

## Windows of Operation . . .

# When the exception swallows the rule

**A**rticle 8 has gone through enormous transformations since collective bargaining began in 1971, none more so than during the bargaining of the 1984 National Agreement. The parties redefined the language in Article 8.5.F and 8.5.G to what is currently in the National Agreement and created an Article 8 Memorandum of Understanding (MOU), negotiated by the Postal Service and the APWU. The MOU states in relevant part:

*Recognizing that excessive use of overtime is inconsistent with the best interests of postal employees and the Postal Service, it is the intent of the parties in adopting changes to Article 8 to limit overtime, to avoid excessive mandatory overtime, and to protect the interests of employees who do not wish to work overtime, while recognizing that bona fide operational requirements do exist that necessitate the use of overtime from time to time. The parties have agreed to certain additional restrictions on overtime work, while agreeing to continue the use of overtime desired lists to protect the interests of those employees who do not*

*want to work overtime, and the interests of those who seek to work limited overtime.*

Over the last 30 years, the NALC has gone to arbitration on almost 1,000 cases related to simultaneous scheduling of overtime of non-ODL and ODL carriers with mixed success. Recently, however, Arbitrator Harry N. MacLean provided what is perhaps the most complete and educational award regarding simultaneous scheduling of overtime to date (C-30503).

The award contains language that provides a roadmap for achieving success at regional arbitration. In his decision, arbitrator MacLean discusses the two relevant national level awards and breaks down the two prevailing lines of thought on the subject.

As MacLean explains, Arbitrator Mittenthal issued two national awards concerning the new 1984 language in Article 8.5.D and 8.5.G. The first Mittenthal award (C-05860), was issued in 1986. The issue concerned the right, under the new language, of employees on the ODL to refuse work

over eight hours on a non-scheduled day, work over six days in a service week, and overtime on more than four or five scheduled days in a service week. The APWU argued that the ODL employees had such a right of refusal. The Service and the NALC argued that the employees did not have such a right of refusal.

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## Grieving COP and wage loss mistakes

**P**ostal managers have an obligation to process on-the-job injury claims in accordance with the regulations of the Federal Employees' Compensation Act (FECA). Those obligations are found in the law, postal regulations and the National Agreement. Even with those obligations, management's mistakes continue to impede letter carriers from filing claims for on-the-job injuries.

Managers often do not have either the training or experience to properly assist injured workers in filing claims successfully. That leaves letter carriers vulnerable to delays and the risk of claim denial through no fault of their own. Shop stewards can help injured workers by being proactive early in the claims process and holding management accountable for their mistakes.

The addition of City Carrier Assistants (CCAs) to the letter carrier craft has created some confusion when stewards assist members in OWCP representation. From their first minute on the job, CCAs have all of the FECA rights and benefits for on-the-job injuries accorded to career letter carriers.

When representing injured workers, shop stewards should be aware of the difference between representation for OWCP claims, and a grievance of management violations of contract and law. Stewards do not have a right to represent injured workers with OWCP claims on the clock.

When investigating management violations related to on-the-job injuries, however, shop stewards do have a right to time on the clock. Article 21.4 provides for the inclusion of FECA regulations into the contract. Management's own regulations in the ELM, EL-505 and other manuals provide multiple protections for injured workers that are often violated and so can be grieved.

Early in the claim process, postal management is required to determine the correct amount of pay injured workers receive for Continuation of Pay (COP) and Wage Loss Compensation (WLC.) While the computation of COP and WLC is relatively straightforward for career employees with set work schedules, it is more complex for employees like CCAs who work variable hours, with no guarantees.

The proper computation of COP and/or WLC for employees such as CCAs has proven to be problematic for some postal officials. In some districts, the Postal Service has simply paid CCAs COP hours equal to their minimum call-in guarantee. That is inconsistent with OWCP regulations and thus constitutes a contractual violation.

OWCP has addressed the issue of how to calculate COP and WLC for Postal Service CCAs in a FECA Bulletin (FB 13-03). The bulletin provides OWCP claims examiners and postal managers guidance in the

proper determination of COP and WLC for CCAs.

You can find FECA Bulletin 13-03 here: <http://www.dol.gov/owcp/dfec/regs/compliance/DFECfolio/FECABulletins/FY2011-2015.htm>. A summation of FB 13-03 follows.

For employees with no set work-hours such as CCAs, the formula that OWCP requires agencies (including the Postal Service) to use to calculate COP is different than the formula OWCP uses to calculate WLC. In addition, there are separate formulas for determining WLC for employees who have worked in the CCA position for 11 months or more, versus those CCAs who have worked in the position for

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less than 11 months. The three formulas are described below.

The calculation of **COP** weekly pay for CCAs is the same for career carriers and is found in the FECA implementing regulations at 20 CFR 10.216(b)(2):

Total pay earned by the employee during the one year period prior to date of injury (excluding overtime); divided by the number of weeks worked by the employee during that one year period (a partial work week counts as an entire week).

Because CCAs initial weeks of classroom and on-the-job instruction can result in less than 40 hour weeks, COP may be calculated at less than 40 hours of pay.

Shop stewards should file an Article 17 request for the injured workers payroll journals, form 50s and work schedules to verify management’s calculations and file a grievance when necessary.

