduct on the job is reasonable? Four? Nine? Twelve? What sort of impact does retaining such a marginal employee have on the costs to their assigned unit (unplanned payment of overtime to covered unscheduled absences), to its efficiency and service commitments (delayed mail) or the morale of those employees **who are dependable and productive**, and must pick up the slack, often with unwanted, mandatory overtime which disrupts family commitments. If we are being honest here, every operations manager (myself included) has received employee complaints over the years, more than once, about having to cover for marginal employees or had the question posed to them, "when are you going to do something about \_\_\_\_\_?" There is a general belief that nothing can really be done by management to address these problem employees.

The Postal Service is currently in a severe financial crisis as alluded to by DM Gamble, due, in large part, to the economic meltdown and the continuing diversion of communications to the Internet. Mail volumes have plunged 22% over the last two years. Postal revenues have dropped precipitously. One hundred thousand jobs have been

Postal Service lost close to \$ 4 billion dollars. In FY 2010, the Postal Service will be in the red \$ 7 billion dollars, despite all of the above efforts. The Postal Service is fighting for economic survival as an ongoing concern. The **nature of the business** and the current economic environment in which the Postal Service must operate **has fundamentally changed**. Business as usual will no longer suffice. Practices that are no longer efficient of economical must change if the organization is going to survive. In such a business environment, the Postal Service can ill afford to endlessly retain employees who chronically fail to report to work, perform unsatisfactorily or disrupt operations with unacceptable conduct. We can no longer suffer and permit such employees. The ship is sinking; we need all hands on deck, and productively working together. That expectation is no greater than any other business enterprise. The Postal Service should not be held to a different standard.

In conclusion, management contends there is no violation of Article 5, 16, 19 and 34 of the National Agreement.

For all the reasons stated above and all the reasons and issues at Informal and Formal Step A of the grievance procedure, management is of the opinion that this grievance should be denied in its entirety and that the remedy requested should not be granted.

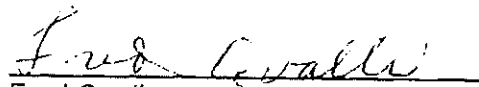
This grievance file contained the following documents:

- (1) PS Form 8190 for H06N-4H-C 10366297
- (2) Union Contentions/Requested Remedy, 6 pages
- (3) Greg A. Gamble letter to unions dated July 29, 2010
- (4) Service Talk: Policy Change for Disciplinary Action dated August 2, 2010
- (5) Reba Mickel statement dated 09/17/2010, 2 pages
- (6) Undated letter from Dave Clark
- (7) Undated letter from Ray Winters
- (8) Undated letter from Thomas L. Rollins
- (9) Letter from Ben Johnson dated 10/05/2010
- (10) Article 16 exerts July 21, 1973 thru 2011, 22 pages
- (11) Undated letter from Corey L. Walton, 4 pages
- (12) Lew Drass letter dated August 30, 2010, 4 pages
- (13) Lew Drass letter dated July 6, 2010, 2 pages
- (14) Lew Drass letter dated June 17, 2010, 2 pages
- (15) Greg A. Gamble letter to unions dated June 8, 2010
- (16) Greg A. Gamble letter to unions dated June 28, 2010
- (17) Greg A. Gamble letter to unions dated July 29, 2010
- (18) John E. Potter letter dated February 23, 2009
- (19) Page 5-1 thru 5-4 of the USPS/NALC Joint Contract Administration Manual
- (20) Page 16-1 and 16-2 of the USPS/NALC Joint Contract Administration Manual
- (21) Page 19-1 and 19-2 of the USPS/NALC Joint Contract Administration Manual
- (22) Page 34-1 and 34-2 of the USPS/NALC Joint Contract Administration Manual
- (23) Page 4 and 5 of Handbook M-39
- (24) Management Contentions, 25 pages
- (25) Management's Additions, 3 pages
- (26) Email correspondence from Renee Cannon dated September 20, 2010
- (27) Kevin J. Augustine for Greg Gamble letter dated February 12, 2010
- (28) Greg A. Gamble letter to unions dated June 8, 2010

- (31) M-3: Greg A. Gamble letter to unions dated June 28, 2010 w/Track & Confirm Results, 3 pages
- (32) Formal Step A Resolution for H06N-4H-C 10261795
- (33) Copy of Formal Step A Resolution for H06N-4H-C 10261795 printed from GATS
- (34) Management Contentions, 2 pages
- (35) Greg A. Gamble letter to unions dated July 29, 2010 w/Track & Confirm Results, 3 pages
- (36) Service Talk: Policy Change for Disciplinary Action dated August 2, 2010
- (37) Service Talk #2: Policy Change for Disciplinary Action dated August 30, 2010
- (38) Employee and Labor Relations Manual, Section 665, 3 pages
- (39) TN District Performance Reports, 6 pages
- (40) Email correspondence from Renee Cannon dated September 24, 2010
- (41) Blank PS Form 630, March 2006
- (42) Arbitrator Gamser Award in USPS Case No. NB-N-4 298-D, 5 pages
- (43) Step B Decision H06N-4H-C 10314794, 17 pages
- (44) October 2008 letter from John E. Potter, Postmaster General/Chief Executive Officer and Alan C. Kessler, Chairman Board of Governors, 2 pages



Paul D. Robbins  
USPS Step B Representative



Fred Qualls  
NALC Step B Representative

DRT grievance # 485-10

Cc: Mr. Lew Drass, NALC NBA  
Annette Poole, Southeast Area Labor Relations Office  
Mark Sullivan, Southeast Area Labor Relations Office  
Monica Lucas, USPS Step A Representative  
Leman D. Clark, NALC Step A Representative  
George Adkisson, District Manager Labor Relations  
J. Renee Cannon, District Manager Labor Relations (A)  
Greg Gamble, District Manager  
Patty Frederick, District Manager HR  
Tracy Mofield, District Manager Operations Support (A)



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



# USPS-NALC Joint Step A Grievance Form

## INFORMAL STEP A — NALC Shop Steward Completes This Section

1. Grievant's Name (Last, first, middle initial) <i>Guss Action</i>		2. Home Telephone No.	
3. Seniority Date (MM/DD/YYYY)	4. Status (Check one) <input type="checkbox"/> FT <input type="checkbox"/> FTF <input type="checkbox"/> PTR <input type="checkbox"/> PTF <input type="checkbox"/> TE		5. Grievant's SSN
6. Installation/Work Unit <i>Nashville Installation/citywide</i>		7. Finance Number	
8. NALC Branch No. <i>4</i>	9. NALC Grievance No. <i>84-00292-10</i>	10. Incident Date (MM/DD/YYYY) <i>ongoing</i>	11. Date Discussed with Supervisor (Filing Date) <i>9/7/10</i>
12a. Companion MSPB Appeal? <input type="checkbox"/> Yes <input type="checkbox"/> No		12b. Companion EEO Appeal? <input type="checkbox"/> Yes <input type="checkbox"/> No	
13a. Supervisor's Printed Name and Initials (Completed by Supervisor) <i>Tim Freels JK</i>		13b. Steward's Printed Name and Initials (Completed by Steward) <i>Corey L. Walton clw</i>	

## FORMAL STEP A — Formal Step A Parties Complete This Section

14. USPS Grievance No. *10366297*

15. Issue Statement/Provide Contract Provision(s) and Frame the Issue(s)  
*Did management violate articles 5, 16, 19 and 39 of the National Agreement when they established a policy change for disciplinary action, which is inconsistent with the Collective Bargaining Agreement? If so what is the appropriate Remedy?*

16. Undisputed Facts (List and Attach All Supporting Documents) Attachments?  No  Yes Number \_\_\_\_\_

17. UNION'S full, detailed statement of disputed facts and contentions (List and Attach All Supporting Documents) Attachments?  No  Yes Number *69*

*See Attachments*

18. MANAGEMENT'S full, detailed statement of disputed facts and contentions (List and Attach All Supporting Documents) Attachments?  No  Yes Number *82*

*See Attachments*

19. Remedy Requested/Offered  
*Management rescind this policy immediately. Any carrier that has been issued discipline as a result of this disciplinary action policy shall have that discipline rescinded and removed from all files immediately or what other remedy that may be deemed appropriate.*

20. Disposition and Date (Check one)  
 Resolved  Withdrawn  Not Resolved

Date of Formal Step A Meeting (MM/DD/YYYY)  
*10-5-2010*

21a. USPS Representative Name  
*Monica Lucas*

21c. USPS Representative Signature  
*Monica Lucas*

21b. Telephone No. (Include Area Code)

21d. Date (MM/DD/YYYY)

22b. Telephone No. (Include Area Code)

**Union Contentions  
B4-00292-10  
Class Action  
Discipline Policy Inconsistent with  
Collective Bargaining Agreement  
Nashville Installation**

The issue in this grievance is did management violate Articles 5, 16, 19, and 34 of the National Agreement when they established a policy change for disciplinary action, which is inconsistent with the Collective Bargaining Agreement.

This grievance file contains a Memorandum from the Tennessee District Manager, Greg Gamble, dated 7/29/10, which reads as follows:

Policy Change for Disciplinary Action

In a letter to the Unions, dated February 12, 2010, Management proposed to change the policy regarding corrective action. Prior to the scheduled implementation date of July 10, 2010, several union officials stated they did not receive the previous notice. The implementation date was cancelled and previous correspondence relating to this issue was rescinded. In a letter dated June 28, 2010, Management issued a second notice to the Unions regarding the proposed policy change. This letter solicited input and provided an opportunity to bargain prior to implementation. Several union officials met with me to voice their opinions and concerns.

After considering all the information presented, it is my decision to implement a single track of discipline for unrelated infractions in the Tennessee District effective September 1, 2010. The current system of using three (3) tracks (performance, attendance, conduct) has not been successful in correcting employee deficiencies. It is crucial that every employee report as scheduled and perform their assigned duties safely and efficiently.

Management is not attempting to unilaterally change any terms or conditions of employment. The Unions were provided ample notice of the proposed change and an opportunity to bargain in good faith. Please consider this your written notification of Management's intent to implement a single track of discipline in accordance with Article 16 of the National Agreement for bargaining employees...

This file also contains copies of "Service Talk" postings showing where the District Manager's intent was placed into action through out the Tennessee District on 9/1/10.

This grievance file also contains a copy of the letter that NALC Region 8, National Business Agent, Lew Drass, addressed to the District Manager concerning his policy change to implement a single track of discipline, which reads in relevant parts as follows:

- "You should be aware that the current system used by the Postal Service to decide and issue discipline in the Tennessee District has been in existence for decades. Your notion of changing the past system that has been in place for decades to a one-track discipline system for unrelated infractions takes this debate to a whole new level."

- The National Agreement was not applied correctly here.
- Article 5 of the National Agreement was not applied correctly here.

- On page 5.3, the National Parties break the definition and sub-sections of...

2. To Clarify Unambiguous Language
3. To Implement Separate Conditions of Employment

- The Union contends that the practice of using a 3 track system to decide and issue discipline over a period of decades is clearly a practice designed "To Implement Contract Language" such as that contained in Article 16, Article 19, Section 115 of the M-39 Handbook and Article 34.
- On page 5-3 and 5-4 the parties agreed to the following:

"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."
- "For the record, Article 5 wasn't even complied with had you been trying to change a past practice where the contract was silent."
- "Despite the fact that the approach you took to attempt to change the past practice at issue was misplace, there was certainly no "good faith" bargaining efforts made on the part of the Postal Service. As a matter of fact, there was no bargaining effort of any kind made by the Postal Service in this situation. It is quite clear that your final decision was made before you neglected to send me the letter announcing the change back in February. The rest of this was merely a formality, and therefore, nothing more than a sham."
- "In addition to the multiple violations of Article 5, the decision to change from a 3 track discipline system to a single track discipline system for unrelated infractions violates several other provisions of the National Agreement such as, but not limited to."
- Article 16, Section 1 of the National Agreement states in relevant part, **"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive."**
- Further, Section 115.1 of the M-39 Handbook states in relevant part,

**"In the administration of discipline, a basic principle must be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause. The delivery manager must make every effort to correct a situation before resorting to disciplinary measures."**
- The M-39 Handbook is also part of the National Agreement via Article 19. Article 19 requires that any changes to handbooks must be made at the National Level.
- It is also the position of the NALC that the current system of discipline is a work standard. Therefore, any notification of change/changes in this work standard would have to be made at the National Level via the provisions contained in Article 34 of the National Agreement.

Article 19 of the National Agreement reads as follows:

Those parts of all handbooks, manuals and published regulations of the Postal Service,

changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable.

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.

**The union contends that management has violated our collective bargaining agreement when establishing the single line of discipline for unrelated infractions.**

This grievance file also contains a copy of NALC Branch 4 President, which reads in relevant part as follows:

"I'm the President of NALC Branch 4, and I offer this statement in an attempt to place some order to the unfolding of events that lead to the union filing grievance # (B4-00292-10). First, I would like to go on record bolstering our Business Agent, Lew Drass's reply to the District Manager's move to change/implement a "one-track" method of issuing discipline. I would like to support the Business Agent's comment that he made to the D M; concerning the longevity (from 1972 to present) that Branch 4 has been addressing management's past administering of discipline as provided in Article 16 of the National Agreement. Every time that management didn't administer discipline in a progressive manner with like infractions, the union was successful in getting that discipline rescinded and removed from the employee's files. The union has included in this grievance file, statements from past President's, Business Agent and other union officials that have been involved in the grievance procedure in Branch 4, reinforcing the fact that when dealing with discipline grievances in the past, discipline not issued in a progressive nature, were always rescinded. Secondly, Branch 4 has a retired member that served as business agent for several years and his statement reveals that he served at the National Level representing the NALC in negotiations concerning Article 16 on more than one occasion. He also revealed that during those negotiations management had tried on more than one occasion to insert the one-track discipline in to the National Agreement, only to be rejected by the union and then they (management) would remove it from the table."

This grievance file also contains a copy of EL 921, Supervisors Guide to handling grievances, where it reads in Chapter 3 section E as follows:

#### E. Investigation

As previously discussed, when an employee commits an offense which seems to warrant discipline, the supervisor must avoid rushing into a disciplinary action without first investigating. **The need for an investigation to meet our *just cause and proof* requirements is self-evident.** However, the employee's past record must also be checked before any disciplinary action is considered. **This is obviously necessary if we are to abide by the principle of progressive discipline.** Failure to investigate before taking a disciplinary action can result in some awkward situations for the Postal Service. Examples:

**One employee who worked for many different supervisors on a relief assignment**

In another instance, an employee bid into a new section and immediately became a tardiness problem. During the first 10 days under the new supervisor, the employee was tardy six times. The supervisor held a discussion with the employee without investigating the past record, which would have revealed that the employee had been a continuing problem and had recently returned from a 30-day suspension for tardiness. Obviously, a discussion was not the correct action in this instance.

The union contends that management has failed to adhere to their own guidelines as provided in EL 921, addressing the progressive issuance of discipline.

This file also contains a copy of PMG Potter's letter addressed to Officers, PCES Managers, where the subject concerns, Collective-Bargaining Agreement-Our Bond with Our Employees, which reads in relevant part as follows:

"Our bond with our employees has never been more important than it is today. That bond is represented by the collective-bargaining agreements with our unions. As we adapt to a dynamic and dramatically changing environment we will, by necessity, bring even more change to our business. But one thing cannot change our adherence to the provisions of our labor agreements. They are our word. They are our pledge of fairness to our employees.

It is up to each one of us to make sure that the changes we bring to the organization are changes for the better. Respecting and protecting the provisions of the collective bargaining agreements will help us to do that."

The union contends that the District Manager of Tennessee didn't get this memo, because his actions in this instant grievance shows a direct disregard to the Postmaster General's directive, when failing to abide by the basic principles when issuing discipline via the provisions of Article 16.1 of the National Agreement.

Unions Contentions to grievance # B4-00292-10, continued;

At the Formal Step A meeting the USPS designee inserted several pages of arguments that reflect her opinion and can't be backed up with contract provisions. I think the union has covered most of the contract provisions that management has violated in their attempt to arbitrarily change the National Agreement in regards to the issue statement in this instant grievance. But there are a few questions that the USPS designee asked that I would like to address.

- Management poses the question to the union, " If there is a one-track discipline system and an employee is placed on notice of a deficiency (of any type), why would they consider it as discipline rather than corrective action when Management proceeds should that same employee continue to show a deficiency in yet another area?

The union contends that a reasonable person should not have such a hard time understanding this process, but I'll attempt to break it down in a scenario that might be more understandable:

**"An employee has been given an official discussion for tardiness and if this discussion has been given properly it should go something like this; Mr. Letter carrier when reviewing your time records they show that in the past month on 6 occasions you have reported at least 15 minutes late to work. If you do not correct this deficiency then I will be forced to issue discipline as a means to correct this matter. Do you understand?"**

Two weeks later management is performing a street observation on the same employee and notices that the carrier dismounts from his vehicle to make a parcel delivery but fails to curb his wheels. **The next day management calls the carrier to her office and informs the carrier that she observed him exiting his vehicle without curbing his wheels. She states, Mr. Letter carrier article 16 provides that I be progressive with the issuance of discipline so since I gave you an official discussion two weeks ago for your tardiness I must now progress to issuing you a letter of warning for your improper dismount.**

Two months later the same carrier thought he made all of his 15 scans along his route but management's report shows that he missed one. **The supervisor calls this carrier to her office and informs the carrier that her records indicate that he didn't make all of his scans yesterday. Why in the world do you insist on not doing your job? The supervisor informs the carrier that her records indicate that he has a letter of warning on file so she must follow the progressiveness of issuing discipline and serves him with a 7-day suspension, slacker.**

Three more months down the road this same carrier was giving his best effort to get back to the station within his 8 hour shift but with all the heavy load of mail that came in this day he went 14 minutes into overtime. **The next morning his supervisor called him into the office and informs him that her records indicate that he used unauthorized overtime yesterday and that is a "no no." She proceeds by telling the carrier that she sees that he has a 7-day suspension on file so in order to be progressive in issuing him discipline she issues him a 14-day suspension and also reminds him that he is just one step from being out the door. You better watch it boy."**

Now here is where the union has a problem with this line of discipline. The carrier in the scenario mentioned above had a discussion approximately 6 months ago for tardiness. That carrier has not had another day of tardiness since the official discussion.

The union contends that placing the carrier on notice via discussion corrected the tardiness infraction and the follow up discipline that management had proceeded forward with on separate infractions in a progressive manner was not necessary to correct the carrier's tardiness deficiency. Hence what part of 16.1 of the National Agreement and Section 115.1 of the M-39 Handbook is so hard to understand:

In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive.

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

The union contends that the basic principle for correcting carrier's deficiencies must be that discipline should be corrective in nature rather than punitive. The union further contends that this method of issuing discipline has been in practice for over 40 years and does work when applied in accordance with the above provisions.

The formal step A rep for the USPS also referred to a Step B Team decision from Knoxville that they issued a decision to impasse.

The union contends that they cannot formally discuss/argue this grievance due to not have the entire file to review.



DATE: July 29, 2010

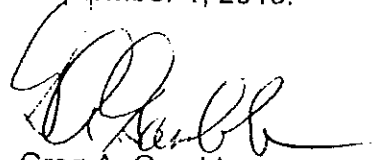
MEMORANDUM FOR: National Association of Letter Carriers (NALC)  
American Postal Workers Union (APWU)  
National Rural Letter Carriers Association (NRLCA)  
National Postal Mail Handlers Union (NPMHU)  
National Association of Postal Supervisors (NAPS)  
National Association of Postmasters (NAPUS)

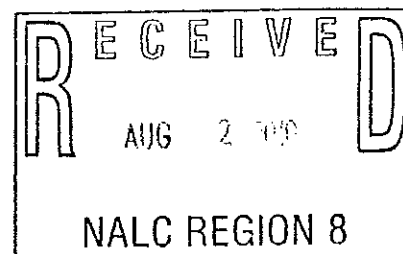
RE: Policy Change for Disciplinary Action

In a letter to the Unions, dated February 12, 2010, Management proposed to change the policy regarding corrective action. Prior to the scheduled implementation date of July 10, 2010, several union officials stated they did not receive the previous notice. The implementation date was cancelled and previous correspondence relating to this issue was rescinded. In a letter dated June 28, 2010, Management issued a second notice to the Unions regarding the proposed policy change. This letter solicited input and provided an opportunity to bargain prior to implementation. Several union officials met with me to voice their opinions and concerns.

After considering all the information presented, it is my decision to implement a single track of discipline for unrelated infractions in the Tennessee District effective September 1, 2010. The current system of using three (3) tracks (performance, attendance, conduct) has not been successful in correcting employee deficiencies. It is crucial that every employee report as scheduled and perform their assigned duties safely and efficiently.

Management is not attempting to unilaterally change any terms or conditions of employment. The Unions were provided ample notice of the proposed change and an opportunity to bargain in good faith. Please consider this your written notification of Management's intent to implement a single track of discipline in accordance with Article 16 of the National Agreement for bargaining employees and the Employee and Labor Relations Manual (ELM), Section 650 for non-bargaining employees effective September 1, 2010.

  
Greg A. Gambie







AUGUST 2, 2010

# \*\*\*SERVICE TALK\*\*\*

## Policy Change for Disciplinary Action

Effective Wednesday, September 1, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies. It is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently. This does not change the guidelines set forth in Article 16. Any currently active discipline may be cited in future disciplinary action request.

All Postal employees are required to comply with the rules of conduct outlined in Section 660 of the Employee and Labor Relations Manual (ELM). Employees may reference the **Postal Service Standards of Conduct (Section 665)** that require employees to:

1. Discharge their assigned duties conscientiously and effectively.
2. Obey the instructions of their Supervisors.
3. Maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment.
4. Be regular in attendance and report as scheduled.

These are just a few examples of requirements. In addition, the ELM states that Postal officials may take appropriate disciplinary measures to correct violations of the regulations referred to in Section 665.

The Employee and Labor Relations Manual (ELM) is available on the Postal Service website at [www.usps.com](http://www.usps.com). Please contact your immediate Supervisor or Manager if you have any questions.

# \*PLEASE POST\*

To Whom It May Concern:

I'm the President of NALC Branch 4, and I offer this statement in an attempt to place some order to the unfolding of events that lead to the union filing grievance # (B4-00292-10).

First, I would like to go on record bolstering our Business Agent, Lew Drass's reply to the District Manager's move to change/implement a "one-track" method of issuing discipline. I would like to support the Business Agent's comment that he made to the D M; concerning the longevity (from 1972 to present) that Branch 4 has been addressing management's past administering of discipline as provided in Article 16 of the National Agreement. Every time that management didn't administer discipline in a progressive manner with like infractions, the union was successful in getting that discipline rescinded and removed from the employee's files. The union has included in this grievance file, statements from past President's, Business Agent and other union officials that have been involved in the grievance procedure in Branch 4, reinforcing the fact that when dealing with discipline grievances in the past, discipline not issued in a progressive nature, were always rescinded. Secondly, Branch 4 has a retired member that served as business agent for several years and his statement reveals that he served at the National Level representing the NALC in negotiations over Article 16 on more than one occasion. He also revealed that during those negotiations management had tried on more than one occasion to insert the one-track discipline in to the National Agreement, only to be rejected by the union and then they (management) would remove it from the table.

Dave Clark  
NALC Br 4 President

TO WHOM IT MAY CONCERN:

My name is Ray Winters and I served as President of Branch 4, NALC from 1980 through 1994.

For this period of time (15 years), management followed the provisions of Article 16.2 of the National Agreement and Section 115.1 of the M-39 Handbook, as it relates to discipline, should be corrective in nature rather than punitive. National Arbitrator Richard Mittenthal ruled in case #'s H4N-3U-C 58637 and H4N-3A-C 59518 (c# 10146 A&B on Page 7):

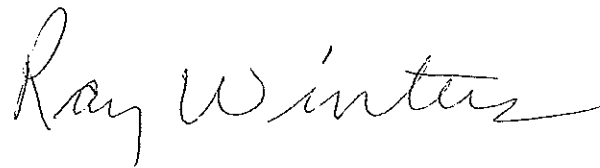
Given this structure, the strong presumption must be that all of Article 16 relates to discipline. When the parties intended some procedure to be outside the scope of Article 16, to be beyond the disciplinary principles of Article 16, they said so.

National Arbitrator Gerald Cohen in Case # C1C-47-D 31565 (c 557) ruled:

“In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive.”

It has been held many times by other arbitrators that, for discipline to be corrective, it must be progressive.

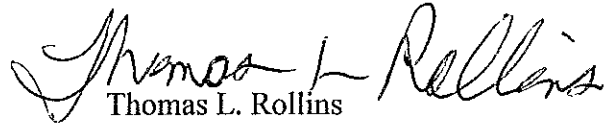
This directive from the National Agreement is mandatory. It is not discretionary. Management does not have the choice as to whether it will issue corrective discipline or not. It must attempt to make discipline corrective.

A handwritten signature in cursive script that reads "Ray Winters". The signature is written in black ink on a white background.

TO WHOM IT MAY CONCERN:

My name is Tom Rollins. I served as full-time President of Branch 4, NALC for the period of January 1995 through December 2000. I also served as the Union Representative on the Dispute Resolution Team (DRT) for the period of January 2001 through December 2002. I then served as full-time President of Branch 4, NALC again from January 2003 to December 2006.

For the twelve (12) years I served as full-time President of Branch 4, NALC and three (3) years I served as the Union Representative (DRT), the Provision Article 16.2 of the National Agreement and Section 115.1 of the M-39 Handbook, as they relate to the issuing of discipline, were followed by management. In the cases that discipline was not issued in a progressive manner, a grievance was filed and that discipline was rescinded.

  
Thomas L. Rollins

To Whom It May Concern:

My name is Ben Johnson, Retired National Business Agent for the National Association of Letter Carriers, AFL-CIO. I was elected National Business Agent in 1980 and I retired in 2002.

I was President of Branch 4, NALC from 1973 to 1978 and President of the Tennessee State Association of Letter Carriers from 1976 to 1980.

I was a member of the NALC Executive Board and a member of the National Negotiating Team from 1981 to 2002.

I was a member of the NALC team that accomplished the National Agreement with the USPS in 1981, 1984, 1987, 1990, 1994, 1998, and 2001.

During the time that I was a member of NALC negotiating team (1981-2001) the Postal Service made several unsuccessful attempts to modify Article 16 to include a single tract discipline procedure. The USPS was never successful in their attempts.

If the USPS wants to modify Article 16 to include a single track disciplinary procedure, it must be done at the National Bargaining Table during the next Contract Negotiations.

It has been an established past practice since 1973 to follow the provisions of Article 16 of the National Agreement, which reads as follows: "In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause."



Ben Johnson  
10/05/2010



# AGREEMENT

between  
United States Postal Service  
and

American Postal Workers Union, AFL-CIO

National Association of Letter Carriers, AFL-CIO

National Post Office Mail Handlers, Watchmen,  
Messengers and Group Leaders Division of Laborers'  
International Union of North America, AFL-CIO

National Rural Letter Carriers Association



July 21, 1973 - July 20, 1975

73-75

**ARTICLE XVII—DISCIPLINE PROCEDURE**

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

**Section 1. Counseling.** For a minor offense, counseling in private shall be the method of dealing with that offense. Counseling is a private matter between the supervisor and the employee.

**Section 2. Suspensions of Less Than 30 Days.** In the case of discipline involving suspensions of thirty (30) days or less, the employee against whom disciplinary action is sought to be initiated shall be served with a written notice of the charges against him and shall be further informed that he will be suspended after two (2) working days during which two-day period he shall remain on the job or on the clock (in pay status) at the option of the Employer.

**Section 3. Suspensions of More Than 30 Days or Discharge.** In the case of suspensions of more than thirty (30) days, or of discharge, any employee shall, unless otherwise provided herein, be entitled to an advance written notice of the charges against him and shall remain either on the job or on the clock at the option of the Employer for a period of thirty (30) days. Thereafter, the employee shall remain on the rolls (non-pay status) until disposition of his case has been had either by settlement with the Union or through exhaustion of the grievance-arbitration procedure. A preference eligible who chooses to appeal his suspension of more than thirty (30) days or his discharge to the Civil Service Commission rather than through the grievance-arbitration procedure shall remain on the rolls (non-pay status) until disposition of his case has been had either by settlement or through exhaustion of his Civil Service appeal. When there is reasonable cause to believe an employee guilty of a crime for which a sentence of imprisonment can be imposed, the advance notice requirement shall not apply and such an employee may be immediately removed from pay status.

**Section 4. Emergency Procedure.** An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U. S. Postal Service property, loss of mail or funds, or where the employee may be injurious to himself or others. The employee shall remain on the rolls (non-pay status) until disposition of his case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge him, the emergency action taken under this Section may be made the subject of a separate grievance.

**Section 5. Review of Discipline.** In no case may a supervisor impose suspension or discharge upon an employee unless the proposed disciplinary action by the supervisor has first been reviewed and concurred in by the installation head or his designee.

In associate post offices of twenty (20) or less employees, or where there is no higher level supervisor than the supervisor who proposes to initiate suspension or discharge, the proposed disciplinary action shall first be reviewed and concurred in by a higher authority outside such installation or post office before any proposed disciplinary action is taken.

**Section 6. Veterans' Preference.** A preference eligible is not hereunder deprived of whatever rights of appeal he may have under the Veterans' Preference Act; however, if he appeals under the Veterans' Preference Act, he thereby waives access to any procedure under this Agreement beyond Step 2B of the grievance-arbitration procedure.

**ARTICLE XVII—REPRESENTATION**

**Section 1. Stewards.** Stewards may be designated for the purpose of presenting and adjusting grievances.

**Section 2. Appointment of Stewards**

A. Each Union signatory to this Agreement will certify to the Employer in writing a steward or stewards, and alternates in accordance with the following general guidelines. Where more than one steward is appointed, one shall be designated chief steward. The selection and appointment of stewards or chief stewards is the sole and exclusive function of each Union. A steward or stewards may be designated to represent more than one craft whenever the Unions so involved agree.

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# AGREEMENT

between  
United States Postal Service  
and

American Postal Workers Union, AFL-CIO

National Association of Letter Carriers, AFL-CIO

National Post Office Mail Handlers, Watchmen,  
Messengers and Group Leaders  
Division of the Laborers' International Union  
of North America, AFL-CIO

National Rural Letter Carriers' Association



July 21, 1975 — July 20, 1978



73-118  
The panel of six (6) arbitrators will be selected by the alternative striking of names by the parties from a geographically balanced list of arbitrators provided by the Federal Mediation and Conciliation Service.

Any vacancies in the panel will be filled by the alternative striking of names from a list of five (5) arbitrators supplied by the FMCS. This method will be used if members of the panel are unavailable for any reason. By mutual agreement, the parties may increase the size of the panel, for such time as is necessary, to assure the expeditious processing of grievances. The additional arbitrators will be selected in the same manner as provided above.

The arbitrator's decision will be final and binding. The arbitrator shall render his award within thirty (30) days of the close of the hearing on cases which do not involve interpretation of the Agreement or are not of a technical or policy-making nature. On all other cases, the award shall be rendered within thirty (30) days, if possible. All decisions of the arbitrator shall be limited to the terms and provisions of this Agreement, and in no event, may the terms and provisions of this Agreement be altered, amended or modified by the arbitrator. All costs, fees and expenses charged by the arbitrator will be shared equally by the parties.

Arbitration hearings shall be held during working hours. Employee witnesses shall be on Employer time when appearing at the hearings provided the time spent as a witness is part of the employee's regular working hours.

In any arbitration proceeding in which a Union feels that its interests may be affected, it shall be entitled to intervene and participate in such arbitration proceedings, but it shall be required to share the cost of such arbitration with any or all other Union parties to such proceeding. In any case in which more than one Union participates, the Unions will share one-half (1/2) and the Employer will pay one-half (1/2) of the costs of such arbitration. Any dispute as to arbitrability may be submitted to the arbitrator and be determined by him. The arbitrator's determination shall be final and binding.

**Section 4. Expedited Arbitration.** The Parties agree to continue the utilization of an expedited arbitration system for disciplinary cases which do not involve interpretation of the Agreement and which are not of a technical or policy-making nature. This system may be utilized by agreement of the Union involved through its national President or designee, and the Senior Assistant Postmaster General, Employee and Labor Relations Group, or his designee. In any such case, the Union and the Employer shall immediately notify the designated arbitrator. The designated arbitrator is that member of the Expedited Arbitration Panel who, pursuant to a rotation system, is scheduled for the next arbitration hearing. Immediately upon such notification the designated arbitrator shall arrange a place and date for the hearing promptly but within a period of not more than ten (10) working days. If the designated arbitrator is not available to conduct a hearing within the ten (10) working days the next panel member in rotation shall be notified until an available arbitrator is obtained.

The hearing shall be conducted in accordance with the following:

- (a) the hearing shall be informal;
- (b) no briefs shall be filed or transcripts made;
- (c) there shall be no formal rules of evidence;
- (d) the hearing shall normally be completed within one day;
- (e) if the arbitrator or the parties conclude at the hearing that the issues involved are of such complexity or significance as to warrant reference to the Regular Arbitration Panel, the case shall be referred to that panel; and
- (f) the arbitrator may issue a bench decision at the hearing but in any event he shall render his decision within 48 hours after conclusion of the hearing. His decision shall be based on the record before him and may include a brief written explanation of the basis for his conclusion. These decisions will not be cited as a precedent. The arbitrator's decision shall be final and binding. An arbitrator who issues a bench decision shall furnish a written copy of his award to the parties within forty-eight (48) hours of the close of the hearing.

The Expedited Arbitration Panel shall be developed by the national parties, on a national or area basis, with the aid of the American Arbitration Association, the Federal Mediation and Conciliation Service, Deans of Law Schools and the National Academy of Arbitrators. The parties shall appoint a Joint Committee with equal representation which shall have the responsibility of developing programs for appropriate orientation of the members of the arbitration panel.

#### ARTICLE XVI DISCIPLINE PROCEDURE

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

**Section 1. Counseling.** For a minor offense, counseling in private shall be the method of dealing with that offense. Counseling is a private matter between the supervisor and the employee.

