Workplace solicitations

NALC Headquarters has received a number of complaints from our members and branch officers regarding employees receiving insurance solicitations addressed to their workplace.

The Freedom of Information Act (FOIA) provides that upon written request from any person, a federal agency must release any agency record unless that record falls within one of the nine statutory exemptions and three exclusions. FOIA binds only federal agencies and covers only records in the possession and control of federal agencies. See AS-353, Section 4-5, Records Which May Be Withheld From Disclosure, for the nine statutory exemptions under which records or portions of records may be withheld from public disclosure.

Postal FOIA regulations are in Handbook AS-353. Chapter 4 of the AS-353 contains the Postal Service's procedures for the public's access to records maintained by the Postal Service, unless the records are exempt from disclosure. Chapter 5 contains the procedures for responding to requests for employee information.

Sections 5.2.b.1 and 5.2.b.3 of the AS-353 provide that the Postal Service, upon written request, may disclose:

> (1) **Employment Data** The following data is considered public information: the name, job title, grade, current salary, duty station, and dates of employment of any current or former Postal Service employee.
>
> (3) **Employee Listings** On written request, the Postal Service provides, to the extent required by law, a listing of employees working at a particular Postal Service facility (but not their home addresses or Social Security numbers).

Now you know how you are receiving solicitation mail addressed to you at your workplace. Once mail is received at your workplace, Section 271.64 of the ASM controls employee personal mail guidelines. Section 271.641 states:

> Employees must not receive personal mail at their place of employment. Mail that is addressed to an employee at any postal facility's address is generally considered to be addressed to and intended for the Postal Service, rather than the employee. This mail may be opened by the Postal Service, without the employee's knowledge or consent, after it is delivered to that facility. Mail that is addressed to an employee at a postal facility's address and that is known or appears to be intended for the employee personally may be refused, but must not be opened.

There are exceptions that can be found in Section 271.642 of the ASM, which state:

> a. Official Postal Service mail or circulars and other mail or circulars that appear to relate to postal employment (such as mail or circulars from the employee unions or from postal uniform vendors) and are intended for individual employees must be delivered without being opened.
>
> b. In the case of an apparent emergency, the Postal Service must accept delivery of personal mail addressed to an employee, and the head of the facility (or designee) must attempt to deliver the mail to the employee.

Solicitations mailed to your workplace that are not related to your postal employment are controlled by 39 CFR 232.1.h and h.2, Conduct on Postal Property, which states:

> (h) Soliciting, electioneering, collecting debts, vending, and advertising. (1) Soliciting alms and contributions, campaigning for election to any public office, collecting private debts, soliciting and vending for commercial purposes (including, but not limited to, the vending of newspapers and other publications), displaying or distributing commercial advertising, collecting signatures on petitions, polls, or surveys (except as otherwise authorized by Postal Service regulations), are prohibited.
>
> (2) Solicitations and other actions which are prohibited by paragraph (h)(1) of this section when conducted on Postal Service property should not be directed by mail or telephone to postal employees on Postal Service property. The Postal Service will not accept or distribute mail or accept telephone calls directed to its employees which are believed to be contrary to paragraph (h)(1) of this section.

Postal Service policy and federal regulations prohibit any form of commercial activity on postal property. If you have received mail at your workplace and it does not appear related to your postal employment, please contact your local union official to see if a grievance case exists. ✉

Can they change my schedule?

You come back to the office and there is a notice on the time clock to all carriers which reads: "All carriers, report at 8:00 a.m. tomorrow." You, and every other regular in the office, have a permanent scheduled starting time of 7 a.m. Can they change your schedule like that with only a day's notice? The simple answer is yes, but that is not the end of it.

While you have a regular starting time, management does have the right to make changes to your starting time. However, this right is *not* without consequence. The employer's rights to change your schedule are mitigated by the protective contractual language found in Article 8 (*JCAM* pages 8-4, 8-5 and 8-6), which may require additional payment to carriers.