The calculation of **WLC** weekly pay is found in FECA regulation 5 USC 8114(d); for CCAs WLC is explained in FB 13-03 as follows:

*If the employee has not worked 11 months or more in the CCA position, WLC is calculated in accordance with 5 USC 8114(d)(2) as follows:*

Total pay (excluding overtime) for the year prior to date of injury for an employee in the same (or neighboring) facility who did work 11 months or more in either TE or CCA positions. If there is more than one such employee, the one who worked the most hours in the year must be used, divided by 52 weeks.

*If the employee has worked 11 months or more in the CCA position, WLC is calculated in accordance with 5 USC 8114(d)(1) as follows:*

Total pay earned by the employee during the one year

time) of a CCA working substantially the whole year in the same or neighboring workplace (see CA-7, section 9.b).

If CA-7 Section 9.b (“Does the employee work a fixed 40-hour per

## The addition of CCAs has created some confusion when assisting members in OWCP cases

period prior to the date of injury (excluding overtime), divided by 52 weeks.

Shop stewards should request a complete copy of the CA-7 filed by claimants for compensation. Examine the Employing Agency portion; look at Section 8 to verify management entered the proper pay rate(s). An error can result in incorrect payments to injured workers and should be grieved immediately.

To correctly calculate WLC for a CCA who has not been employed for 11 months, OWCP depends upon the Postal Service to provide the gross earnings (excluding over-

week schedule?”) is answered “No,” and a CCA’s WLC is calculated at less than 40 hours, shop stewards should request to interview the postal official who certified the CA-7. Postal officials should be asked to indicate which employee was used to calculate the WLC in question, and whether there were other employees considered. If there is reason to believe that a different CCA’s prior year’s gross earnings may have afforded higher WLC, shop stewards should investigate and grieve for the higher WLC.

- 20 CFR 10.403
- ELM 542.3
- ELM 545.81
- ELM 545.8.11
- ELM 545 8.12
- ELM 5458.2
- EL 505 pages 23, 79, 91 & 110

Regulations Governing CA-7’s

### Index Available

A cumulative index for all past issues of the *Activist*, from 1986-2013, is now available in either hard copy or digital format. Please note that this is an *index*, not the full-text of all the back issues of the newsletter. If you would like a copy, contact Nancy Dysart at 202.662.2879 or [dysart@nalc.org](mailto:dysart@nalc.org). Be sure to specify which format you prefer.

# The art of interviewing witnesses

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

In grievance investigations, shop stewards are like the detectives in the first half of *Law and Order*. If the steward doesn't conduct a thorough investigation or misses something, the union probably won't prevail in the second half of the show – the grievance.

Interviewing witnesses is one of the most challenging and one of the most important tasks of a grievance investigator. Many grievances are won because the steward conducted thorough interviews of the witnesses; many are lost because a witness was missed or the right questions were not asked. Knowing who to interview and what questions to ask is not an easy skill to learn, but

with some guidelines and practice, anyone can improve.

Let's start with what a thorough interview is not: It is not simply asking the witness to write a statement. For the most part, witnesses don't know what to write. They don't know what's important and what's not. They don't know the difference between direct, circumstantial and hearsay evidence. Unknowingly, witnesses often write things down that are detrimental to the case or are just plain wrong. Sometimes witnesses have difficulty expressing themselves in writing or may have poor grammar skills or bad handwriting. Before putting a witness statement in the

file, the steward should review it for accuracy, completeness, legibility, relevance and tone. The steward may have to ask the witness to re-write it several times to get it right, which will not make the witness happy. Even so, while written witness statements may be helpful to a case, they are no substitute for a thorough and probing interview that is documented by copious note taking.

Skilled interviewing is an important investigatory tool. It's not just asking the witness to recall what they saw or heard; stewards have to know what's important and relevant and what's not. However, the importance of a witness's testimony may

## Information to Elicit during Witness Interviews

### 1. General Information

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

### 2. Postal Experience

- A. Where hired, which craft, what position
- B. Positions held, CC1, CC-2, OJI, Safety Captain, DLT, etc.
- C. Awards: Safe Driver, Attendance, Merit or Performance
- D. Management experience: 204-B, supervisor, when, how long, why no longer?

3. Union Experience
  - A. Current position
  - B. Other offices held, when, how long
  - C. Specialized training: Advocacy, OWCP, JARAP, Safety, etc.
  - D. Grievance handling: How many, what steps, etc?
  - E. Local negotiation experience, when, what role, etc.
4. Other Experience that may be relevant
  - A. Prior employment
  - B. Armed Forces
  - C. Outside interests
5. Prior Adverse Actions
  - A. Discipline: LOW's, suspensions, removals
  - B. Administrative: RSL, suspension/revocation of driving privileges, Letter of Demand
  - C. When? Why? Was it grieved or appealed? Why or why not? What was the outcome?
6. Qualification to Testify
  - A. I saw... I heard... I was issued... I was told... I felt...
  - B. Expert qualifications: my experience, curriculum vitae
7. What Happened
  - A. Date, time, location, (how did you know it was a specific time?)
  - B. Where witness was, what the witness was doing at the time
  - C. Where others were, what they were doing
  - D. What the witness saw
  - E. What the witness heard
  - F. What the witness felt, perceived or understood
  - G. How the witness reacted
  - H. What the witness said
    - I. How others reacted
  - J. How the witness now feels about the incident
8. Aftermath
  - A. Was there a meeting, a discussion, an investigation by management?
  - B. When, where, who else was there
  - C. What was said or done
  - D. Management's response to incident
  - E. Witness's response to incident
  - F. Witness's hoped for outcome

not be evident right away, so it's crucial the interview be detailed, complete and documented. Keep in mind that witness descriptions often include error-prone perceptions during the event and (unintentional) selective recall afterwards.