**Section 2. Suspensions of Less Than 30 Days.** In the case of discipline involving suspensions of thirty (30) days or less, the employee against whom disciplinary action is sought to be initiated shall be served with a written notice of the charges against him and shall be informed that he will be suspended after two (2) working days during which two-day period he shall remain on the job or on the clock (on pay status) at the option of the Employer.

# **AGREEMENT**

between  
**United States Postal Service**

and

**American Postal Workers Union, AFL-CIO**

**National Association of Letter Carriers, AFL-CIO**

**National Post Office Mail Handlers, Watchmen,  
Messengers and Group Leaders Division of the Laborers'  
International Union of North America, AFL-CIO**



**July 21, 1978—July 20, 1981**

79-81

Art. XV, 4, D

- Employee and Labor Relations Group, or designee. In any such case, the PMA/CS or AAA shall immediately notify the designated arbitrator. The designated arbitrator is that member of the Expedited Panel who, pursuant to a rotation system, is scheduled for the next arbitration hearing. Immediately upon such notification the designated arbitrator shall arrange a place and date for the hearing promptly but within a period of not more than ten (10) working days. If the designated arbitrator is not available to conduct a hearing within the ten (10) working days, the next panel member to rotation shall be notified until an available arbitrator is obtained.
- (2) If either party concludes that the issues involved are of such complexity or significance as to warrant reference to the Regular Regional Arbitration Panel, that party shall notify the other party of such reference at least twenty-four (24) hours prior to the scheduled time for the expedited arbitration.
- (3) The hearing shall be conducted in accordance with the following:
- (a) the hearing shall be informal;
  - (b) no briefs shall be filed or transcripts made;
  - (c) there shall be no formal rules of evidence;
  - (d) the hearing shall normally be completed within one day;
  - (e) if the arbitrator or the parties mutually conclude at the hearing that the issues involved are of such complexity or significance as to warrant reference to the Regular Regional Arbitration Panel, the case shall be referred to that panel; and
  - (f) the arbitrator may issue a bench decision at the hearing but in any event shall render a decision within forty-eight (48) hours after conclusion of the hearing. Such decision shall be based on the record before the arbitrator and may include a brief written explanation of the basis for such conclusion. These decisions will not be cited as a precedent. The arbitrator's decision shall be final and binding. An arbitrator who issues a bench decision shall furnish a written copy of the award to the parties within forty-eight (48) hours of the close of the hearing.
- (4) No decision by a member of the Expedited Panel in such a case shall be regarded as a precedent or be cited in any future proceeding, but otherwise will be a final and binding decision.
- (5) The Expedited Arbitration Panel shall be developed by the National parties, on an area basis, with the aid of the American Arbitration Association and the Federal Mediation and Conciliation Service.
- D. National Level Arbitration
- (1) Only cases involving interpretive issues under this Agreement or supplements thereto of general application will be arbitrated at the National level.
- (2) Separate dockets of cases appealed to arbitration at the National level shall be maintained for each Union. The arbitrators on the

Art. XVI

National Panel shall be scheduled to hear cases on a rotating system basis, unless otherwise agreed by the parties. All available hearing time at the National level shall be pre-rotated among the Unions on the basis of the relative size of the respective bargaining units represented. Cases on each docket will be scheduled for arbitration in the order in which appealed, unless the Union and Employer otherwise agree in Section 5, Administration.

The parties recognize their continuing joint responsibility for efficient functioning of the grievance procedure and effective use of arbitration. Commencing April 1, 1979, and quarterly thereafter, the Employer will furnish to the President of each Union a copy of a quarterly report containing the following information covering operation of the arbitration procedure at the National level, and for each Region separately:

- (a) number of cases appealed to arbitration;
- (b) number of cases scheduled for hearing;
- (c) number of cases heard;
- (d) number of scheduled hearing dates, if any, which were not used;
- (e) the total number of cases pending but not scheduled at the end of the quarter.

Section 6.

The provisions of this Article will become effective February 1, 1979. Grievances instituted prior to February 1, 1979, will be processed, including arbitration, under the Grievance-Arbitration Procedure set forth under Article XV of the 1975 National Agreement.

See Memorandum of Understanding, Page 148

ARTICLE XVI

DISCIPLINE PROCEDURE

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

For minor offenses by an employee, management has a responsibility to discuss such matters with the employee. Discussions of this type shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grievable. Following such discussions, there is no prohibition against the supervisor

# AGREEMENT

between

United States Postal Service

and

American Postal Workers Union, AFL-CIO

National Association of Letter Carriers, AFL-CIO



July 21, 1981—July 20, 1984

Article 16.1

thereafter, the Employer will furnish to the President of each Union a copy of a quarterly report containing the following information covering operation of the arbitration procedure at the National level, and for each Region separately:

- (a) number of cases appealed to arbitration;
- (b) number of cases scheduled for hearing;
- (c) number of cases heard;
- (d) number of scheduled hearing dates, if any, which were not used;
- (e) the total number of cases pending but not scheduled at the end of the quarter.

ARTICLE 16

DISCIPLINE PROCEDURE

Section 1. Principles

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

Section 2. Discussion

For minor offenses by an employee, management has a responsibility to discuss such matters with the employee. Discussions of this type shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grievable. Following such discussions, there is no prohibition against the supervisor and/or the employee making a personal notation of the date and subject matter for their own personal record(s). However, no notation or other information pertaining to such discussion shall be included in the employee's personnel folder. While such discussions may not be cited as an element of prior adverse record in any subsequent disciplinary action against an employee, they may be, where relevant and timely, relied upon to establish that employees have been made aware of their obligations and responsibilities.

81-84

Article 16.6

Section 3. Letter of Warning

A letter of warning is a disciplinary notice in writing, identified as an official disciplinary letter of warning, which shall include an explanation of a deficiency or misconduct to be corrected.

Section 4. Suspensions of 14 Days or Less

In the case of discipline involving suspensions of fourteen (14) days or less, the employee against whom disciplinary action is sought to be initiated shall be served with a written notice of the charges against the employee and shall be further informed that he/she will be suspended after two (2) working days during which two-day period the employee shall remain on the job or on the clock (in pay status) at the option of the Employer.

Section 5. Suspensions of More Than 14 Days or Discharge

In the case of suspensions of more than fourteen (14) days, or of discharge, any employee shall, unless otherwise provided herein, be entitled to an advance written notice of the charges against him/her and shall remain either on the job or on the clock at the option of the Employer for a period of thirty (30) days. Thereafter, the employee shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement with the Union or through exhaustion of the grievance-arbitration procedure. A preference eligible who chooses to appeal a suspension of more than fourteen (14) days or his discharge to the Merit Systems Protection Board (MSPB) rather than through the grievance-arbitration procedure shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement or through exhaustion of his MSPB appeal. When there is reasonable cause to believe an imprisonment can be imposed, the Employer is not required to give the employee the full thirty (30) days advance written notice in a discharge action, but shall give such lesser number of days advance written notice as under the circumstances is reasonable and can be justified. The employee is immediately removed from a pay status at the end of the notice period.

Section 6. Indefinite Suspension—Crime Situation

A. The Employer may indefinitely suspend an employee in those cases where the Employer has reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed. In such cases, the Employer

**1984-1987**  
**AGREEMENT**

between

**U.S. POSTAL SERVICE**

and

**National Association of Letter Carriers, AFL-CIO**



Pursuant to the final and binding Arbitration  
Award issued December 24, 1984

84-87

Article 15, §4.C(3)(d)

- (d) the hearing shall normally be completed within one day;
- (e) if the arbitrator or the parties mutually conclude at the hearing that the issues involved are of such complexity or significance as to warrant reference to the Regular Regional Arbitration Panel, the case shall be referred to that panel; and
- (f) the arbitrator may issue a bench decision at the hearing but in any event shall render a decision within forty-eight (48) hours after conclusion of the hearing. Such decision shall be based on the record before the arbitrator and may include a brief written explanation of the basis for such conclusion. These decisions will not be cited as a precedent. The arbitrator's decision shall be final and binding. An arbitrator who issues a bench decision shall furnish a written copy of the award to the parties within forty-eight (48) hours of the close of the hearing.
- (4) No decision by a member of the Expedited Panel in such a case shall be regarded as a precedent or be cited in any future proceeding, but otherwise will be a final and binding decision.
- (5) The Expedited Arbitration Panel shall be developed by the National Parties, on an area basis, with the aid of the American Arbitration Association and the Federal Mediation and Conciliation Service.

D. National Level Arbitration

- (1) Only cases involving interpretive issues under this Agreement or supplements thereto of general application will be arbitrated at the National level.
- (2) Separate dockets of cases appealed to arbitration at the National level shall be maintained for each Union. The arbitrators on the National Panel shall be scheduled to hear cases on a rotating system basis, unless otherwise agreed by the parties. All available hearing time at the National level shall be pro-rated among the Unions on the basis of the relative size of the respective bargaining units represented. Cases on each docket will be scheduled for arbitration in the order in which appealed, unless the Union and Employer otherwise agree.

Section 5. Administration

The parties recognize their continuing joint responsibility

Article 16, §2

for efficient functioning of the grievance procedure and effective use of arbitration. Commencing April 1, 1979 and quarterly thereafter, the Employer will furnish to the President of each Union a copy of a quarterly report containing the following information covering operation of the arbitration procedure at the National level, and for each Region separately:

- (a) number of cases appealed to arbitration;
- (b) number of cases scheduled for hearing;
- (c) number of cases heard;
- (d) number of scheduled hearing dates, if any, which were not used;
- (e) the total number of cases pending but not scheduled at the end of the quarter.

ARTICLE 16  
DISCIPLINE PROCEDURE

Section 1. Principles

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

[See Memo, page 131]

Section 2. Discussion

For minor offenses by an employee, management has a responsibility to discuss such matters with the employee. Discussions of this type shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grievable. Following such

**1987-1990**

# **AGREEMENT**

**between**

**National Association of Letter Carriers, AFL-CIO**

**and**

**U.S. Postal Service**





1988-1990

**Paragraph B.3.g.** was modified to include RCAs with RCRs in giving preference in the selection from the register of eligibles, provided their name appears in the top three. Further, it establishes a relationship between the RCAs and the RCRs.

RCAs will always be given preference over RCRs in the selection process. Also, preference shall always be given to an RCA at the office where the vacancy exists. If there are no RCAs among the top three, RCRs shall be given preference in accordance with the longest period of continuous service. An RCR at the office where the vacancy exists would also have preference over one from another office.

**Paragraph B.4.** was intended to clarify the bidding process at the local office. The bidding notice must now state that the bidding is not only for the posted vacancy, but also for any other vacancy which subsequently occurs as a result of the original posting. This enables management to expedite the bidding process without violating anyone's seniority and bidding rights.

**Paragraph B.5.**—The primary change in this part is the expansion from ten (10) days to *fifteen (15) days* for a posting of a route at the MSC level. This enables potential bidders a longer period to investigate and examine the route before making a decision to bid. There are also some reference changes in this paragraph made necessary by the addition of earlier paragraphs.

**ARTICLE 13**  
**Assignment Of Ill Or Injured Employees**

No change.

**ARTICLE 14**  
**Safety and Health**

No change.

**ARTICLE 15**  
**Grievance And Arbitration Procedure**

The major change in this Article appears in **Section A.E.1. EEO Complaints.** It requires that the processing of any grievance regarding an issue which is also the subject of an EEO complaint shall be deferred until a final decision on the EEO complaint is rendered. Upon final disposition of the EEO complaint, only those contractual issues unrelated to the discrimination issue may be reactivated. An exception to the above provision is made for removal actions. In such actions, within fifteen (15) days after an EEO complaint is filed, either party may request that the grievance shall be processed.

Also, the Union agrees to take affirmative steps to inform employees that they may not pursue contractual matters simultaneously under the grievance and the EEO processes, and that it will not encourage dual filing of grievances.

This provision replaces the previous one which prohibited the employee from processing a grievance beyond Steps 28 or 3, if an EEO complaint had been filed.

The other changes in the Article were merely cosmetic language changes replacing the term "Employee and Labor Relations" with the new term "Human Resources" in appropriate places in the Agreement.

**ARTICLE 16**  
**Discipline Procedure**

No change.

**1990-1994**

# **AGREEMENT**

between

**National Association of Letter Carriers, AFL-CIO**

and

**U.S. Postal Service**



Article 16.1

1990-94

ARTICLE 16  
DISCIPLINE PROCEDURE

**Section 1. Principles**

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

[see Memo, page 285]

**Section 2. Discussion**

For minor offenses by an employee, management has a responsibility to discuss such matters with the employee. Discussions of this type shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grievable. Following such discussions, there is no prohibition against the supervisor and/or the employee making a personal notation of the date and subject matter for their own personal record(s). However, no notation or other information pertaining to such discussion shall be included in the employee's personnel folder. While such discussions may not be cited as an element of prior adverse record in any subsequent disciplinary action against an employee, they may be, where relevant and timely, relied upon to establish that employees have been made aware of their obligations and responsibilities.

**Section 3. Letter of Warning**

A letter of warning is a disciplinary notice in writing, identified as an official disciplinary letter of warning, which shall include an explanation of a deficiency or misconduct to be corrected.

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Article 16.6

**Section 4. Suspensions of 14 Days or Less**

In the case of discipline involving suspensions of fourteen (14) days or less, the employee against whom disciplinary action is sought to be initiated shall be served with a written notice of the charges against the employee and shall be further informed that he/she will be suspended after ten (10) calendar days during which ten-day period the employee shall remain on the job or on the clock (in pay status) at the option of the Employer.

**Section 5. Suspensions of More Than 14 Days or Discharge**

In the case of suspensions of more than fourteen (14) days, or of discharge, any employee shall, unless otherwise provided herein, be entitled to an advance written notice of the charges against him/her and shall remain either on the job or on the clock at the option of the Employer for a period of thirty (30) days. Thereafter, the employee shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement with the Union or through exhaustion of the grievance-arbitration procedure. A preference eligible who chooses to appeal a suspension of more than fourteen (14) days or his/her discharge to the Merit Systems Protection Board (MSPB) rather than through the grievance-arbitration procedure shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement or through exhaustion of his/her MSPB appeal. When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed, the Employer is not required to give the employee the full thirty (30) days advance written notice in a discharge action, but shall give such lesser number of days advance written notice as under the circumstances is reasonable and can be justified. The employee is immediately removed from a pay status at the end of the notice period.

**Section 6. Indefinite Suspension—Crime Situation**

A. The Employer may indefinitely suspend an employee in those cases where the Employer has reasonable cause to believe an employee is guilty of a crime for which a sentence

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**1994-1998**

# **AGREEMENT**

**between**

**National Association of Letter Carriers, AFL-CIO**

**and**

**U.S. Postal Service**



Article 16.1

94-98

Article 16.6

## ARTICLE 16 DISCIPLINE PROCEDURE

### Section 1. Principles

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

[see Memos, pages 170, 171]

### Section 2. Discussion

For minor offenses by an employee, management has a responsibility to discuss such matters with the employee. Discussions of this type shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grievable. Following such discussions, there is no prohibition against the supervisor and/or the employee making a personal notation of the date and subject matter for their own personal records. However, no notation or other information pertaining to such discussion shall be included in the employee's personnel folder. While such discussions may not be cited as an element of prior adverse record in any subsequent disciplinary action against an employee, they may be, where relevant and timely, relied upon to establish that employees have been made aware of their obligations and responsibilities.

### Section 3. Letter of Warning

A letter of warning is a disciplinary notice in writing, identified as an official disciplinary letter of warning, which shall include an explanation of a deficiency or misconduct to be corrected.

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### Section 4. Suspensions of 14 Days or Less

In the case of discipline involving suspensions of fourteen (14) days or less, the employee against whom disciplinary action is sought to be initiated shall be served with a written notice of charges against the employee and shall be further informed that he/she will be suspended after ten (10) calendar days during which ten-day period the employee shall remain on the job or on the clock (in pay status) at the option of the Employer.

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### Section 6. Indefinite Suspension - Crime Situation

A. The Employer may indefinitely suspend an employee in those cases where the Employer has reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed. In such cases, the Employer

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**1998-2001**

# **AGREEMENT**

between

**National Association of Letter Carriers, AFL-CIO**

and

**U.S. Postal Service**



93-01

**ARTICLE 16  
DISCIPLINE PROCEDURE**

**Section 1. Principles**

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

[see Memos, pages 184-186]

**Section 2. Discussion**

For minor offenses by an employee, management has a responsibility to discuss such matters with the employee. Discussions of this type shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grievable. Following such discussions, there is no prohibition against the supervisor and/or the employee making a personal notation of the date and subject matter for their own personal record(s). However, no notation or other information pertaining to such discussion shall be included in the employee's personnel folder. While such discussions may not be cited as an element of prior adverse record in any subsequent disciplinary action against an employee, they may be, where relevant and timely, relied upon to establish that employees have been made aware of their obligations and responsibilities.

**Section 3. Letter of Warning**

A letter of warning is a disciplinary notice in writing, identified as an official disciplinary letter of warning, which shall include an explanation of a deficiency or misconduct to be corrected.

**Section 4. Suspensions of 14 Days or Less**

In the case of discipline involving suspensions of fourteen (14) days or less, the employee against whom disciplinary action is sought to be initiated shall be served with a written notice of the charges against the employee and shall be further informed that he/she will be suspended after ten (10) calendar days during which ten-day period the employee shall remain on the job or on the clock (in pay status) at the option of the Employer.

[see Memo, page 193]

**Section 5. Suspensions of More Than 14 Days or Discharge**

In the case of suspensions of more than fourteen (14) days, or of discharge, any employee shall, unless otherwise provided herein, be entitled to an advance written notice of the charges against him/her and shall remain either on the job or on the clock at the option of the Employer for a period of thirty (30) days. Thereafter, the employee shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement with the Union or through exhaustion of the grievance-arbitration procedure. A preference eligible who chooses to appeal a suspension of more than fourteen (14) days or his/her discharge to the Merit Systems Protection Board (MSPB) rather than through the grievance-arbitration procedure shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement or through exhaustion of his/her MSPB appeal. When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed, the Employer is not required to give the employee the full thirty (30) days advance written notice in a discharge action, but shall give such lesser number of days advance written notice as under the circumstances is reasonable and can be justified. The employee is immediately removed from a pay status at the end of the notice period.

**Section 6. Indefinite Suspension - Crime Situation**

A. The Employer may indefinitely suspend an employee in those cases where the Employer has reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed. In such cases, the Employer

2001-2006

# *National Agreement*

between the  
National Association of Letter Carriers  
the United States Postal Service





use of arbitration. Commencing April 1, 1979, and quarterly thereafter, the Employer will furnish to the President of the Union a copy of a quarterly report containing the following information covering operation of the arbitration procedure at the National level, and for each Area separately:

- (a) number of cases appealed to arbitration;
- (b) number of cases scheduled for hearing;
- (c) number of cases heard;
- (d) number of scheduled hearing dates, if any, which were not used;
- (e) the total number of cases pending but not scheduled at the end of the quarter.

(The preceding Article, Article 15, shall apply to Transitional Employees; additional provisions regarding Article 15 and Transitional Employees can be found in Appendix B.)

[see Memos, pages 180-186]

**ARTICLE 16**

**DISCIPLINE PROCEDURE**

**Section 1. Principles**

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

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**Section 3. Letter of Warning**

A letter of warning is a disciplinary notice in writing, identifying as an official disciplinary letter of warning, which shall include an explanation of a deficiency or misconduct to be corrected.

[see Memo, page 187]

**Section 4. Suspensions of 14 Days or Less**

In the case of discipline involving suspensions of fourteen (14) days or less, the employee against whom disciplinary action sought to be initiated shall be served with a written notice of the charges against the employee and shall be further informed that he/she will be suspended. A suspended employee will remain on duty during the term of the suspension with a loss of pay. These disciplinary actions shall, however, be considered to be of the same degree of seriousness and severity as the same corrective steps in the pattern of progressive discipline as the time-off suspensions. Such suspensions are equivalent to time-off suspensions and may be cited as elements of past discipline in subsequent discipline accorded with Article 16.10.

**Section 5. Suspensions of More Than 14 Days or Discharge**

In the case of suspensions of more than fourteen (14) days,

2006-2011

# *National Agreement*

between the  
National Association of Letter Carriers  
& the United States Postal Service



**ARTICLE 16  
DISCIPLINE PROCEDURE**

**Section 1. Principles**

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

**Section 2. Discussion**

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**Section 5. Suspensions of More Than 14 Days or Discharge**

In the case of suspensions of more than fourteen (14) days, or of discharge, any employee shall, unless otherwise provided herein, be entitled to an advance written notice of the charges against him/her and shall remain either on the job or on the clock at the option of the Employer for a period of thirty (30) days. Thereafter, the employee shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement with the Union or through exhaustion of the grievance-arbitration procedure. A preference eligible who chooses to appeal a suspension of more than fourteen (14) days or his/her discharge to the Merit Systems Protection Board (MSPB) rather than through the grievance-arbitration procedure shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement or through exhaustion of his/her MSPB appeal. When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed, the Employer is not required to give the employee the full thirty (30) days advance written notice in a discharge action, but shall give such lesser number of days advance written notice as under the circumstances is reasonable and can be justified. The employee is immediately removed from a pay status at the end of the notice period.

To whom it may concern,

My name is Corey L. Walton and I am the former NALC Formal Step A representative for the Nashville installation. I held that position for approximately 3 years. I am writing this statement in response to management's continued attempt at the local level to change how disciplinary action and procedures will be handled.

In a recent standup talk at my station management issued a "service talk" titled "Policy change for disciplinary action". In this service talk the supervisor read a letter that stated the "Tennessee district was implementing a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies". The letter went on to read, " this does not change the guidelines set forth in Article 16".

Management is given clear instruction under Article 3 of the National Agreement, which states on page 3-1, as follows:

*The Postal Service's "exclusive rights" under Article 3 are basically the same as its statutory rights under the Postal Reorganization Act, 39 U.S.C. Section 1001(e). While postal management has the right to "manage" the Postal Service, it must act in accordance with applicable laws, regulations, contract provisions, arbitration awards, letters of agreement, and memoranda. Consequently, many of the management rights enumerated in Article 3 are limited by negotiated contract provisions. For example, the Postal Service's Article 3 right to "suspend, demote, discharge, or take other disciplinary action against" employees is subject to the provisions of Articles 15 and 16.*

Management is also prohibited from making any unilateral actions inconsistent with terms of the existing agreement during the term of a collective bargaining agreement as outlined under Article 5 of the National Agreement. Page 5-1 of the National Agreement reads as follows:

*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.*

These Articles make it crystal clear that management must act in accordance with contract provisions and cannot under any circumstances make unilateral changes inconsistent with the National Agreement during the term of a collective bargaining agreement.

Management stated in the "service talk" that they were making a "Policy change for disciplinary action". It is my position that disciplinary procedures or how they are handled is not a "policy". Disciplinary procedures or actions are covered in the Joint Contract Administration Manual under Article 16. This means that both parties, management and union, sat down together at the National level and agreed on how discipline will be handled. How management will handle discipline is not a policy it is contractual and outlined in our collective bargaining agreement.

Management stated in their "service talk" that "the current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies..." "this does not change the guidelines set forth in Article 16." I strongly disagree with this statement. This "policy" is completely changing the guidelines as set forth in Article 16. The most basic of principles under any disciplinary action is management must have "just cause" which is a "term of art" created by labor Arbitrators. Arbitrators have divided the just cause principles into six sub questions. I am only going to refer to the first sub question, which is covered on page 16-1 of the Joint Contract Administration Manual and reads as follows:

*Is there a rule? If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule? It is not enough to say, "Well, everybody knows that rule," or, "We posted that rule ten years ago." You may have to prove that the employee should have known of the rule. Certain standards of conduct are normally expected in the industrial environment and it is assumed by arbitrators that employees should be aware of these standards. For example, an employee charged with intoxication on duty, fighting on duty, pilferage, sabotage, insubordination, etc., may be generally assumed to have understood that these offenses are neither condoned nor acceptable, even though management may not have issued specific regulations to that effect.*

Article 16.2 of the National Agreement reads as follows:

**Section 2. Discussion**

*For minor offenses by an employee, management has a responsibility to discuss such matters with the employee. Discussions of this type shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grievable. Following such discussions, there is no prohibition against the supervisor and/or the employee making a personal notation of the date and subject matter for their own personal record(s). However, no notation or other information pertaining to such discussion shall be included in the employee's personnel folder. While such discussions may not be cited as an element of prior adverse record in any subsequent disciplinary action against an employee, they may be, where relevant and timely, relied upon to establish that employees have been made aware of their obligations and responsibilities.*

Management is clearly attempting to circumvent the contract when it comes to dealing with Article 16. For instance under managements "policy" they can bring me in and give me a discussion on my attendance. They have now fulfilled their obligation under Article 16.2 and the first sub question. Now under managements "policy" they can now issue me a letter of warning for breaking a mirror off of my vehicle then in turn issue me a seven day suspension for not reporting to work on time then a fourteen day suspension for leaving a parcel behind and then a removal for missing a scan point. Needless to say this is ludicrous and goes against the very intent of the just cause principles and the National Agreement itself.

Management is contradicting their own handbook under their attempt to implement their new "policy". Handbook EL-921 Supervisor's Guide to Handling Grievances, Chapter 3, section E investigation, reads as follows:

#### *E. Investigation*

*As previously discussed, when an employee commits an offense, which seems to warrant discipline, the supervisor must avoid rushing into a disciplinary action without first investigating. The need for an investigation to meet our just cause and proof requirements is self-evident. However, the employee's past record must also be checked before any disciplinary action is considered. This is obviously necessary if we are to abide by the principle of progressive discipline. Failure to investigate before taking a disciplinary action can result in some awkward situations for the Postal Service. Examples:*

*One employee who worked for many different supervisors on a relief assignment was involved in discussions at separate times within one year by different supervisors for similar infractions. When discussion did not correct the employee's irregularity, progressive discipline should have been imposed at an early stage.*

*In another instance, an employee bid into a new section and immediately became a tardiness problem. During the first 10 days under the new supervisor, the employee was tardy six times. The supervisor held a discussion with the employee without investigating the past record, which would have revealed that the employee had been a continuing problem and had recently returned from a 30-day suspension for tardiness. Obviously, a discussion was not the correct action in this instance.*

It was always my feeling during my time as the Formal Step A rep. that if management took the time to read Handbook EL-921 as well as get themselves acquainted with Article 16 of the National Agreement then they could easily correct "employee deficiencies". My opinion is the "service talk" should have been titled "policy change for disciplinary action because our supervisors and managers are too lazy to issue discipline correctly".

During my three years as the Formal Step A rep. we handled discipline cases the same way. All discipline was dealt with separated by related infractions. Such as, attendance was dealt with separate from safety violations, which was separate from behavioral issue and so on. Management attempting to change this long standing past practice is also covered under Article 5 on pages 5-1 thru 5-4, which deals with Past Practices and its definitions. On page 5-2 specifically it defines a Past Practice as follows:

#### ***Defining Past Practice***

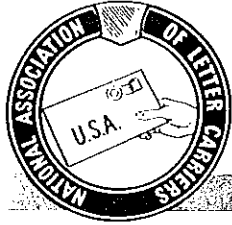
*In a paper given to the National Academy of Arbitrators, Arbitrator Mittenthal described the elements required to establish a valid past practice:*

- 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.*

I would like to end by stating that during my three years dealing with discipline at the Formal Step A level, management and I always handled it the same way. With clarity, consistency, longevity, repetition and acceptability. Just as past practices are defined above. I can honestly say that we always went by the guidelines as set forth in the National Agreement and never wavered from it. That is something I am extremely proud of.

Corey L. Walton



# National Association of Letter Carriers

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**Dale P. Hart**  
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**Brian E. Hellman**  
Director, Safety & Health

**Myra Warren**  
Director, Life Insurance

**Timothy C. O'Malley**  
Director, Health Insurance

**Ernest S. Kirkland**  
Director, Retired Members

**Board of Trustees:**  
**Larry Brown Jr.**  
Chairman  
**Randall L. Kefler**  
**Michael J. Gill**

August 30, 2010

Greg A. Gamble  
District Manager  
USPS – Tennessee District  
811 Royal Parkway  
Nashville, TN 37229-9998

Dear Greg,

I am in receipt of your letter dated July 29, 2010 regarding your decision to change the current system of using 3 tracks (performance, attendance, conduct) to administer Article 16 of the National Agreement, to a single track of discipline for unrelated infractions.

You are (or should be) well aware that the current system used by the Postal Service to decide and issue discipline in the Tennessee District has been in existence for decades and has been the source of great debate via the grievance-arbitration procedure for that same period of time.

The notion of changing the system referenced above that has been in place for decades to a one-track discipline system for unrelated infractions takes this debate to a whole new level.

I must inform you that the National Agreement as currently written does not permit you to make such a decision.

First and foremost, Article 5 of the National Agreement was not applied correctly here. I tried to explain this to you in my letters dated June 17 and July 6, 2010 to no avail, but I'll try again.

Page 5-1 – 5-4 of the JCAM (enclosed) represents the National Parties' general agreement on the subject of past practice. On p, 5-3, the National Parties break the definition and rules to change "Past Practice" issues into three categories. They are:

1. To Implement Contract Language
2. To Clarify Unambiguous Language
3. To Implement Separate Conditions of Employment



In the NALC's view, the practice of using a 3 track system to decide and issue discipline over a period of decades is clearly a practice designed "To Implement Contract Language" such as that contained in Article 16, Article 19, Section 115 of the M-39 Handbook, and Article 34 for starters.

If the argument is that the language in the above stated provisions of the National Agreement is ambiguous, then the practice at issue here would fall into the "To Clarify Unambiguous Language" category.

Either way, the contractual path to attempt to change the current discipline system to a single track of discipline for unrelated infractions is shown in the J-CAM on p. 5-3 where it states in relevant part,

**"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."

The decision to treat the established past practice of using a multiple track discipline system as falling into the "To Implement Separate Conditions of Employment" category fatally flawed your attempts to make this change from the beginning.

The notion that the contract is silent on the issue of deciding, determining the level, issuing discipline, and resolving disputes that arise when discipline is issued is absurd.

However, just for the record, Article 5 wasn't even complied with had you been trying to change a past practice where the contract was silent.

The first letter I received regarding this matter was to inform me that you had already made your decision and the change would be implemented July 10, 2010. It is interesting to note that you had already begun to implement service talks to announce this change to all employees. I responded to your letter on June 17, 2010 and informed you that what you were doing was a violation of the National Agreement and I had never been informed about any of this.

I received a letter from you in early July rescinding the previous actions and announcing the same exact change. I responded to your letter by letter dated July 6, 2010 and once again informed you that what you were doing is a violation of the National Agreement.

I also met with you via the telephone to discuss this matter. I explained to you that in the NALC's view, what you were doing was a clear violation of the National Agreement. We talked about the matter for a few minutes, but that was it.

Despite the fact that the approach you took to attempt to change the past practice at issue was misplaced, there was certainly no “good faith” bargaining efforts made on the part of the Postal Service. As a matter of fact, there was no bargaining effort of any kind made by the Postal Service in this situation.

It is quite clear that your final decision was made before you neglected to send me the letter announcing the change back in February. The rest of this was merely a formality, and therefore, nothing more than a sham.

In addition to the multiple violations of Article 5, the decision to change from a 3 track discipline system to a single track discipline system for unrelated infractions violates several other provisions of the National Agreement such as, but not limited to,

Article 16, Section 1 of the National Agreement states in relevant part,

**“In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive.”**

Further, Section 115.1 of the M-39 Handbook states in relevant part,

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

The M-39 Handbook is also part of the National Agreement via Article 19. Article 19 requires that any changes to handbooks must be made at the National Level.

It is also the position of the NALC that the current system of discipline is a work standard. Therefore, any notification of change/changes in this work standard would have to be made at the National Level via the provisions contained in Article 34 of the National Agreement.

In closing, I must say that it is regrettable that you would attempt to use the financial situation of the Postal Service to justify circumventing the provisions of the National Agreement as described in your letter.

This situation mirrors the Postal Service’s misguided attempt to implement the National Reassessment Process (NRP) in the Tennessee District in such a way as to completely ignore your contractual obligations as agreed to by The United States Postal Service and the National Association of Letter Carriers.

I’m requesting that you reconsider your decision and adhere to the agreed to provisions in the National Agreement with respect to this situation instead of just making things up as you go along like the Tennessee District did with NRP

It seems to me that we should be working together to both generate revenue and reduce the cost of disputes. It is my opinion that any attempt to implement the change to the current disciplinary system as stated in your letter will have the opposite effect.

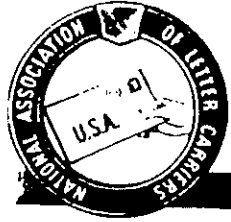
I want to thank you in advance for your consideration in this matter. If you have any questions, or would like to discuss this matter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Lew Drass". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Lew Drass  
National Business Agent  
Region 8

cc: Roberta Albright, Manager, Labor Relations, Southeast Area  
NALC Branch Presidents



# National Association of Letter Carriers

Fredric V. Rolando, President

Low Drass  
National Business Agent  
NALC Region 8  
160 Commissioner Drive  
Meridianville, AL  
35759-2038  
256.828.8205  
Fax: 256.828.8613

July 6, 2010

7009 2820 0003 5434 4461

Greg A. Gamble  
District Manager  
USPS – Tennessee Customer Service & Sales  
811 Royal Parkway  
Nashville, TN 37229-9998

Dear Greg,

I am in receipt of your letter dated June 28, 2010 regarding a single track of discipline for unrelated infractions.

Your letter recognizes that you are attempting to change the current system of discipline as stated in the National Agreement. For instance, Article 16, Section 1 of the National Agreement states in relevant part,

**“In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive.”**

Further, Section 115.1 of the M-39 Handbook states in relevant part,

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

The M-39 Handbook is also part of the National Agreement via Article 19.