There are three ways in which management can change your starting time: a permanent schedule change, where the employee is properly notified and in compliance with provisions of the local memorandum of understanding; a temporary schedule change, where the carrier is given advance notice by Wednesday of the preceding service week; and a temporary schedule change, where the carrier is not properly given advance notice.

In the example given, the employee was not provided with advance notice by Wednesday of the preceding week. Do you get "out of schedule" pay? *JCAM* (8-5) states:

> **Rules for Out-of-Schedule Premium.** In the letter carrier craft the out-of-schedule premium provisions are applicable only in cases where management has given advance notice of the change of schedule by Wednesday of the preceding service week. In all other cases a full time employee is entitled to work the hours of his or her regular schedule or receive pay in lieu thereof and the regular overtime rules apply—not the out-of-schedule premium rules.

So, if "out of schedule" pay does not apply, what is the consequence for management? Again, the *JCAM* reads:

> In this case any hours worked in addition to the employee's regular schedule are not considered out-of-schedule premium hours. Instead, they are paid as overtime hours worked in excess of 8 hours per service day or 40 hours per service week.

In other words, you are permanently scheduled to work 7 to 3:30, right? You are guaranteed those hours. However, your supervisor changed your schedule to work 8 to 4:30, right? So, in the example above, you would receive one hour of guarantee time (7 to 8 a.m.), seven hours of straight time (8 a.m. to 3:30 p.m.) and one hour of overtime (3:30 to 4:30 p.m.). Had the note on the time clock been a change to report at 9 instead of 8, the formula would be two hours of guaranteed time, six hours of straight time and two hours at the overtime rate.

Keep in mind that if you are not on the Overtime Desired List and you were scheduled to work overtime, in this scenario, all the carriers on the ODL should be utilized to the maximum extent, possibly including "penalty overtime." While the overtime you worked was a result of the schedule change, you were still scheduled to work overtime when ODL employees were available (*JCAM* 8-16):

> **Mandatory Overtime.** One purpose of the Overtime Desired List is to excuse full-time carriers not wishing to work overtime from having to work overtime. Before requiring a non-ODL carrier to work overtime on a non-scheduled day or off his/her own assignment on a regularly scheduled day, management must seek to use a carrier from the ODL, even if the ODL carrier would be working penalty overtime.

When would "out of schedule" pay apply? When management gives advance notice of the schedule change by Wednesday of the preceding week. Using the example of changing the starting time from 7 to 8 and working eight hours, the time from 8 to 3:30 would be seven hours of straight time and the hour from 3:30 to 4:30 would be one hour of "out of schedule" pay. Under this example, if you worked until 5:30, you would receive seven hours straight time, one hour of "out of schedule" premium, and one hour of overtime.

Don't be confused by schedule changes or "out of schedule" pay. The *JCAM* contains clear and concise examples to help guide you (nalc.org/depart/cau/jcam.html).

Steward certification: A primer for all

We have recently seen a spate of cases throughout the country involving challenges by management to the proper certification of shop stewards handling grievances. It appears a review of Article 17, Section 2 is in order. Article 17, Section 2.A, Appointment of Stewards, states:

> The Union 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....

Article 17, Section 2.A requires that stewards be certified in writing, normally to the installation head. Always maintain a copy of certification letters at the branch office. When new shop stewards are added, send an updated certification letter before the new steward begins his or her duties. That means whenever a shop steward is replaced, not only certify the new steward, but make sure that the old steward is removed from the updated letter.

Remember that proper use of shop stewards certified under 17.2.A means that a steward certified to represent carriers in a specific work location is not certified to represent carriers in another work location. A steward certified to be a steward in Unit A within an installation cannot be used as a steward in Unit B without proper certification for that unit.

An alternate method to the use of shop stewards as contemplated in 17.2.A is Section 17.2.B, which states:

> At an installation, the Union may designate in writing to the Employer one Union officer actively employed at that installation to act as a steward to investigate, present and adjust a specific grievance or to investigate a specific problem to determine whether to file a grievance. The activities of such Union officer shall be in lieu of a steward designated under the formula in Section 2.A and shall be in accordance with Section 3....