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

It is important to prepare for the interview. Don't just grab a pen and paper and start asking questions. Taking time to prepare will help keep you on course and increase the chances that you will cover what you want to cover. Start by reviewing the issues involved in the case. For example, if it's a disciplinary case, take time to review the principles of just cause in the JCAM and *Defenses to Discipline* found in the NALC Contract DVD (2012). If the case is about improper assignment of overtime, review the rules regarding overtime in the JCAM and the DVD. The more you understand about Article 8, the better prepared you will be to know what information to seek and which witnesses to interview.

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# Nalcrest — A place for us

The 50-year mark in our lives is a milestone. If we are lucky, it is a time when we celebrate all that we have accomplished and begin to look forward to what's next. Just recently Nalcrest celebrated its 50<sup>th</sup> birthday, complete with lighted paper lanterns released into the night sky commemorating its lasting success and hope for the future.

Members who receive NALC publications such as *The Postal Record* and *The Activist* have certainly read their share of articles about Nalcrest. Most of them included geographical data, lists of amenities and rental application information. Hopefully this article will add a little more of a personal touch to our letter carrier community which will perhaps inspire you to visit!

This retirement and vacation location belongs to each and every NALC member thanks to the steadfast guardianship of both past and present trustees. Unlike other retirement destinations, the trustees take a very personal hands on approach to ensure its proper administration. However, their commitment isn't the only thing that makes Nalcrest unlike other retirement communities. What is different is our ownership is not only in the physical sense of the buildings and grounds, but also in a spiritual sense which runs through the heart and soul of our brothers and sisters who reside there.

The concept of union and standing together in a common cause is evident in the way the retirees who

live there, either year round or just a month or two to get away from winter weather, show their continued support and solidarity. This is best described in an article by Jennifer Levitz, "In Florida, These Retirees Deliver a First-Class Protest," in the *Wall Street Journal*. She writes about how the residents have written their congressional representatives fighting against 5-day delivery and attacks on health benefits, picketed their local representative's office and only send gifts to their grandchildren using the Postal Service.

The community's public spirit doesn't stop with postal issues. As a local newspaper, *The Ledger*, noted, Nalcrest residents pitched in to help when it appeared the Toys for Tots campaign in the Lake Wales area was going to run short of Christmas gifts.

Both these legislative and humanitarian efforts help make the

community a true reflection of letter carriers. Keeping in that tradition, those that live there also take great care to ensure their neighbors are looked after. It is a town built for union retirees and visitors. One of the most important things is the sense of belonging described by the residents there. They boast that "no one is left alone or even left out . . . this means a lot as the years pass. There is a saying: 'We are all in the same boat.' Here in Nalcrest, we're all in the same union."

These actions reveal what is still in the hearts and minds of our union's retired letter carriers long after they leave their routes behind. The values alive and well at Nalcrest are not so different from our own as union activists. Volunteering, staying legislatively active and helping out our own just comes naturally to most of us.

It is important to mention that there is another side to Nalcrest as well. Melba Newsome, the author of a *National Geographic* article in July 2004, wrote "...contrary to what you might expect from a community of Cliff Clavens, no one sits around reminiscing about Sears-catalog-induced hernias or half-mile sprints just ahead of an angry Rottweiler...It's a lot like being in college (no jobs, few responsibilities, lots of parties without the mid-terms)." Some retirees describe book clubs where there isn't as much reading going on as there is

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# HEALTH & SAFETY

*It could happen to you . . .*

## Park smart

Imagine waking up in the hospital and being told that you no longer have your legs. Even worse, your family has to tell you the horrific news about the accident and subsequent consequences several times during recovery because you also have lost your short term memory. Worse yet, a life is lost from an accident where a letter carrier is struck at the back of their postal vehicle while it was parked. Unfortunately, all of these are real-life scenarios that have followed this kind of accident the past several years.

Prevention is the first step to safer park points, working conditions and surroundings. Routes should be set up to reduce or eliminate the number of potential accidents. Make personal safety a top priority and set a good example. As a leader in your branch, educate your members on how they can take preventive actions to reduce or eliminate the potential for injury or death. Provide assistance to others when needed.

Tragically, letter carriers are involved in accidents every day while doing their jobs. Many cause injury, and in some cases death. The NALC is aware of 14 devastating accidents since 1996 in which carriers were struck while at a park point. Of those struck by a vehicle, some recovered fully, while others have long term or lifelong consequences. Worse yet, four of the 14 lost their lives.

Although letter carriers should expect to be safe while doing their job, sometimes the unexpected happens. Take action for yourself and encourage others to do so.

Take a serious look at where park points are located. Evaluate locations for potential accidents.

- Is the vehicle parked on a high traffic corner?
- Is either the carrier or the vehicle obscured from oncoming traffic?
- Can this park point be moved to a safer location?