It is the position of the NALC that the announcement of a change to the current system of discipline would attempt to change the unambiguous language in the National Agreement referenced above and violates the past practice provisions as it relates to clarification of contract language as considered in Article 5 of the National Agreement. The JCAM at page 5-3 states:

Fredric V. Rolando  
President

Gary H. Mullins  
Executive Vice President

George C. Mignost  
Vice President

Jane E. Broendel  
Secretary-Treasurer

Nicole Rhine  
Asst. Secretary-Treasurer

Dale P. Hart  
Director, City Delivery

Brian E. Hellman  
Director, Safety & Health

Myra Warren  
Director, Life Insurance

Timothy C. O'Malley  
Director, Health Insurance

Ernest S. Kirkland  
Director, Retired Members

Board of Trustees:

Larry Brown Jr.  
Chairman

Randall L. Keller

Michael J. Gill

**"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."

Therefore any such change would have to be negotiated at the National Level during National Negotiations.

It is also the position of the NALC that the current system of discipline is a work standard. Therefore, any notification of change/changes in this work standard would have to be made at the National Level via the provisions contained in Article 34 of the National Agreement.

In closing, I must say that it is regrettable that you would attempt to use the financial situation of the Postal Service to justify circumventing the provisions of the National Agreement as described in your letter.

It seems to me that we should be working together to both generate revenue and reduce the cost of disputes. It is my opinion that any attempt to implement the change to the current disciplinary system as stated in your letter will have the opposite effect.

If you have any questions, or would like to discuss this matter, please feel free to contact me.

Sincerely,



Lew Drass  
National Business Agent  
Region 8

cc: Eloise Lance, Manager, Labor Relations, Southeast Area  
NALC Branch Presidents



# National Association of Letter Carriers

Fredric V. Rolando, President

Lew Drass  
National Business Agent  
NALC Region 8  
160 Commissioner Drive  
Meridianville, AL  
35759-2038  
256.828.8205  
Fax: 256.828.8613

June 17, 2010

Greg A. Gamble  
District Manager  
USPS – Tennessee Customer Service & Sales  
811 Royal Parkway  
Nashville, TN 37229-9998

Dear Greg,

I am in receipt of your letter dated June 8, 2010 regarding a single track of discipline for unrelated infractions.

First of all, neither I nor anyone else who works in my office has any record or recollection of receiving a letter from you dated February 12, 2010. It is also significant to note that you and I met on April 8, 2010 in your conference room to discuss the Dispute Resolution Process (DRP) as part of the quarterly DRP meeting between the Southeast Area and the NALC for the Tennessee District, but never even brought this issue up.

That aside, your letter recognizes that you are attempting to change the current system of discipline as stated in the National Agreement. For instance, Article 16, Section 1 of the National Agreement states in relevant part,

**“In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive.”**

Further, Section 115.1 of the M-39 Handbook states in relevant part,

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

The M-39 Handbook is also part of the National Agreement via Article 19.

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Director, City Delivery

Brian E. Hellman  
Director, Safety & Health

Myra Warren  
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Timothy C. O'Malley  
Director, Health Insurance

Ernest S. Kirkland  
Director, Retired Members

Board of Trustees:

Larry Brown Jr.  
Chairman

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Michael J. Gill

It is the position of the NALC that the announcement of a change to the current system of discipline would attempt to change the unambiguous language in the National Agreement referenced above and violates the past practice provisions as it relates to clarification of contract language as considered in Article 5 of the National Agreement. The JCAM at page 5-3 states:

**“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.”

Therefore any such change would have to be negotiated at the National Level during National Negotiations.

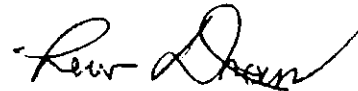
It is also the position of the NALC that the current system of discipline is a work standard. Therefore, any notification of change/changes in this work standard would have to be made at the National Level via the provisions contained in Article 34 of the National Agreement.

In closing, I must say that it is regrettable that you would attempt to use the financial situation of the Postal Service to justify circumventing the provisions of the National Agreement as described in your letter.

It seems to me that we should be working together to both generate revenue and reduce the cost of disputes. It is my opinion that any attempt to implement the change to the current disciplinary system as stated in your letter will have the opposite effect.

If you have any questions, or would like to discuss this matter, please feel free to contact me.

Sincerely,



Lew Drass  
National Business Agent  
Region 8

cc: Eloise Lance, Manager, Labor Relations, Southeast Area  
NALC Branch Presidents



DATE: June 8, 2010

MEMORANDUM FOR: National Association of Letter Carriers (NALC)  
American Postal Workers Union (APWU)  
National Rural Letter Carriers Association (NRLCA)  
National Postal Mail Handlers Union (NPMHU)  
National Association of Postal Supervisors (NAPS)  
National League of Postmasters

RE: Policy Change for Disciplinary Action

Effective Saturday, July 10, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies. With the current financial state of the Postal Service, declining mail volume and economic crisis nationwide, it is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently.

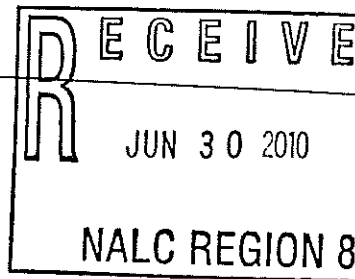
Management is not attempting to unilaterally change any terms or conditions of employment. You were notified in a letter dated February 12, 2010, of Management's proposal to change the policy regarding corrective action. Management provided the Unions with prior notice and an opportunity to present questions or comments by February 26, 2010. APWU was the only union to respond but declined to bargain prior to implementation. This is your written notification of the change to a single line of discipline for unrelated infractions effective Saturday, July 10, 2010.

Management has complied with the National Agreement and attempted to bargain in good faith. Employees and Management officials will be notified of this change and effective date.

  
Greg A. Gamble



DISTRICT MANAGER  
TENNESSEE CUSTOMER SERVICE AND SALES



DATE: June 28, 2010

MEMORANDUM FOR: National Association of Letter Carriers (NALC)  
American Postal Workers Union (APWU)  
National Rural Letter Carriers Association (NRLCA)  
National Postal Mail Handlers Union (NPMHU)  
National Association of Postal Supervisors (NAPS)  
National Association of Postmasters (NAPUS)

RE: Policy Change for Disciplinary Action

The Tennessee District is considering implementation of a single track of discipline for unrelated infractions. The current system of using three (3) tracks (performance, attendance, conduct) has not been successful in correcting deficiencies. With the current financial state of the Postal Service, declining mail volume and economic crisis nationwide, it is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently.

Management is not attempting to unilaterally change any terms or conditions of employment. In a letter dated February 12, 2010, Management proposed to change the policy regarding corrective action. Prior to implementation, several union officials stated they did not receive the previous notice. Please be advised of Management's intent to bargain in good faith. All previous correspondence relating to this issue is hereby rescinded. This is your written notification of Management's proposed change to administer Article 16 in accordance with the National Agreement by using a single track of discipline.

Please consider this your notice and opportunity to bargain prior to implementation. You may contact Stacey Crockett in my office at (615) 885-9252 within ten (10) calendar days from the date of this letter to set-up an appointment to discuss this issue.

Greg A. Gamble



DATE: July 29, 2010

MEMORANDUM FOR: National Association of Letter Carriers (NALC)  
American Postal Workers Union (APWU)  
National Rural Letter Carriers Association (NRLCA)  
National Postal Mail Handlers Union (NPMHU)  
National Association of Postal Supervisors (NAPS)  
National Association of Postmasters (NAPUS)

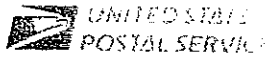
RE: Policy Change for Disciplinary Action

In a letter to the Unions, dated February 12, 2010, Management proposed to change the policy regarding corrective action. Prior to the scheduled implementation date of July 10, 2010, several union officials stated they did not receive the previous notice. The implementation date was cancelled and previous correspondence relating to this issue was rescinded. In a letter dated June 28, 2010, Management issued a second notice to the Unions regarding the proposed policy change. This letter solicited input and provided an opportunity to bargain prior to implementation. Several union officials met with me to voice their opinions and concerns.

After considering all the information presented, it is my decision to implement a single track of discipline for unrelated infractions in the Tennessee District effective September 1, 2010. The current system of using three (3) tracks (performance, attendance, conduct) has not been successful in correcting employee deficiencies. It is crucial that every employee report as scheduled and perform their assigned duties safely and efficiently.

Management is not attempting to unilaterally change any terms or conditions of employment. The Unions were provided ample notice of the proposed change and an opportunity to bargain in good faith. Please consider this your written notification of Management's intent to implement a single track of discipline in accordance with Article 16 of the National Agreement for bargaining employees and the Employee and Labor Relations Manual (ELM), Section 650 for non-bargaining employees effective September 1, 2010.

Greg A. Gamble



February 23, 2009

OFFICERS  
PCES MANAGERS

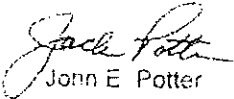
SUBJECT: Collective-Bargaining Agreements—Our Bond with Our Employees

These are difficult times. The Postal Service, like every other element of the economy, is working through challenges unlike any it has faced in generations. While no one can predict when a recovery will occur, this much is certain: success in today's environment requires flexibility, innovation, and willingness to find better ways of doing everything we do.

I appreciate your leadership in adjusting quickly to the extreme economic pressures we have faced over the last 15 months. This has been a testament of our unwavering commitment to our customers—raising service to new heights as we continue to bring costs down and develop and pursue new revenue opportunities. It has also been a demonstration of what is possible through the combined and focused efforts of employees throughout the organization—in all positions and at every level.

Our bond with our employees has never been more important than it is today. That bond is represented by the collective-bargaining agreements with our unions. As we adapt to a dynamic and dramatically changing environment we will, by necessity, bring even more change to our business. But one thing cannot change: our adherence to the provisions of our labor agreements. They are our word. They are our pledge of fairness to our employees.

It is up to each one of us to make sure that the changes we bring to the organization are changes for the better. Respecting and protecting the provisions of the collective-bargaining agreements will help us to do that.

  
John E. Potter

## 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 Transitional 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 HIN-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

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 prac

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

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 16 DISCIPLINE PROCEDURE

### 16.1 Section I. Principles

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

#### Just Cause Principle

The principle that any discipline must be for "just cause" establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the "just cause" provision requires a fair and provable justification for discipline.

"Just cause" is a "term of art" created by labor arbitrators. It has no precise definition. It contains no rigid rules that apply in the same way in each case of discipline or discharge. However, arbitrators frequently divide the question of just cause into six sub-questions and often apply the following criteria to determine whether the action was for just cause. These criteria are the *basic* considerations that the supervisor must use before initiating disciplinary action.

- **Is there a rule?** If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule? It is not enough to say, "Well, everybody knows that rule," or, "We posted that rule ten years ago." You may have to prove that the employee should have known of the rule. Certain standards of conduct are normally expected in the industrial environment and it is assumed by arbitrators that employees should be aware of these standards. For example, an employee charged with intoxication on duty, fighting on duty, pilferage, sabotage, insubordination, etc., may be generally assumed to have understood that these offenses are neither condoned nor acceptable, even though management may not have issued specific regulations to that effect.
- **Is the rule a reasonable rule?** Management must make sure rules are reasonable, based on the overall objective of safe and efficient work performance. Management's rules should be reasonably related to business efficiency, safe operation of our business, and the performance we might expect of the employee.



enforcement is a critical factor. Consistently overlooking employee infractions and then disciplining without warning is improper. If employees are consistently allowed to smoke in areas designated as *No Smoking* areas, it is not appropriate suddenly to start disciplining them for this violation. In such cases, management loses its right to discipline for that infraction, in effect, unless it first puts employees (and the unions) on notice of its intent to enforce that regulation again. Singling out employees for discipline is usually improper. If several similarly situated employees commit an offense, it would not be equitable to discipline only one.

- **Was a thorough investigation completed?** Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective. This is the employee's *day in court* privilege. Employees have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves *before* the discipline is initiated.
- **Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record?** The following is an example of what arbitrators may consider an inequitable discipline: If an installation consistently issues five-day suspensions for a particular offense, it would be extremely difficult to justify why an employee with a past record similar to that of other disciplined employees was issued a thirty-day suspension for the same offense. There is no precise definition of what establishes a good, fair, or bad record. Reasonable judgment must be used. An employee's record of previous offenses may never be used to establish guilt in a case you presently have under consideration, but it may be used to determine the appropriate disciplinary penalty.
- **Was the disciplinary action taken in a timely manner?**  
Disciplinary actions should be taken as promptly as possible after the offense has been committed.

#### **Corrective Rather than Punitive**

The requirement that discipline be "corrective" rather than "punitive" is an essential element of the "just cause" principle. In short, it means that for most offenses management must issue discipline in a "progressive" fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense and a pattern of increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge). The basis of this principle of "corrective" or "progressive" discipline is that it is

## 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 transitional employees only to the extent consistent with other rights and characteristics of transitional employees negotiated 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 transitional employees pursuant to the same standards and procedures found in Article 19 of this Agreement.

[See Memo, page 181]

This Memo is located on JCAM page 19-2.

**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 negotiated as part of the 2001 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 condi

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 NB-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 changes and a summary of the change(s) which shows the change(s) 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 final draft copy will identify 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 bargaining unit employees.
4. At the request of the Union, the parties will meet to discuss the change(s). If the Union request a meeting on the change(s), the Union will provide the Postal Service with the change(s) the Union want 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

## ARTICLE 34 WORK AND/OR TIME STANDARDS

A. The principle of a fair day's work for a fair day's pay is recognized by all parties to this Agreement.

B. The Employer agrees that any work measurement systems or time or work standards shall be fair, reasonable and equitable. The Employer agrees that the Union concerned through qualified representatives will be kept informed during the making of time or work studies which are to be used as a basis for changing current or instituting new work measurement systems or work or time standards. The Employer agrees that the National President of the Union may designate a qualified representative who may enter postal installations for purposes of observing the making of time or work studies which are to be used as the basis for changing current or instituting new work measurement systems or work or time standards.

C. The Employer agrees that before changing any current or instituting any new work measurement systems or work or time standards, it will notify the Union concerned as far in advance as practicable. When the Employer determines the need to implement any new nationally developed and nationally applicable work or time standards, it will first conduct a test or tests of the standards in one or more installations. The Employer will notify the Union at least 15 days in advance of any such test.

D. If such test is deemed by the Employer to be satisfactory and it subsequently intends to convert the test to live implementation in the test cities, it will notify the Union at least 30 days in advance of such intended implementation. Within a reasonable time not to exceed 10 days after the receipt of such notice, representatives of the Union and the Employer shall meet for the purpose of resolving any differences that may arise concerning such proposed work measurement systems or work or time standards.

E. If no agreement is reached within five days after the meetings begin, the Union may initiate a grievance at the national level. If no grievance is initiated, the Employer will implement the new work or time standards at its discretion.

If a grievance is filed and is unresolved within 10 days, and the Union decides to arbitrate, the matter must be submitted to priority arbitration by the Union within five days. The conversion from a test basis to live implementation may proceed in the test cities, except as provided in Paragraph I.

F. The arbitrator's award will be issued no later than 60 days after the commencement of the arbitration hearing. During the period prior to the issuance of the arbitrator's award, the new work or time standards will not be implemented beyond the test cities, and no new tests of the new standards will be initiated. Data gathering efforts or work or time studies, however, may be conducted during this period in any installation.

G. The issue before the arbitrator will be whether the

H. In the event the arbitrator rules that the national concepts involved in the new work or time standards are not fair, reasonable and equitable, such standards may not be implemented by the Employer until they are modified to comply with the arbitrator's award. In the event the arbitrator rules that the national concepts involved in the new work or time standards are fair, reasonable and equitable, the Employer may implement such standards in any installation. No further grievances concerning the national concepts involved may be initiated.

I. After receipt of notification provided for in Paragraph D of this Article, the Union shall be permitted through qualified representatives to make time or work studies in the test cities. The Union shall notify the Employer within ten (10) days of its intent to conduct such studies. The Union studies shall not exceed one-hundred fifty (150) days, from the date of such notice, during which time the Employer agrees to postpone implementation in the test cities for the first ninety (90) days. There shall be no disruption of operations or of the work of employees due to the making of such studies. Upon request, the Employer will provide reasonable assistance in making the study, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in providing such assistance. Upon request, the Union representative shall be permitted to examine relevant available technical information, including final data worksheets, that were used by the Employer in the establishment of the new or changed work or time standards. The Employer is to be kept informed during the making of such Union studies and, upon the Employer's request the Employer shall be permitted to examine relevant available technical information, including final data worksheets, relied upon by the Union.

(The preceding Article, Article 34, shall apply to Transitional Employees.)

#### 113.4 Park and Loop Route

A route that uses a motor vehicle for transporting all classes of mail to the route. The vehicle is used as a moveable container as it is driven to designated park points. The carrier then loops segments of the route on foot.

#### 113.5 Dismount Route

A city delivery route on which 50 percent or more of the possible deliveries are made by dismount delivery to the door, Vertical Improved Mail (VIM) Room, Neighborhood Delivery and Collection Box Units (NBU), Delivery Centers, etc. (If the dismount deliveries are less than 50 percent of the total possible deliveries of a route, the route will be classified as per the majority of the type delivery; e.g., curblin, park and loop, etc.)

### 114 City Delivery Area Map

- 114.1 Each unit must have a map of the ZIP Code area served. Show the boundaries of each route using street names or numbers and identify each route by number. If desired, use different colors to show each route.
- 114.2 The unit manager can study the line of travel to discover possible improvement.
- 114.3 Location of collection and relay boxes can be shown. This will serve to determine the adequacy of the boxes and as instruction or reference to new carriers.

### 115 Discipline

#### 115.1 Basic Principle

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

#### 115.2 Using People Effectively

Managers can accomplish their mission only through the effective use of people. How successful a manager is in working with people will, to a great measure, determine whether or not the goals of the Postal Service are attained. Getting the job done through people is not an easy task, and certain basic things are required, such as:

- a. Let the employee know what is expected of him or her.
- b. Know fully if the employee is not attaining expectations; don't guess — make certain with documented evidence.
- c. Let the employee explain his or her problem — listen! If given a chance, the employee will tell you the problem. Draw it out from the employee if needed, but get the whole story.

### 115.3 **Obligation to Employees**

When problems arise, managers must recognize that they have an obligation to their employees and to the Postal Service to look to themselves, as well as to the employee, to:

- a. Find out who, what, when, where, and why.
- b. Make absolutely sure you have all the facts.
- c. The manager has the responsibility to resolve as many problems as possible before they become grievances.
- d. If the employee's stand has merit, admit it and correct the situation. You are the manager; you must make decisions; don't pass this responsibility on to someone else.

### 115.4 **Maintain Mutual Respect Atmosphere**

The National Agreement sets out the basic rules and rights governing management and employees in their dealings with each other, but it is the front-line manager who controls management's attempt to maintain an atmosphere between employer and employee which assures mutual respect for each other's rights and responsibilities.

## 116 **Mail Processing for Delivery Services**

### 116.1 **Scheduling Clerks in a Delivery Unit**

Schedule distribution clerks in a unit with decentralized distribution so that service standards will be met and an even flow of mail will be provided to the carriers each day throughout the year. Schedule the accountable clerk to avoid delaying the carriers' departures in the morning and for clearance of carriers on their return to the office.

### 116.2 **Mail Flow**

#### 116.21 **Leveling Volume Fluctuations**

When volumes for daily delivery vary substantially from the lightest to the heaviest day in the week, a unit cannot operate at maximum effectiveness. Substantial changes in the daily relationships of flats and letters have considerable effect on delivery costs. If this situation exists, the unit manager must document the problem and request, through appropriate management channels, a more even flow of mail.

#### 116.22 **Plan for Next Day's Workload**

Each day as early as is practical, using procedures developed locally, the delivery unit manager should obtain information about anticipated volumes, especially flat volumes for the next day's delivery. This information will assist in planning the next day's manpower needs. Anticipating the flow of mail will minimize undertime and overtime which can be controlled. If undertime occurs often in the morning or afternoon, examine the mail flow, the scheduling of the delivery unit's clerks and carriers, and the affected routes.

Management's Contentions—Policy Change concerning One Track Discipline—Class Action City

The Union asks if Management violated articles 5, 16, 19, and 34 of the National Agreement when they established a policy change for disciplinary action.

The following are the articles taken directly from the NALC National Agreement.

**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 Transitional Employees.)

In altering the formerly used disciplinary action system, it in no way affects employees wages, hours, and other conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement.

Section 8(d) of the National Labor Relations Act states the following:

National Labor Relations Act, Section 8: UNFAIR LABOR PRACTICES

Sec. 8. § 158. (a) Unfair labor practices by employer It shall be an unfair labor practice for an employer—

(d) Obligation to bargain collectively For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: Provided, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;



notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) paragraphs (2) to (4) of this subsection shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a) section 159(a) of this title, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within any notice period specified in this subsection, or who engages in any strike within the appropriate period specified in subsection (g) of this section, shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act sections 158, 159, and 160 of this title, but such loss of status for such employee shall terminate if and when he is reemployed by such employer. Whenever the collective bargaining involves employees of a health care institution, the provisions of this section 8(d) this subsection shall be modified as follows:

(A) The notice of section 8(d)(1) paragraph (1) of this subsection shall be ninety days; the notice of section 8(d)(3) paragraph (3) of this subsection shall be sixty days; and the contract period of section 8(d)(4) paragraph (4) of this subsection shall be ninety days.

(B) Where the bargaining is for an initial agreement following certification or recognition, at least thirty days' notice of the existence of a dispute shall be given by the labor organization to the agencies set forth in section 8(d)(3) in paragraph (3) of this subsection.

(C) After notice is given to the Federal Mediation and Conciliation Service under either clause (A) or (B) of this sentence, the Service shall promptly communicate with the parties and use its best efforts, by mediation and conciliation, to bring them to agreement. The parties shall participate fully and promptly in such meetings as may be undertaken by the Service for the purpose of aiding in a settlement of the dispute.

Pub. L. 93-360, July 26, 1974, 88 Stat. 395, amended the last sentence of Sec. 8(d) by striking the words "the sixty-day" and inserting the words "any notice" and by inserting before the words "shall lose" the phrase ", or who engages in any strike within the appropriate period specified in subsection (g) of this section." It also amended the end of

paragraph Sec. 8(d) by adding a new sentence "Whenever the collective bargaining . . . aiding in a settlement of the dispute."

In Mr. Gamble's letters to all Unions listed above, he invited each labor to bargain together concerning this policy change. According to any and all correspondence that was received by Mr. Gamble, those unions had no intention of bargaining together to come to some similar mutual agreement. The unions simply stated that Postal Management was circumventing the Collective bargaining agreement and that "this was a matter to be dealt with by a National Arbitrator."

From the Joint Contract Administration Manual:

#### **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 Transitional 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.

#### **Past Practice**

The following explanation represents the national parties' general agreement on the subject of past practice. The explanation is not exhaustive,

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.

According to the above, Management may change past practices, whether the contract is silent or not, when they have provided the union with appropriate notice, which they have. Management attempted to bargain with the Unions, however, an agreement was not reached, therefore, this instant grievance has arisen.

Taken from the NALC Contract:

#### **ARTICLE 16 DISCIPLINE PROCEDURE**

##### **Section 1. Principles**

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

##### **Section 2. Discussion**

For minor offenses by an employee, management has a responsibility to discuss such matters with the employee. Discussions of this type shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grievable. Following such discussions, there is no prohibition against the supervisor and/or the employee making a personal notation of the date and subject matter for their own personal record(s). However, no notation or other information pertaining to such discussion shall be included in the employee's personnel folder. While such discussions may not be cited as an element of prior adverse record in any subsequent disciplinary action against an employee, they may be, where relevant and timely, relied upon to establish that employees have been made aware of their obligations and responsibilities.

##### **Section 3. Letter of Warning**

A letter of warning is a disciplinary notice in writing, identified

(Notice how there is ABSOLUTELY NO mention above that states that the instances must be “like in Nature” instances in order to progress in corrective action.)

#### **Section 4. Suspensions of 14 Days or Less**

In the case of discipline involving suspensions of fourteen (14) days or less, the employee against whom disciplinary action is sought to be initiated shall be served with a written notice of the charges against the employee and shall be further informed that he/she will be suspended. A suspended employee will remain on duty during the term of the suspension with no loss of pay. These disciplinary actions shall, however, be considered to be of the same degree of seriousness and satisfy the same corrective steps in the pattern of progressive discipline as the time-off suspensions. Such suspensions are equivalent to time-off suspensions and may be cited as elements of past discipline in subsequent discipline in accordance with Article 16.10.

#### **Section 5. Suspensions of More Than 14 Days or Discharge**

In the case of suspensions of more than fourteen (14) days, or of discharge, any employee shall, unless otherwise provided herein, be entitled to an advance written notice of the charges against him/her and shall remain either on the job or on the clock at the option of the Employer for a period of thirty (30) days. Thereafter, the employee shall remain on the rolls (nonpay status) until disposition of the case has been had either by settlement with the Union or through exhaustion of the grievance-arbitration procedure. A preference eligible who chooses to appeal a suspension of more than fourteen (14) days or his/her discharge to the Merit Systems Protection Board (MSPB) rather than through the grievance-arbitration procedure shall remain on the rolls (non-pay status) until disposition of the case has been had either by settlement or through exhaustion of his/her MSPB appeal. When there is reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed, the Employer is not required to give the employee the full thirty (30) days advance written notice in a discharge action, but shall give such lesser number of days advance written notice as under the circumstances is reasonable and can be justified. The employee is immediately removed from a pay status at the end of the notice period.

#### **Section 6. Indefinite Suspension - Crime Situation**

A. The Employer may indefinitely suspend an employee in those cases where the Employer has reasonable cause to believe an employee is guilty of a crime for which a sentence of imprisonment can be imposed. In such cases, the Employer is not required to give the employee the full thirty (30) days advance notice of indefinite suspension, but shall give such lesser number of days of advance written notice as under the circumstances is reasonable and can be justified. The employee is immediately removed from a pay status at the end of the notice period.

B. The just cause of an indefinite suspension is grievable. The arbitrator shall have the authority to reinstate and make the employee whole for the entire period of the indefinite suspension.

C. If after further investigation or after resolution of the

shall be entitled to back pay for the period that the indefinite suspension exceeded seventy (70) days, if the employee was otherwise available for duty, and without prejudice to any grievance filed under B above.

D. The Employer may take action to discharge an employee during the period of an indefinite suspension whether or not the criminal charges have been resolved, and whether or not such charges have been resolved in favor of the employee. Such action must be for just cause, and is subject to the requirements of Section 5 of this Article.

#### **Section 7. Emergency Procedure**

An employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others. The employee shall remain on the rolls (non-pay status) until disposition of the case has been had. If it is proposed to suspend such an employee for more than thirty (30) days or discharge the employee, the emergency action taken under this Section may be made the subject of a separate grievance.

#### **Section 8. Review of Discipline**

In no case may a supervisor impose suspension or discharge upon an employee unless the proposed disciplinary action by the supervisor has first been reviewed and concurred in by the installation head or designee.

In post offices of twenty (20) or less employees, or where there is no higher level supervisor than the supervisor who proposes to initiate suspension or discharge, the proposed disciplinary action shall first be reviewed and concurred in by a higher authority outside such installation or post office before any proposed disciplinary action is taken.

Given the fact that there is no vocabulary stating that the occurrences must be the same offense, the contract would be considered silent in this area.

Also, according to current trends in the Postal Service (within the Tennessee District) with regards to Unscheduled Sick Leave Usage leading to unnecessary Overtime usage and employee's negligence concerning the ability to follow Safety rules and the timeliness of accident reporting—there needed to be a change in the Tennessee District. This would come into play where it states that the change may be made when the “past practice” is no longer efficient and economical.

Taken from the NALC Contract:

#### **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

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 transitional employees only to the extent consistent with other rights and characteristics of transitional employees negotiated 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 transitional employees pursuant to the same standards and procedures found in Article 19 of this Agreement.

[see Memo, page 181]

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BETWEEN THE  
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AND THE  
NATIONAL ASSOCIATION OF LETTER CARRIERS,  
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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 changes and a summary of the change(s) which shows 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 final draft copy will identify 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



Agreement, the Union will be notified of the purpose and anticipated impact of the change(s) on bargaining unit employees.

4. At the request of the Union, the parties will meet to discuss the change(s). If the Union request a meeting on the change(s), the Union will provide the Postal Service with the change(s) the Union want 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 condition 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, 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. 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 that change(s) which is different from the final draft copy.

9. When the changes discussed above are incorporated into a newly printed version of a handbook, manual, publication, or published regulation, and there is not additional change(s) which would required notice under Article 19, the Union will be provided a courtesy copy. No new notice period is 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: April 25, 2002

**Management has made NO changes to any Handbooks or Manuals. The change at hand involves corrective action, which will still be handled in a progressive nature, which is contractual. As verified by Acting Manager Labor Relations, Rene Cannon, there was no PS Form 630, Policy Update Issuance Approval, initiated.**

**This form is used ONLY when there are to be made corrections, additions, or**

modifications to Postal handbooks or manuals. This form was not used because it simply was not necessary. Postal Management is not changing a rule or a regulation, merely a process in the way that corrective action will progress with any given employee.

Taken From the NALC Contract:

**ARTICLE 34**

**WORK AND/OR TIME STANDARDS**

- A. The principle of a fair day's work for a fair day's pay is recognized by all parties to this Agreement.
- B. The Employer agrees that any work measurement systems or time or work standards shall be fair, reasonable and equitable. The Employer agrees that the Union concerned through qualified representatives will be kept informed during the making of time or work studies which are to be used as a basis for changing current or instituting new work measurement systems or work or time standards. The Employer agrees that the National President of the Union may designate a qualified representative who may enter postal installations for purposes of observing the making of time or work studies which are to be used as the basis for changing current or instituting new work measurement systems or work or time standards.
- C. The Employer agrees that before changing any current or instituting any new work measurement systems or work or time standards, it will notify the Union concerned as far in advance as practicable. When the Employer determines the need to implement any new nationally developed and nationally applicable work or time standards, it will first conduct a test or tests of the standards in one or more installations. The Employer will notify the Union at least 15 days in advance of any such test.
- D. If such test is deemed by the Employer to be satisfactory and it subsequently intends to convert the test to live implementation in the test cities, it will notify the Union at least 30 days in advance of such intended implementation. Within a reasonable time not to exceed 10 days after the receipt of such notice, representatives of the Union and the Employer shall meet for the purpose of resolving any differences that may arise concerning such proposed work measurement systems or work or time standards.
- E. If no agreement is reached within five days after the meetings begin, the Union may initiate a grievance at the national level. If no grievance is initiated, the Employer will implement the new work or time standards at its discretion. If a grievance is filed and is unresolved within 10 days, and the Union decides to arbitrate, the matter must be submitted to priority arbitration by the Union within five days. The conversion from a test basis to live implementation may proceed in the test cities, except as provided in Paragraph I.
- F. The arbitrator's award will be issued no later than 60 days after the commencement of the arbitration hearing. During the period prior to the issuance of the arbitrator's award, the new work or time standards will not be implemented beyond the test cities, and no new tests of the new standards will be initiated. Data gathering efforts or work or time studies,

installation.

G. The issue before the arbitrator will be whether the national concepts involved in the new work or time standards are fair, reasonable and equitable.

H. In the event the arbitrator rules that the national concepts involved in the new work or time standards are not fair, reasonable and equitable, such standards may not be implemented by the Employer until they are modified to comply with the arbitrator's award. In the event the arbitrator rules that the national concepts involved in the new work or time standards are fair, reasonable and equitable, the Employer may implement such standards in any installation. No further grievances concerning the national concepts involved may be initiated.

I. After receipt of notification provided for in Paragraph D of this Article, the Union shall be permitted through qualified representatives to make time or work studies in the test cities. The Union shall notify the Employer within ten (10) days of its intent to conduct such studies. The Union studies shall not exceed one-hundred fifty (150) days, from the date of such notice, during which time the Employer agrees to postpone implementation in the test cities for the first ninety (90) days. There shall be no disruption of operations or of the work of employees due to the making of such studies. Upon request, the Employer will provide reasonable assistance in making the study, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in providing such assistance. Upon request, the Union representative shall be permitted to examine relevant available technical information, including final data worksheets, that were used by the Employer in the establishment of the new or changed work or time standards. The Employer is to be kept informed during the making of such Union studies and, upon the Employer's request the Employer shall be permitted to examine relevant available technical information, including final data worksheets, relied upon by the Union.

(The preceding Article, Article 34, shall apply to Transitional Employees.)

**Management does not see how the above Article is relevant to this instant grievance, as this Article pertains to work and time standards of employees. The change made relates to corrective action for infractions made by employees.**

The core basis of disciplinary action, that it will require just cause, and that it be progressive in nature, will not change. Corrective action issuance has not been consistent throughout the Tennessee District, **therefore**, it would not fall into the category of past practice. If the union is citing the method of the three track discipline as the "past practice", then Management has followed all appropriate steps in order to modify the system as appropriate.

-On February 12, 2010, a letter was sent to the NALC, APWU, NRLCA, NPMHU, NAPS, and NLP concerning the proposed policy change for corrective action. No method of tracking of delivery was used. The letters were all sent via First Class Mail, which the USPS would have no hesitancy in using as this mail is handled with as much care as our Priority Service.

-On June 8, 2010, a Memorandum was sent to the NALC, APWU, NRLCS, NPMHU, NAPC, and NLP stating that the Policy Change for Disciplinary Action would become effective on Saturday, July 10, 2010.

-The NALC's memorandum letter was delivered on June 10, 2010. The same letter was delivered to Lew Drass, NALC NBA, on June 11, 2010.

-Letter dated June 28, 2010 from District Manager Greg Gamble stating that "several union officials stated they did not receive the previous notice" sent out on February 12, 2010. In this letter he stated that, "all previous correspondence relating to this issue is hereby rescinded." The letter also stated that, "This is your written notification of Management's proposed change to administer Article 16 in accordance with the National Agreement by using a single track of discipline. He stated, "Please consider this your notice and opportunity to bargain prior to implementation." He left contact information and stated to contact him within 10 days to set-up an appointment with him.

-Letter dated June 28, 2010 was delivered to NALC Dave Clark on June 29, 2010. Letter addressed to Lew Drass, NALC NBA, on June 30, 2010.

