Grievance remedies

In any grievance, proving a violation of the *National Agreement* may be the first step, but it can mean nothing without an appropriate remedy. National Arbitrator Richard Mittenthal is often quoted for the observation that "the grievance procedure is a system not only for adjudicating rights, but for redressing wrongs." This month's Contract Talk will explore grievance remedies.

Article 15 of the *National Agreement* explains that Informal Step A and Formal Step A representatives have authority to resolve a grievance. This means representatives have authority to agree to an appropriate remedy.

Article 15.2, Informal Step A (b) states:

> (b) In any such discussion the supervisor shall have authority to resolve the grievance. The steward or other Union representative likewise shall have authority to resolve the grievance in whole or in part. The local parties are not prohibited from using the Joint Step A Grievance Form to memorialize a resolution reached at an Informal Step A Meeting. No resolution reached as a result of such discussion shall be a precedent for any purpose.

Article 15.2, Formal Step A (c) states in part:

> In all grievances at Formal Step A, the grievant shall be represented for all purposes by a steward or a Union representative who shall have authority to resolve the grievance as a result of discussions or compromise in this Step. The installation head or designee also shall have authority to resolve the grievance in whole or in part.

In every grievance, it's important to request an appropriate remedy. Restoring the grievant to the status quo or "making the grievant whole" is usually the goal. It shouldn't be to punish management for their failure to meet the terms of the collective-bargaining agreement, but to make the grievant whole and ensure future compliance. In cases where management repeatedly violates the agreement and shows no sign of improvement or additional effort to adhere, the union has no choice but to seek additional remedies, which can improve compliance.

The *National Agreement* doesn't allow management to violate the contract with impunity. Letter carriers and the union are harmed when violations become routine or the "cost of doing business." Management must comply. Additional remedies may include training for management representatives, paid time off, or even larger monetary remedies to ensure compliance. At the end of the day, there would be no additional remedies necessary if management followed the agreement.

When requesting additional compensatory remedies, shop stewards should demonstrate that the violations were deliberate, repeated or egregious. Both the *Joint Contract Administration Manual (JCAM)* and national-level arbitration awards provide support for additional compensatory remedies in such situations. The *JCAM's* discussion of remedies for violating the opting provisions of Article 41.2.B (*2025 JCAM,* page 41-16) is particularly helpful because, as arbitrators should be reminded, it expresses the jointly agreed-upon position of both the NALC and the Postal Service. Page 41-16 of the *2025 JCAM* states:

> 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 ensure 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 ensure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy.

The *JCAM* specifically suggests and authorizes compensatory remedies beyond mere payment for lost hours and benefits in appropriate circumstances. It should be emphasized that this is a general principle that can, and should, be applied to other kinds of contract violations.

Fortunately, arbitrators have the authority and responsibility to formulate appropriate remedies. Supreme Court case *United Steelworkers of America v. Enterprise Wheel & Car Corp.* (see M-01787 in NALC's Materials Reference System) states in part:

> When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency.

Despite this bedrock labor-relations decision from the Supreme Court, the Postal Service has always argued and will likely continue to argue that an arbitrator does not have authority to issue any awards that the Postal Service believes are "punitive." The Postal Service is quick to label any and all remedies, beyond a "make whole" as punitive. In one such instance following an arbitration decision in 2019 that awarded grievants substantial monetary compensation, the Postal Service attempted to vacate the arbitration award through federal court proceedings. In 2021, the federal court (M-01967) held that 1) the legal doctrine of sovereign immunity does not shield USPS from punitive remedies in arbitration awards, and 2) arbitrators do not exceed their au-

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Contract Talk
by the Contract Administration Unit

Grievance remedies (continued)

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thority under the *National Agreement* by issuing punitive remedies against USPS.

It's worth repeating that this federal court decision stated that arbitrators do not exceed their authority under the *National Agreement* by issuing punitive remedies against the USPS. Despite this explicit language, never label a remedy as punitive. Make sure the requested remedy is appropriate and necessary to ensure future compliance.

The *JCAM* discusses specific remedies in only a few instances. One such instance deals with overtime equitability. National Arbitrator Gamser explained that generally the proper remedy for an employee deprived of equitable overtime opportunities is an equalizing opportunity in the next quarter. This isn't the case when management disregards their obligation or there isn't a chance to provide an equalizing opportunity. *JCAM* page 8-14 states:

> Remedies. National Arbitrator Howard Gamser ruled in NC-S-5426, April 3, 1979 (C-03200) that the Postal Service must pay employees deprived of equitable opportunities for the overtime hours they did not work only if management's failure to comply with its contractual obligations under Article 8.5.C.2 shows 'a willful disregard or defiance of the contractual provision, a deliberate attempt to grant disparate or favorite treatment to an employee or group of employees, or caused a situation in which the equalizing opportunity could not be afforded within the next quarter.' In all other cases, Gamser held, the proper remedy is to provide 'an equalizing opportunity in the next immediate quarter, or pay a compensatory monetary award if this is not done...'

The *JCAM* also discusses remedies for opting violations, out-of-schedule work, and some overtime violations. As always, grievance handlers should consult the *JCAM* with their counterpart when working to resolve a grievance.

Interest on back pay

When an arbitration award determines that an employee is entitled to back pay, the Postal Service is required to pay interest on back pay at the Federal Judgment Rate. This is found in MOU Re: Interest on Back Pay (*JCAM* page 15-23). The Federal Judgment Rate is a federal post-judgment interest rate for civil and bankruptcy cases and varies over time. Because this MOU is only specific to arbitration awards, it can be appropriate to consider adding interest at the Federal Judgment Rate to a remedy request.

Documentation

Requested remedies should be supported with documentation. This can include pay stubs or clock rings demonstrating loss of work and pay. It can and should also include statements from grievants describing their harm. These statements may include emotional and financial harm depending on the circumstances and violations. Do not take this step lightly. Just because you've proved a contract violation and included all the supporting documentation and statements doesn't mean the remedy is a given. Supporting documentation to prove the remedy requested should also include prior grievances of the same nature, including Informal A, Formal A and Step B, as well as arbitration decisions.

Grievance handlers who are working toward resolving issues and pursuing appropriate remedies for aggrieved letter carriers deserve a special thank-you. Without proper remedies, there are no rights.

Executive Vice President

Branch elections (continued)

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9.5 The United States Postal Service may not contribute money or anything of value to the campaign of any candidate.

9.6 Branch officers and candidates may not campaign on union time.

9.7 Branch officers and candidates may not use branch funds, employees, office space, telephones, facilities, equipment or materials to campaign.

9.8 No campaigning is allowed within a polling place during voting.

I hope this helps to clarify some of the campaign issues that may arise during branch election periods. Remember, the intent of this article is to educate our members, not to create problems—especially since any objection to an election must be based on the fact circumstances in that particular election.