If the answer to any of these questions is yes, carriers should immediately talk to their supervisor to select park points that reduce exposure to potential hazards. If carriers are unable to get their supervisor to respond to requests, encourage them to obtain PS Form 1767: *Report of Hazard, Unsafe Condition or Practice*. This should be available on all USPS work room floors. If employees are unable to locate this form, make sure they know to notify management and the steward immediately.

PS Form 1767 is used to identify hazards. If a park point is a hazard, document the location(s), describe the unsafe condition and provide a recommended corrective action. Once completed, give this form to the supervisor who is required to recommend or describe the specific

action taken to eliminate the hazard. An approving official is required to take corrective action, submit a work order, or determine there were no grounds to determine such a hazard exists. If no grounds exist, the supervisor must explain how this decision was made. The employee is to be provided a copy of the decision. Hopefully, exposure to risky park points will be addressed. If it is not, then the documentation is already available to go straight to a grievance file and on to Formal A (Article 14 Section 2.c and Article 15, Formal Step A, Section 2.b).

Carriers should look next at the following once a park point is reached:

- Is the vehicle parked at least 20 feet from an uncontrolled intersection and 30 feet from a controlled intersection?
- Will the use of flashers or strobes while working from the rear of the vehicle help increase visibility to other drivers?

While this article only covers park points, remember that the National Agreement, the ELM, PS Form 1767 and several other tools all can be used to provide a safer working environment for all on this issue and others. Regular safety talks, safety committee meetings, abatement of unsafe conditions and innovative ideas on improving

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# YOUR CONTRACT

## CCAs:

# On loan to another office and 1723s

In the Winter 2013 issue of the *NALC Activist* we discussed 204Bs and PS Forms 1723, but those are not the only categories of employees for which a PS Form 1723 should be used. City Carrier Assistants (CCAs) when temporarily assigned to duties in other postal facilities also should have a PS Form 1723 to accompany their assignment.

President Rolando signed M-01827 with the Postal Service regarding the temporary assignment of CCAs outside their employing post office (installation) to another post office (installation).

The provisions of the MOU can be found in Box #1 below.

While the language in M-01827 sets clear parameters on the temporary assignments of CCAs to other offices, management must meet other requirements **when loaning any employee** to another postal facility other than the employee's duty station.

Section 423 of the F-21 *Time and Attendance* handbook [see Box #2 on page 9] clearly requires management to fill out a PS Form 1723 when an employee is temporarily assigned to another duty station.

This would apply to CCAs when loaned to another office.

PS Form 1723 follows the explanation given in the F-21 for temporary assignments. According to the instructions attached to PS Form 1723 (listed below), it is an assignment order filled out by managers to record assignment changes.

**Purpose.** Complete this form to record management-directed assignment changes involving:

Temporary assignments to perform duties other than those in employee's official job description,

1. CCAs will normally work in their employing post office but may be assigned to work in another post office in the local travel area (Handbook F-15, Section 7-1.1.1.1) within the same district on an occasional basis (the assignment may be for a partial day or several consecutive days, depending on local circumstances). Sunday CCA work assignments are not subject to the occasional basis limitation.
2. Temporary assignments must otherwise be consistent with the National Agreement (e.g. assigning CCAs to work outside their employing office may not violate Article 7 1.C.4 in the temporary office or the letter carrier paragraph in the employing office).
3. Management will schedule CCAs to work in other post offices in advance of the reporting date whenever practicable.
4. When the need arises to temporarily assign CCAs outside their employing post office, management will, to the extent practicable, use volunteer CCAs from the delivery unit providing assistance as long as the volunteers will be in a similar pay status (e.g. straight-time rate, regular overtime rate, penalty overtime rate). If sufficient volunteers are not found, CCAs from the delivery unit providing assistance will be temporarily assigned to the other installation in reverse relative standing order whenever practicable as long as the junior CCAs are in a similar pay status.
5. CCAs who are required or volunteer to work outside their employing office may receive payment for mileage for the difference between their residence and employing office provided the difference is greater (Handbook F-15, Section 7-1.1.1.2.d).

Box #1  
M-01827



## 423 Loaned Hours

## 423.1 Definition

423.11 “Loaned hours” is time worked at a postal facility other than the employee's official duty station. With the exception of installation heads, the employee's official duty station is normally the facility which keeps the employee's official personnel folder. *Loaned hours do not include work at stations or branches within the same finance number.*

## 423.2 Eligibility

423.21 There are no eligibility requirements because “loaned hours” is simply an accounting of the hours charged to payroll accounts.

423.22 Loaned hours should not be recorded when employees are assigned to a regional office or other installation to instruct or to receive training.

## 423.3 Authorization and Supporting PS Forms

423.31 Whenever an employee is temporarily assigned to a facility other than his official duty station (or to another government agency) a PS Form 1723, *Assignment Order*, must be prepared in duplicate by the employee's supervisor directing the employee to perform the duties of the assigned position. Exhibit 423.31 is an example of a properly completed PS Form 1723.

## Box #2

## F-21 Section 423

including higher level and training assignments.

Scheduled hours and/or days off when schedule change is not posted.