-Copy of Formal Step A Resolution Form signed by Formal Step A NALC Representative Dave Clark and Formal Step A Representative for Management, Monica Lucas. This stated that the parties agreed that as of the Formal Step A Meeting, July 9, 2010, the policy change for disciplinary action that was to go into effect on July 10, 2010, which would implement a single track of discipline for unrelated infractions, has subsequently been rescinded by letter which was sent on June 28, 2010, by District Manager, Greg A. Gamble. Should this matter be brought up in the future, there will be a potential to address this issue via the grievance procedure again.

(Although the previous change HAD in fact been rescinded, Management must wonder if the NALC had read the bottom portion of Mr. Gamble's letter which stated that the June 28, 2010, letter was to serve as notice that the TN District WOULD indeed be moving to a one track discipline system. I never personally had, prior to this grievance, a copy of this letter.

-Copy of Formal Step A Decision printed from GATS.

-Letter from District Manager, Greg Gamble, dated July 29, 2010, stating that after his June 28, 2010, letter that he had met with several union officials who had voiced their opinions and concerns. He stated that he had considered all the information presented and it was his decision to implement a single track of discipline for unrelated infractions in the Tennessee District effective September 1, 2010. He went further to state that "Management is not attempting to unilaterally change any terms or conditions of employment. The Unions were provided ample notice of the proposed change and an opportunity to bargain in good faith. Please consider this your written notification of Management's intent to implement a single track of discipline in accordance with Article 16 of the National Agreement for bargaining employees and the Employee and Labor Relations Manual (ELM), Section 650 for non-bargaining employees effective September 1, 2010."

-Letter dated July 30, 2010 was delivered to NALC President, Dave Clark on July 31, 2010. Letter dated July 30, 2010 was delivered to NALC NBA, Lew Drass, on August 2, 2010.

-Service Talk which was shared with all Tennessee District employees. This was on August 2, 2010, almost a month in advance.

-Second Service Talk dated August 30, 2010, for all Tennessee District employees.

-Copies of the Employee and Labor Relations Manual Postal Service Standards of Conduct (665).

- 665.1 General Expectations
- 665.2 Prohibited Conduct
- 665.3 Cooperation in Investigations
- 665.4 Attendance
- 665.5 Furnishing Address
- 665.6 Disciplinary Action

(ALL of these fall under the same category of Standards of Conduct)

-Tennessee rankings concerning Industrial and Motor Vehicle Accidents  
(Industrial/Motor Vehicle)

-2010 Absence Review

-Adjusted Overtime Usage

-Letter from NALC NBA, Lew Drass, where he states that, "First of all, neither I nor Anyone else who works in my office has any record or recollection of receiving a letter From you dated February 12, 2010." (If the NALC has a street address, would the NALC NBA be saying that somehow this vital mail piece from upper Postal Management was NOT delivered? If they pick up mail at the Post Office with Caller Service or via P.O. Box, then would the NALC NBA be suggesting that the clerks at Meridianville, AL, are not conducting their job as required? If either one of these should be the case and Mr. Drass was not in any way associated with the Postal Service, would he not expect his issue of delivery to be resolved and dealt with by Postal Management?

Mr. Drass, Postal customer, would not care to hear, "Well, I'm sorry Mr. Drass, but I Cannot say anything to Carrier X because he might think I'm punishing him for not Performing his job." No! Customers expect service! Also, Postal Management also Expect their employees to come to work! Postal Management also expect their Employees to work in a safe manner! As we realize accidents will and do happen, the Fact that so many of them are "at fault" accidents that are caused by inattention and Simple carelessness is the reasoning that Tennessee is one of the highest ranked Accident Districts in the country. These carriers are also exhausted from having to Work unexpected overtime because Management simply cannot force the Carrier who works beside them to ever show up to work.

As the Union constantly point out past practice—some carriers—not ALL—have Formulated a "Past Practice" of beating the system. They know how many times they Can call in before they will receive corrective action. They know exactly what day that Action will be expunged from their files. Like clockwork, that employee will call in the Day following that day. Management has exhausted themselves with trying to correct These employee actions through the three-tier disciplinary procedure and upper Postal Management is now attempting to formulate a program that will work in order to be More cost efficient to the company, for longevity's sake.

Does the Union not want there to be a Post Office in 10 years? 5? Yes, Management is

finishes  
to her

Fully aware of the “Pre-Paid retirement funding”, therefore, does not need to be reminded every single time that Management points out that the USPS is in the red. The NALC constantly states that if it weren’t for that, the USPS would be profiting. The current issue at hand is this: “The USPS is STILL pre-funding those retirement benefits!” Until Congress passes the bill stating that the USPS no longer must do that—the USPS will still be in the negative.

Most of the Union arguments state that the Policy change takes the procedure from being a corrective action one to a disciplinary one. Management simply does not see this logic. Management STILL wishes to only correct the poor work habits, performance, and the inability to report for duty of its employees.

Management poses the question to the unions, “If there is a one-track discipline system and an employee is placed on notice of a deficiency (of ANY type), why would they consider it as discipline rather than corrective action when Management proceeds should that same employee continue to show a deficiency in yet another area?

Does the union simply not care if a Postal employee refuses to be irregular in attendance?

Does the union have no concern if one of THEIR letter carriers is working in an unsafe manner that is potentially causing themselves, and others, danger?

Does the union not care that if the Postal Service is no longer here? They also will have no job as they will have no carriers to represent!

If the corrective action is issued, as contractually stated, with just cause, meaning the employee offense warranted such action, and Management follows through with issuing that action—the Union will continue to have the right to grieve that action on any basis they chose, as they have for many years, whether the employee is guilty or not.

This is where I believe the Union and Management definitely differ. If the union definitely knows that an employee is guilty of said infraction, they must represent them because they technically pay their salary.

If I feel, as the Formal Step A Representative, that Management has committed a wrong to an employee, or has definitely violated contractual provisions, I can discuss with my bosses what I believe a good settlement would be and suggest how to go about avoiding the same outcome in future similar cases. It all boils down to educating one another. I attempt to educate fellow Managers and Supervisors as well as my Superiors on contractual adherence rather than circumvention and neglect.

The Union, however, does not see a losing case and tell that carrier, “Look, you did wrong...start coming to work” or “You hit that other car while talking on your cell phone and you know they have talked to you about this before so I suggest you serve out this Letter of Warning.” The Union believes that no carrier should ever have any type of disciplinary action, NOR corrective action on file! The carriers’ arguments that they do not even support, off the record, they must argue—for fear of legal retaliation from that carrier.

I believe that when action is warranted, it should be issued. I also believe that all of Management would agree with this statement as well.

At this point, it seems as if carriers have the power over Management and the Unions and that is simply ridiculous! Carriers need to realize that they are the employees, with expectations, and they need to start being held accountable for their work deficiencies.

Taken from [www.merriam-webster.com](http://www.merriam-webster.com):

cor·rec·tive

adj \kə-ˈrɛk-tɪv\

: intended to correct <corrective lenses> <corrective punishment>

pu·ni·tive

adj \ˈpyü-nə-tɪv\

: inflicting, involving, or aiming at punishment <severe *punitive* measures>

In a one tier system, with the first offense, regardless of what the offense is, the carrier would receive, as he/she always has, an official discussion—all fall within job performance category under this one tier system.

On a second occurrence, regardless of offense, it would nevertheless, fall under that all-encompassing umbrella of job performance and the carrier would receive a Letter of Warning. This would be the initiation in correcting the poor job performance of the carrier—whether it be an attendance issue, failure to follow instructions, or conduct.

As mentioned in the Step B Decision Impasse from Knoxville, TN, there were statements submitted by 51 letter carriers who felt “intimidated” by this new process.

If all of these carriers were following all Postal Handbooks and Manuals, coming to work without irregular attendance issues, following the instructions of their Manager, etc. why on Earth would any employee feel intimidated by such a procedure? The Union states that this “new discipline policy has created a hostile work environment and has Letter Carriers in fear for their jobs.”

If there is a carrier who 1) has an attendance problem, 2) does not follow instructions, AND 3) displays inappropriate conduct, then I would expect those would be the employees who would not be pleased by this policy change. If, as shown above, an employee has a perpetual habit of not being able to perform any of the ELM and M-39 job requirements suitably despite the corrective action that is progressively given to him or her, these employees should simply no longer be employees. They would have ample time to correct any deficiencies before committing yet another infraction. The progressive nature of official discussion, Letter of Warning, 7 day Suspension, 14 day Suspension, and Subsequent Removal would still apply. Therefore, the Union is stating that these 51 carriers are fearing that they would not be able to perform their duties without being in fear of losing their job throughout this 5 step process. That is simply an astounding statement and I certainly know of no other entity where someone can go and get a job and have absolutely no accountability for anything!

Also in the Step B Impasse, I see many statements where the Union claims what Management has initiated is “absurd”, however, it is this statement from the Union that is absurd! Management actually trying to finally take some action in the Tennessee District after too many years of this “past practice” is what is refreshing. Employees that have been fired multiple times return due to the smallest of technicalities or the documentation that was so expertly found a year later at arbitration. (It had never existed the year

For the Union to also state that Management is violating the ELM 665.16 Mutual Respect Atmosphere is once again absurd! How is Management not respecting employees simply by expecting them to complete their tasks as assigned or to report to work and upon reporting, to complete their job in a safe manner? By Management initiating this policy change, Management is in fact ONLY asking carriers to in fact follow all National Agreement Article 19 Handbook and Manual rulings such as rules and regulations from the Employee and Labor Relations Handbook and the M-39, City Letter Carrier Daily Duties and Responsibilities.

The DRT Impasse includes a section where the Union states that local Management no longer has the decision making power. In regards to Section 115.3 of the M-39, station Management still has the authority to perform a thorough investigation involving any particular matter and if that further progressive corrective action is not warranted, it would not be requested. How would this, then, be violating that section? The new policy simply states a remedy request. Management would still have all decision making ability in regards to their stations regarding if they should initiate corrective action and for how long that employee would need to remain "on notice" for their deficiencies.

As the NALC places with all of their Formal Step A grievance packets, I will add the Article 16 Discipline Procedure from the JCAM:  
Management's statements are in **bold**, underlined, *Italics*.

## **ARTICLE 16 DISCIPLINE PROCEDURE**

### **16.1 Section 1. Principles**

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

*This does not state—OF LIKE INSTANCES (Therefore making the contract SILENT in this area!)*

### **Just Cause Principle**

The principle that any discipline must be for "just cause" establishes a standard that must apply to any discipline or discharge of an employee. Simply put, the "just cause" provision requires a fair and provable justification for discipline.

"Just cause" is a "term of art" created by labor arbitrators. **It has no precise definition. It contains no rigid rules that apply in the same way in each case of discipline or discharge.** However, arbitrators frequently divide the question of just cause into six sub-questions and often apply the following criteria to determine whether the action was for just cause. These criteria are the *basic* considerations that the supervisor must use before initiating disciplinary action.

- **Is there a rule?** If so, was the employee aware of the rule? Was the employee forewarned of the disciplinary consequences for failure to follow the rule? It is not enough to say, "Well, everybody knows that rule," or, "We posted that rule ten years ago." You may have to



standards of conduct are normally expected in the industrial environment and it is assumed by arbitrators that employees should be aware of these standards. For example, an employee charged with intoxication on duty, fighting on duty, pilferage, sabotage, insubordination, etc., may be generally assumed to have understood that these offenses are neither condoned nor acceptable, even though management may not have issued specific regulations to that effect.

*If Management can show that the employee was aware of the rule—this applies.*

- **Is the rule a reasonable rule?** Management must make sure rules are reasonable, based on the overall objective of safe and efficient work performance. Management's rules should be reasonably related to business efficiency, safe operation of our business, and the performance we might expect of the employee.

*Attendance, Safety, Conduct, Performance—are any of THESE rules unreasonable?*

- **Is the rule consistently and equitably enforced?** A rule must be applied fairly and without discrimination. Consistent and equitable enforcement is a critical factor. Consistently overlooking employee infractions and then disciplining without warning is improper. If employees are consistently allowed to smoke in areas designated as *No Smoking* areas, it is not appropriate suddenly to start disciplining them for this violation. In such cases, management loses its right to discipline for that infraction, in effect, unless it first puts employees (and the unions) on notice of its intent to enforce that regulation again. Singling out employees for discipline is usually improper. If several similarly situated employees commit an offense, it would not be equitable to discipline only one.

*This would still be utilized as it is in today's corrective action.*

- **Was a thorough investigation completed?** Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective. This is the employee's *day in court* privilege. Employees have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves *before* the discipline is initiated.

*Investigative Interviews would still be conducted.*

- **Was the severity of the discipline reasonably related to the infraction itself and in line with that usually administered, as well as to the seriousness of the employee's past record?** The following is an example of what arbitrators may consider an inequitable discipline: If an installation consistently issues five-day suspensions for a particular offense, it would be extremely difficult to justify why an employee with a past record similar to that of other disciplined employees was issued a thirty-day suspension for the same offense. There is no precise definition of what establishes a good, fair, or bad record. Reasonable judgment must be used. An employee's record of

previous offenses may never be used to establish guilt in a case you presently have under consideration, but it may be used to determine the appropriate disciplinary penalty.

*If the corrective action continues to progress alike with all employees—it is reasonable with all employees the same.*

• **Was the disciplinary action taken in a timely manner?**

Disciplinary actions should be taken as promptly as possible after the offense has been committed.

*No change here.*

**Corrective Rather than Punitive**

The requirement that discipline be “corrective” rather than “punitive” is an essential element of the “just cause” principle. In short, it means that for most offenses management must issue discipline in a “progressive” fashion, issuing lesser discipline (e.g., a letter of warning) for a first offense and a pattern of increasingly severe discipline for succeeding offenses (e.g., short suspension, long suspension, discharge). The basis of this principle of “corrective” or “progressive” discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution.

It states right here...issue lesser discipline for a first offense, which Management would do and a pattern of increasingly severe discipline for succeeding offenses, which would also occur. This explains the principle of “corrective” or “progressive” discipline is that it is issued for the purpose of correcting or improving employee behavior and not as punishment or retribution. Therefore, since Management would still be following with the lesser discipline for the first offense and then would continue with a “pattern of increasingly severe discipline for succeeding offenses” as referenced from the JCAM.

National Arbitration:

NB-N-4298-D 4298 GAMSER, HOWARD DENIED 07/31/1975 NALC KWIAT

The question of whether just cause for the discharge of this employee existed must be judged herein if possible by criteria for such a determination agreed to by the parties. Article XVI articulates the views of the parties to the Agreement on this question. There do not appear to be any procedural deficiencies in the manner in which this discharge was carried out nor were any cited by the Union. Thus it was established that Kwiat did receive the consideration and due process provided in Section 3 of Article XVI for employees suspended more than 30-days or discharged. Additionally, the preliminary paragraph in Article XVI is also concerned with the concept of just cause. It states that discipline should be corrective rather than punitive. The disciplinary record compiled by this grievant and the manner in which this discipline was administered must be examined to determine if the Postal Service lived up to the agreed upon obligation to undertake corrective action.

(Arbitration is attached)

In the Knoxville DRT Impasse, the Union states that Management is going directly against Postmaster General Potter’s policy letter of 02/23/09 stating that “It is up to each one of us to make sure that the changes we bring to the organization are changes for the better. Respecting and protecting the provisions of the collective bargaining agreements will help us do that.”

Management is unsure how they are not complying with Postmaster General Potter’s request given the information at hand.

-District Manager Greg Gamble sent out letters to all Unions stating a Policy Change which is the requirement for Management concerning "silent" contractual issues on 02/12/10.

-District Manager Greg Gamble sent out letters to all Unions stating the Policy Change would be effective on 07/10/10 and stated that the APWU was the only Union to respond.

-District Manager Greg Gamble sent out letters to all Unions stating that the Policy Change would be rescinded, temporarily, due to the fact that several unions stated that they did not receive the initial letter that had been sent out by Mr. Gamble on 02/12/10. Therefore, this letter would then serve as notice as evidence with the letter stating, "Please be advised of Management's intent to bargain in good faith. All previous correspondence relating to this issue is hereby rescinded. This is your written notification of Management's proposed change to administer Article 16 in accordance with the National Agreement by using a single track of discipline. Please consider this your notice and opportunity to bargain prior to implementation. You may contact Stacey Crockett in my office at (615) 885-9252 within ten (10) calendar days from the date of this letter to set-up an appointment to discuss this issue."

-District Manager Greg Gamble sent out letters to all Unions on July 29, 2010, stating that his June 28, 2010 letter solicited input and provided an opportunity to bargain prior to implementation. Several union officials met with me to voice their opinions and concerns. After considering all the information presented, it is my decision to implement a single track of discipline for unrelated infractions in the Tennessee District effective September 1, 2010. He further stated that, "Management is not attempting to unilaterally change any terms or conditions of employment. The Unions were provided ample notice of the proposed change and opportunity to bargain in good faith. Please consider this your written notification of Management's intent to implement a single track of discipline in accordance with Article 16 of the National Agreement and the Employee and Labor Relations Manual (ELM), Section 650 for non-bargaining employees effective September 1, 2010."

It is of great interest that with all of the citations of District Manager Greg Gamble's letters as noted above, there is only one record of a response letter from National Business Agent for the NALC, Lew Drass. This letter was dated June 17, 2010. In this letter he states that he received the letter dated June 8, 2010. It was in this letter that he explained how no one in his office, nor himself, received the letter that was sent out by Mr. Gamble on February 12, 2010. He furthermore states that he had met with Mr. Gamble on April 8, 2010 to discuss the Dispute Resolution Process, however this issue was never brought up. If Mr. Gamble was unaware that Mr. Drass, nor anyone in his office had not received the letter dated February 12, 2010, why would he bring up the issue? They had a meeting to discuss another issue and that meeting took place. Mr. Gamble's February 12<sup>th</sup> letter stated if the Union officials cared to speak with him that they could contact him.

Mr. Drass continues to state the following: "It is the position of the NALC that the announcement of a change to the current system of discipline would attempt to change the unambiguous language in the National Agreement referenced above and violates the past practice provisions as it relates to clarification of contract language as considered in Article 5 of the National Agreement." Mr. Drass goes further to quote the Joint Contract Administration Manual page 5-3, which describes "Changing Past Practices that implement or Clarify Contract Language." Mr. Drass then continues to say, "It is also the position of the NALC that the current system of discipline is a work standard. Therefore, any notification of change/changes in this work standard would have to be made at the National Level via the provisions contained in Article 34 of the National Agreement. In closing, I must say that it is regrettable that you would attempt to use the financial situation of the Postal Service to justify circumventing the provisions of the National Agreement as described in your letter. It seems to me that we should be working together to both generate revenue and reduce the cost of disputes. It is my opinion that any attempt to implement the change to the current disciplinary system as stated in your letter will have the opposite effect. If you have any questions, or would like to discuss this matter, please feel free to contact me."

It is obvious that in Mr. Drass' letter, he does not agree with Mr. Gamble's decision and both men's interpretation of ambiguous vs. silent contract language concerning "past practices" differ

Mr. Drass, obviously, in his vehement objection to this change was not willing to negotiate concerning this policy change. Mr. Drass points out in his letter that the M-39 Handbook is also part of the National Agreement via Article 19.

Management is not attempting, either, to alter or change the M-39 handbook. See excerpts below:

## **15 Discipline**

### **115.1 Basic Principle**

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

*(Management would continue to require just cause before issuing any type of corrective action.)*

### **115.2 Using People Effectively**

**Managers can accomplish their mission only through the effective use of people.** How successful a manager is in working with people will, to a great measure, determine whether or not the goals of the Postal Service are attained. Getting the job done through people is not an easy task, and certain basic things are required, such as:

- a. Let the employee know what is expected of him or her.
- b. Know fully if the employee is not attaining expectations; don't guess — make certain with documented evidence.
- c. Let the employee explain his or her problem — listen! If given a chance, the employee will tell you the problem. Draw it out from the employee if needed, but get the whole story.

*Employees would still be made aware of their expectations.*

### **115.3 Obligation to Employees**

When problems arise, managers must recognize that they have an obligation to their employees and to the Postal Service to look to themselves, as well as to the employee, to:

- a. Find out who, what, when, where, and why.
- b. Make absolutely sure you have all the facts.
- c. The manager has the responsibility to resolve as many problems as possible before they become grievances.
- d. If the employee's stand has merit, admit it and correct the situation. You are the manager; you must make decisions; don't pass this responsibility on to someone else.

*Management would continue to conduct thorough investigations and involve employees in Investigative Interview as well as offering employees EAP or FMLA, when needed, in order to minimize absences or employee issues while at work.*

### **115.4 Maintain Mutual Respect Atmosphere**

The National Agreement sets out the basic rules and rights governing management and employees in their dealings with each other, but it is the front-line manager who controls management's attempt to maintain an atmosphere between employer and employee which assures mutual respect for each other's rights and responsibilities.

*Having a one-track discipline has nothing to do with the respect that is shared between employees and Management. Respecting an employee while expecting them to perform their assigned duties are two separate issues completely.*

Management believes it odd that Mr. Drass did not cite that the M-41, City Carriers Daily Duties and Responsibilities is also a Handbook that is part of the National Agreement via Article 19. Here are some of ITS requirements:

## 1 General Information

### 11 Responsibilities of Carrier

#### 111 Scope of Responsibilities

Every carrier is responsible for the items listed under part 112. However, the carrier's responsibilities are not limited to those specific items.

#### 112 General Responsibilities

##### 112.1 Efficient Service

Provide reliable and efficient service. Federal statutes provide penalties for persons who knowingly or willfully obstruct or retard the mail. The statutes do not afford employees immunity from arrest for violations of law.

##### 112.2 Diligence and Promptness

112.21 Obey the instructions of your manager.

112.22 Report for work promptly as scheduled.

112.23 Complete time records to accurately reflect the hours employed each day.

112.24 Display a willing attitude and put forth a conscientious effort in developing skills to perform duties assigned.

112.25 Be prompt, courteous, and obliging in the performance of duties. Attend quietly and diligently to work and refrain from loud talking and the use of profane language.

112.26 Do not report at cases or racks before tour of duty is scheduled to begin or linger about cases or racks after tour has ended.

112.27 Do not move mail from place to place on or adjacent to your case. Do not engage in any time wasting practices before placing mail in the proper separation.

112.28 Do not loiter or stop to converse unnecessarily on your route.

112.29 Return to the delivery unit immediately on completion of assigned street duties and promptly check in on arrival. A metered carrier unloads his vehicle and then

### **112.3 Security**

112.31 Protect all mail, money, and equipment entrusted to your care.

112.32 Return all mail, money, and equipment to the post office at the end of the workday.

112.33 Do not place mail in your pockets or clothing, lockers or desks, or in parcels, hand grips, lunch containers, or other luggage.

### **112.4 Safety**

Conduct your work in a safe manner so as not to endanger yourself or others (see part 133 for general safety practices and part 812 for vehicle safety practices).

### **112.5 Neatness and Example**

112.51 Maintain a neat, clean and generally creditable appearance.

112.52 Conduct affairs of personal life in a way that will reflect creditably on both you and the Postal Service.

### **112.6 Courtesy to Public**

112.61 Do not engage in controversies with customers or other members of the public when on duty.

112.62 When requested, furnish customers with postal and other reasonable information and provide change of address cards and other postal forms.

### **112.7 Proper Vehicle Operation**

(See subchapter 81)

### **133 Safety Practices**

133.1 Always exercise care to avoid personal injury and report all hazardous conditions to the unit manager (see part 812 for vehicle safety).

133.2 Do not finger mail when driving, or when walking up or down steps or curbs, when crossing streets, or at any time it would create a safety hazard to the carriers or to the public.

133.3 Use crosswalks when crossing busy streets, and following traffic signals or the direction of traffic control personnel.

133.4 Do not litter streets with twine or facing slips used in relay of mail. Deposit litter in street trash receptacles or return to office for proper disposal.

133.5 Do not antagonize or attempt to pet dogs. Use animal repellent on attacking animals. Carriers are not required to deliver mail where dogs are present.

Report interference to manager. If service is withdrawn, use Forms 3982 or 1564-B to record special instructions.

133.6 Report immediately when you are being followed. A number of important arrests have resulted from such reports.

133.7 Handle mail containing biological specimens, blood samples, dry ice, and other potentially hazardous material (HAZMAT) carefully. Careful attention should be paid to mail that is addressed to and from a laboratory or chemical company, since it suggests that the mail may contain HAZMAT. Additionally, package markings such as "ORM-D" (Other Regulated Material Class D) also indicate HAZMAT. Do not throw, drop, or slide packages containing HAZMAT, or handle them in such a way that they could be crushed or overlooked pending delivery or dispatch. Special attention should be paid to HAZMAT that has the sound of broken glass, a stain on the package, an unusual odor, or signs of damage or tampering. Report all such material to your supervisor immediately.

Regardless of all Handbooks applicable, Mr. Gamble mailed out a subsequent letter on June 28, 2010, and no letter or meeting request from NBA Lew Drass arrived or occurred. Obviously, good faith bargaining cannot occur when the two parties were simply going to agree to disagree. Mr. Drass stated that he thought it unfortunate that Mr. Gamble used the "financial situation" of the Postal Service as an "excuse" for this policy change. Does Mr. Drass not believe that unscheduled unexcused absenteeism that forces mandatory overtime and possible penalty overtime would not further cripple the Postal Service's financial situation? Management certainly does. Management also believes that an overabundance of motor vehicle and industrial accidents due to carelessness, which lead to long term OWCP claims are also very costly to the USPS. Therefore, Management decided to alter a system that was no longer efficient. Management believes it to be sad that this Union organization does not support this change. After all, the union can set their minds at ease, the corrective action that was before sent up incorrectly or was issued untimely, unless corrected—would still be completed the same. Therefore, the same carriers' issues that Management is attempting to correct—would still be won on a technicality by the union no matter how many tiers are in the system.

Monica L. Lucas  
Manager, Customer Service  
Formal Step A Representative

## Management's Additions - Policy Change

Management questions the memory of former NALC President Tom Rollins. Management lacks confidence in his statement due to the fact that even though in his first paragraph he gave a timeline of his NALC positions held, his second paragraph challenges this. Perhaps Mr. Rollins was attempting to say with his total NALC position experience being 12 years and not 12 years as the NALC President.

Management sincerely also doubts the validity of Mr. Rollins' statement that during the entire 12 year tenure, "the Provision Article 16.2 of the National Agreement and Section 115.1 of the m-39 Handbook, as they relate to the issuing of discipline, were followed by management. In the cases that discipline was not issued in a progressive manner, a grievance was filed and that discipline was rescinded." Mr. Rollins' final statement negates his prior one if they were "followed by management" no grievances would have ever been filed.

Management believes the inconsistencies in Mr. Rollins' statements should render his opinion invalid.

So the union stating that I am simply reflecting my opinion not backed by contractual argument:

It is not simply "my opinion" that the Postal Service is suffering financially. It is not my opinion that the Tennessee District has the high accident rating and the high overtime usage due to uncheduled absence usage that has not been successfully with the three track discipline system that is currently being used.

In the union's wonderful condescending example of discipline rather than corrective action, while quite interesting reading, the union shows that the employee



## Management's Additions - Page 2

UCAM Page 16-2 last paragraph -

Corrective Rather than Punitive

"... In short, it means that for most offenses management must issue discipline in a "progressive" fashion, issuing lesser discipline (e.g., short suspension), long suspension, discharge."

Is this exactly not what management did in the scenario.

Basically, as long as management can meet the burden of proof in regards to showing that 1) There is a rule, 2) the carrier was aware of the rule, and 3) there was 4) just cause for corrective action issuance.

In all the union's submissions of contract agreements 1975-~~2006~~ present in Article 16 Discipline Procedure it states "No employee may be disciplined or discharged except for just cause such as, BUT NOT LIMITED TO, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this agreement, or failure to observe safety rules and regulations."

Does it state "of like offenses"? Then, the contract remains silent in this area.

Postmaster Potter also, in October 2008, stated the requirement for change. The union should be embracing this change and its potential for aiding Postal longevity.

Concerning this "past practice", the union has never had any input in the issuance of discipline, as that is an exclusive right of management.

## Management's Additions-3

the Agreement are not violated.

There is no evidence of a "mutual agreement" between the USPS and NALC which is required for a true past practice to be established.

Article 16.10 allows management to consider ALL live discipline when considering subsequent action.

The old adage of "if it ain't broke, don't fix it" does not apply to this situation.

The TD District's current procedure is broken and it needs to be fixed.

Monica Lucas  
Manager, Customer Service  
Journal Step A Representative

**Lucas, Monica L - Nashville, TN**

---

**From:** Cannon, Jerri R - Nashville, TN  
**Sent:** Monday, September 20, 2010 12:53 PM  
**To:** Lucas, Monica L - Nashville, TN  
**Subject:** One Track Discipline Grievance

The past practice was a three-tiered system but it was not consistently applied. I found 161 TN District arbitrations where the union claimed disparate treatment. Management will abide by Article 16 and take corrective action when needed.

---

**From:** Cannon, Jerri R - Nashville, TN  
**Sent:** Wednesday, August 25, 2010 4:19 PM  
**To:** Kivett, Jane E - Knoxville, TN  
**Cc:** Conklin, Eric W - Knoxville, TN  
**Subject:** FW: One Track Discipline Grievance

1. The union must address the violation for each Article cited in the grievance.
2. Management will abide by Article 16.
3. Discipline will be progressive.
4. Past practice does not apply. Review the JCAM. Issuance of disciplinary action has not been consistent throughout the District. The union has cited disparate treatment in most disciplinary cases alleging that Management was not fair and consistent.
5. The TN District is not making plan for revenue, TOE, workhours, OT, SL or Safety.

Total Operating Expenses - actual 857,834,412, 1.3% over plan = 846,772,884

work hours - actual 421,815, 1.2% over plan = 416,914

OT - actual 21,456, 5.1% over plan = 16,555

SL - 629,499 hrs minus 61,854 FMLA/DC protected = 567,645 unprotected sick leave hrs or 14.66%

Safety - The TN District is the highest in the nation of motor vehicle accidents at 701 accidents. TN District is 4th in the nation in highest number of industrial accidents at 1,179. TN District ranks 2nd in the nation with combined MVA/LA for a total of 1,931 accidents.

Does this really sound like the union's alleged "past practice" corrected these problems? I will be scanning you some documents to attach. This should help defend Management's position with the single track discipline. Thanks.

DISTRICT MANAGER, CUSTOMER SERVICES & SALES  
TENNESSEE DISTRICT



February 12, 2010

National Association of Letter Carriers  
American Postal Workers Union  
National Rural Letter Carriers Association  
National Postal Mail Handlers Union  
National Association of Postal Supervisors  
National League of Postmasters

SUBJECT: Proposed Policy Change for Corrective Action

We are presently using a three (3) track system for corrective action. The three tracks of corrective action are:

- Performance
- Attendance
- Conduct

I am considering a policy change to a one (1) track system, which is sometimes referred to as a "stacked" system. Corrective action would still be progressive with one significant change: Corrective action that has already been issued would be cited in any subsequent actions regardless of the previous issue.

If you have any questions or concerns, please send to me no later than February 26, 2010.

Sincerely,

A handwritten signature in cursive script, appearing to read "Greg Gamble".

Greg Gamble  
District Manager

cc: file



DATE: June 8, 2010

MEMORANDUM FOR: National Association of Letter Carriers (NALC)  
American Postal Workers Union (APWU)  
National Rural Letter Carriers Association (NRLCA)  
National Postal Mail Handlers Union (NPMHU)  
National Association of Postal Supervisors (NAPS)  
National League of Postmasters

RE: Policy Change for Disciplinary Action

Effective Saturday, July 10, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies. With the current financial state of the Postal Service, declining mail volume and economic crisis nationwide, it is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently.

Management is not attempting to unilaterally change any terms or conditions of employment. You were notified in a letter dated February 12, 2010, of Management's proposal to change the policy regarding corrective action. Management provided the Unions with prior notice and an opportunity to present questions or comments by February 26, 2010. APWU was the only union to respond but declined to bargain prior to implementation. This is your written notification of the change to a single line of discipline for unrelated infractions effective Saturday, July 10, 2010.

Management has complied with the National Agreement and attempted to bargain in good faith. Employees and Management officials will be notified of this change and effective date.

  
Greg A. Gamble



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- Delivered, June 10, 2010, 9:37 am, NASHVILLE, TN 37214
- Arrival at Post Office, June 10, 2010, 8:14 am, NASHVILLE, TN 37214
- Acceptance, June 09, 2010, 3:42 pm, NASHVILLE, TN 37230

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*Nashville, TN*

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PS Form 152, May 2002 (See Reverse)



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### Detailed Results

- Delivered, June 11, 2010, 12:32 pm, MERIDIANVILLE, AL 35759
- Out for Delivery or Available at PO Box, June 11, 2010, 8:34 am, MERIDIANVILLE, AL 35759
- Sorting Complete, June 11, 2010, 8:04 am, MERIDIANVILLE, AL 35759
- Arrival at Post Office, June 11, 2010, 7:33 am, MERIDIANVILLE, AL 35759
- Processed through Sort Facility, June 11, 2010, 3:52 am, HUNTSVILLE, AL 35813
- Acceptance, June 09, 2010, 3:44 pm, NASHVILLE, TN 37230

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LEW THOMAS, JR.  
Meridianville, AL

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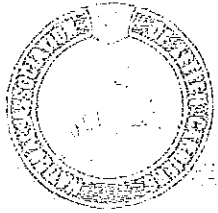
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National Association of Letter Carriers

7009 2620 0003

Administrative routing table with columns for various departments and checkboxes.

Greg Grass  
District Manager  
NAALC Region 7  
2010 Royal Parkway  
Nashville, TN 37229-9998  
615-257-2200

June 17, 2010

Greg A. Gamble  
District Manager  
USPS - Tennessee Customer Service & Sales  
811 Royal Parkway  
Nashville, TN 37229-9998

Dear Greg,

I am in receipt of your letter dated June 8, 2010 regarding a single track of discipline for unrelated infractions.

First of all, neither I nor anyone else who works in my office has any record or recollection of receiving a letter from you dated February 12, 2010. It is also significant to note that you and I met on April 8, 2010 in your conference room to discuss the Dispute Resolution Process (DRP) as part of the quarterly DRP meeting between the Southeast Area and the NALC for the Tennessee District, but never even brought this issue up.

