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 that " 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

> *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, states under Chapter 3 section E investigation, the following:

> *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