**Frequency.** Prepare a new form for each accounting period.

**Approvals.** Assignments and changes may be approved by immediate supervisor.

**Signatures.** If employee is unable to sign form, the supervisor should indicate and also identify how the employee was notified in the employee signature space.

When management temporarily assigns a CCA voluntarily or involuntarily to work in another office for any time period, a PS Form 1723 should be completed.

PS Forms 1723 for loaned CCAs may be helpful in Article 8 cases in either the loaned office or the duty station. They will also be helpful for the steward monitoring compli-

ance with the CCA provisions of “Questions and Answers – 2011 USPS/NALC National Agreement” (M-01833). Anyone involved with these issues should review the full questions and answers in M-01833.

Stewards should request this information via an Article 17 & 31 document request when any CCA is assigned outside their post office. This will make certain management is meeting its requirements per the National Agreement.

Keeping managers on their toes regarding the loaning of CCAs should help CCAs understand how long their detail to another office will be and provide the union with the necessary information to ensure compliance with the National Agreement. ■

**Nalcrest**

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card playing and beer sampling or birthday parties where it isn't necessarily someone's birthday!

All of this is what we as a union have accomplished at our “slice” of Florida, but now it is time to look ahead. The future of Nalcrest rests with all of us. Keeping this place alive and sustainable for each and every union member, present and future, is no small task. It is our obligation to carry on the traditions our union has started there. Some branches might want to consider renting a place for their membership to enjoy throughout the year. Or, if you're close to retirement and looking for a permanent residence, a winter home or just want a place to stay on your yearly vacation trips to Florida, visit Nalcrest and see for yourself what it is all about. It is a place people like us, union activists, fit in. ■

*NALC organizing — made in the USA!!*

## *Organize — Every Member!!*

**W**e should all be very proud of the rich history of the NALC. Not only do we deliver billions of pieces of mail year after year, but the NALC is also a national leader in serving the American public outside the scope of our daily delivery duties. The achievements of the NALC are the results of the combined efforts of individual NALC members working together in solidarity.

We must continue to reach out to every non-member within our organization until they are convinced that joining the NALC is simply the right thing to do!

Currently, 90.5% of total craft members are organized; 93.0% of active career letter carriers and 77.2% of city carrier assistants. In both categories, we can improve the numbers if we continue to work together.

So what's the secret? While there is no "one size fits all" method that will reach every non-member, many branch leaders have offered tips that have increased their success in organizing letter carriers in the installations they represent.

The following simple, but effective steps may assist your branch with organizing non-members:

**Make an assessment** - Every branch receives a non-member list on a monthly basis from the Membership Department. Branch lead-

ers should review and identify the number of non-members.

The non-member list should be reviewed on a monthly basis to monitor and track the organizing success of the branch. Branches should consider including this review as an agenda item for regular branch meetings.

**Categorize** – Who are the non-members:

- Non-career?
- Career?
- Missed opportunity at orientation?
- Missed opportunity at the station?

**Identify** the reason(s) given for not joining:

- Cost too much money.
- I don't like the branch president.
- I'll join once I get hired as a career employee.
- I don't want my union dues going to politicians.

**Know** who you are approaching. Listen. It is important you know why the non-member is resistant to joining. Prepare an educational response; be factual and informative, not adversarial.

**Resources** - Some branches have been successful in their organizing efforts by appointing members to an organizing committee. Other branches choose the one-on-one approach with shop stewards, leadership academy graduates, or that "go to" guy or gal of the branch.

Generally speaking, there's always a member within the branch that has some sort of common interest with that of a non-member. Whether it's a fantasy baseball league, bowling, dancing, cycling, hunting, music, or other social activities, there's someone in the branch that can make the connection and talk to the non-member.

**Simple acts of caring and kindness** go a long way to get a "Yes!"

- Invite the non-member to eat lunch when possible.
- Offer advice on approaching that snow covered porch.
- Offer uniform items to the new letter carrier if you can.



- Helping letter carriers in any way is a start to gaining their trust in the union.

### Develop an action plan –

Branch leaders should have regular meetings within their branch to decide the best method to approach non-members.

- Encourage your branch membership to talk with non-members and approach them to explain why they should belong.
- Consider having your membership adopt new letter carriers to mentor from the beginning of their appointments.

Having a mentor to go to for everyday questions and concerns is not only a sure way to get him/her to join NALC, but it's also a great advantage when trying to get them to become active in the union.

Following these steps should improve your branch's organizing results. What about other tools that may help a branch in their organizing efforts?

Many branches find it very beneficial to use their regular branch meetings to develop organizing skills and their branch newsletters to introduce new letter carriers. Some branch leaders take advantage of station visits and conduct one-on-one conversations with non-members.

One of the most inspiring tools can be found on the NALC website: the video, "The Strike at 40," which is now played at each national convention. It includes fascinating interviews

with several letter carriers from New York Branch 36, where the strike began, and others across the country who joined it. Among the letter carriers sharing their stories is President Emeritus Vincent Sombrotto.

Show the video at branch meetings. It can be accessed on the NALC website by going to the News link, clicking on Minneapolis Convention Recaps under Topics and then clicking on "The Strike at 40."

Be diligent in your efforts. Organize, don't agonize. Remember, regardless of our differences, we strive shoulder to shoulder.

If you find yourself getting frustrated because that non-member just doesn't seem to want to give in, remember these encouraging words by President Emeritus Vincent Sombrotto on March 17, 1970, when the historic vote to strike happened.