That aside, your letter recognizes that you are attempting to change the current system of discipline as stated in the National Agreement. For instance, Article 16, Section 1 of the National Agreement states in relevant part,

**"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive."**

Further, Section 115.1 of the M-39 Handbook states in relevant part,

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

The M-39 Handbook is also part of the National Agreement via Article 19.

Greg A. Gamble  
District Manager  
USPS - Tennessee Customer Service & Sales  
811 Royal Parkway  
Nashville, TN 37229-9998  
615-257-2200

Greg A. Gamble  
District Manager  
USPS - Tennessee Customer Service & Sales  
811 Royal Parkway  
Nashville, TN 37229-9998  
615-257-2200

Greg A. Gamble  
District Manager  
USPS - Tennessee Customer Service & Sales  
811 Royal Parkway  
Nashville, TN 37229-9998  
615-257-2200

Greg A. Gamble  
District Manager  
USPS - Tennessee Customer Service & Sales  
811 Royal Parkway  
Nashville, TN 37229-9998  
615-257-2200

Greg A. Gamble  
District Manager  
USPS - Tennessee Customer Service & Sales  
811 Royal Parkway  
Nashville, TN 37229-9998  
615-257-2200



It is the position of the NALC that the announcement of a change to the current system of discipline would attempt to change the unambiguous language in the National Agreement referenced above and violates the past practice provisions as it relates to clarification of contract language as considered in Article 5 of the National Agreement. The JCAM at page 5-3 states:

**“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.”

Therefore any such change would have to be negotiated at the National Level during National Negotiations.


It is also the position of the NALC that the current system of discipline is a work standard. Therefore, any notification of change/changes in this work standard would have to be made at the National Level via the provisions contained in Article 34 of the National Agreement.

In closing, I must say that it is regrettable that you would attempt to use the financial situation of the Postal Service to justify circumventing the provisions of the National Agreement as described in your letter.

It seems to me that we should be working together to both generate revenue and reduce the cost of disputes. It is my opinion that any attempt to implement the change to the current disciplinary system as stated in your letter will have the opposite effect.

If you have any questions, or would like to discuss this matter, please feel free to contact me.

Sincerely,



Lew Drass  
National Business Agent  
Region 8

cc: Eloise Lance, Manager, Labor Relations, Southeast Area  
NALC Branch Presidents

DISTRICT MANAGER  
TENNESSEE CUSTOMER SERVICE AND SALES



DATE: June 28, 2010

MEMORANDUM FOR: National Association of Letter Carriers (NALC)  
American Postal Workers Union (APWU)  
National Rural Letter Carriers Association (NRLCA)  
National Postal Mail Handlers Union (NPMHU)  
National Association of Postal Supervisors (NAPS)  
National Association of Postmasters (NAPUS)

RE: Policy Change for Disciplinary Action

The Tennessee District is considering implementation of a single track of discipline for unrelated infractions. The current system of using three (3) tracks (performance, attendance, conduct) has not been successful in correcting deficiencies. With the current financial state of the Postal Service, declining mail volume and economic crisis nationwide, it is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently.

Management is not attempting to unilaterally change any terms or conditions of employment. In a letter dated February 12, 2010, Management proposed to change the policy regarding corrective action. Prior to implementation, several union officials stated they did not receive the previous notice. Please be advised of Management's intent to bargain in good faith. All previous correspondence relating to this issue is hereby rescinded. This is your written notification of Management's proposed change to administer Article 16 in accordance with the National Agreement by using a single track of discipline.

Please consider this your notice and opportunity to bargain prior to implementation. You may contact Stacey Crockett in my office at (615) 885-9252 within ten (10) calendar days from the date of this letter to set-up an appointment to discuss this issue.

A handwritten signature in black ink, appearing to read "G. Gamble".

/Greg A. Gamble



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- Delivered, June 29, 2010, 9:07 am, NASHVILLE, TN 37214
- Out for Delivery or Available at PO Box, June 29, 2010, 8:26 am, NASHVILLE, TN 37214
- Sorting Complete, June 29, 2010, 7:56 am, NASHVILLE, TN 37214
- Arrival at Post Office, June 29, 2010, 6:08 am, NASHVILLE, TN 37214
- Processed through Sort Facility, June 28, 2010, 10:31 pm, NASHVILLE, TN 37227
- Acceptance, June 28, 2010, 1:58 pm, NASHVILLE, TN 37230

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Dave Clark  
President, NALC - Branch 4  
P O Box 140816  
Nashville, TN 37214

JUN 28 2010

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- Out for Delivery or Available at PO Box, June 30, 2010, 8:14 am, MERIDIANVILLE, AL 35759
- Sorting Complete, June 30, 2010, 7:44 am, MERIDIANVILLE, AL 35759
- Arrival at Post Office, June 30, 2010, 7:25 am, MERIDIANVILLE, AL 35759
- Processed through Sort Facility, June 30, 2010, 4:09 am, HUNTSVILLE, AL 35813
- Processed through Sort Facility, June 28, 2010, 11:56 pm, NASHVILLE, TN 37227
- Acceptance, June 28, 2010, 1:58 pm, NASHVILLE, TN 37230

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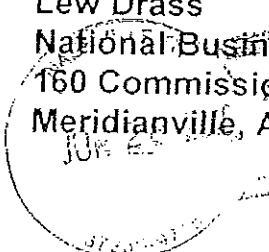
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0309 1830 0002 1793 6503

**Lew Drass**  
National Business Agent, NALC  
160 Commissioner Drive  
Meridianville, AL 35759



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## FORMAL STEP A RESOLUTION FORM

NALC GRIEVANCE NUMBER: B4-00224-10

10261795

USPS GRIEVANCE NUMBER:

GRIEVANT NAME: CLASS ACTION

STATION/POST OFFICE: NASHVILLE CITY

DATE OF DECISION: JULY 9, 2010

The issue of this grievance pertains to:

DID MANAGEMENT VIOLATE ARTICLES 5, 16, 19, AND 34 OF THE NATIONAL AGREEMENT WHEN THEY ESTABLISHED A POLICY CHANGE FOR DISCIPLINARY ACTION?

As a result of a Formal Step A meeting of the Dispute Resolution Process we the parties agree to the following resolution of this grievance:

THE PARTIES AGREE THAT AS OF THE FORMAL STEP A MEETING THE POLICY CHANGE FOR DISCIPLINARY ACTION THAT WAS TO GO INTO EFFECT ON JULY 10, 2010, WHICH WOULD IMPLEMENT A SINGLE TRACK OF DISCIPLINE FOR UNRELATED INFRACTIONS, HAS SUBSEQUENTLY BEEN RESCINDED BY LETTER WHICH WAS SENT ON JUNE 28, 2010, BY DISTRICT MANAGER, GREG A. GAMBLE. SHOULD THIS MATTER BE BROUGHT UP IN THE FUTURE, THERE WILL BE A POTENTIAL TO ADDRESS THIS ISSUE VIA THE GRIEVANCE PROCEDURE AGAIN.

Samuel A. Clark Jr.

NALC REPRESENTATIVE

Monica Lucas

USPS REPRESENTATIVE

July 9, 2010

Dave Clark  
LETTER CARRIERS  
12/28/00 UPDATED - B. CHANDLER  
Phoenix, AZ 85026-9511

Decision: RESOLVED  
USPS Number: H06N-4H-C 10261795  
NALC Number: B40022410  
Date  
Received at 07-09-2010  
Step A:  
Step A  
Decision 07-09-2010  
Date:  
Issue Code: 190000,192000,451900,950000  
Grievant: CLASS ACTION  
Installation: NASHVILLE, TN 37230-9998

ISSUE:

DECISION: The Formal Step A Team has RESOLVED this grievance. The parties agree that as of the Formal Step A meeting, the policy change for disciplinary action that was to go into effect on July 10, 2010, which would implement a single track of discipline for unrelated infractions, has subsequently been rescinded by letter which was sent on June 28, 2010, by District Manager, Greg A. Gamble. Should this matter be brought up in the future, there will be a potential to address this issue via the grievance procedure again.

MANAGEMENT POSITION:

UNION POSITION:

EXPLANATION:

representatives to make time or work studies in the test cities. The Union shall notify the Employer within ten (10) days of its intent to conduct such studies. The Union studies shall not exceed one-hundred fifty (150) days, from the date of such notice, during which time the Employer agrees to postpone implementation in the test cities for the first ninety (90) days. There shall be no disruption of operations or of the work of employees due to the making of such studies. Upon request, the Employer will provide reasonable assistance in making the study, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in providing such assistance. Upon request, the Union representative shall be permitted to examine relevant available technical information, including final data worksheets, that were used by the Employer in the establishment of the new or changed work or time standards. The Employer is to be kept informed during the making of such Union studies and, upon the Employer's request the Employer shall be permitted to examine relevant available technical information, including final data worksheets, relied upon by the Union. (The preceding Article, Article 34, shall apply to Transitional Employees.)

**Management does not see how the above Article is relevant to this instant grievance, as this Article pertains to work and time standards of employees. The change made relates to corrective action for infractions made by employees.**

The core basis of disciplinary action, that it will require just cause, and that it be progressive in nature, will not change. The fact that corrective action issuance has not been consistent throughout the Tennessee District, therefore, it would not fall into the category of past practice. If the union is citing the method of the three track discipline as the "past practice", then Management has followed all appropriate steps in order to modify the system as appropriate.

-On February 12, 2010, a letter was sent to the NALC, APWU, NRLCA, NPMHU, NAPS, and NLP concerning the proposed policy change for corrective action.

-On June 8, 2010, a Memorandum was sent to the NALC, APWU, NRLCS, NPMHU, NAPC, and NLP stating that the Policy Change for Disciplinary Action would become effective on Saturday, July 10, 2010.

-The NALC's memorandum letter was delivered on June 10, 2010. The same letter was delivered to Lew Drass, NALC NBA, on June 11, 2010.

-Letter dated June 28, 2010 from District Manager Greg Gamble stating that "several union officials stated they did not receive the previous notice" sent out on February 12, 2010. In this letter he stated that, "all previous correspondence relating to this issue is hereby rescinded." The letter also stated that, "This is your written notification of Management's proposed change to administer Article 16 in accordance with the National Agreement by using a single track of discipline. He stated, "Please consider this your notice and opportunity to bargain prior to implementation." He left contact information and stated to contact him within 10 days to set-up an appointment with him.

-Letter dated June 28, 2010 was delivered to NALC Dave Clark on June 29, 2010. Letter addressed to Lew Drass, NALC NBA, on June 30, 2010.

-Copy of Formal Step A Resolution Form signed by Formal Step A NALC Representative Dave Clark and Formal Step A Representative for Management, Monica Lucas. This stated that the parties agreed that as of the Formal Step A Meeting, July 9, 2010, the policy change for disciplinary action that was to go into effect on July 10, 2010, which would implement a single track of discipline for unrelated infractions, has subsequently been rescinded by letter which was sent on June 28, 2010, by District Manager, Greg A. Gamble. Should this matter be brought up in the future, there will be a potential to address this issue via the grievance procedure again.

(Although the previous change HAD in fact been rescinded, Management must wonder if the NALC had read the bottom portion of Mr. Gamble's letter which stated that the June 28, 2010, letter was to serve as notice that the TN District WOULD indeed be moving to a one track discipline system. I never personally had, prior to this grievance, a copy of this letter.

-Copy of Formal Step A Decision printed from GATS.

-On July 30, 2010, the APWU also resolved a grievance concerning the same matter. I also wonder if they had read the bottom portion of Mr. Gamble's July 28, 2010 letter.

-Letter from District Manager, Greg Gamble, dated July 29, 2010, stating that after his June 28, 2010, letter that he had met with several union officials who had voiced their opinions and concerns. He stated that he had considered all the information presented and it was his decision to implement a single track of discipline for unrelated infractions in the Tennessee District effective September 1, 2010. He went further to state that "Management is not attempting to unilaterally change any terms or conditions of employment. The Unions were provided ample notice of the proposed change and an opportunity to bargain in good faith. Please consider this your written notification of Management's intent to implement a single track of discipline in accordance with Article 16 of the National Agreement for bargaining employees and the Employee and Labor Relations Manual (ELM), Section 650 for non-bargaining employees effective September 1, 2010."

-Letter dated July 30, 2010 was delivered to NALC President, Dave Clark on July 31, 2010. Letter dated July 30, 2010 was delivered to NALC NBA, Lew Drass, on August 2, 2010.

-Service Talk which was shared with all Tennessee District employees. This was on August 2, 2010, almost a month in advance.

-Second Service Talk dated August 30, 2010, for all Tennessee District employees.

-Copies of the Employee and Labor Relations Manual Postal Service Standards of Conduct (665).

-665.1 General Expectations

-665.2 Prohibited Conduct

-665.3 Cooperation in Investigations

-665.4 Attendance

-665.5 Furnishing Address

-665.6 Disciplinary Action

(ALL of these fall under the same category of Standards of Conduct)

-Tennessee rankings concerning Industrial and Motor Vehicle Accidents





DATE: July 29, 2010

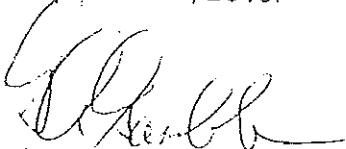
MEMORANDUM FOR: National Association of Letter Carriers (NALC)  
American Postal Workers Union (APWU)  
National Rural Letter Carriers Association (NRLCA)  
National Postal Mail Handlers Union (NPMHU)  
National Association of Postal Supervisors (NAPS)  
National Association of Postmasters (NAPUS)

RE: Policy Change for Disciplinary Action

In a letter to the Unions, dated February 12, 2010, Management proposed to change the policy regarding corrective action. Prior to the scheduled implementation date of July 10, 2010, several union officials stated they did not receive the previous notice. The implementation date was cancelled and previous correspondence relating to this issue was rescinded. In a letter dated June 28, 2010, Management issued a second notice to the Unions regarding the proposed policy change. This letter solicited input and provided an opportunity to bargain prior to implementation. Several union officials met with me to voice their opinions and concerns.

After considering all the information presented, it is my decision to implement a single track of discipline for unrelated infractions in the Tennessee District effective September 1, 2010. The current system of using three (3) tracks (performance, attendance, conduct) has not been successful in correcting employee deficiencies. It is crucial that every employee report as scheduled and perform their assigned duties safely and efficiently.

Management is not attempting to unilaterally change any terms or conditions of employment. The Unions were provided ample notice of the proposed change and an opportunity to bargain in good faith. Please consider this your written notification of Management's intent to implement a single track of discipline in accordance with Article 16 of the National Agreement for bargaining employees and the Employee and Labor Relations Manual (ELM), Section 650 for non-bargaining employees effective September 1, 2010.

  
Greg A. Gamble



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## Track & Confirm

### Search Results

Label/Receipt Number: 0309 1830 0002 1793 7425

Class: Priority Mail®

Service(s): Delivery Confirmation™

Status: Delivered

Your item was delivered at 6:42 am on July 31, 2010 in NASHVILLE, TN 37214

#### Detailed Results:

- Delivered, July 31, 2010, 6:42 am, NASHVILLE, TN 37214
- Arrival at Post Office, July 31, 2010, 6:42 am, NASHVILLE, TN 37214
- Acceptance, July 30, 2010, 5:39 pm, NASHVILLE, TN 37230

#### Notification Options

Track & Confirm by email

Get current event information or updates for your item sent to you or others by email. [Go >](#)

[Track & Confirm](#)

Enter Label/Receipt Number.

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### U.S. Postal Service™ Delivery Confirmation™ Receipt

DELIVERY CONFIRMATION NUMBER:  
0309 1830 0002 1793 7425

**Dave Clark**  
President, NALC - Branch 4  
P O Box 140816  
Nashville, TN 37214

Postmark  
Here

**POSTAL CUSTOMER:**  
Keep this receipt. For Inquiries:  
Access internet web site at  
[www.usps.com](http://www.usps.com)®  
or call 1-800-222-1811

- CHECK ONE (POSTAL USE ONLY)**
- Priority Mail™ Service
- First-Class Mail® parcel
- Package Services parcel

PS Form 152, May 2002

(See Reverse)



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# Track & Confirm

## Search Results

Label/Receipt Number: 0309 1830 0002 1793 7418  
Class: Priority Mail®  
Service(s): Delivery Confirmation™  
Status: Delivered

Track & Confirm  
Enter Label/Receipt Number.

Your item was delivered at 12:40 pm on August 02, 2010 in MERIDIANVILLE, AL 35759.

Go >

### Detailed Results:

- Delivered, August 02, 2010, 12:40 pm, MERIDIANVILLE, AL 35759
- Out for Delivery or Available at PO Box, August 02, 2010, 8:17 am, MERIDIANVILLE, AL 35759
- Sorting Complete, August 02, 2010, 7:47 am, MERIDIANVILLE, AL 35759
- Arrival at Post Office, August 02, 2010, 6:18 am, MERIDIANVILLE, AL 35759
- Processed through Sort Facility, August 01, 2010, 7:13 pm, HUNTSVILLE, AL 35813
- Acceptance, July 30, 2010, 5:39 pm, NASHVILLE, TN 37230

### Notification Options

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Get current event information or updates for your item sent to you or others by email. [Go >](#)

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## U.S. Postal Service™ Delivery Confirmation™ Receipt



DELIVERY CONFIRMATION NUMBER: 0309 1830 0002 1793 7418

**Lew Drass**  
**National Business Agent, NALC**  
**160 Commissioner Drive**  
**Meridianville, AL 35759**

Postmark  
Here

**POSTAL CUSTOMER:**  
Keep this receipt. For inquiries:  
Access internet web site at  
[www.usps.com](http://www.usps.com)®  
or call 1-800-222-1811

**CHECK ONE (POSTAL USE ONLY)**

- Priority Mail™ Service
- First-Class Mail® parcel
- Package Services parcel

# \*\*\*SERVICE TALK\*\*\*

## Policy Change for Disciplinary Action

Effective Wednesday, September 1, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies. It is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently. This does not change the guidelines set forth in Article 16. Any currently active discipline may be cited in future disciplinary action request.

All Postal employees are required to comply with the rules of conduct outlined in Section 660 of the Employee and Labor Relations Manual (ELM). Employees may reference the Postal Service Standards of Conduct (Section 665) that require employees to:

1. Discharge their assigned duties conscientiously and effectively.
2. Obey the instructions of their Supervisors.
3. Maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment.
4. Be regular in attendance and report as scheduled.

These are just a few examples of requirements. In addition, the ELM states that Postal officials may take appropriate disciplinary measures to correct violations of the regulations referred to in Section 665.

The Employee and Labor Relations Manual (ELM) is available on the Postal Service website at [www.usps.com](http://www.usps.com). Please contact your immediate Supervisor or Manager if you have any questions.

# \*PLEASE POST\*

# **\*\*\*SERVICE TALK #2\*\*\***

## **Policy Change for Disciplinary Action**

Effective Wednesday, September 1, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. This does not change the guidelines set forth in Article 16. Any currently active discipline may be cited in future disciplinary action request.

All Postal employees are required to comply with the rules of conduct outlined in Section 660 of the Employee and Labor Relations Manual (ELM).

The Postal Service Standards of Conduct (Section 665) require employees to be regular in attendance, conduct themselves in a favorable manner, obey the instructions of their Supervisor and discharge their assigned duties conscientiously and effectively. The Employee and Labor Relations Manual (ELM) is available on the Postal Service website at [www.usps.com](http://www.usps.com).

Article 34 of the Collective Bargaining Agreement for each union, APWU, NPMHU, NALC, NRLCA and NPMHU, recognizes the principle of a "fair day's work for a fair day's pay". These are difficult times with declining mail volume, staffing changes and higher operating costs. It is crucial that every employee reports as scheduled and performs their assigned duties safely and efficiently. Unscheduled absences, accidents and injuries all have a negative impact on operations and service. Come to work and be safe because without your commitment, the Tennessee District will not be successful.

Please contact your immediate Supervisor or Manager if you have any questions.

# **\*PLEASE POST\***

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## 665 Postal Service Standards of Conduct

### 665.1 General Expectations

#### 665.11 Loyalty

Employees are expected to be loyal to the United States government and uphold the policies and regulations of the Postal Service.

#### 665.12 Performance of Public Duties

Employees are expected to serve on juries and to act as witnesses when summoned by official sources.

#### 665.13 Discharge of Duties

Employees are expected to discharge their assigned duties conscientiously and effectively.

#### 665.14 Reporting Violations

Allegations of violations of postal laws by postal employees, including mail theft, must be reported immediately to the Office of Inspector General.

#### 665.15 Obedience to Orders

Employees must obey the instructions of their supervisors. If an employee has reason to question the propriety of a supervisor's order, the individual must nevertheless carry out the order and may immediately file a protest in writing to the official in charge of the installation or may appeal through official channels.

#### 665.16 Behavior and Personal Habits

Employees are expected to conduct themselves during and outside of working hours in a manner that reflects favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it does require that postal employees be honest, reliable, trustworthy, courteous, and of good character and reputation. The Federal Standards of Ethical Conduct referenced in 665.1 also contain regulations governing the off-duty behavior of postal employees. Employees must not engage in criminal, dishonest, notorious, disgraceful, immoral, or other conduct prejudicial to the Postal Service. Conviction for a violation of any criminal statute may be grounds for disciplinary action against an employee, including removal of the employee. In addition, any other penalty imposed pursuant to statute. Employees are expected to maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment.

#### 665.17 Reporting Requirements for Sex Offenders

An employee who is required by the law of any jurisdiction to register as a sex offender must report in writing that he or she is subject to this requirement, as follows:

- a. Any employee who is not an Area or Headquarters employee must make their report to the District Manager of Human Resources; Area employees must make their report to their Area Manager of Human Resources; and Headquarters employees must make their report to the Headquarters Manager, Corporate Personnel.
- b. An employee who first registers as a sex offender on or after May 24, 2007, must make this report to management within 10 calendar days after the employee first registers as a sex offender.
- c. An employee who registered as a sex offender at any time before May 24, 2007, must make this report to management no later than June 4, 2007.
- d. If, after making his or her first report to management, the employee is required to register as a sex offender in a different jurisdiction, or to register anywhere because the employee has committed an additional offense, the employee must inform management within 10 calendar days after so registering.

### 665.2 Prohibited Conduct

#### 665.21 Incomplete Mail Disposition

It is a criminal act for anyone who has taken charge of any mail to quit voluntarily or desert the mail before making proper disposition of the mail according to 18 U.S.C. 1700.

#### 665.22 Unofficial Recommendations

Employees must not recommend or suggest the employment of any person offering

attorney, expediter, or the like, for the purpose of assisting in any negotiation, transaction, or other business with the Postal Service unless required to do so as part of their official duties.

#### 665.23 Discrimination

Employees acting in an official capacity must not directly or indirectly authorize, permit, or participate in any action, event, or course of conduct that subjects any person to discrimination, or results in any person being discriminated against on the basis of race, color, religion, sex, national origin, age (40+), physical or mental disability, marital or parental status, sexual orientation, or any other nonmerit factor, or that subjects any person to reprisal for prior involvement in EEO activity.

#### 665.24 Violent and/or Threatening Behavior

The Postal Service is committed to the principle that all employees have a basic right to a safe and humane working environment. In order to ensure this right, it is the unequivocal policy of the Postal Service that there must be no tolerance of violence or threats of violence by anyone at any level of the Postal Service. Similarly, there must be no tolerance of harassment, intimidation, threats, or bullying by anyone at any level. Violation of this policy may result in disciplinary action, including removal from the Postal Service.

#### 665.25 Illegal Drug Sale, Use, or Possession

The Postal Service will not tolerate the sale, possession, or use of illegal drugs, or the abuse of legal drugs while on duty or on postal premises. Employees found to be engaged in these activities are subject to discipline, including removal and/or criminal prosecution where appropriate.

#### 665.26 Intoxicating Beverages

Employees must not drink beer, wine, or other intoxicating beverages while on duty; begin work or return to duty intoxicated; or drink intoxicating beverages in a public place while in uniform. Unless the postmaster general specifically authorizes an exception (for example, an official reception), employees must not have or bring any container of beer, wine, or other intoxicating beverage into any Postal Service facility or premises, whether or not the container has been opened. Employees found to be violating this policy may be subject to disciplinary action.

#### 665.27 Gambling

Employees must not participate in any gambling activity while on duty or while on property owned or leased by the Postal Service or the United States. This prohibition includes the operation of any gambling device, conducting a game for money or property, or selling or purchasing a numbers slip or ticket.

*Note:* This section does not prohibit participation in activities specified here if participation is necessitated by an employee's law enforcement duties, or if participation is in accordance with Executive Order No. 10927, relating to agency-approved solicitations, or in accordance with the Randolph-Sheppard Act, when approved by postal management.

### 665.3 Cooperation in Investigations

Employees must cooperate in any postal investigation, including Office of Inspector General investigations.

### 665.4 Attendance

#### 665.41 Requirement of Regular Attendance

Employees are required to be regular in attendance. Failure to be regular in attendance may result in disciplinary action, including removal from the Postal Service.

#### 665.42 Absence Without Permission

Employees who fail to report for duty on scheduled days, including Saturdays, Sundays, and holidays, are considered absent without leave except in cases where actual emergencies prevent them from obtaining permission in advance. In emergencies, the supervisor or proper official must be notified of the inability to report as soon as possible. Satisfactory evidence of the emergency must be furnished later. An employee who is absent without permission or who fails to provide satisfactory evidence that an actual emergency existed will be placed in a nonpay status for the period of such absence. The absence may be the basis for disciplinary action. However, once the employee provides management with notice of the need for leave in accordance with Family Medical Leave Act (FMLA)-required time frames, and the absence is determined to be FMLA protected, the employer must change the AWOL to approved FMLA-LWOP, and delete the AWOL status from the record.

#### 665.43 Tardiness

considered tardy. Tardiness in installations equipped with time recorders is defined as any deviation from schedule.

**665.44 Falsification in Recording Time**

Recording the time for another employee constitutes falsification of a report. Any employee knowingly involved in such a procedure is subject to removal or other discipline. Failure of a supervisor to report known late arrivals is regarded as condoning falsification. These practices may also result in criminal prosecution.

**665.5 Furnishing Address**

Employees must keep the installation head informed of their current mailing addresses. Any change in mailing addresses must be reported to the installation head on PS Form 1216, *Employee's Current Mailing Address*, through "Self Service" on the Postal Service Blue Page, or through USPS approved methods including *PostalEase*.

**665.6 Disciplinary Action**

Postal officials may take appropriate disciplinary measures to correct violations of the regulations referred to in 665.

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# All Ind + MVA

Sum of CFY	05Type				Grand Total
PFC	1-MOTOR VEHICLE	2- NATURAL EVENT	3- INDUSTRI AL	4-OTHER	
553-NORTHLAND PFC	477	3	1331	129	1940
370-TENNESSEE PFC	701	1	1179	50	1931
980-SEATTLE PFC	520	4	1236	139	1899
335-SUNCOAST PFC	609	1	1120	108	1838
400-KENTUCKIANA PFC	617	0	963	166	1746
530-LAKELAND PFC	408	2	1224	96	1730
060-CONNECTICUT VALLEY PFC	439	3	1166	75	1683
020-GREATER BOSTON PFC	533	1	1103	46	1683
440-NORTHERN OHIO PFC	454	3	1104	89	1650
752-DALLAS PFC	553	6	879	189	1627
170-CENTRAL PENNSYLVANIA PFC	402		1071	116	1589
080-SOUTH JERSEY PFC	439	0	1052	59	1550
450-CINCINNATI PFC	408		978	120	1506
926-SANTA ANA PFC	446	0	983	56	1485
780-RIO GRANDE PFC	542	0	857	80	1479
070-NORTHERN NJ PFC	433	6	943	77	1459
640-MID-AMERICA PFC	469	1	896	93	1459
460-GREATER INDIANA PFC	536		836	67	1439
270-GREENSBORO PFC	492	1	879	60	1432
630-GATEWAY PFC	391	0	938	65	1394
300-ATLANTA PFC	597	0	752	37	1386
280-MID-CAROLINAS PFC	450	1	827	99	1377
200-CAPITAL PFC	501	2	822	28	1353
330-SOUTH FLORIDA PFC	515	0	781	44	1340
600-NORTHERN ILLINOIS PFC	406	0	877	53	1336
190-PHILADELPHIA METROPOLITAN PFC	396	1	890	39	1326
604-CENTRAL ILLINOIS PFC	406	1	799	117	1323
970-PORTLAND PFC	371	2	838	96	1307
800-COLORADO/WYOMING PFC	408	2	825	66	1301
770-HOUSTON PFC	500	0	722	34	1256
150-WESTERN PENNSYLVANIA PFC	335	1	842	71	1249
913-SIERRA COASTAL PFC	412	1	702	115	1230

# INDUSTRIAL

Sum of CFY PFC	05Type				Grand Total
	1-MOTOR VEHICLE	2- NATURAL EVENT	3- INDUSTRI AL	4-OTHER	
553-NORTHLAND PFC	477	3	1331	129	1940
980-SEATTLE PFC	520	4	1236	139	1899
530-LAKELAND PFC	408	2	1224	96	1730
370-TENNESSEE PFC	701	1	1179	50	1931
060-CONNECTICUT VALLEY PFC	439	3	1166	75	1683
335-SUNCOAST PFC	609	1	1120	108	1838
440-NORTHERN OHIO PFC	454	3	1104	89	1650
020-GREATER BOSTON PFC	533	1	1103	46	1683
170-CENTRAL PENNSYLVANIA PFC	402		1071	116	1589
080-SOUTH JERSEY PFC	439	0	1052	59	1550
926-SANTA ANA PFC	446	0	983	56	1485
450-CINCINNATI PFC	408		978	120	1506
400-KENTUCKIANA PFC	617	0	963	166	1746
070-NORTHERN NJ PFC	433	6	943	77	1459
630-GATEWAY PFC	391	0	938	65	1394
640-MID-AMERICA PFC	469	1	896	93	1459
190-PHILADELPHIA METROPOLITAN PFC	396	1	890	39	1326
752-DALLAS PFC	553	6	879	189	1627
270-GREENSBORO PFC	492	1	879	60	1432
600-NORTHERN ILLINOIS PFC	406	0	877	53	1336
780-RIO GRANDE PFC	542	0	857	80	1479
150-WESTERN PENNSYLVANIA PFC	335	1	842	71	1249
970-PORTLAND PFC	371	2	838	96	1307
460-GREATER INDIANA PFC	536		836	67	1439
280-MID-CAROLINAS PFC	450	1	827	99	1377
800-COLORADO/WYOMING PFC	408	2	825	66	1301
200-CAPITAL PFC	501	2	822	28	1353
604-CENTRAL ILLINOIS PFC	406	1	799	117	1323
110-TRIBORO PFC	284	1	798	51	1134
330-SOUTH FLORIDA PFC	515	0	781	44	1340
852-ARIZONA PFC	374	3	768	74	1219
117-LONG ISLAND PFC	268	4	758	49	1079

# Motor Vehicle

Sum of CFY PFC	05Type				Grand Total
	1-MOTOR VEHICLE	2- NATURAL EVENT	3- INDUSTRI AL	4-OTHER	
370-TENNESSEE PFC	701	1	1179	50	1931
400-KENTUCKIANA PFC	617	0	963	166	1746
335-SUNCOAST PFC	609	1	1120	108	1838
300-ATLANTA PFC	597	0	752	37	1386
752-DALLAS PFC	553	6	879	189	1627
780-RIO GRANDE PFC	542	0	857	80	1479
460-GREATER INDIANA PFC	536		836	67	1439
020-GREATER BOSTON PFC	533	1	1103	46	1683
980-SEATTLE PFC	520	4	1236	139	1899
330-SOUTH FLORIDA PFC	515	0	781	44	1340
200-CAPITAL PFC	501	2	822	28	1353
770-HOUSTON PFC	500	0	722	34	1256
270-GREENSBORO PFC	492	1	879	60	1432
553-NORTHLAND PFC	477	3	1331	129	1940
640-MID-AMERICA PFC	469	1	896	93	1459
230-RICHMOND PFC	458	1	590	51	1100
440-NORTHERN OHIO PFC	454	3	1104	89	1650
280-MID-CAROLINAS PFC	450	1	827	99	1377
926-SANTA ANA PFC	446	0	983	56	1485
060-CONNECTICUT VALLEY PFC	439	3	1166	75	1683
080-SOUTH JERSEY PFC	439	0	1052	59	1550
350-ALABAMA PFC	438	0	657	96	1191
070-NORTHERN NJ PFC	433	6	943	77	1459
920-SAN DIEGO PFC	430	7	680	79	1196
700-LOUISIANA PFC	418	1	621	75	1115
913-SIERRA COASTAL PFC	412	1	702	115	1230
210-BALTIMORE PFC	410	0	665	33	1108
530-LAKELAND PFC	408	2	1224	96	1730
450-CINCINNATI PFC	408		978	120	1506
800-COLORADO/WYOMING PFC	408	2	825	66	1301
600-NORTHERN ILLINOIS PFC	406	0	877	53	1336
604-CENTRAL ILLINOIS PFC	406	1	799	117	1323