The union has always defined "officer" in rather broad terms. However, we were recently unsuccessful with a regional arbitration case where the EEO officer of the branch (a non-elected position) was assigned to act as a shop steward and management argued the person was not an officer of the branch. While we disagree with management's narrow interpretation, care should be taken when assigning officers under the provisions of 17.2.B.

In addition, the parties agreed in National Pre-Arbitration Settlement H94N-4H-C 96084996 (M-01267) that "actively employed" includes full-time officers from the branch who are employed at the installation. The work of these officers acting in lieu of shop stewards should be compensated pursuant to Article 17, Section 4, which deals with the payment of stewards.

Article 17, Section 2.C allows the union to certify a representative who works in a different installation to act as a shop steward in other installations of 20 or fewer employees. Such certification must be in writing.

Article 17, Section 2.D is the catch-all for many of the other assignments of shop stewards and states:

> At the option of the Union, representatives not on the Employer's payroll shall be entitled to perform the functions of a steward or chief steward, provided such representatives are certified in writing to the Employer at the area level....

17.2.D allows the union to assign representatives not on the employer's payroll to act as shop steward. These individuals do not have to be officers of the branch, though they may be, nor do they have to work at the installation to which they are being assigned. Importantly, these individuals *must be certified in writing to the area*. Unless you have received instructions to the contrary, send the certification to the area manager.

Anyone certified under 17.2.D is not on the employer's official time. The individuals being certified may be from other installations as considered in National Pre-Arbitration Settlement H8N-2B-C 12054 (M-00233), which makes several requirements: (1) The employee must be actively employed; (2) The employee must be certified in writing to the area; (3) Certified employee will be compensated by the union; and (4) Will act in lieu of steward as designated in Article 17, Section 2.A. In addition, pursuant to Step Four H4C-1M-C 2986 (M-00798), former employees will be allowed to act in lieu of shop stewards.

Check to see that your certification letters are up-to-date. Make sure that shop stewards and individuals assigned to act in lieu of shop stewards do not begin their steward duties until proper certification has taken place. ✉

Steelworkers Trilogy—reinventing the wheel

The widespread adoption of rights or grievance arbitration in the United States originated during World War II. This period was marked by significant growth in union membership and an obvious public interest in avoiding strikes that interrupted war production. The U.S. government, through the National War Labor Board, prompted organized labor to give up the right to strike over grievances in return for binding grievance arbitration as the final step of the grievance procedure. At the conclusion of the war, the only thing that labor and management could agree on was that grievances were best settled through a grievance procedure ending in binding arbitration, rather than a strike.

Grievance arbitration was further institutionalized by the important Supreme Court decisions in *Textile Workers v. Lincoln Mills* (1957) and the Steelworkers Trilogy cases (1960). In short, these decisions prohibit labor and management from ignoring an arbitration clause in their contract, provide significant legitimacy to the arbitration process and restrict the scope of judicial review.

The United States Supreme Court, in three cases before them in 1960 known as the Steelworkers Trilogy, formed the basis for industrial arbitration by weaving together basic rules that provide guidance to arbitrators and grievance handlers.

Last month, we discussed the certification of shop stewards pursuant to Article 17 of the National Agreement. With management looking for ever-easier victories in the grievance procedure, it is important we understand what standard the Supreme Court set 50 years ago. The most important standard they found was that questions of arbitrability should be limited, and cases should be determined based on the merits of the case.

For example, management recently made arguments about the arbitrability of grievances based on the flimsiest of arguments. Whether the issue is timeliness, steward certification or the catch-all, "the issue is beyond the arbitrator's authority to consider," we need to be prepared not only to counter management's arguments, but to remind arbitrators of the limits the Supreme Court put on arbitrability. Arbitrator Carlton J. Snow, in a regular panel arbitration case (C-24877), explained the burden that the Supreme Court placed on management when making an arbitrability argument. Professor Snow states:

> In determining subject matter jurisdiction, the U.S. Supreme Court has applied a presumption that favors arbitrability of claims. The Court has stated: "An order to arbitrate a particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage. (See *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960)." The way to avoid the presumption of arbitrability is expressly to exclude subject matter from the grievance procedure. As the Supreme Court has taught: "Apart from matters that the parties specifically exclude, all the questions on which the parties disagree must, therefore, come within the scope of the grievance and arbitration provisions of the collective agreement. (See *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960)." Moreover, a presumption favoring arbitrability is a strong one, and "only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail...." (See *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960). A vague exclusion combined with a broad arbitration clause generally will not be sufficient to exclude a complaint from arbitration.