**"I thought we were going to win, and I never had a doubt about it—they were going to have to give in."**

*President Emeritus  
Vincent Sombrotto* ■

### The art of interviewing witnesses

*(Continued from page 5)*

Develop a game plan for asking questions and writing down the answers. There are two basic ways to do this. Some stewards like to write out their questions beforehand leaving space on the page to fill in the answers. Newer stewards seem to prefer this style as they feel it helps them make sure they have covered everything and won't get off-track. The problem with this

style is that its difficult to anticipate every question that needs to be asked and important details can be missed if the interview is not allowed to go in unanticipated directions.

A second method is to simply prepare a list of topics you want to cover and ask questions about them. This allows the interview to flow more freely while at the same time covering the areas you know you need to cover. So, instead of writing this:

*Q: Did you take the Red Plums out on Friday May 4<sup>th</sup>?*

*A: No.*

*Q: Why not?*

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

Write this:

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

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

The boxes on pages 4-5 outline some of the information that should be elicited during interviews with the grievant and other witnesses. Not all of the information noted on those pages will be needed from

*(Continued on page 13)*

**When the exception . . .***(Continued from page 1)*

Mittenthal held that employees did not have a right of refusal, in part because it would impact the rights of employees not on the list. Arbitrator Mittenthal opined:

*This dispute is significant not just for those who have placed their names on the ODL. It also has a derivative impact on full-time regulars not on the ODL. For they can be required to work overtime only if all available and qualified employees on the ODL have reached the twelve-hour day and sixty-hour week limits. The APWU view of ODL employees' rights would make non-ODL employees less susceptible to an overtime draft.*

*In short, non-ODL employees can be drafted for overtime at precisely the point at which ODL employees have exhausted their overtime obligation. Such symmetry assures the availability of someone to work the needed overtime.*

Arbitrator Mittenthal solidifies the significance of the contractual right of a non-ODL carrier not to work overtime and puts to rest the

first before attempting to mandate non-ODL carriers. The case, however, does not directly address the question of when, if ever, non-ODL and ODL employees may be simultaneously scheduled.

The second award by arbitrator Mittenthal (C-13902) does consider the issue of simultaneous scheduling of overtime, but somewhat indirectly. This award has been misinterpreted by management over the years as an approval of simultaneous scheduling when in fact Arbitrator Mittenthal simply settled a dispute over whether the Memorandum created specific circumstances in determining when simultaneous scheduling can be done. Arbitrator MacLean stated:

*It is important to note that in this award Mittenthal was not attempting to define or set forth the conditions in which simultaneous scheduling could take place. In fact, he stated that if the dispute was over the meaning of such terms as bona fide operational requirements it would not be a subject for a national award. Mittenthal made it clear that he was not articulating or applying such a*

Arbitrator MacLean then took the arbitration citations from both sides and appropriately put them in two camps:

*The Williams line of cases holds that windows of operations are legitimate operational rules and justify mandating overtime for non-OTDL carriers. If the WOO mandates that carriers be back by 5 p.m., then carriers who would not be back by that time are not "available" and therefore mandating non-OTDL is justified.*

*The Klein line of cases essentially holds that even when a WOO is established the Service can only mandate overtime for non-ODL carriers when there is an unusual or unforeseen circumstances.*

Arbitrator MacLean comments on the rationale offered in several of the Williams's line of cases for allowing regular simultaneous scheduling:

*The cases point to Article 8.5.D which allows for forced overtime if there are not "sufficient qualified people" on the OTDL. Similarly, Article 8.5.G provides that forced overtime for non-OTDL employees is allowable only "if all available employees" on the list have worked 12 hours. Under the WOO, these cases argue, there are not "sufficient" people on the list to get the mail delivered by the DOV. Secondly, since the OTDL employees had to be back by 5:20, they were not "available" to work the 12 hours. Both of these arguments seem to be circular: it was the very imposition of the window that caused there to be insufficient employees and a lack of available employees. The Arbitrator agrees with Arbitrator Klein in her statement that the Service cannot rely on this*

**“Where a WOO mandates overtime for non-OTDL employees on a regular basis – the exception will swallow the rule.”**

notion that overtime can be refused by an ODL carrier then handed to a non-ODL carrier. It places an emphasis on precise scheduling that requires a good faith effort to schedule overtime to the ODL employee

*standard, but merely deciding whether the issue was properly before him. Therefore, this award has very little, if any, precedential value in determining when in fact the Service can simultaneously schedule non-OTDLs and OTDLs.*

*“artificial” or “forced insufficiency” to justify simultaneous scheduling.*

During the hearing, the Service argued that the phrase “bona fide operations” in the MOU makes it clear that it can simultaneous schedule if necessary to meet the requirements of a WOO. The arbitrator hits the proverbial nail on the head. Simultaneous scheduling that is institutionalized or ongoing on a regular basis is not supported by the agreed upon language of the MOU:

*Critical in this sentence is the phrase “from time to time.” These are words of limitation; they indicate that simultaneous scheduling will not occur on an ongoing and regular basis, but only on specific occasions when operational requirements necessitate it.*

Finally, arbitrator MacLean states:

*A central flaw in the Service’s case and in the cases supporting it is well put by Arbitrator Klein in Case No. J01N-4J-C 06223911, in which she states that under this approach—where a WOO mandates overtime for non-OTDL employees on a regular basis—the exception will swallow the rule. If all you have to find is a valid operational reason to uphold simultaneous scheduling, then you really have no restriction at all.*

*The MOU specifically “protects the interests of employees who do not wish to work overtime,” and in the Arbitrator’s view, this is an important protection. Employees sign up to work 8 hours a day and 40 hours a week. They have two days off a week. To force overtime on a regular and ongoing basis is a serious diminishment of the right to that schedule.*

As stated above, arbitrator MacLean’s award contains language that provides a roadmap for achieving success at regional arbitration when management simultaneous schedules overtime on an ongoing and regular basis. In the next issue of the *Activist*, we will discuss filing a grievance on this issue. ■

### The art of interviewing witnesses

*(Continued from page 11)*

every witness in every case. What you cover will vary depending on the particular circumstances of the case and each person’s part in it. A good interviewer will ask questions in a way that doesn’t feel like an interrogation but more like a conversation. A witness at ease will be more forthcoming. Questions should be clear so the witness understands them. Don’t read them from a list; just blend them into the conversation. Here are some important tips for interviewers:

- Don’t interrupt witnesses; they may forget to return to an important point.
- Ask one question at a time and allow the witness to answer. If you have a thought, jot it down in the margin and come back to it later.
- Pause between questions; make sure they are finished answering.
- Ask open ended questions and avoid those that only require a “yes” or “no” answer. More information is obtained that way and it’s in the witness’s words not yours. The answers are more precise and can often lead to other questions. Here are some examples of open ended questions: “Tell me in

*your own words what happened?” “And what was his response?” “What did you do next?” “... How did that make you feel?”*

- Encourage witnesses to volunteer information without prompting by pausing, or looking at them quizzically, “Hmmmmmmm”
- Ask the witness to report all details, no matter how trivial they may seem.
- Don’t signal by body language or by stopping your note taking, that what they are saying is not important. They will sense this and be less forthcoming.
- Ask them to mentally recreate the circumstances of the event, not only what happened but what they thought and how they felt at the time.
- When possible, take them to the location of the incident. This will likely generate more information.
- Encourage witnesses to draw rough diagrams or maps showing where people were, what directions they moved, what other objects were in the area, etc. Ask them to use gestures to demonstrate actions.

### Taking Notes

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

Good note taking is essential to being a good investigator. It’s a

*(Continued on page 15)*

## Training Seminars & State Conventions

Listed below are all training sessions, educational seminars, or state conventions currently scheduled. For more information on any event, please contact the appropriate business agent. Any region not listed below has not reported any training scheduled as of the publication date of this issue of the *Activist*.

**Region 2** - NBA Paul Price 360-892-6545  
Alaska, Utah, Idaho, Montana, Oregon, Washington  
May 12-15 MT Shop Steward College; Copper King, Butte MT  
May 16-17 MT State Convention; Copper King, Butte MT  
May 16-18 WA State Convention; Red Lion, Olympia WA  
October 26-28 Regional Assembly; Sunriver Resort, Sunriver OR

**Region 3** - NBA Neal Tisdale 217-787-7850  
Illinois  
June 12-14 IL State Association Convention; Clock Tower Resort, Rockford IL  
September 22-24 Region 3 Fall Training Seminar; Marriott-Bloomington/Normal Hotel & Conference Center, Normal IL

**Region 4** - NBA Roger Bledsoe 501-760-6566  
Arizona, Arkansas, Colorado, Oklahoma, Wyoming  
May 2-3 OK Convention; McAlester OK Convention Center, McAlester OK  
May 30-31 WY State Training; Holiday Inn, Laramie WY  
June 13-14 AR State Training; Austin Hotel, Hot Springs AR  
September 12-13 Region 4 Rap Session and Training; Doubletree Hotel, Little Rock AR

**Region 5** - NBA Dan Pittman, 314-872-0227  
Missouri, Iowa, Nebraska, Kansas  
June 6-8 MO State Convention; Tan-Tar-A Resort & Conference Center, Osage Beach MO  
October 18-19 NE Fall Training; Holiday Inn, Grand Island NE  
October 26-28 IA Fall Training; Holiday Inn, Coralville IA

**Region 6** - NBA Patrick Carroll 586-997-9917  
Kentucky, Indiana, Michigan  
October 10-13 KIM Regional Training Seminar; Motor City Hotel & Casino, Detroit MI

**Region 7** - NBA Chris Wittenburg 612-378-3035  
Minnesota, North Dakota, South Dakota, Wisconsin  
April 28-May 2 Region 7 Training Seminar; Radisson Hotel, Roseville MD  
May 15-17 WI State Convention; Midway Motor Lodge, Brookfield WI  
October 5-8 MN State Convention; Ruttger's Bay Lodge, Deerwood MN

**Region 9** - NBA Judy Willoughby 954-964-2116  
Florida, Georgia, North Carolina, South Carolina  
May 14-17 SC State Association Convention and Training; Embassy Suites Airport, Charleston SC  
June 12-14 GA State Convention; Georgia Convention Center, Savannah GA  
October 4-5 SC State Training; Branch 233 Union Hall, Columbia SC  
October 17-19 FL State Association Training; Embassy Suites, West Palm Beach FL  
October 24-25 NC State Association Training; Hotel TBA, Asheville NC