SENCE REVIEW

	A	B	C	F	G	H	I	J	K	L	M	N	O	R	S	T	U	W	X	Y	Z	AA
Total Hours	10,382	457	4,437																			
Total SIL Hours	30,940	1,066	3,824	40	4,359	3,366	3,433	1,029	9,911	1,341	1,259	31	183	1,811	24	259	551	1,970				
EAS SIL Hours	1,211	4,033	2,541	177	3,343	2,333	3,578	8,200	0	210	0	0	135	0	45	1,537	951	4,985				
Total SIL %	2.97	0.26	8.87	0.90	10.00	7.91	23.22	23.22	0.00	3.29	0.73	0.00	0.31	1.81	0.00	1.53	1.43	12.42				
EAS SIL %	0.01	0.89	0.57	0.01	0.75	0.66	0.80	0.80	0.00	0.03	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.04				
LWOP %	3.00	0.23	8.63	0.43	9.75	6.42	2.49	1.90	7.70	1.18	0.52	0.00	0.34	1.62	0.00	1.27	1.11	10.00				
Annual Leave	47,590	1,029	9,911	1,029	32,708	7,771	2,926	0.59	32,708	7,771	2,926	0.59	32,708	7,771	2,926	0.59	32,708	7,771				
AL %	10.20	2.28	22.34	2.82	73.88	17.28	6.92	0.00	33.00	5.43	2.28	0.00	0.83	4.83	0.00	3.00	2.77	23.22				
Other Leave	20,238	49,342	47,866	3,824	112,142	7,943	8,833	7,403	0	40	0	0	227	2,002	10	186	175	1,775				
Other %	4.92	10.99	10.82	0.86	26.28	6.43	2.32	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	14.56				
FMLA Dep Care %	1.18	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07				
FMLA Dep Care %	0.24	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07				
Total FMLA %	1.42	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14				
Total FMLA %	0.24	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07				
Non-FMLA Dep Care %	1.03	0.17	0.17	0.17	1.03	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17				
Non-FMLA Dep Care %	0.24	0.07	0.07	0.07	0.24	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07				
Total Non-FMLA Dep Care %	1.27	0.24	0.24	0.24	1.27	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24				
Total Non-FMLA Dep Care %	0.24	0.07	0.07	0.07	0.24	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07				
Unprotected SIL Col B-O	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568				
Unprotected SIL %	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00				
Total Absent Minus FMLA / DC	1,764	4,408	3,643	1,764	1,764	1,764	1,764	1,764	1,764	1,764	1,764	1,764	1,764	1,764	1,764	1,764	1,764	1,764				

DATE

	A	B	C	F	G	H	I	J	K	L	M	N	O	R	S	T	U	W	X	Y	Z	AA
Total Hours	462,025	18,283	4,251	1,306	4,071	3,823	3,591	32,708	7,771	2,926	0.59	32,708	7,771	2,926	0.59	32,708	7,771	2,926				
Total SIL Hours	53,364	3,863	3,863	3,863	3,863	3,863	3,863	3,863	3,863	3,863	3,863	3,863	3,863	3,863	3,863	3,863	3,863	3,863				
EAS SIL Hours	1,029	4,033	2,541	177	3,343	2,333	3,578	8,200	0	210	0	0	135	0	45	1,537	951	4,985				
Total SIL %	11.56	0.86	9.08	0.90	9.46	9.92	11.32	23.22	0.00	3.29	0.73	0.00	0.31	1.81	0.00	1.53	1.43	12.42				
EAS SIL %	0.22	0.89	0.57	0.01	0.75	0.66	0.80	0.80	0.00	0.03	0.00	0.00	0.00	0.00	0.00	0.01	0.01	0.04				
LWOP %	3.00	0.23	8.63	0.43	9.75	6.42	2.49	1.90	7.70	1.18	0.52	0.00	0.34	1.62	0.00	1.27	1.11	10.00				
Annual Leave	47,590	1,029	9,911	1,029	32,708	7,771	2,926	0.59	32,708	7,771	2,926	0.59	32,708	7,771	2,926	0.59	32,708	7,771				
AL %	10.20	2.28	22.34	2.82	73.88	17.28	6.92	0.00	33.00	5.43	2.28	0.00	0.83	4.83	0.00	3.00	2.77	23.22				
Other Leave	20,238	49,342	47,866	3,824	112,142	7,943	8,833	7,403	0	40	0	0	227	2,002	10	186	175	1,775				
Other %	4.92	10.99	10.82	0.86	26.28	6.43	2.32	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	14.56				
FMLA Dep Care %	1.18	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07				
FMLA Dep Care %	0.24	0.07	0.07	0.07	0.24	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07				
Total FMLA %	1.42	0.14	0.14	0.14	1.42	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14	0.14				
Total FMLA %	0.24	0.07	0.07	0.07	0.24	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07				
Non-FMLA Dep Care %	1.03	0.17	0.17	0.17	1.03	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17	0.17				
Non-FMLA Dep Care %	0.24	0.07	0.07	0.07	0.24	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07				
Total Non-FMLA Dep Care %	1.27	0.24	0.24	0.24	1.27	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24	0.24				
Total Non-FMLA Dep Care %	0.24	0.07	0.07	0.07	0.24	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07	0.07				
Unprotected SIL Col B-O	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568	4,568				
Unprotected SIL %	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00	10.00				
Total Absent Minus FMLA / DC	48,594	171,871	117,283	48,594	48,594	48,594	48,594	48,594	48,594	48,594	48,594	48,594	48,594	48,594	48,594	48,594	48,594	48,594				

	B	C	D	E	F	G	H	I	J	K	L	M
1	ADJUSTED OVERTIME USAGE											
2												
3	Total Workhours		Week 47B									
4		Actual Workhours	Plan Workhours	Plan Var	% Plan	SPLY Workhours	Actual % SPLY	Plan % SPLY	Actual OT	What OT Should Have Been	Actual OT%	OT% Should Have Been
5	PFC											
6	ATLANTA	405,970	387,650	18,320	4.7%	431,345	-5.9%	-10.1%	21,190	2,870	5.2	0.7
7	SOUTH GEORGIA	194,962	192,178	2,784	1.4%	198,964	-2.0%	-3.4%	9,598	6,814	4.9	3.5
8	NORTH FLORIDA	265,601	259,415	6,186	2.4%	278,101	-4.5%	-6.7%	16,143	9,957	6.1	3.8
9	SOUTH FLORIDA	409,401	380,979	28,422	7.5%	433,050	-5.5%	-12.0%	35,680	7,258	8.7	1.9
10	SUNCOAST	547,927	529,456	18,471	3.5%	567,620	-3.5%	-6.7%	28,270	9,799	5.2	1.9
11	ALABAMA	303,348	297,573	5,775	1.9%	309,049	-1.8%	-3.7%	15,922	10,147	5.2	3.4
12	TENNESSEE	421,815	416,914	4,901	1.2%	438,646	-3.8%	-5.0%	21,456	16,555	5.1	4.0
13	MISSISSIPPI	166,627	170,363	-3,736	-2.2%	169,686	-1.8%	0.4%	5,237	5,237	3.1	3.1
14	SEA 977	68,697	89,584	-20,887	-23.3%	71,348	-3.7%	25.6%	4,510	4,510	6.6	6.6
15	SOUTHEAST AREA	2,784,348	2,724,112	60,236	2.2%	2,897,809	-3.9%	-6.0%	158,006	97,770	5.7	3.6
16												
17	Function 1 - Mail Processing											
18	PFC	Actual Workhours	Plan Workhours	Variance	% Plan	SPLY Workhours	Actual % SPLY	Plan % SPLY	Actual OT	What OT Should Be	Actual OT%	OT% Should Have Used
19	ATLANTA	71,859	60,879	10,980	18.0%	81,051	-11.3%	-24.9%	4,124	0	5.7	0.0
20	SOUTH GEORGIA	20,358	18,768	1,590	8.5%	22,535	-9.7%	-16.7%	1,688	98	8.3	0.5
21	NORTH FLORIDA	43,804	40,340	3,464	8.6%	49,912	-12.2%	-19.2%	3,979	515	9.1	1.3
22	SOUTH FLORIDA	63,766	53,596	10,170	19.0%	72,165	-11.6%	-25.7%	3,234	0	5.1	0.0
23	SUNCOAST	99,262	84,534	14,728	17.4%	104,503	-5.0%	-19.1%	4,360	0	4.4	0.0
24	ALABAMA	42,885	36,852	6,033	16.4%	45,014	-4.7%	-18.1%	4,098	0	9.6	0.0
25	TENNESSEE	69,116	62,309	6,807	10.9%	74,121	-6.8%	-15.9%	6,451	0	9.3	0.0
26	MISSISSIPPI	11,459	10,851	608	5.6%	12,949	-11.5%	-16.2%	636	28	5.6	0.3
27	SOUTHEAST AREA	465,963	413,719	52,244	12.6%	505,969	-7.9%	-18.2%	32,305	0	6.9	0.0
28												
29	Function 2B - City Delivery											
30	PFC	Actual Workhours	Plan Workhours	Variance	% Plan	SPLY Workhours	Actual % SPLY	Plan % SPLY	Actual OT	What OT Should Be	Actual OT%	OT% Should Have Used
31	ATLANTA	103,840	100,654	3,186	3.2%	107,131	-3.1%	-6.0%	10,310	7,124	9.9	7.1
32	SOUTH GEORGIA	43,350	42,455	895	2.1%	43,538	-0.4%	-2.5%	4,715	3,820	10.9	9.0
33	NORTH FLORIDA	69,708	64,949	4,759	7.3%	70,815	-1.5%	-8.3%	8,105	3,346	11.6	5.2
34	SOUTH FLORIDA	219,070	204,944	14,126	6.9%	221,614	-1.1%	-7.5%	26,492	12,366	12.1	6.0
35	SUNCOAST	182,625	179,542	3,083	1.7%	187,270	-2.5%	-4.1%	17,348	14,265	9.5	7.9
36	ALABAMA	70,129	68,668	1,461	2.1%	70,915	-1.1%	-3.2%	6,669	5,208	9.5	7.6
37	TENNESSEE	100,345	98,983	1,362	1.4%	103,995	-3.5%	-4.8%	8,571	7,209	8.5	7.3
38	MISSISSIPPI	31,661	32,557	-896	-2.8%	32,005	-1.1%	1.7%	2,295	2,295	7.2	7.2
39	SOUTHEAST AREA	820,728	794,446	26,282	3.3%	837,303	-2.0%	-5.1%	84,505	58,223	10.3	7.3
40												
41												
42												
43												
44												
45	Function 4 - Customer Service											
46	PFC	Actual Workhours	Plan Workhours	Variance	% Plan	SPLY Workhours	Actual % SPLY	Plan % SPLY	Actual OT	What OT Should Be	Actual OT%	OT% Should Have Used
47	ATLANTA	86,707	59,979	26,728	44.7%	74,796	-10.8%	-19.8%	3,152	0	4.7	0.0
48	SOUTH GEORGIA	31,440	31,351	89	0.3%	33,491	-6.1%	-6.4%	1,873	1,784	6.0	5.7
49	NORTH FLORIDA	37,361	37,052	309	0.8%	41,396	-9.7%	-10.5%	2,315	2,006	6.2	5.4
50	SOUTH FLORIDA	54,868	50,007	4,861	9.9%	64,229	-14.4%	-22.1%	4,225	0	7.7	0.0
51	SUNCOAST	73,532	70,492	3,040	4.3%	82,488	-10.9%	-14.5%	3,971	931	5.4	1.3
52	ALABAMA	41,359	42,637	-1,278	-3.0%	44,889	-7.9%	-5.0%	2,530	2,530	6.1	6.1
53	TENNESSEE	52,608	52,683	-75	-0.1%	58,766	-10.5%	-10.4%	2,753	2,753	5.2	5.2
54	MISSISSIPPI	28,464	31,721	-3,257	-10.3%	30,261	-5.9%	4.8%	1,544	1,544	5.4	5.4
55	SOUTHEAST AREA	386,439	380,745	5,694	1.5%	430,396	-10.2%	-11.5%	22,363	16,669	5.8	4.4



**Lucas, Monica L - Nashville, TN**

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**From:** Cannon, Jerri R - Nashville, TN  
**Sent:** Friday, September 24, 2010 11:03 AM  
**To:** Lucas, Monica L - Nashville, TN  
**Subject:** RE: Grievance TODAY

No. This is not applicable. No policies, manuals or work standards were changed.

---

**From:** Lucas, Monica L - Nashville, TN  
**Sent:** Friday, September 24, 2010 9:28 AM  
**To:** Cannon, Jerri R - Nashville, TN  
**Subject:** Grievance TODAY  
**Importance:** High

Labor didn't have to fill out a PS Form 630 concerning the change in discipline did they??

Monica Lucas  
Manager, Customer Service  
Main Office Window Service  
Formal Step A Representative  
Nashville TN 37230-9715  
615-872-5749



# Policy Update Issuance Approval

Date of Request

Route to the Following Executives:		Kind of Issuance (Check one)
1.	5.	<input type="checkbox"/> Revised    ISM
2.	6.	<input type="checkbox"/> New <input type="checkbox"/> Revised    HBK IS- _____
3.	7.	<input type="checkbox"/> New <input type="checkbox"/> Revised    Reg. 39 CFR
4.	8.	<input type="checkbox"/> New <input type="checkbox"/> Revised    Other: _____
Title of Policy Update (Subject)		Originating Group/Office
Originator Name	Telephone Number (Include area code)	Room Number
Contact Name	Telephone Number (Include area code)	Room Number

List directives rescinded and describe how issuance changes existent procedures.

If this policy update changes a manual, handbook, or other published regulation directly relating to wages, hours, or working conditions, Labor Relations clearance has been obtained.	<input type="checkbox"/> N/A <input type="checkbox"/> Date cleared _____
If this policy update changes a manual, handbook, or other published regulation directly relating to customer or employee information, the Privacy Office has been contacted for comments	<input type="checkbox"/> N/A <input type="checkbox"/> Date comments received _____
Changes Must be Made to:	
<input type="checkbox"/> Table of Contents <input type="checkbox"/> ISIS	<input type="checkbox"/> Handbook
	<input type="checkbox"/> Number _____
Does issuance change current forms? (If "Yes", enter affected form numbers.)	
<input type="checkbox"/> No <input type="checkbox"/> Yes. (New form(s) processed through Information Policies and Procedures per ASM.)	

Concurrence/Comments								
	1.	2.	3.	4.	5.	6.	7.	8.
I Concur (Reviewer's Initials)								
Date								
See my Comments Below (Reviewer's Initials)								
Date								

Comments (Use this space, and the reverse if necessary. Do not use a routing slip. Where specific changes are suggested, attach a marked-up copy of the issuance or the affected pages.)

Approved by	Date Clearance Completed (Entered by originator)
	Date Approved



NB-N-4298-D  
7/31/75 GAMSER

In the Matter of the Arbitration Between

NATIONAL ASSOCIATION OF LETTER CARRIERS,  
AFL-CIO

-and-

UNITED STATES POSTAL SERVICE

Case No. NB-N-4298-D  
J. Kwiat, Grievant  
Radio City Station, N.Y.

OPINION AND AWARD

Appearances:

For the Union: - Mr. Ralph Merigliano, President, N.Y. State  
Letter Carriers, Local Bus. Agent, NALC

Mr. Jack Kwiat, Grievant

For the USPS: - Stuart A. Abramson, Esq., Senior Ass't Reg.  
Labor Counsel, Labor Law Division

Mr. Sidney I. Sicker, Regional General Mgr.  
Arb. Division, Northeast Region

Background:

Pursuant to the pertinent provisions of Article XV, of the collective bargaining agreement, dated July 21, 1973, the above-referenced case was certified to arbitration on March 31, 1975.

The undersigned was duly designated to act as arbitrator in this proceeding and the hearing was held on July 25, 1975, in New York, N.Y. At the hearing, both parties were given full opportunity to present testimony, other evidence and argument in support of their respective contentions. The grievant was represented as indicated above and also appeared and testified on his own behalf.

The Issue:

On November 7, 1974, the USPS served a removal notice on the grievant herein. He was advised that his discharge was to be effective on December 20, 1974, and of his right to appeal this action. In due course, an appeal was perfected by his Union, and, as stated above, the grievance raised on behalf of the grievant was brought on for arbitration after being processed through the preliminary steps set forth in the Agreement.

In the grievance filed on November 18, 1974, and in the subsequent presentation of the case, the Union alleged that the USPS did not demonstrate "just cause", as defined in Article XVI, for the termination of J. Kwiat, a Regular Carrier assigned to Radio City Station who was working on Tour 2 at the time of his discharge. The issue thus presented is whether just cause did exist to discharge this grievant on or about December 20, 1974, and if not, what should the appropriate disposition of this case be.

Statement of the Case:

Jack Kwiat, as stated above, was a Regular Carrier assigned to the Radio City Station. At the time of his discharge, he was working on Tour Two (2) and was assigned to foot collection for about one year prior to that time. He was first employed by the USPS on January 8, 1973, and thus had just short of two years of service when he was terminated.

The triggering incident, which led to his removal from service, was his failure to make a collection from the letter box located at 50th Street and Fifth Avenue, which was his regular stop #17. This failure was observed during a routine check conducted by a Route Examiner, on Tuesday, September 24, 1974. The mail in this Dual/Air Mail Box was scheduled to be collected at 2:15 PM, and the grievant did have until 3:00 PM, to make this pickup. When the collection had not been made by 3:05 PM, the Route Examiner called the Station and another Carrier was dispatched to make the collection. This was done at 3:40 PM.

During the processing of this case, and at the arbitration hearing, neither the grievant nor the Union on his behalf, contested the fact that he had failed to make the collection as charged on that date and at that box.

The charge against this grievant, as set forth in the Notice of Removal (NY Form P2-49IX, January 1972), indicated that in addition to the failure to make the collection, as set forth above, the decision to discharge was also based upon a consideration of this employee's past disciplinary record.

That record was placed in evidence and the information contained in the employee's file as presented was not disputed by the grievant nor his spokesman:

November 16, 1973- failed to collect mail-1 day suspension

February 21, 1974-failed to collect mail- 14 day suspension

May 9, 1974-failed to collect mail-28 day suspension (reduced to ten working days, as full disposition prior to arbitration, on May 21, 1975)

In addition, the Postal Service also cited the following elements in Kwiat's past record which were also considered in determining the appropriate penalty for his last offense:

On June 7, 1973, orally counselled for improper uniform

On November 9, 1973, given oral counselling for excessive absence.

On January 14, 1974, issued a Letter of Warning for disrespect toward immediate Supervisor.

On July 16, 1974, given a suspension for "no call" for absence.

On September 19, 1974, given a Letter of Warning for failure to report for duty.

None of the disciplinary actions, noted above, were appealed or contested by the grievant except for the twenty eight day suspension for the collection failure on May 21, 1974. In a pre-arbitration discussion of that case, the parties agreed that the twenty eight calendar days of suspension would be reduced to ten working days, and the Union would withdraw its request for arbitration. This disposition was agreed to on May 21, 1975 or shortly thereafter, which was some five months after the effective date of his discharge for the offense with which we are concerned in this proceeding.

#### Contentions of the Parties:

The Postal Service contended that it had just cause to discharge Jack Kwiat because his record indicated that he did not respond in a positive way to the progressive disciplinary action that was attempted. The spokesman for the Service asserted that Kwiat never expressed himself as being troubled or beset with problems that prevented him from properly performing his duties prior to the processing of this case. In the many counselling sessions held with his supervisors, Kwiat never indicated that he needed assistance or time off to cope with personal problems which were causing his work performance to suffer and exposing him to disciplinary cation.

The Postal Service argued that by his conduct on the job this employee was determined to decide when mail would be collected and when it would not be collected. The importance of complete and timely collections from all boxes on the collection route did not have to be emphasized since it was obvious. The attempts to impress Kwiat with the need to make collections in that manner were obviously unavailing, judged by his disciplinary record; and thus discharge was

On his behalf, the Union argued that this grievant could not contest the fact that he failed to collect from this Dual/Air Box on his route. He had many more stops to make before his tour ended and was pressed for time. Since he regarded this as a light box, or one which could be collected by the carrier on the next shift without too much mail piling up in it, he (Kwiat) decided to skip this box on September 24, 1974, when his collection was under surveillance. The Union conceded that this was an error in judgment, but discharge was an excessive penalty for such an offense under the existing circumstances.

In mitigation of the offense, the Union also argued that Kwiat was beset with personal problems that caused him not to exercise his best judgment on September 24th, and also not to conscientiously pursue his right to appeal the previous disciplinary actions which were taken against him. The only appeal was taken against the 28 day suspension he received for the May 9th, 1974, collection failure. That case, according to the Union, lacked merit and could have been successfully upset in arbitration but the lateness of the appeal made a modification of penalty settlement in order.

Finally, the Union stated that Kwiat's suspension from December of 1974 until the date of the arbitration hearing should be considered a sufficient and appropriate penalty in view of the mitigating and other circumstances revealed during the course of the hearing. The Union spokesman pointed out that Kwiat is a young man who has an abiding interest in making a career in the Postal Service, and he should be given an opportunity to prove that he can become a valuable employee. Based on that spokesman's lengthy experience in observing career employees, he was sure that Kwiat had learned his lesson, after this traumatic experience of being discharged, and, if given the opportunity, could really do a creditable job.

#### Opinion:

The question of whether just cause for the discharge of this employee existed must be judged herein if possible by criteria for such a determination agreed to by the parties. Article XVI articulates the views of the parties to the Agreement on this question. There do not appear to be any procedural deficiencies in the manner in which this discharge was carried out nor were any cited by the Union. Thus it was established that Kwiat did receive the consideration and due process provided in Section 3 of Article XVI for employees suspended more than 30-days or discharged.

Additionally, the preliminary paragraph in Article XVI is also concerned with the concept of just cause. It states that discipline should be corrective rather than punitive. The disciplinary record compiled by this grievant and the manner in which this discipline was administered must be examined to determine if the Postal

The testimony and other evidence adduced during the course of the arbitration proceeding substantiated the fact that Kwiat, a relatively short term employee, during his tenure on the job did receive counselling in proper job performance for a variety of reasons on a number of occasions. The testimony of his immediate supervisors also established that Kwiat was urged to seek assistance and guidance when questions arose about the proper course of conduct which he should pursue in carrying out his duties. As to his specific penchant for deciding which boxes warranted being collected and which could be left for subsequent attention, he was not only counseled about this type of misconduct, but, as the record reveals, he was subjected to progressively severe disciplinary action in the hope that he would respond and recognize the seriousness of such an offense.

Unfortunately, the disciplinary record compiled by this grievant is stark testimony to the fact that he did not respond to the corrective efforts that were attempted. This grievant just had no excuse to justify his failure to make the collection from the box between 2:00 PM and 3:05 PM. He was back at the Station at or before the time he was due to go off duty on that shift. He decided on his own how to spend his time making his collection so he could punch out on time but leave work and mail behind for someone else to perform and dispatch. The deleterious impact of such job performance on the Service's ability provide efficient mail delivery need not be explained since it is apparent. From his conduct on the job it must be concluded that Kwiat just did not understand this, or, if he did, he did not care about the fact collection failures were serious offenses. The progressive discipline employed by the Service did not impress this fact upon him either.

In view of his poor record, compiled within a relatively brief career, and in further view of his response to the disciplinary actions taken and the corrective efforts of his immediate supervisors, it must be found that just cause to terminate this employee for the collection failure on September 24, 1974, and previous record existed.

This determination is made with great reluctance in view of the opinion expressed by an experienced and sincere spokesman for the grievant with regard to his future potential value to the USPS. Nevertheless, the cold facts of the record before the undersigned cannot be ignored, in view of the contractual requirements discussed above, in order to provide deference to that opinion, and this grievance must be denied.

A W A R D

The grievance raised on behalf of J. Kwiat, in Case No. NB-N-4298, is hereby denied.

RECEIVED

AUG 4 1975

## STEP B DECISION

### STEP B TEAM

Paul D. Robbins, USPS  
Fred Qualls, NALC

District: Tennessee  
DRT Number: 442-10

Decision:	<b>IMPASSED</b>
USPS number:	H06N-4H-C 10314794
Grievant:	Class Action
Branch Grievance Number:	419-10-088
Branch:	419
Installation:	Knoxville
Delivery Unit:	Installation
State:	Tennessee
Incident Date:	Ongoing
Date Informal Step A Initiated:	08/23/2010
Formal Step A Meeting Date:	09/03/2010
Date Received at Step B:	09/10/2010
Step B Decision Date:	09/24/2010
Issue Code:	19.2000 05.0000 34.000
NALC Code:	508099 100929

### ISSUE

1. Did Management violate Articles 3 and/or 5 and/or 16 and/or 19 and/or 34 of the National Agreement and/or Section 115 of the M-39 Handbook and/or Section 665 of the ELM, via Article 19 of the National Agreement when they threatened the Letter Carriers with the implementation of a discipline policy change in which discipline would no longer be progressive/corrective, rather it would now be single track, punitive and escalating for unrelated offenses? And if so, what should the remedy be?

### DECISION

The Dispute Resolution Team (DRT) has decided to declare an **IMPASSE**. The NALC National Business Agent may appeal this grievance to arbitration within fourteen (14) days after receipt of this joint report.

The Step B team has considered all arguments and evidence in the case file and any of this material may be cited in the event of arbitration.

### EXPLANATION

The Formal Step A parties agreed to the following for Block 16 of the PS form 8190:

1. There were eleven grievances filed in the Knoxville Installation concerning this same issue (single track discipline). Rather than having eleven (11) separate GATS Numbers and discussing eleven (11) separate grievances at Formal Step

2. The parties agree all time limits have been met and all Stewards are properly certified (UM-1 and (UM-2).

**UNION'S POSITION:**

The union contends that management has violated multiple Articles of the National and/or Handbooks and Manuals when they threatened letter carriers with the implementation of a discipline policy change in which discipline would no longer be progressive/corrective, rather it would become single track, punitive and escalating for unrelated offenses.

Management cited and included a Regional Arbitration decision (M-8) (A06M-1A-C 08194185), and quoted from the decision. The union notes:

1. The NPMHU decision cited by management is a Regional decision.
2. The decision is from the NPMHU union which does not have the NALC agreement with the Postal Service, the JCAM, the M-39 Handbook, nor same agreements, decisions and other rulings as does the NALC.

Again, the above decision clearly does not have any bearing on this instant grievance. It was for the NPMHU union (craft). Additionally, it is a Regional Arbitration case (Kearney, New Jersey).

Management also erroneously attempted to claim two other decisions had relevance in this grievance. The union notes:

1. These APWU decisions cited by management are Regional decisions.
2. These decisions are from the union APWU which does not have the NALC agreement with the Postal Service, the JCAM, the M-39 Handbook, nor same agreements, decisions and other rulings as does the NALC.

Clearly, this instant grievance must be decided utilizing the National Association of Letter Carriers (NALC) agreement, the JCAM, M-39 Handbook along with all other appropriate Handbooks, Manuals and other agreements between the NALC and the USPS.

Other unions' regional arbitration decisions are irrelevant to this grievance.

Management has made the claim they sent a letter from Greg Gamble (signed by Kevin J. Augustine), dated February 12, 2010 concerning a "one track system" for discipline to six Postal Unions. Management has presented no evidence that the NALC was sent the letter that was "supposedly" written on February 12, 2010. The union contends the letter was not received by the NALC.

District Manager Gamble did, at a later date, declare his intention to implement a single track of discipline in the TN district. This instant grievance file contains statements from fifty one Letter Carriers describing being intimidated by the declaration by Mr. Gamble (which was passed along to the workroom floor via a "Service Talk"). These statements

also disclosed that in the extended time they had worked at the Postal Service, many approximately 30 years, there had never been a "single track" for discipline.

A letter from **Mr. Gamble dated June 8, 2010** reads in part as follows:

"Effective Saturday, July 10, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies..."

Accompanying the above letter was a **"Service Talk"** entitled "Policy Change for Disciplinary Action" which has been given in several Knoxville Stations. It states in part the following:

"Effective Saturday, July 10, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies..."

On **June 17, 2010**, NALC Region 8 National Business Agent **Low Drass** sent a letter to **Mr. Gamble**, which reads as follows:

"Dear Greg,

I am in receipt of your letter dated June 8, 2010 regarding a single track of discipline for unrelated infractions.

First of all, neither I nor anyone else who works in my office has any record or recollection of receiving a letter from you dated February 12, 2010. It is also significant to note that you and I met on April 8, 2010...but never even brought this issue up.

That aside, your letter recognizes that you are attempting to change the current system of discipline as stated in the National Agreement. For instance, Article 16, Section 1 of the National Agreement states in relevant part,

**"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive."**

Further, Section 115.1 of the M-39 Handbook states in relevant part,

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

The M-39 Handbook is also part of the National Agreement via Article 19.

It is the position of the NALC that the announcement of a change to the current system of discipline would attempt to change the unambiguous language in the National Agreement referenced above and violates the past practice provisions as it relates to clarification of contract language as considered in Article 5 of the National Agreement. The JCAM at page 5-3 states:

**"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



Therefore any such change would have to be negotiated at the National Level during National Negotiations.

It is also the position of the NALC that the current system of discipline is a work standard. Therefore, any notification of change/changes in this work standard would have to be made at the National Level via the provisions contained in Article 34 of the National Agreement.

In closing, I must say that it is regrettable that you would attempt to use the financial situation of the Postal Service to justify circumventing the provisions of the National Agreement as described in your letter.

It seems to me we should be working together to both generate revenue and reduce the costs of disputes. It is my opinion that any attempt to implement the change to the current disciplinary system as stated in your letter will have the opposite effect.

If you have any questions, or would like to discuss this matter, please feel free to contact me."

The Union representative requested a "written definition of single track discipline for unrelated infractions" after the Service Talk had been given. USPS Labor Relations presented the following via e mail "If she does request it, please inform the union that at this time, there is no definition to put out"

Obviously, management was unable or unwilling to explain what they had declared to be their new and declared policy.

On June 28, 2010 Mr. Gamble sent a letter to the NALC and other unions which reads in part as follows:

"The Tennessee District is considering implementation of a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies..."

The June 28 letter also contains the following:

"...All previous correspondence relating to this issue is hereby rescinded..."

On July 6, 2010, NALC Region 8 National Business Agent Lew Drass sent a certified letter to Mr. Gamble pointing out the same contractual violations as Mr. Drass' letter of June 17, 2010."

On July 29, 2010 District Manager Gamble sent a letter which reads in part as follows:

"...it is my decision to implement a single track of discipline for unrelated infractions in the Tennessee District effective September 1, 2010. The current system of using three (3) tracks (performance, attendance, conduct) has not been successful in correcting employee deficiencies..."

On August 2, 2010, Mr. Gamble prepared the 2<sup>nd</sup> Service Talk entitled: Policy change for Disciplinary Action". The Service talk was given at all the stations in the Knoxville Installation and was posted at all the stations. Mr. Gamble was in effect changing the policy on discipline, thus changing Article 16 of the National Agreement.

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Note that the Service Talk of June and the Service Talk of August are almost identical. The only difference in the two is the implementation date and the removal of, *"With the current financial state of the Postal Service, declining mail volume and economic crisis nationwide"*. Mr. Gamble didn't change anything, despite the NALC's efforts to inform him of the various contractual violations.

On page 15-10 of the JCAM, the parties agreed to the following:

"The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end".

On August 30, 2010 NALC National Business Agent Lew Drass sent the following letter to District Manager Gamble which reads as follows:

"Dear Greg,

I am in receipt of your letter dated July 29, 2010 regarding your decision to change the current system of using 3 tracks (performance, attendance, conduct) to administer Article 16 of the National Agreement, to a single track of discipline for unrelated infractions.

You are (or should be) well aware that the current system used by the Postal Service to decide and issue discipline in the Tennessee District has been in existence for decades and has been the source of great debate via the grievance-arbitration procedure for that same period of time.

The notion of changing the system referenced above that has been in place for decades to a one-track system for unrelated infractions takes this debate to a whole new level.

I must inform you that the National Agreement as currently written does not permit you to make such a decision.

First and foremost, Article 5 of the National Agreement was not applied correctly here. I tried to explain this to you in my letter dated June 17 and July 6, 2010 to no avail, but I'll try again.

Page 5-1 - 5-4 of the JCAM (enclosed) represents the National Parties' general agreement on the subject of past practice. On p, 5-3, the National Parties break the definition and rules to change "Past Practice" issues into three categories. They are:

1. To Implement Contract Language
2. To Clarify Unambiguous Language
3. To Implement Separate Conditions of Employment

In the NALC's view, the practice of using a 3 track system to decide and issue discipline over a period of decades is clearly a practice designed "To Implement Contract Language" such as that contained in Article 16, Article 19, Section 115 of the M-39 Handbook, and Article 34 for starters.

If the argument is that the language in the above stated provisions of the National Agreement is ambiguous, then the practice at issue here would fall into the "To Clarify Unambiguous Language" category.

Either way, the contractual path to attempt to change the current discipline system to a single track of discipline for unrelated infractions is shown in the JCAM on p. 5-3 where it states in relevant part,

**"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."**

The decision to treat the established past practice of using a multiple track discipline system as falling into the "To Implement Separate Conditions of Employment" category fatally flawed your attempts to make this change from the beginning.

The notion that the contract is silent on the issue of deciding, determining the level, issuing discipline, and resolving disputes that arise when discipline is issued is absurd.

However, just for the record, Article 5 wasn't even complied with had you been trying to change a past practice where the contract was silent.

The first letter I received regarding this matter was to inform me that you had already made your decision and the change would be implemented July 10, 2010. It is interesting that you had already begun to implement service talks to announce this change to all employees. I responded to your letter on June 17, 2010 and informed you that what you were doing was a violation of the National Agreement and I had never been informed about any of this.

I received a letter from you in early July rescinding the previous actions and announcing the same exact change. I responded to your letter by letter dated July 6, 2010 and once again informed you that what you were doing is a violation of the National Agreement.

I also met with you via the telephone to discuss this matter. I explained to you that in the NALC's view, what you were doing was a clear violation of the National Agreement. We talked about the matter for a few minutes, but that was it.

Despite the fact that the approach you took to attempt to change the past practice at issue was misplaced, there was certainly no "good faith" bargaining efforts made on the part of the Postal Service. As a matter of fact, there was no bargaining effort of any kind made by the Postal Service in this situation.

It is quite clear that your final decision was made before you neglected to send me the letter announcing the change back in February. The rest of this was merely a formality, and therefore, nothing more than a sham.

In addition to the multiple violations of Article 5, the decision to change from a 3 track discipline system to a single track discipline system for unrelated infractions violates several other provisions of the National Agreement such as, but not limited to,

Article 16, Section 1 of the National Agreement states in relevant part,

**"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive."**

Further, Section 115.1 of the M-39 Handbook states in relevant part,

**"In the administration of discipline, a basic principle must be that discipline should be corrective in nature, rather than punitive. No employee may be**

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**must make every effort to correct a situation before resorting to disciplinary measures.”**

The M-39 Handbook is also part of the National Agreement via Article 19. Article 19 requires that any changes to handbooks must be made at the National Level.

It is also the position of the NALC that the current system of discipline is a work standard. Therefore, any notification of change/changes in this work standard would have to be made at the National Level via the provisions contained in Article 34 of the National Agreement.