In some cases, management may not raise the issue of arbitrability until the actual hearing, but if you suspect that an arbitrability issue may arise, let your union grievance handler at the next step know so they will be prepared. Lastly, always be prepared when arbitrability does come up, whether during the grievance procedure or at the hearing, to automatically cite the Steelworkers Trilogy language as part of our argument to have decision made on the merits of the case. ✉

Steward certification, Part II

This article should be read in conjunction with the April Contract Talk article.

Article 17, Section 1 of the National Agreement states: "Stewards may be designated for the purpose of investigating, presenting and adjusting grievances." The 2009 *JCAM* at page 17-1 addresses the designation of stewards:

> **Contractual Authorization for Stewards.** Although shop stewards are union representatives and NALC officials chosen according to NALC rules, stewards are also given important rights and responsibilities by the National Labor Relations Act (NLRA)....

When management challenges the *selection* of an NALC representative under Article 17.2 of the contract, it is important to remember to cite Article 17.1 and the *JCAM*, as well as the appropriate provisions in Article 17.2.

Pre-Arbitration: H94N-4H-C 96084996 (M-1267) settled the issue of whether a full-time union official may be certified under Article 17.2.B. The settlement states:

> The issue in these grievances is whether a full-time union official who is on the employer's rolls is 'actively employed' for the purposes of Article 17.2.B.
>
> During that discussion, it was agreed to resolve the interpretive issue with an understanding that full-time union officers on the employer's rolls are considered 'actively employed' for the purposes of Article 17.2.B.

When a local branch president certifies a union officer to act as a steward in an installation that is different from the one in which they are employed, the certification falls under Article 17.2.D. Although Article 17.2.D provides all the rights of a shop steward, the designated individual would not be compensated by the Postal Service.

In offices with 20 or fewer total craft employees which have no stewards certified under 17.2, the union may certify a representative to handle grievances at both Informal and Formal Step A. Article 17.2.C states:

> To provide steward service to installations with twenty or less craft employees where the Union has not certified a steward, a Union representative certified to the Employer in writing and compensated by the Union may perform the duties of a steward.

In offices with greater than 20 craft employees which have no stewards certified under 17.2, the union may certify a representative to handle grievances at Informal and Formal Step A, pursuant to either 17.2.B or 17.2.D.

The union has the right via Article 17.2.D and the NLRA to designate a person not on the employer's payroll to serve as steward. "Not on the employer's payroll" can mean, for example, an employee employed at a different installation, or a retired employee.

National Pre-Arbitration Award E8N-2E-C-12054 (M-00233) addresses Article 17, Section 2.D of the National Agreement. The interpretive issue in this case was whether a union member employed at a post office could be designated as a union representative at another post office under the provisions of Article 17.2.D. The resolution states:

> In full settlement of the interpretive dispute presented in this case, the parties mutually agree to the following:
>
> 1. A Union member actively employed in a post office may be designated as a Union representative to process a grievance at another post office.
>
> 2. Such employee must be certified in writing, to the Employer at the regional level.
>
> 3. An employee so certified will not be on the Employer's official time and will be compensated by the Union.
>
> 4. An employee so certified will act in lieu of the steward designated under Article 17, Section 2.A and 2.B at the facility where the grievance was initiated.

Step Four No. H4C-1M-C 2986 (M-00798) addresses Article 17.2.D when a former employee, certified as a shop steward, is denied access to the post office. The parties determined to resolve the case as follows:

> The individual named in this grievance will be allowed to enter the facility to perform the functions of a steward or chief steward in accordance with the provisions of Article 17.2.D.