**Region 10** - NBA Kathy Baldwin 281-540-5627  
Texas, New Mexico  
June 6-7 NM State Convention; Route 66 Hotel Casino, Albuquerque NM

**Region 12** - NBA William Lucini 215-824-4826  
Pennsylvania, South and Central New Jersey  
September 28-30 NJ Training Seminar; Caesar's Hotel and Casino, Atlantic City NJ

**Region 13** - NBA Timothy Dowdy 757-934-1013  
Delaware, Maryland, Virginia, West Virginia, Washington DC  
May 18-20 Branch Officer Training & Regional Rap Session (region-wide); Homestead/Omni, Hot Springs VA

**Region 14** - John Casciano 617-363-9299  
Connecticut, Maine, Massachusetts, New Hampshire,  
Rhode Island, Vermont  
June 6-8 NH State Convention; Attitash Grand Resort,  
Bartlett NH

**Region 15** - Larry Cirelli 212-868-0284  
Northern New Jersey, New York, SW Connecticut,  
Puerto Rico, Virgin Islands  
September 28-30 NJ State Association Seminar;  
Caesar's Resort, Atlantic City NJ

### The art of interviewing witnesses

*(Continued from page 13)*

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

Here are some other basic note taking tips:

- Use one side of paper 8 ½ x 11. This will make it easier for photocopying.
- Write in ink; pencil can be erased. If you make a mistake, line out and initial the error, don't obliterate it.
- Use wide margins and spaces between lines to leave room for adding details and reminders to yourself.
- Use colored pens and highlighters to mark important info.
- Use abbreviations for common terms.
- Remember, others may have to rely on your notes, so write legibly.

As soon as possible after the interview, write up a report or summary of the interview. Date it. The longer you wait, the less reliable your report is seen to be. If you add something to the report that was not in your notes, point this out and explain it.

Remember that your notes and summary become part of the official grievance file and may become an essential element proving the union's case. Should the case go to arbitration, you may be called as a witness to testify about what's in your notes. This could be many months after the interview; if your notes are unreadable or incomplete, they will be of little value, to you or to your case. ■

### Park smart

*(Continued from page 7)*

safety should be a priority of all employees, supervisors, and managers.

Article 14 (Safety and Health) of our National Agreement provides detailed language on safety. Section 1 addresses management's responsibilities with union cooperation and assistance. Section 2 speaks to the insistence on correcting unsafe conditions. Sections 3 – 9 deal with implementation of safety programs at various levels. Joint Labor-Management Safety and Health Committees are to be established in installations of 50 or more employees. Use these committees to address unsafe conditions or practices. Until every park point on every route is safe, park points should be

at the top of the list of priorities for all safety committees.

The ELM, Section 8, details principles to which the USPS has committed. Use these tools along with others to promote a safer work environment both in and out of the office. ELM Section 811.21 states management's commitment, involvement and accountability to providing safe and healthful working conditions.

The Postal Service affirms they are to be held accountable for safety performance and compliance to OSHA standards and regulations. Make sure management's commitment to safety is evident in every office. When we do this, we are telling the members that the NALC is doing all it can to provide a safe work environment for all.

A list of additional resources available to promote hazard prevention and safer work environments can be found in the box below. ■

- Publication 129 *Safety Talks*
- Pub 174 *How to Avoid Dog Bites*
- EL 801 *Supervisors Safety Handbook*
- EL 802 *Executive's and Manager's Safety Compliance Guide*
- EL 804 *Safe Driver Program*
- EL 814 *Employees' Guide to Safety*
- [www.osha.gov](http://www.osha.gov)

Other Safety Resources

# ACTIVIST

**NALC**  
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**NATIONAL ASSOCIATION OF LETTER CARRIERS**  
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## USPS **BY THE NUMBERS**

### Operations

	Number	Change from SPLY*
<b>FY 2014 - Q1</b>		
Total mail volume (Millions of pieces)	42,038	-3.3%
<b>Mail volume by class (YTD in millions)</b>		
First-Class	16,881	-4.6%
Periodicals	1,564	-4.7%
Standard (bulk mail)	21,993	-2.8%
Shipping & Packages	1,114	10.3%
International	266	-1.1%
Other	220	-5.6%
<b>Average days to delivery</b>		
First-class mail	2.1	
Package services	4.6	

\*SPLY=Same Period Last Year

### Finances

	Number	Change from SPLY*
<b>FY 2014 - Q1 (millions)</b>		
Operating Revenue	\$17,994	1.9%
Operating Expenses	\$18,306	-3.1%
Controllable Operating Income	\$765	
PSRHBFB Expenses	\$1,425	
Workers' Comp adjustments	NA	
Net operating loss	-\$354	

### Employment

	Number	Change from SPLY*
<b>FY 2014 - PP8</b>		
City carrier employment	165,244	-4.2%
Full Time	160,248	-1.7%
PT Regular	609	-9.5%
PTF	4,387	-50.3%
City Carrier Assistant	33,320	63.2%
City carriers per delivery supervisor	15.8	
Career USPS employment	484,039	-0.7%
Non-career USPS employment	137,037	13.4%