In closing, I must say that it is regrettable that you would attempt to use the financial situation of the Postal Service to justify circumventing the provisions of the National Agreement as described in your letter.

This situation mirrors the Postal Service's misguided attempt to implement the National Reassessment Process (NRP) in the Tennessee District in such a way as to completely ignore your contractual obligations as agreed to by The United States Postal Service and the National Association of Letter Carriers.

I'm requesting that you reconsider your decision and adhere to the agreed to provisions in the National Agreement with respect to this situation instead of just making things up as you go along like the Tennessee District did with NRP.

It seems to me that we should be working together to both generate revenue and reduce the cost of disputes. It is my opinion that any attempt to implement the change to the current disciplinary system as stated in your letter will have the opposite effect.

I want to thank you in advance for your consideration in this matter. If you have any questions, or would like to discuss this matter, please feel free to contact me.”

In the case at bar, the NALC National Business Agent initially **attempted twice to point out the contractual violations of District Manager Gamble's actions** to avoid numerous grievances from being filed. **District Manager Gamble ignored Mr. Drass' letters** and consequently numerous grievances are likely to be filed throughout the Tennessee district. The NALC NBA **tried a third time to convince District Manager Gamble to do the right thing** and rescind this absurd policy change.

This is not the first time a **Tennessee District Manager** has tried to implement something locally without going through the parties at the National Level. **Tennessee District printed post cards** instructing Postal customers to keep a watch on unsafe Letter Carriers and listed a toll-free number to call if they saw unsafe Letter Carriers. The Union grieved it, claiming management violated Article 19 and a Step 4 Settlement. The Step B Team **issued a cease and desist (twice)**. On 04/20/09, the Step B DRT ruled:

“The grievance file contains no documentation showing that these cards have previously been used anywhere or that they have been discussed/considered by the National Parties. The DRT agrees that if management chooses to utilize these cards in the future, they will submit a request to the Parties at the National Level for their consideration and concurrence or rejection...”

The DRT agrees the resolution for this grievance includes the same language as grievance number H06N-4H-C 09127600 and a cease and desist mailing the postcards until after concurrence by the National Parties

Therefore, this is further notice that future violations of these two decisions can result in monetary payments".

The Tennessee District had been instructed by the Step B DRT twice to obtain either concurrence or rejection from the Parties at the National level **before implementing local changes** which were inconsistent with the National Agreement and Postal Handbooks. The Tennessee District **has now implemented another local policy change** and has again not gone through the Parties at the National Level.

The grievance file contains statements from fifty-one letter carriers (many having over 30 years of Postal Service) who feel intimidated by Mr. Gamble's change in policy. Those **statements describe the multiple tracks of discipline and show concern with management changing the "past practice" (interpretation of the language in Article 16 of the National Agreement).**

Additionally:

The NALC Region 8 NBA addressed Article 5 in all three of his letters to District Manager Gamble. In his letter of August 30, 2010, the NBA significantly elaborated on the violations of Article 5 of the National Agreement.

Based on the letters District Manager Gamble has sent to the union and the content of the associated service talks, the union contends that District Manager Gamble's interpretation of Article 5 of the National Agreement is incorrect. The letters and service talk indicate District Manager Gamble is **implying a "silent contract"**. This is why he sent notification to the union(s). The contract, specifically; **Article 16.1 is not silent** regarding the administration of discipline. Neither is Section 115 of the M-39 Handbook. Both documents specifically state that discipline is to be corrective. District Manager Gamble's implementation of single track discipline is **not corrective**. In fact it is **entirely punitive**.

The union at Formal Step A cited two Step B decisions (shown above in this impasse) concerning Tennessee District's implementation of locally developed postcards. The parties at the National Level agreed to the following:

"A Step B decision established precedent only in the installation from which the grievance arose. For this purpose, precedent means that the decision relied upon in dealing with subsequent similar cases to avoid the repetition of disputes on similar issues that have been previously decided in that installation."

The Tennessee District's newest attempt to implement a local policy which violates the National Agreement and Postal Handbooks/Manuals is a **willful disregard of the Step B DRT Decisions cited above**.

On page 19-2 of the JCAM, the parties agreed to the following:

"Locally developed policies may not vary from nationally established handbook and manual provisions. (National Arbitrator Aaron...)"

The implementation of single track discipline **does vary** from established handbooks and manuals; and the National Agreement. Management violated Article 19 of the **National Agreement and the National Arbitrator Aaron Award cited in Article 19**.

and ELM into the National Agreement and makes them just as enforceable as the National Agreement.

Postmaster General John Potter wrote a Postal Directive dated February 23, 2009 which reads as follows:

"Our bond with our employees has never been more important than it is today. That bond is represented by the collective-bargaining agreements with our unions...but one thing cannot change. Our adherence to the provisions of our labor agreements. They are our word. They are our pledge of fairness to our employees.

It is up to each one of us to make sure that the changes we bring to the organization are changes for the better. Respecting and protecting the provisions of the collective bargaining agreements will help us do that".

The union contends management is in direct violation of PMG Potter's Policy Letter. Management knew the Union's position regarding single track discipline via the three letters from NALC Region 8 NBA Lew Drass cited above. Mr. Drass' pleas for contract compliance were ignored as management implemented the new policy anyway.

Section 665.16 of the ELM reads as follows:

"Employees are expected to maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment".

Section 665.24 of the ELM reads as follows:

"Similarly, there must be no tolerance of harassment, intimidation, or bullying by anyone at any level".

The union's contentions along with the 51 statements from letter carriers in this grievance file clearly show this new discipline policy **has created a hostile work environment** and has Letter Carriers in fear for their jobs. Clearly this new policy violates Sections 665.16 and 665.24 of the ELM.

The following is the relevant portion of the National Agreement concerning Article 3.

"While postal management has the right to "manage" the Postal Service, it must act in accordance with applicable laws, regulations, contract provisions, arbitration awards, letters of agreement, and memoranda".

The union has clearly shown the contractual provisions management has violated, along with Postal Handbook and Manual provisions. The union has also shown a National Arbitrator Aaron Award management violated and two Step B Decisions. The Union has shown memoranda from Postmaster General Potter which was violated. Management violated Article 3 of the National Agreement.

Article 16.1 of the National Agreement reads in part as follows:

"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive."

Section 115.1 of the M-39 Handbook was quoted above in the NALC NBA Drass' letter

"Managers can accomplish their mission only through the effective use of people. How successful a manager is in working with people will, to a great measure, determine whether or not the goals of the Postal Service are attained... Let the employee know what is expected... Let the employee explain his/her problem—listen if given a chance, the employee will tell you the problem..."

**District Manager Gamble has effectively removed local management's ability to be successful with working with their employees.**

Section 115.3 of the M-39 Handbook reads as follows:

"The manager has the responsibility to resolve as many problems as possible before they become grievances. If the employee's stand has merit, admit it and correct the problem. You are the manager, you must make decisions; don't pass this responsibility on to someone else". (Emphasis added)

With the District Manager's implementation of single track discipline for unrelated infractions, **local managers cannot "make decisions"**. The decision has already been made; by the Tennessee District Manager.

Section 115.4 of the M-39 Handbook reads as follows:

The National Agreement sets out the basic rules and rights governing management and employees in their dealings with each other, but it is the front-line manager who controls management's attempt to maintain an atmosphere between the employer and employee which assures mutual respect for each other's rights and responsibilities".

In this instant case, it is not the front-line manager who determines anything regarding discipline; it is the Tennessee District Manager. The statements in this grievance file from 51 letter carriers show they believe this new disciplinary policy is not conducive to maintaining a mutual respect atmosphere. The union contends documentation contained in this grievance file shows the new policy creates a hostile work environment.

The union also contends the implementation of this new policy violates the provisions of Article 34 of the National Agreement.

On page 2 of Block 18, management asserts that Manager Gamble's actions were proper because Section 665.6 of the ELM permits management to *"take appropriate disciplinary measures to correct violations of the regulations referred to in 665"*. This does not describe the terms or conditions by which the discipline must be administered. The union refers to **Article 16 of the National Agreement and Section 115 of the M-39 Handbook-Management of Delivery Services**. These documents **apply specifically to Letter Carriers/NALC**. The ELM includes all employees and all crafts. This is why it refers to discipline in such broad terms. The parties in this instant case are **not** dealing with the **APWU, NPMHU Collective Bargaining Unit Agreements**, but with the **National Agreement between the NALC and USPS which specifically addresses the terms and conditions under which discipline must be administered**. As the union has pointed out, the **new single track discipline for unrelated infractions policy from the Tennessee District Manager violates this**, among other provisions.

For all the reasons stated above and all the reasons and issues the union raised at Formal Step A of the grievance process, the union requests that the grievance be sustained and the employee be reinstated to his former position with back pay.

**MANAGEMENT'S POSITION:**

The Management Formal A representative effectively presented the Facts and Contentions. All of the arguments raised by Management at the Informal and Formal Step A meetings are brought forward to Step B and at Arbitration. The Step B representative would like to add the following:

Management contends that under the one track disciplinary process, discipline will continue to be corrective in nature and that there is no violation of Article 3 and/or 5 and/or 16 and/or 19 and/or 34 of the National Agreement and/or Section 115 of the M-39 Handbook and/or Section 665 of the ELM, via Article 19 of the National Agreement.

Management further maintains that letter carriers were in no way threatened through the communication of the service talk below.

AUGUST 2, 2010

**\*\*\*SERVICE TALK\*\*\***

**Policy Change for Disciplinary Action**

Effective Wednesday, September 1, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies. It is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently. **This does not change the guidelines set forth in Article 16.** Any currently active discipline may be cited in future disciplinary action request. (Emphasis added)

All Postal employees are required to comply with the rules of conduct outlined in Section 660 of the Employee and Labor Relations Manual (ELM). Employees may reference the Postal Service Standards of Conduct (Section 665) that require employees to:

1. Discharge their assigned duties conscientiously and effectively.
2. Obey the instructions of their Supervisors.
3. Maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment.
4. Be regular in attendance and report as scheduled.

These are just a few examples of requirements. In addition, the ELM states that Postal officials may take appropriate disciplinary measures to correct violations of the regulations referred to in Section 665.

The Employee and Labor Relations Manual (ELM) is available on the Postal Service website at [www.usps.com](http://www.usps.com). Please contact your immediate Supervisor or Manager if you have any questions.

**\*PLEASE POST\***

In this, and in all subsequent communications, management has clearly stated that this change "does not change the guidelines set forth in Article 16." Corrective action will remain corrective.



Article 16.1 of the National Agreement between United States Postal Service and National Association of Letter Carriers (NALC), AFL-CIO, reads as follows:

## ARTICLE 16 DISCIPLINE PROCEDURE

### 16.1 Section 1. Principles

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

This language exists verbatim in the National Agreement for each of the craft unions addressed in the letters from Tennessee District Manager, Greg Gamble. The Employee and Labor Relations Manual (ELM) is also applicable to National Postal Mail Handlers Union (NPMHU), American Postal Workers Union (APWU), National Rural Letter Carriers Association (NRLCA) and National Association of Letter Carriers. Although specific to NALC Letter Carriers, Section 115.1 of Handbook M-39 simply paraphrases the language in Article 16.1 and 16.2.

These facts are particularly important as consideration is given to the arbitration decisions included in this grievance file.

On page 12 through 13 of Arbitrator Benn's decision in USPS Case No. C0C-4R-D 5111, 5614, the following is stated in part:

"...Article 16.1 states that discipline must be "corrective in nature, rather than punitive". It does not state that the parties have agreed that separate disciplinary tracks are to be followed for attendance problems, insubordination, unacceptable conduct, etc. The logical extent of the Union's argument is that before an employee could be given a 14 day suspension for unacceptable conduct, there must be a letter of warning and a seven day suspension for that particular misconduct, even though, as here, the employee had a substantial prior disciplinary record with a letter of warning, seven day suspension and another 14 day suspension. **Under the Union's theory, an employee could engage in different areas of misconduct and, notwithstanding the existence of prior lengthy suspensions, only expect to receive a letter of warning if that is the first time that employee delved into that particular area of misconduct.** Absent clear direction from the Agreement that the parties intended such a result, I am unwilling to apply that notion of progressive discipline to this case.

**The basic function of progressive discipline is to rehabilitate the errant employee through the imposition of increasing amounts of discipline in order to get the message through to the employee that failure to comply with an employer's rules will not be tolerated..."** (Emphasis added)

On page 25 of Arbitrator Dobranski's decision in USPS Case No. C7C-4R-D 19906 and 20107, the following is stated in part:

"...In reaching my conclusion in this case, I did not rely upon the Postal Service argument that it need not follow separate pillars of progressive discipline for each category of offense. Although the Postal Service correctly asserts that it is

Management's Formal Step A correctly states in part the following:

"...It is management's position that under the one track disciplinary process, discipline would continue to be corrective in nature in order to satisfy all elements of just cause. Discipline would still be issued in a progressive fashion, issuing lesser discipline for a first offense and a pattern of increasingly severe discipline for succeeding offenses, the very definition of corrective discipline..."

Article 5 of the National Agreement between United States Postal Service and National Association of Letter Carriers (NALC), AFL-CIO, reads in its entirety as follows:

#### **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 Transitional Employees.)

The underlined language above also exists verbatim in the National Agreement for each of the craft unions addressed in the letters from Tennessee District Manager, Greg Gamble.

On page 5-1 of the USPS-NALC Joint Contract Administration Manual (JCAM), April 2009, the national parties agreed to the following:

"...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..."

On page 5-2 of the USPS-NALC Joint Contract Administration Manual (JCAM), April 2009, the national parties agreed that **unilateral change** to a valid past practice may also be restricted:

"...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..."

In a paper given to the National Academy of Arbitrators, Arbitrator Mittenthal described the elements required to establish a valid past practice. In the same paper, Arbitrator Mittenthal noted that there are three distinct functions of past practice:

- > To Implement Contract Language
- > To Clarify Ambiguous Language
- > To Implement Separate Conditions of Employment

Management maintains, and arbitrators have agreed, that the change proposed in this instant grievance is correctly defined as a separate condition of employment. It is indisputable that the change proposed in this instant grievance is a separate condition of employment.

disciplinary tracks be followed for attendance, conduct and performance in the National Agreement or any postal manual. Nor is there any evidence to support that the national parties intended such a result.

Once established that the past practice of multiple disciplinary tracks is a separate condition of employment, the principal question becomes; did management act unilaterally?

Page 5-4 of the USPS-NALC JCAM, states the following:

**“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.”

Management's contends, and the evidence shows, that the Unions were provided advance notice and that management engaged in good faith bargaining through the exchange of letters and phone conversations between TN District Manager, Greg Gamble and Region 8, National Business Agent, Lew Drass.

In the letter from Mr. Gamble's dated June 8, 2010, he clearly addresses changes to the nature of the business and the inefficiency of the current practice (items 2 and 3 above). In addition, he speaks to prior efforts to notify and negotiate in good faith prior to implementation of the policy change, in part as follows:

“... The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies. With the current financial state of the Postal Service, declining mail volume and economic crisis nationwide, it is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently.

... You were notified in a letter dated February 12, 2010, of Management's proposal to change the policy regarding corrective action. Management provided the Unions with prior notice and an opportunity to present questions or comments by February 26, 2010. APWU was the only union to respond but declined to bargain prior to implementation...” (Emphasis added)

In the letter from Mr. Gamble's dated June 28, 2010, he again addresses changes to the nature of the business and the inefficiency of the current disciplinary practice, as well as, efforts to notify and negotiate. The letter reads in part as follows:

\* The current system of using three (3) tracks (performance, attendance, conduct)

financial state of the Postal Service, declining mail volume and economic crisis nationwide, it is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently.

...In a letter dated February 12, 2010, Management proposed to change the policy regarding corrective action. Prior to implementation, several union officials stated they did not receive the previous notice. Please be advised of Management's intent to bargain in good faith. All previous correspondence relating to this issue is hereby rescinded. This is your written notification of Management's proposed change to administer Article 16 in accordance with the National Agreement by using a single track of discipline..." (Emphasis added)

*Note: The grievance file contains evidence via USPS-Track & Confirm, that this letter and subsequent correspondence to the Unions was delivered.*

In the letter from Mr. Gamble's dated June 29, 2010, he again addresses the reason for change the current practice (items 2 and 3 above), efforts to notify and negotiate in good faith and his intent to proceed with implementation effective September 1, 2010.

The fact that the parties were unable to agree to this change or fashion an acceptable compromise, does not negate the reality that proper notification took place and that management engaged in good faith negotiations prior to implementation.

On page 5 of Arbitrator Holden's Award in USPS Case No. A06M-1A-C 08194185, the following is stated in part:

"Arbitrator Talmadge's award found that the offending that the offending aspect of the grievance before her was that Management did not provide the Union with notice or a change to negotiate a change in the discipline practice. 'The Plant Manager unilaterally changed a twenty-nine year practice of applying single line discipline to attendance, behavior and performance infractions without providing the Union with an opportunity to negotiate prior to changing the disciplinary process, a mandatory subject of bargaining.' She did not find that Management cannot change its discipline procedure.

... The focus in the instant case is on Article 5 which prohibits management from taking unilateral action that affects 'wages, hours and other terms and conditions of employment...' Arbitrator Talmadge found in her case that Management had acted unilaterally in violation of Article 5. She directed Management to return to the status quo ante with the clear finding that if the changes sought by Management were done with prior notice to the Union and with opportunity for the Union to bargain prior to implementation, such changes would be possible under the CBA..." (Emphasis added)

It is unclear whether the statements of the 51 city carriers included in this grievance file is an accurate representation of the membership, since a disproportionate number of the statements are written by acknowledged past and present NALC Branch Presidents, Vice Presidents, Chief Stewards and Alternates. Regardless, the sentiment expressed repeatedly; that this change is merely an effort to terminate employees faster or easier is not supported in fact.

The union presented this same argument in USPS Case No. A06M-1A-C 08194185 before Arbitrator Holden. The decision reasoned this issue as follows:

" Thus, it appears in question..."

The Union's argument that Management wants to implement progressive discipline to get people out more quickly is, thus, not substantiated by the parties' experience..."

Management maintains that the policy change in this instant grievance is directed toward correcting employee deficiencies; not complement reduction.

To the Union's allegation that this change a new work standard and thus a violation of Article 34, the management Formal Step A states the following in part:

"...It is management's position that the Union's allegation that the current system of discipline is a work standard has no merit and must be dismissed... Article 34 has not only not been violated in this grievance; it is not even applicable..."

The management member of this Formal Step B team is also unclear as to how Article 34 is relevant to this policy change beyond item A., which reads as follows:

#### **ARTICLE 34 WORK AND/OR TIME STANDARDS**

A. The principle of a fair day's work for a fair day's pay is recognized by all parties to this Agreement.

Management maintains that this change is entirely consistent with this agreement.

The Step B Decisions included by the union in this grievance file have no apparent relevance. Neither decision indicates or alleges any wrong doing by the District Manager at that time and certainly has no relevance to any action(s) by the current District Manager, Greg Gamble.

In conclusion, management contends there is no violation of Article 3 and/or 5 and/or 16 and/or 19 and/or 34 of the National Agreement and/or Section 115 of the M-39 Handbook and/or Section 665 of the ELM, via Article 19 of the National Agreement.

For all the reasons stated above and all the reasons and issues at Informal and Formal Step A of the grievance procedure, management is of the opinion that this grievance should be denied in its entirety and that the remedy requested should not be granted.

This grievance file contained the following documents:

- (1) PS Form 8190 for H06N-4H-C 10314794
- (2) Union Contentions/Requested Remedy, 14 pages
- (3) Time Limit Extensions, 3 pages
- (4) U-1: PS Form 8190 for individual units within installation, 11 pages
- (5) U-12: Email correspondences, 6 pages
- (6) Greg A. Gamble letter to unions dated June 8, 2010
- (7) Service Talk: Policy Change for Disciplinary Action
- (8) Lew Drass letter dated June 17, 2010, 2 pages
- (9) NALC Request for Time/Information
- (10) U-16: Email
- (11) Greg A. Gamble letter to unions dated June 28, 2010
- (12) U-18: Email correspondences, 10 pages
- (13) Lew Drass letter dated July 6, 2010, 2 pages
- (14) Greg A. Gamble letter to unions dated July 29, 2010

- (16) Lew Drass letter dated August 30, 2010, 4 pages
- (17) DRT Decision for H06N-4H-C 091737751, 6 pages
- (18) Employee Statements, 51 pages
- (19) Page 5-3 and 5-4 of the USPS/NALC Joint Contract Administration Manual
- (20) Page 15-8, 15-10 of the USPS/NALC Joint Contract Administration Manual
- (21) Page 19-1 and 19-2 of the USPS/NALC Joint Contract Administration Manual
- (22) John E. Potter letter dated February 23, 2009
- (23) Page 643 and 644 of the Employee and Labor Relations Manual
- (24) Page 3-1 of the USPS/NALC Joint Contract Administration Manual
- (25) Page 16-1 of the USPS/NALC Joint Contract Administration Manual
- (26) Page 4 and 5 of Handbook M-39
- (27) Page 34-1 and 34-2 of the USPS/NALC Joint Contract Administration Manual
- (28) Management Contentions, 13 pages
- (29) M-1: Kevin J. Augustine for Greg Gamble letter dated February 12, 2010
- (30) M-2: Greg A. Gamble letter to unions dated June 8, 2010 w/Track & Confirm Results, 20 pages
- (31) M-3: Greg A. Gamble letter to unions dated June 28, 2010 w/Track & Confirm Results, 24 pages
- (32) M-4: Greg A. Gamble letter to unions dated July 29, 2010 w/Track & Confirm Results, 34 pages
- (33) M-5: August 2, 2010 Service Talk: Policy Change for Disciplinary Action
- (34) M-6: TN District Performance Reports, 6 pages
- (35) M-8: Arbitrator Holden Award in USPS Case No. A06M-1A-C 08194185, 7 pages
- (36) M-9: Arbitrator Benn Award in USPS Case No. C0C-4R-D 5111, 5614, 15 pages
- (37) M-10: Arbitrator Dobranski Award in USPS Case No. C7C-4R-D 19906, 20107, 28 pages



Paul D. Robbins  
USPS Step B Representative



Fred Qualls  
NALC Step B Representative

DRT grievance # 442-10

Cc: Mr. Lew Drass, NALC NBA  
Annette Poole, Southeast Area Labor Relations Office  
Mark Sullivan, Southeast Area Labor Relations Office  
Jane Kivett, USPS Step A Representative  
Tom Gavin, NALC Step A Representative  
George Adkisson, District Manager Labor Relations  
J. Renee Cannon, District Manager Labor Relations (A)  
Greg Gamble, District Manager  
Patty Frederick, District Manager HR  
Fred Peterson, District Manager Operations Support

October 2008

***A Letter from the Postmaster General/CEO and the  
Chairman of the Board of Governors***

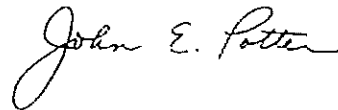
*Vision 2013* is a new approach from previous Strategic Plans the U.S. Postal Service has developed. Amid the current challenges, *Vision 2013* offers a broader perspective of what it will take to advance the Postal Service and the postal industry as a whole. The goal of *Vision 2013* is to maintain affordable universal service for the country.

The customer is at the center of all our efforts. In planning and executing future programs and policies, success means engaging all stakeholders—from businesses and consumers, to employees and labor leaders, to industry and public policy leaders. In this time of uncertainty, we see opportunity to build on a solid foundation of service and operational excellence. We will continue to invest in the Intelligent Mail Barcode, flexible processing and transportation networks, the new Flats Sequencing System, and other initiatives that promise new gains in service, efficiency, and customer value in the years ahead.

At the same time, we know we must deliver additional value and develop new, innovative ways for businesses and consumers to use our products and services. Our new marketing structure will allow us to adapt and respond more quickly to tap new sources of revenue and volume.

The Postal Act of 2006 gives us new tools and clearly was a first step in providing flexibility to adapt our products and pricing to market requirements. We need to build on these fundamental principles and work with lawmakers to assure we have the necessary flexibility to meet future customer needs.

Serving the customer is the objective and *Vision 2013* is the roadmap. As we move down this road over the next five years, we expect change to be the hallmark of the postal industry. Embracing change will require innovation and collaboration on an unprecedented scale. The management team is ready and looks forward to working with everyone who has a stake in maintaining the world's best Postal Service.



John E. Potter  
Postmaster General,  
Chief Executive Officer



Alan C. Kessler  
Chairman  
Board of Governors



To Whom it may concern:

My name is Ray Winters, and I served as President of Branch 4, NALC from 1980 thru 1994.

For this period of time (15 yrs) management followed the provisions of article 16.2 of the National agreement and section 115.1 of the m-39 handbook as it relates to discipline should be corrective in nature rather than punitive.

National Arbitrator Richard Mittenthal ruled in case #s #4N-3U-C 58637 & #4N-3A-C 59518 (CC# 10146 A+B on page 7

Cut & Paste

National Arbitrator Gerald Cohen in Case # CIC-47-D 31565 (c 557) ruled

Cut & Paste

permissible variation in the range of available discipline. Section 7, the subject of this dispute, is an "emergency procedure" which allows Management to place an employee "immediately" on non-duty, non-pay status in certain specified situations. Sections 8, 9 and 10 refer to a necessary internal managerial "review of discipline", a "veteran's preference" in the choice of a forum for contesting discipline, and a statute of limitations as to "employee discipline records."

Given this structure, the strong presumption must be that all of Article 16 relates to discipline. When the parties intended some procedure to be outside the scope of Article 16, to be beyond the disciplinary principles of Article 16, they said so. Thus, Section 2 expressly provides that supervisory "discussions" of the "minor offenses" of employees "are not considered discipline..." No such disclaimer is found in Section 7. Nowhere did the parties state that placement of an employee on non-duty, non-pay status pursuant to Section 7 "is not considered discipline..." Had that been their wish, it would have been a simple matter to write those words into the "emergency procedure."

The employee misconduct which may trigger Management's use of Section 7 is "intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules or regulations." The very same acts of misconduct are cited in Section 1 as constituting "just cause" for discipline. It is difficult to understand the Postal Service view that a suspension for such misconduct is discipline when Management invokes Section 4 or 5 but is not discipline when Management invokes Section 7. The impact on the employee is much the same in all three situations. The employee is taken off of the job against his will and placed on non-duty, non-pay status because of such misconduct. He is denied work and wages. He is punished, that is, suspended, because Management believes he is intoxicated or has stolen something or has ignored safety rules. Indeed, the suspension under Section 7 is more burdensome for the employee because its length is indeterminate and because he may not have been given written notice of the charge against him, conditions which can only serve to heighten his sense of concern.

The Postal Service sees Section 7, the "emergency procedure", as an independent provision unrelated to the typical suspension arrangements found in Sections 4 and 5. However, when one reviews the history of this provision and the overall structure of Article 16, it seems to me that Section 7 should more appropriately be construed as a broad exception to Sections 4 and 5. The "emergency procedure" is,

Grievant did not provide the documentation called for by the extended absence letter. Her telephone calls were insufficient, since they were all oral. She did submit a document on April 19 which gave April 27 as a date for return to work. She could rightly claim that she had documented that absence. However, the absence from that point through all of May was not covered by any documentation. Again, her oral phone calls during that period were insufficient.

The issue which now remains to be determined - an issue which was recognized as such by the Postal Service - is that of whether Grievant's infraction merited discharge, or whether she should have been given some lesser penalty.

Grievant's supervisor was asked if he had considered a lesser penalty. He replied that he had, and had decided against it on the ground that he felt it would "have no impact".

The action of the supervisor in this regard is a violation of Article 16, Section 1, of the National Agreement. The first sentence of this Article states:

"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive."

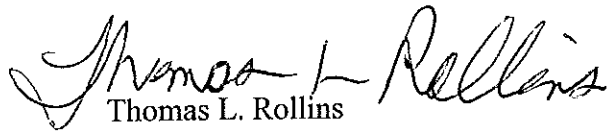
It has been held many times by other arbitrators that, for discipline to be corrective, it must be progressive.

This directive from the National Agreement is mandatory. It is not discretionary. Management does not have the choice as to whether it will issue corrective discipline or not. It must attempt to make discipline corrective. Here, Grievant's supervisor decided for reasons which appeared to him to be valid that

TO WHOM IT MAY CONCERN:

My name is Tom Rollins. I served as full-time President of Branch 4, NALC for the period of January 1995 through December 2000. I also served as the Union Representative on the Dispute Resolution Team (DRT) for the period of January 2001 through December 2002. I then served as full-time President of Branch 4, NALC again from January 2003 to December 2006.

For the twelve (12) years I served as full-time President of Branch 4, NALC and three (3) years I served as the Union Representative (DRT), the Provision Article 16.2 of the National Agreement and Section 115.1 of the M-39 Handbook, as they relate to the issuing of discipline, were followed by management. In the cases that discipline was not issued in a progressive manner, a grievance was filed and that discipline was rescinded.

  
Thomas L. Rollins



TO WHOM IT MAY CONCERN:

My name is Ray Winters and I served as President of Branch 4, NALC from 1980 through 1994.

For this period of time (15 years), management followed the provisions of Article 16.2 of the National Agreement and Section 115.1 of the M-39 Handbook, as it relates to discipline, should be corrective in nature rather than punitive. National Arbitrator Richard Mittenthal ruled in case #'s H4N-3U-C 58637 and H4N-3A-C 59518 (c# 10146 A&B on Page 7):

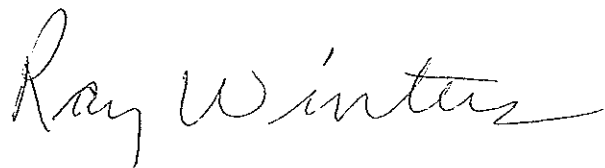
Given this structure, the strong presumption must be that all of Article 16 relates to discipline. When the parties intended some procedure to be outside the scope of Article 16, to be beyond the disciplinary principles of Article 16, they said so.

National Arbitrator Gerald Cohen in Case # C1C-47-D 31565 (c 557) ruled:

“In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive.”

It has been held many times by other arbitrators that, for discipline to be corrective, it must be progressive.

This directive from the National Agreement is mandatory. It is not discretionary. Management does not have the choice as to whether it will issue corrective discipline or not. It must attempt to make discipline corrective.

A handwritten signature in cursive script that reads "Ray Winters". The signature is written in black ink on a white background.

DISTRICT MANAGER  
TENNESSEE CUSTOMER SERVICE AND SALES



DATE: June 8, 2010

MEMORANDUM FOR: National Association of Letter Carriers (NALC)  
American Postal Workers Union (APWU)  
National Rural Letter Carriers Association (NRLCA)  
National Postal Mail Handlers Union (NPMHU)  
National Association of Postal Supervisors (NAPS)  
National League of Postmasters

RE: Policy Change for Disciplinary Action

Effective Saturday, July 10, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies. With the current financial state of the Postal Service, declining mail volume and economic crisis nationwide, it is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently.

Management is not attempting to unilaterally change any terms or conditions of employment. You were notified in a letter dated February 12, 2010, of Management's proposal to change the policy regarding corrective action. Management provided the Unions with prior notice and an opportunity to present questions or comments by February 26, 2010. APWU was the only union to respond but declined to bargain prior to implementation. This is your written notification of the change to a single line of discipline for unrelated infractions effective Saturday, July 10, 2010.

Management has complied with the National Agreement and attempted to bargain in good faith. Employees and Management officials will be notified of this change and effective date.

  
Greg A. Gamble



# \*\*\*SERVICE TALK\*\*\*

## Policy Change for Disciplinary Action

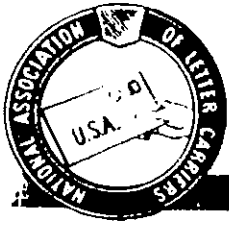
Effective Saturday, July 10, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies. With the current financial state of the Postal Service, declining mail volume and economic crisis nationwide, it is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently. This does not change the guidelines set forth in Article 16. Any current active discipline may be cited in future disciplinary action request.

All Postal employees are required to comply with the rules of conduct outlined in Section 660 of the Employee and Labor Relations Manual (ELM). Employees may reference the Postal Service Standards of Conduct (Section 665) that require employees to:

1. Discharge their assigned duties conscientiously and effectively.
2. Obey the instructions of their Supervisors.
3. Maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment.
4. Be regular in attendance and report as scheduled.

These are just a few examples of requirements. In addition, the ELM states that Postal officials may take appropriate disciplinary measures to correct violations of the regulations referred to in Section 665.

The Employee and Labor Relations Manual (ELM) is available on the Postal Service website at [www.usps.com](http://www.usps.com). Please contact your immediate Supervisor or Manager if you have any questions.



# National Association of Letter Carriers

Fredric V. Rolando, President

Lew Drass

National Business Agent

NALC Region 8

160 Commissioner Drive

Meridianville, AL

35759-2038

256.828.8205

Fax: 256.828.8613

June 17, 2010

Greg A. Gamble

District Manager

USPS – Tennessee Customer Service & Sales

811 Royal Parkway

Nashville, TN 37229-9998

Dear Greg,

I am in receipt of your letter dated June 8, 2010 regarding a single track of discipline for unrelated infractions.

First of all, neither I nor anyone else who works in my office has any record or recollection of receiving a letter from you dated February 12, 2010. It is also significant to note that you and I met on April 8, 2010 in your conference room to discuss the Dispute Resolution Process (DRP) as part of the quarterly DRP meeting between the Southeast Area and the NALC for the Tennessee District, but never even brought this issue up.

That aside, your letter recognizes that you are attempting to change the current system of discipline as stated in the National Agreement. For instance, Article 16, Section 1 of the National Agreement states in relevant part,

**“In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive.”**

Further, Section 115.1 of the M-39 Handbook states in relevant part,

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

The M-39 Handbook is also part of the National Agreement via Article 19.

Fredric V. Rolando  
President

Gary H. Mullins  
Executive Vice President

George C. Mignosi  
Vice President

Jane E. Broendel  
Secretary-Treasurer

Nicole Rhine  
Asst. Secretary-Treasurer

Dale P. Hart  
Director, City Delivery

Brian E. Hellman  
Director, Safety & Health

Myra Warren  
Director, Life Insurance

Timothy C. O'Malley  
Director, Health Insurance

Ernest S. Kirkland  
Director, Retired Members

Board of Trustees:

Larry Brown Jr.