The *JCAM* at 17-3 explains Article 17, Section 2.D:

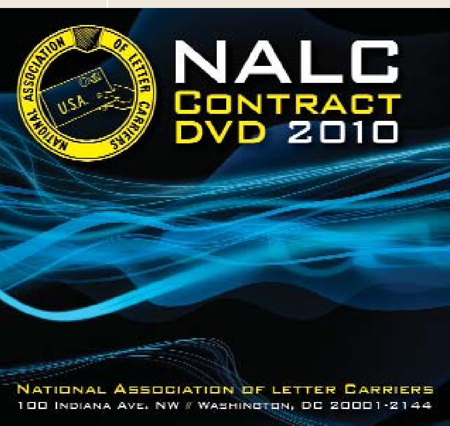
> Representatives certified by the union pursuant to Article 17.2.D may be anyone who is not on the employer's official time. This would include, for example, employees from another installation (H8N-2B-C 12054, M-00233) and former employees (H4C-1M-C 2986, M-00798).

NALC Contract DVD 2010

NALC has recently created a new tool: the NALC Contract DVD 2010. It was produced to provide members with the latest and most complete set of resources available with tens of thousands of pages of postal-related documents.

Although it certainly should be in every steward's toolkit, you don't need to be a shop steward or a branch officer to find it useful. Not only does the new DVD contain the *National Agreement* and *Joint Contract Administration Manual (JCAM)*, it also has a wide range of NALC publications from our archives. The DVD contains *Carriers in a Common Cause*, a comprehensive history of the NALC, and the *Letter Carrier Guide*. Both publications are excellent resources for new members.

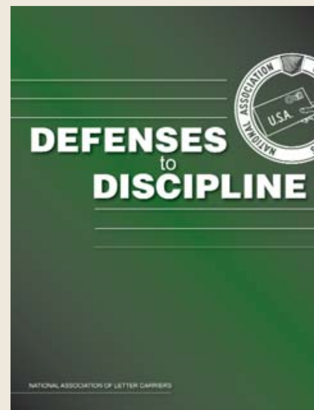
The NALC Contract DVD 2010 contains more than 50 current USPS handbooks, manuals and publications ranging from common handbooks, such as the *M-41*, *M-39* and *ELM,* to lesser-known publications—*Management Instruction EL 520-2005-1*, *Health Benefits and Life Insurance Coverage During Military Service* and *AS-353, Guide to the Privacy and Freedom of Information Act,* to mention a few.



The Contract DVD has the complete Joint Alternate Route Adjustment Process (JARAP) document and guide (M-01736). As we continue with the joint adjustment process, you will have all the documentation at your fingertips. If a manager says the JARAP agreement says this or that, you will be able to look for yourself.

The DVD also contains the *NALC Guide to Safety and Health*. This guide is intended for members of local joint safety and health committees and for other activists interested in safety and health issues. It provides basic information about many safety-related issues for letter carriers.

Sound like a lot? Wait, there's more. The Materials Reference System (MRS) is also on the DVD and is a collection of contract administration materials assembled by the Contract Administration Unit at headquarters. The MRS should be used as a supplement to the *JCAM*, which is authoritative and controlling in the case of any ambiguities or contradictions. Everything in the new MRS has a link to a significant reference document whether, for example, a national or regional arbitration, Step 4 settlements or a memorandum of understanding. All of these documents are searchable and are in PDF format so you can print them.



One of the most impressive reference resources on the DVD is *Defenses to Discipline*. This resource contains thousands of links relevant to defending letter carriers who face disciplinary action. Even if you are not defending a letter carrier facing discipline, you will likely find this publication quite interesting and definitely informative.

The DVD is searchable by word, topic and, to aid in your research, an additional search tool has been made available on the NALC website, which will allow you to search the DVD by index. This will greatly speed your search time. You may download the updated search patch by logging on to nalc.org/depart/cau/cmcd.html.