Chairman

Randall L. Kellier

Michael J. Gill



It is the position of the NALC that the announcement of a change to the current system of discipline would attempt to change the unambiguous language in the National Agreement referenced above and violates the past practice provisions as it relates to clarification of contract language as considered in Article 5 of the National Agreement. The JCAM at page 5-3 states:

**“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.”

Therefore any such change would have to be negotiated at the National Level during National Negotiations.

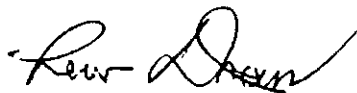
It is also the position of the NALC that the current system of discipline is a work standard. Therefore, any notification of change/changes in this work standard would have to be made at the National Level via the provisions contained in Article 34 of the National Agreement.

In closing, I must say that it is regrettable that you would attempt to use the financial situation of the Postal Service to justify circumventing the provisions of the National Agreement as described in your letter.

It seems to me that we should be working together to both generate revenue and reduce the cost of disputes. It is my opinion that any attempt to implement the change to the current disciplinary system as stated in your letter will have the opposite effect.

If you have any questions, or would like to discuss this matter, please feel free to contact me.

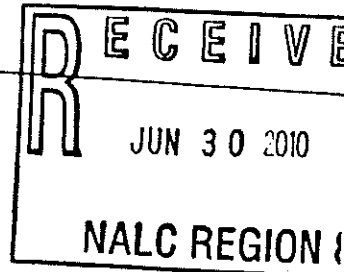
Sincerely,



Lew Drass  
National Business Agent  
Region 8

cc: Eloise Lance, Manager, Labor Relations, Southeast Area  
NALC Branch Presidents

DISTRICT MANAGER  
TENNESSEE CUSTOMER SERVICE AND SALES



DATE: June 28, 2010

MEMORANDUM FOR: National Association of Letter Carriers (NALC)  
American Postal Workers Union (APWU)  
National Rural Letter Carriers Association (NRLCA)  
National Postal Mail Handlers Union (NPMHU)  
National Association of Postal Supervisors (NAPS)  
National Association of Postmasters (NAPUS)

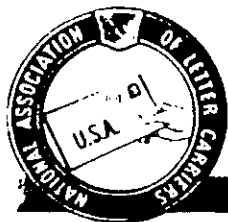
RE: Policy Change for Disciplinary Action

The Tennessee District is considering implementation of a single track of discipline for unrelated infractions. The current system of using three (3) tracks (performance, attendance, conduct) has not been successful in correcting deficiencies. With the current financial state of the Postal Service, declining mail volume and economic crisis nationwide, it is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently.

Management is not attempting to unilaterally change any terms or conditions of employment. In a letter dated February 12, 2010, Management proposed to change the policy regarding corrective action. Prior to implementation, several union officials stated they did not receive the previous notice. Please be advised of Management's intent to bargain in good faith. All previous correspondence relating to this issue is hereby rescinded. This is your written notification of Management's proposed change to administer Article 16 in accordance with the National Agreement by using a single track of discipline.

Please consider this your notice and opportunity to bargain prior to implementation. You may contact Stacey Crockett in my office at (615) 885-9252 within ten (10) calendar days from the date of this letter to set-up an appointment to discuss this issue.

Greg A. Gamble



# National Association of Letter Carriers

Fredric V. Rolando, President

**Low Drass**  
National Business Agent  
NALC Region 8  
160 Commissioner Drive  
Meridianville, AL  
35759-2038  
256.828.8205  
Fax: 256.828.8613

July 6, 2010

7009 2820 0003 5434 4461

Greg A. Gamble  
District Manager  
USPS – Tennessee Customer Service & Sales  
811 Royal Parkway  
Nashville, TN 37229-9998

Dear Greg,

I am in receipt of your letter dated June 28, 2010 regarding a single track of discipline for unrelated infractions.

Your letter recognizes that you are attempting to change the current system of discipline as stated in the National Agreement. For instance, Article 16, Section 1 of the National Agreement states in relevant part,

**“In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive.”**

Further, Section 115.1 of the M-39 Handbook states in relevant part,

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

The M-39 Handbook is also part of the National Agreement via Article 19.

It is the position of the NALC that the announcement of a change to the current system of discipline would attempt to change the unambiguous language in the National Agreement referenced above and violates the past practice provisions as it relates to clarification of contract language as considered in Article 5 of the National Agreement. The JCAM at page 5-3 states:

**Fredric V. Rolando**  
President

**Gary H. Mullins**  
Executive Vice President

**George C. Mignosi**  
Vice President

**Jane E. Broendel**  
Secretary-Treasurer

**Nicole Rhine**  
Asst. Secretary-Treasurer

**Dale P. Hart**  
Director, City Delivery

**Brian E. Hellman**  
Director, Safety & Health

**Myra Warren**  
Director, Life Insurance

**Timothy C. O'Malley**  
Director, Health Insurance

**Ernest S. Kirkland**  
Director, Retired Members

**Board of Trustees:**  
**Larry Brown Jr.**  
Chairman  
**Randall L. Keller**  
**Michael J. Gill**

**“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.”

Therefore any such change would have to be negotiated at the National Level during National Negotiations.

It is also the position of the NALC that the current system of discipline is a work standard. Therefore, any notification of change/changes in this work standard would have to be made at the National Level via the provisions contained in Article 34 of the National Agreement.

In closing, I must say that it is regrettable that you would attempt to use the financial situation of the Postal Service to justify circumventing the provisions of the National Agreement as described in your letter.

It seems to me that we should be working together to both generate revenue and reduce the cost of disputes. It is my opinion that any attempt to implement the change to the current disciplinary system as stated in your letter will have the opposite effect.

If you have any questions, or would like to discuss this matter, please feel free to contact me.

Sincerely,



Lew Drass  
National Business Agent  
Region 8

cc: Eloise Lance, Manager, Labor Relations, Southeast Area  
NALC Branch Presidents

DISTRICT MANAGER  
TENNESSEE CUSTOMER SERVICE AND SALES



DATE: July 29, 2010

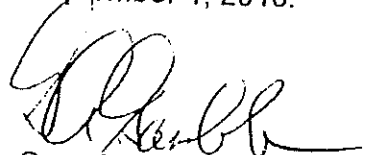
MEMORANDUM FOR: National Association of Letter Carriers (NALC)  
American Postal Workers Union (APWU)  
National Rural Letter Carriers Association (NRLCA)  
National Postal Mail Handlers Union (NPMHU)  
National Association of Postal Supervisors (NAPS)  
National Association of Postmasters (NAPUS)

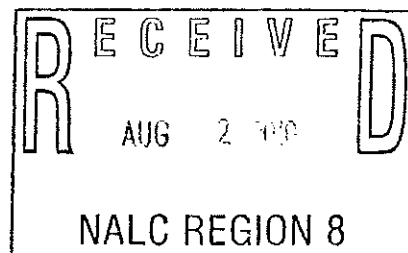
RE: Policy Change for Disciplinary Action

In a letter to the Unions, dated February 12, 2010, Management proposed to change the policy regarding corrective action. Prior to the scheduled implementation date of July 10, 2010, several union officials stated they did not receive the previous notice. The implementation date was cancelled and previous correspondence relating to this issue was rescinded. In a letter dated June 28, 2010, Management issued a second notice to the Unions regarding the proposed policy change. This letter solicited input and provided an opportunity to bargain prior to implementation. Several union officials met with me to voice their opinions and concerns.

After considering all the information presented, it is my decision to implement a single track of discipline for unrelated infractions in the Tennessee District effective September 1, 2010. The current system of using three (3) tracks (performance, attendance, conduct) has not been successful in correcting employee deficiencies. It is crucial that every employee report as scheduled and perform their assigned duties safely and efficiently.

Management is not attempting to unilaterally change any terms or conditions of employment. The Unions were provided ample notice of the proposed change and an opportunity to bargain in good faith. Please consider this your written notification of Management's intent to implement a single track of discipline in accordance with Article 16 of the National Agreement for bargaining employees and the Employee and Labor Relations Manual (ELM), Section 650 for non-bargaining employees effective September 1, 2010.

  
Greg A. Gamble





AUGUST 2, 2010

# \*\*\*SERVICE TALK\*\*\*

## Policy Change for Disciplinary Action

Effective Wednesday, September 1, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies. It is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently. This does not change the guidelines set forth in Article 16. Any currently active discipline may be cited in future disciplinary action request.

All Postal employees are required to comply with the rules of conduct outlined in Section 660 of the Employee and Labor Relations Manual (ELM). Employees may reference the **Postal Service Standards of Conduct (Section 665)** that require employees to:

1. Discharge their assigned duties conscientiously and effectively.
2. Obey the instructions of their Supervisors.
3. Maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment.
4. Be regular in attendance and report as scheduled.

These are just a few examples of requirements. In addition, the ELM states that Postal officials may take appropriate disciplinary measures to correct violations of the regulations referred to in Section 665.

The Employee and Labor Relations Manual (ELM) is available on the Postal Service website at [www.usps.com](http://www.usps.com). Please contact your immediate Supervisor or Manager if you have any questions.

# \*PLEASE POST\*



# National Association of Letter Carriers

Fredric V. Rolando, President

Lew Drass  
National Business Agent  
NALC Region 8  
160 Commissioner Drive  
Meridianville, AL  
35759-2038  
256.828.8205  
Fax: 256.828.8613

**TO: BRANCH PRESIDENTS/SECRETARIES**  
**DATE: AUGUST 31, 2010**  
**SUBJECT: POLICY CHANGE FOR DISCIPLINARY  
ACTION IN THE TENNESSEE DISTRICT**

I received another letter from District Manager Greg Gamble dated July 29, 2010 regarding a policy change in the Tennessee District for the way they issue Discipline (copy attached).

This letter announces that the previous correspondence regarding this issue has been rescinded. However, the letter once again announces that the Tennessee District has decided to start issuing punitive discipline when charges are unrelated.

For instance, a Letter Carrier may receive a Discussion for leaving a sleeper in the case, then a Letter of Warning for a first offense of Attendance, then a 7-Day Suspension for a first offense of leaving the vehicle unlocked, etc.

I responded to District Manager Gamble's letter yesterday (copy attached). Any grievances you decide to file concerning this policy change should take the same positions as are contained in the response letter, include copies of both letters in your case file, and add any other documentation and/or arguments that you believe are relevant to this matter.

I am also advising all of you to include a copy of all of the letters written back and forth on this issue between me and District Manager Gamble (attached) with every single discipline grievance case file sent forward. You should be arguing that they are violating each Letter Carrier's due process rights when discipline is issued in this way. The same is true if you choose to grieve the policy itself.

If you have any questions or need further assistance in this matter, please call my office.

Fraternally,

Lew Drass  
National Business Agent  
Region 8

Fredric V. Rolando  
President

Gary H. Mullins  
Executive Vice President

George C. Mignosi  
Vice President

Jane E. Broendel  
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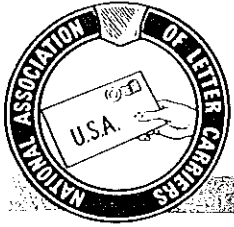
Timothy C. O'Malley  
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Ernest S. Kirkland  
Director, Retired Members

Board of Trustees:

Larry Brown Jr.  
Chairman

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Michael J. Gill



# National Association of Letter Carriers

**Lew Drass**

National Business Agent  
NALC Region 8  
160 Commissioner Drive  
Meridianville, AL  
35759-2038  
256.828.8205  
Fax: 256.828.8613

**Fredric V. Rolando**  
President

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**Ernest S. Kirkland**  
Director, Retired Members

**Board of Trustees:**

**Larry Brown Jr.**  
Chairman  
**Randall L. Keller**  
**Michael J. Gill**

August 30, 2010

Greg A. Gamble  
District Manager  
USPS – Tennessee District  
811 Royal Parkway  
Nashville, TN 37229-9998

Dear Greg,

I am in receipt of your letter dated July 29, 2010 regarding your decision to change the current system of using 3 tracks (performance, attendance, conduct) to administer Article 16 of the National Agreement, to a single track of discipline for unrelated infractions.

You are (or should be) well aware that the current system used by the Postal Service to decide and issue discipline in the Tennessee District has been in existence for decades and has been the source of great debate via the grievance-arbitration procedure for that same period of time.

The notion of changing the system referenced above that has been in place for decades to a one-track discipline system for unrelated infractions takes this debate to a whole new level.

I must inform you that the National Agreement as currently written does not permit you to make such a decision.

First and foremost, Article 5 of the National Agreement was not applied correctly here. I tried to explain this to you in my letters dated June 17 and July 6, 2010 to no avail, but I'll try again.

Page 5-1 – 5-4 of the JCAM (enclosed) represents the National Parties' general agreement on the subject of past practice. On p, 5-3, the National Parties break the definition and rules to change "Past Practice" issues into three categories. They are:

1. To Implement Contract Language
2. To Clarify Unambiguous Language
3. To Implement Separate Conditions of Employment



In the NALC's view, the practice of using a 3 track system to decide and issue discipline over a period of decades is clearly a practice designed "To Implement Contract Language" such as that contained in Article 16, Article 19, Section 115 of the M-39 Handbook, and Article 34 for starters.

If the argument is that the language in the above stated provisions of the National Agreement is ambiguous, then the practice at issue here would fall into the "To Clarify Unambiguous Language" category.

Either way, the contractual path to attempt to change the current discipline system to a single track of discipline for unrelated infractions is shown in the J-CAM on p. 5-3 where it states in relevant part,

**"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."

The decision to treat the established past practice of using a multiple track discipline system as falling into the "To Implement Separate Conditions of Employment" category fatally flawed your attempts to make this change from the beginning.

The notion that the contract is silent on the issue of deciding, determining the level, issuing discipline, and resolving disputes that arise when discipline is issued is absurd.

However, just for the record, Article 5 wasn't even complied with had you been trying to change a past practice where the contract was silent.

The first letter I received regarding this matter was to inform me that you had already made your decision and the change would be implemented July 10, 2010. It is interesting to note that you had already begun to implement service talks to announce this change to all employees. I responded to your letter on June 17, 2010 and informed you that what you were doing was a violation of the National Agreement and I had never been informed about any of this.

I received a letter from you in early July rescinding the previous actions and announcing the same exact change. I responded to your letter by letter dated July 6, 2010 and once again informed you that what you were doing is a violation of the National Agreement.

I also met with you via the telephone to discuss this matter. I explained to you that in the NALC's view, what you were doing was a clear violation of the National Agreement. We talked about the matter for a few minutes, but that was it.

Despite the fact that the approach you took to attempt to change the past practice at issue was misplaced, there was certainly no "good faith" bargaining efforts made on the part of the Postal Service. As a matter of fact, there was no bargaining effort of any kind made by the Postal Service in this situation.

It is quite clear that your final decision was made before you neglected to send me the letter announcing the change back in February. The rest of this was merely a formality, and therefore, nothing more than a sham.

In addition to the multiple violations of Article 5, the decision to change from a 3 track discipline system to a single track discipline system for unrelated infractions violates several other provisions of the National Agreement such as, but not limited to,

Article 16, Section 1 of the National Agreement states in relevant part,

**"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive."**

Further, Section 115.1 of the M-39 Handbook states in relevant part,

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

The M-39 Handbook is also part of the National Agreement via Article 19. Article 19 requires that any changes to handbooks must be made at the National Level.

It is also the position of the NALC that the current system of discipline is a work standard. Therefore, any notification of change/changes in this work standard would have to be made at the National Level via the provisions contained in Article 34 of the National Agreement.

In closing, I must say that it is regrettable that you would attempt to use the financial situation of the Postal Service to justify circumventing the provisions of the National Agreement as described in your letter.

This situation mirrors the Postal Service's misguided attempt to implement the National Reassessment Process (NRP) in the Tennessee District in such a way as to completely ignore your contractual obligations as agreed to by The United States Postal Service and the National Association of Letter Carriers.

I'm requesting that you reconsider your decision and adhere to the agreed to provisions in the National Agreement with respect to this situation instead of just making things up as you go along like the Tennessee District did with the NRP.

It seems to me that we should be working together to both generate revenue and reduce the cost of disputes. It is my opinion that any attempt to implement the change to the current disciplinary system as stated in your letter will have the opposite effect.

I want to thank you in advance for your consideration in this matter. If you have any questions, or would like to discuss this matter, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Lew Drass".

Lew Drass  
National Business Agent  
Region 8

cc: Roberta Albright, Manager, Labor Relations, Southeast Area  
NALC Branch Presidents

DISTRICT MANAGER  
TENNESSEE CUSTOMER SERVICE AND SALES



DATE: June 8, 2010

MEMORANDUM FOR: National Association of Letter Carriers (NALC)  
American Postal Workers Union (APWU)  
National Rural Letter Carriers Association (NRLCA)  
National Postal Mail Handlers Union (NPMHU)  
National Association of Postal Supervisors (NAPS)  
National League of Postmasters

RE: Policy Change for Disciplinary Action

Effective Saturday, July 10, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies. With the current financial state of the Postal Service, declining mail volume and economic crisis nationwide, it is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently.

Management is not attempting to unilaterally change any terms or conditions of employment. You were notified in a letter dated February 12, 2010, of Management's proposal to change the policy regarding corrective action. Management provided the Unions with prior notice and an opportunity to present questions or comments by February 26, 2010. APWU was the only union to respond but declined to bargain prior to implementation. This is your written notification of the change to a single line of discipline for unrelated infractions effective Saturday, July 10, 2010.

Management has complied with the National Agreement and attempted to bargain in good faith. Employees and Management officials will be notified of this change and effective date.

  
Greg A. Gamble



# \*\*\*SERVICE TALK\*\*\*

## Policy Change for Disciplinary Action

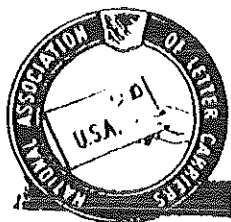
Effective Saturday, July 10, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies. With the current financial state of the Postal Service, declining mail volume and economic crisis nationwide, it is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently. This does not change the guidelines set forth in Article 16. Any current active discipline may be cited in future disciplinary action request.

All Postal employees are required to comply with the rules of conduct outlined in Section 660 of the Employee and Labor Relations Manual (ELM). Employees may reference the Postal Service Standards of Conduct (Section 665) that require employees to:

1. Discharge their assigned duties conscientiously and effectively.
2. Obey the instructions of their Supervisors.
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4. Be regular in attendance and report as scheduled.

These are just a few examples of requirements. In addition, the ELM states that Postal officials may take appropriate disciplinary measures to correct violations of the regulations referred to in Section 665.

The Employee and Labor Relations Manual (ELM) is available on the Postal Service website at [www.usps.com](http://www.usps.com). Please contact your immediate Supervisor or Manager if you have any questions.



# National Association of Letter Carriers

**Freddie V. Rolando, President**

**Low Drass**

National Business Agent  
NALC Region 8  
160 Commissioner Drive  
Meridianville, AL  
35759-2038  
256.828.8205  
Fax: 256.828.8613

June 17, 2010

Greg A. Gamble  
District Manager  
USPS – Tennessee Customer Service & Sales  
811 Royal Parkway  
Nashville, TN 37229-9998

Dear Greg,

I am in receipt of your letter dated June 8, 2010 regarding a single track of discipline for unrelated infractions.

First of all, neither I nor anyone else who works in my office has any record or recollection of receiving a letter from you dated February 12, 2010. It is also significant to note that you and I met on April 8, 2010 in your conference room to discuss the Dispute Resolution Process (DRP) as part of the quarterly DRP meeting between the Southeast Area and the NALC for the Tennessee District, but never even brought this issue up.

That aside, your letter recognizes that you are attempting to change the current system of discipline as stated in the National Agreement. For instance, Article 16, Section 1 of the National Agreement states in relevant part,

**“In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive.”**

Further, Section 115.1 of the M-39 Handbook states in relevant part,

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It is the position of the NALC that the announcement of a change to the current system of discipline would attempt to change the unambiguous language in the National Agreement referenced above and violates the past practice provisions as it relates to clarification of contract language as considered in Article 5 of the National Agreement. The JCAM at page 5-3 states:

**"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."

Therefore any such change would have to be negotiated at the National Level during National Negotiations.

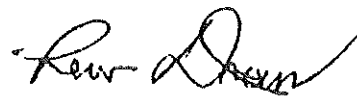
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In closing, I must say that it is regrettable that you would attempt to use the financial situation of the Postal Service to justify circumventing the provisions of the National Agreement as described in your letter.

It seems to me that we should be working together to both generate revenue and reduce the cost of disputes. It is my opinion that any attempt to implement the change to the current disciplinary system as stated in your letter will have the opposite effect.

If you have any questions, or would like to discuss this matter, please feel free to contact me.

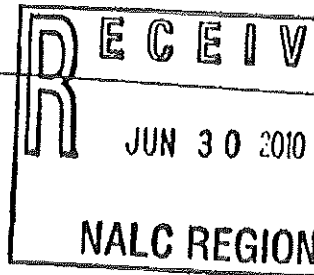
Sincerely,



Lew Drass  
National Business Agent  
Region 8

cc: Eloise Lance, Manager, Labor Relations, Southeast Area  
NALC Branch Presidents

DISTRICT MANAGER  
TENNESSEE CUSTOMER SERVICE AND SALES



DATE: June 28, 2010

MEMORANDUM FOR: National Association of Letter Carriers (NALC)  
American Postal Workers Union (APWU)  
National Rural Letter Carriers Association (NRLCA)  
National Postal Mail Handlers Union (NPMHU)  
National Association of Postal Supervisors (NAPS)  
National Association of Postmasters (NAPUS)

RE: Policy Change for Disciplinary Action

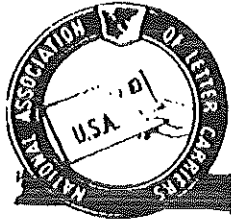
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Management is not attempting to unilaterally change any terms or conditions of employment. In a letter dated February 12, 2010, Management proposed to change the policy regarding corrective action. Prior to implementation, several union officials stated they did not receive the previous notice. Please be advised of Management's intent to bargain in good faith. All previous correspondence relating to this issue is hereby rescinded. This is your written notification of Management's proposed change to administer Article 16 in accordance with the National Agreement by using a single track of discipline.

Please consider this your notice and opportunity to bargain prior to implementation. You may contact Stacey Crockett in my office at (615) 885-9252 within ten (10) calendar days from the date of this letter to set-up an appointment to discuss this issue.

Greg A. Gamble





# National Association of Letter Carriers

Fredric V. Rolando, President

Low Drass

National Business Agent  
NALC Region 8  
160 Commissioner Drive  
Meridianville, AL  
35759-2038  
256.828.8205  
Fax: 256.828.8613

July 6, 2010

7009 2820 0003 5434 4461

Greg A. Gamble  
District Manager  
USPS - Tennessee Customer Service & Sales  
811 Royal Parkway  
Nashville, TN 37229-9998

Dear Greg,

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Your letter recognizes that you are attempting to change the current system of discipline as stated in the National Agreement. For instance, Article 16, Section 1 of the National Agreement states in relevant part,

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Therefore any such change would have to be negotiated at the National Level during National Negotiations.

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In closing, I must say that it is regrettable that you would attempt to use the financial situation of the Postal Service to justify circumventing the provisions of the National Agreement as described in your letter.

It seems to me that we should be working together to both generate revenue and reduce the cost of disputes. It is my opinion that any attempt to implement the change to the current disciplinary system as stated in your letter will have the opposite effect.

If you have any questions, or would like to discuss this matter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Lew Drass", written in a cursive style.

Lew Drass  
National Business Agent  
Region 8

cc: Eloise Lance, Manager, Labor Relations, Southeast Area  
NALC Branch Presidents

DISTRICT MANAGER  
TENNESSEE CUSTOMER SERVICE AND SALES



DATE: July 29, 2010

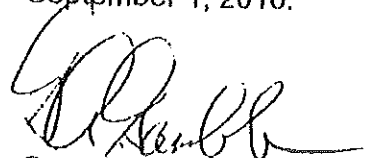
MEMORANDUM FOR: National Association of Letter Carriers (NALC)  
American Postal Workers Union (APWU)  
National Rural Letter Carriers Association (NRLCA)  
National Postal Mail Handlers Union (NPMHU)  
National Association of Postal Supervisors (NAPS)  
National Association of Postmasters (NAPUS)

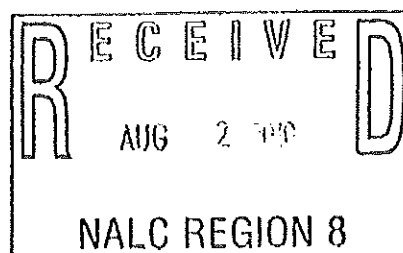
RE: Policy Change for Disciplinary Action

In a letter to the Unions, dated February 12, 2010, Management proposed to change the policy regarding corrective action. Prior to the scheduled implementation date of July 10, 2010, several union officials stated they did not receive the previous notice. The implementation date was cancelled and previous correspondence relating to this issue was rescinded. In a letter dated June 28, 2010, Management issued a second notice to the Unions regarding the proposed policy change. This letter solicited input and provided an opportunity to bargain prior to implementation. Several union officials met with me to voice their opinions and concerns.

After considering all the information presented, it is my decision to implement a single track of discipline for unrelated infractions in the Tennessee District effective September 1, 2010. The current system of using three (3) tracks (performance, attendance, conduct) has not been successful in correcting employee deficiencies. It is crucial that every employee report as scheduled and perform their assigned duties safely and efficiently.

Management is not attempting to unilaterally change any terms or conditions of employment. The Unions were provided ample notice of the proposed change and an opportunity to bargain in good faith. Please consider this your written notification of Management's intent to implement a single track of discipline in accordance with Article 16 of the National Agreement for bargaining employees and the Employee and Labor Relations Manual (ELM), Section 650 for non-bargaining employees effective September 1, 2010.

  
Greg A. Gamble





AUGUST 2, 2010

# \*\*\*SERVICE TALK\*\*\*

## Policy Change for Disciplinary Action

Effective Wednesday, September 1, 2010, the Tennessee District will implement a single track of discipline for unrelated infractions. The current system of multiple single tracks for related infractions has not been successful in correcting employee deficiencies. It is more important than ever for employees to report as scheduled and to perform their assigned duties safely and efficiently. This does not change the guidelines set forth in Article 16. Any currently active discipline may be cited in future disciplinary action request.

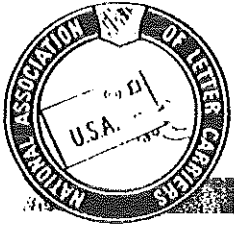
All Postal employees are required to comply with the rules of conduct outlined in Section 660 of the Employee and Labor Relations Manual (ELM). Employees may reference the Postal Service Standards of Conduct (Section 665) that require employees to:

1. Discharge their assigned duties conscientiously and effectively.
2. Obey the instructions of their Supervisors.
3. Maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment.
4. Be regular in attendance and report as scheduled.

These are just a few examples of requirements. In addition, the ELM states that Postal officials may take appropriate disciplinary measures to correct violations of the regulations referred to in Section 665.

The Employee and Labor Relations Manual (ELM) is available on the Postal Service website at [www.usps.com](http://www.usps.com). Please contact your immediate Supervisor or Manager if you have any questions.

# \*PLEASE POST\*



# National Association of Letter Carriers

Fredric V. Rolando, President

Low Drass  
National Business Agent  
NALC Region 8  
160 Commissioner Drive  
Meridianville, AL  
35759-2038  
256.828.8205  
Fax: 256.828.8613

**TO: BRANCH PRESIDENTS/SECRETARIES**  
**DATE: AUGUST 31, 2010**  
**SUBJECT: POLICY CHANGE FOR DISCIPLINARY ACTION IN THE TENNESSEE DISTRICT**

I received another letter from District Manager Greg Gamble dated July 29, 2010 regarding a policy change in the Tennessee District for the way they issue Discipline (copy attached).

This letter announces that the previous correspondence regarding this issue has been rescinded. However, the letter once again announces that the Tennessee District has decided to start issuing punitive discipline when charges are unrelated.

For instance, a Letter Carrier may receive a Discussion for leaving a sleeper in the case, then a Letter of Warning for a first offense of Attendance, then a 7-Day Suspension for a first offense of leaving the vehicle unlocked, etc.

I responded to District Manager Gamble's letter yesterday (copy attached). Any grievances you decide to file concerning this policy change should take the same positions as are contained in the response letter, include copies of both letters in your case file, and add any other documentation and/or arguments that you believe are relevant to this matter.

I am also advising all of you to include a copy of all of the letters written back and forth on this issue between me and District Manager Gamble (attached) with every single discipline grievance case file sent forward. You should be arguing that they are violating each Letter Carrier's due process rights when discipline is issued in this way. The same is true if you choose to grieve the policy itself.

If you have any questions or need further assistance in this matter, please call my office.

Fraternally,

Low Drass  
National Business Agent  
Region 8

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President

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Director, City Delivery

Brian E. Hellman  
Director, Safety & Health

Myra Warren  
Director, Life Insurance

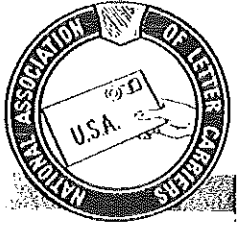
Timothy C. O'Malley  
Director, Health Insurance

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# National Association of Letter Carriers

Fredric V. Rolando, President

## Low Drass

National Business Agent  
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256.828.8205  
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August 30, 2010

Greg A. Gamble  
District Manager  
USPS – Tennessee District  
811 Royal Parkway  
Nashville, TN 37229-9998

Dear Greg,

I am in receipt of your letter dated July 29, 2010 regarding your decision to change the current system of using 3 tracks (performance, attendance, conduct) to administer Article 16 of the National Agreement, to a single track of discipline for unrelated infractions.

You are (or should be) well aware that the current system used by the Postal Service to decide and issue discipline in the Tennessee District has been in existence for decades and has been the source of great debate via the grievance-arbitration procedure for that same period of time.

The notion of changing the system referenced above that has been in place for decades to a one-track discipline system for unrelated infractions takes this debate to a whole new level.

I must inform you that the National Agreement as currently written does not permit you to make such a decision.

First and foremost, Article 5 of the National Agreement was not applied correctly here. I tried to explain this to you in my letters dated June 17 and July 6, 2010 to no avail, but I'll try again.

Page 5-1 – 5-4 of the JCAM (enclosed) represents the National Parties' general agreement on the subject of past practice. On p. 5-3, the National Parties break the definition and rules to change "Past Practice" issues into three categories. They are:

1. To Implement Contract Language
2. To Clarify Unambiguous Language
3. To Implement Separate Conditions of Employment

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In the NALC's view, the practice of using a 3 track system to decide and issue discipline over a period of decades is clearly a practice designed "To Implement Contract Language" such as that contained in Article 16, Article 19, Section 115 of the M-39 Handbook, and Article 34 for starters.

If the argument is that the language in the above stated provisions of the National Agreement is ambiguous, then the practice at issue here would fall into the "To Clarify Unambiguous Language" category.

Either way, the contractual path to attempt to change the current discipline system to a single track of discipline for unrelated infractions is shown in the J-CAM on p. 5-3 where it states in relevant part,

**"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."

The decision to treat the established past practice of using a multiple track discipline system as falling into the "To Implement Separate Conditions of Employment" category fatally flawed your attempts to make this change from the beginning.

The notion that the contract is silent on the issue of deciding, determining the level, issuing discipline, and resolving disputes that arise when discipline is issued is absurd.

However, just for the record, Article 5 wasn't even complied with had you been trying to change a past practice where the contract was silent.

The first letter I received regarding this matter was to inform me that you had already made your decision and the change would be implemented July 10, 2010. It is interesting to note that you had already begun to implement service talks to announce this change to all employees. I responded to your letter on June 17, 2010 and informed you that what you were doing was a violation of the National Agreement and I had never been informed about any of this.

I received a letter from you in early July rescinding the previous actions and announcing the same exact change. I responded to your letter by letter dated July 6, 2010 and once again informed you that what you were doing is a violation of the National Agreement.

I also met with you via the telephone to discuss this matter. I explained to you that in the NALC's view, what you were doing was a clear violation of the National Agreement. We talked about the matter for a few minutes, but that was it.

Despite the fact that the approach you took to attempt to change the past practice at issue was misplaced, there was certainly no "good faith" bargaining efforts made on the part of the Postal Service. As a matter of fact, there was no bargaining effort of any kind made by the Postal Service in this situation.

It is quite clear that your final decision was made before you neglected to send me the letter announcing the change back in February. The rest of this was merely a formality, and therefore, nothing more than a sham.

In addition to the multiple violations of Article 5, the decision to change from a 3 track discipline system to a single track discipline system for unrelated infractions violates several other provisions of the National Agreement such as, but not limited to,

Article 16, Section 1 of the National Agreement states in relevant part,

**"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive."**

Further, Section 115.1 of the M-39 Handbook states in relevant part,

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

The M-39 Handbook is also part of the National Agreement via Article 19. Article 19 requires that any changes to handbooks must be made at the National Level.

It is also the position of the NALC that the current system of discipline is a work standard. Therefore, any notification of change/changes in this work standard would have to be made at the National Level via the provisions contained in Article 34 of the National Agreement.

In closing, I must say that it is regrettable that you would attempt to use the financial situation of the Postal Service to justify circumventing the provisions of the National Agreement as described in your letter.

This situation mirrors the Postal Service's misguided attempt to implement the National Reassessment Process (NRP) in the Tennessee District in such a way as to completely ignore your contractual obligations as agreed to by The United States Postal Service and the National Association of Letter Carriers.

I'm requesting that you reconsider your decision and adhere to the agreed to provisions in the National Agreement with respect to this situation instead of just making things up as



It seems to me that we should be working together to both generate revenue and reduce the cost of disputes. It is my opinion that any attempt to implement the change to the current disciplinary system as stated in your letter will have the opposite effect.

I want to thank you in advance for your consideration in this matter. If you have any questions, or would like to discuss this matter, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lew Drass".

Lew Drass  
National Business Agent  
Region 8

cc: Roberta Albright, Manager, Labor Relations, Southeast Area  
NALC Branch Presidents