The Contract Administration Unit believes a well-informed and knowledgeable membership is a key element in our efforts to move forward and effectively represent letter carriers. This DVD was designed with that very purpose in mind—to be a useful tool to help members as they stand up against any obstacle. If you are interested in this resource and want more information, you can go to nalc.org/nalc/store and download the order form.

Hold-down assignments

Article 41, Sections 2.B.3, 4 and 5 provide a special procedure for exercising seniority to fill temporary vacancies in full-time duty Grade 1 letter carrier assignments. This procedure, known as "opting," allows carriers to "hold down" duty assignments vacant for five or more days. Full-time reserve letter carriers, full-time flexible letter carriers, unassigned full-time carriers and part-time flexible carriers may all opt for hold-down assignments. In the past, the contract's opting provisions have raised many contentious issues. NALC has been forced to take grievances concerning the application of these provisions to national-level arbitration on four occasions. Pages 41-9 through 41-15 of the 2009 *Joint Contract Administration Manual (JCAM)* provide the parties' detailed joint explanation of how the opting provisions are to be applied.

Currently, most "opting" disputes concern the application of Article 41, Section 2.B.5, which provides that once an available hold-down position is awarded, the opting employee "shall work that duty assignment for its duration." This means that employees on hold-downs are entitled to work the regularly scheduled days and the daily hours of duty of the assignment until the opt ends. (See M-00239.) The scheduling rights of full- time or part-time carriers on hold-down create some of the most perplexing problems in the opting process.

Scheduled days and opting—An employee who successfully opts for a hold-down assignment is guaranteed the right to work the hours of duty and scheduled days of the regular carrier. (See M-00720.) A carrier on a hold-down, however, is not guaranteed the right to *not* work on non-scheduled days. This is the same rule that applies to the assignment's regular carrier, who may, under certain conditions, be required to work on a non-scheduled day. However, management may not swap scheduled work days with days off in order to shift hours into another service week to avoid overtime or for any other reason.

Remedies and opting—The *JCAM* provides the following discussion of remedies for opting violations:

> Where the record is clear that a PTF was the senior available employee exercising a preference on a qualifying vacancy, but was denied the opt in violation of Article 41.2.B.4, an appropriate remedy would be a 'make whole' remedy in which the employee would be compensated for the difference between the number of hours actually worked and the number of hours he/she would have worked had the opt been properly awarded.
>
> In those circumstances in which a PTF worked forty hours per week during the opting period (or forty-eight hours in the case of a six day opt), an instructional 'cease and desist' resolution would be appropriate. This would also be an appropriate remedy in those circumstances in which a reserve letter carrier or an unassigned letter carrier was denied an opt in violation of Article 41.2.B.3.
>
> In circumstances where the violation is egregious or deliberate or after local management has received previous instructional resolutions on the same issue and it appears that a 'cease and desist' remedy is not sufficient to insure future contract compliance, the parties may wish to consider a further, appropriate compensatory remedy to the injured party to emphasize the commitment of the parties to contract compliance. In these circumstances, care should be exercised to insure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy.

This *JCAM* language establishes the basic "make whole" remedy for a carrier not properly awarded or scheduled on a hold-down assignment. Its real significance, however, is that in it, the Postal Service has also jointly agreed to the broader principle, applicable to all contract cases, that where contract violations are repetitive, "egregious or deliberate," more than a simple make-whole pay remedy may be required "to insure future contract compliance."

Out-of-schedule premium is not an appropriate remedy request for PTF carriers, since the out-of-schedule provisions of *ELM* 434.6 only apply to full-time employees. The parties also have agreed in M-00091 that when full-time employees "opt" on an assignment, they assume the hours and days off of the assignment without the Postal Service incurring any out-of-schedule liability.

A different situation arises when management assigns a full-time reserve or unassigned letter carrier to a vacant duty assignment. In such cases, the assigned letter carrier can be required to work the schedule of the vacant assignment, but the out-of-schedule premium provisions of *ELM* 434.6 still apply. See M-00940 for a complete explanation of this issue. ✉