

ACTIVIST

NALC

A NEWSLETTER FOR BRANCH LEADERS OF THE NATIONAL ASSOCIATION OF LETTER CARRIERS
VOL. 21, NO. 2
July 2008

November 4 is coming fast . . .

Make this election count!

Being an NALC Activist involves more than the contract, postal handbooks and manuals, and grievances. Sometimes being an NALC Activist is about resolving disputes, raising money for MDA or collecting food for the Food Drive.

This fall, an NALC Activist has the chance to secure a successful future for our country, our families and our jobs by getting involved in the upcoming elections.

The 2008 elections may be the most important in years for trade

unions and their members. In fact, in terms of protecting labor rights and preventing the elimination of the working middle-class, this is the most important election in our nation's history.

We have witnessed years of steady decline in worker protections and an outright assault on organized labor. The American middle-class was born and grew through organized labor and the growth of manufacturing following WWII. The dream of attaining home ownership and a secure economic future, which became a reality in post-war America, is well on its way to again becoming only a dream.

Let's look at some facts:

- Inflation is at its highest rate in 25 years
- Unemployment is at a 5 year high—5.7%
- The United States Government has a national debt of over \$9.5 TRILLION
- The average after-tax income of the richest one percent of households rose from \$722,000 in 2003 to \$868,000 in 2004—an

increase of 20% (largest in 15 years)

- The income of the middle fifth of the population rose \$1,700 or 3.6% to \$48,400 in 2004. The income of the bottom fifth rose a scant \$200, or 1.4%, to \$14,700
- Over 50% of American households make less than \$45,000 annually
- Nearly 47 million Americans, or 16% of the population, were without health insurance in 2005

(Continued on page 2)

STRIKE!

The Postal Strike of 1970 was the first strike in the history of the postal service and the largest walkout ever staged by Federal employees. NALC members led the way. This exhibit tells how letter carriers in New York City and across the country defied Congress and the President of the United States in order to improve their pay and working conditions.

NALC and the Postal Strike of 1970

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Your branch can join the 1970 strikers — *Find out on page 6*

INSIDE

Book Nook 4

Minor Route Adjustments 5

Strike! 6

Reading a Disciplinary Notice ... 7

Make this election count!

(Continued from page 1)

Starting in the early 80's, with the Reagan firing of striking PATCO workers, and continuing through the Bush-mandated Department of Labor attacks on union rights, the number of union households has declined. With the chipping away of union rights and the unrepentant administration bias favoring Wall Street over Main Street, the American middle-class is in jeopardy!

This fall you have a chance—if not a responsibility—to put your activism to the test to elect labor friendly candidates and a labor friendly President! Obviously, you own vote is essential, but you can do more to ensure success this November.

“Change” appears to be the catch-phrase of this year’s election. Activists don’t wait for change to come to them, activists make change happen. There are a number of ways you can make a difference in this election.

How can you make a difference?

You can ensure a positive change in this election. There are a number of ways to make a difference and they all start with your time. Your investment of a few hours will be significant and reap huge rewards toward our future. As a union member you have a real leg up on most people who volunteer. You have a ready-made constituency to work with—fellow union members.

The AFL-CIO has launched **Labor2008**—a union-member to union-member campaign to get out the vote. Labor2008 works in all 50 states to educate union members

about the candidates and issues important to working families. NALC is part of Labor2008 and has been an essential part of labor campaigns in past election cycles. NALC will release approximately 200 letter carriers across the country to work full-time in the Labor2008 effort. Most of these letter carriers will be working out of central labor council offices.

AFL-CIO President John Sweeney has said across the country, “Letter carriers showed union members how to knock on doors.”

While 200 full-time letter carriers will be important, it is only the beginning. Activist letter carrier volunteers make up some of the most effective campaign workers in the labor movement. AFL-CIO President John Sweeney has said across the country that “letter carriers showed union members how to knock on doors.” Due to the nature of your work, you are uniquely valued across the labor movement and among elected officials—letter carriers are trusted in their neighborhoods, develop great relationships with the public, and possess an intimate knowledge of their communities.

Door-to-door canvassing uses your unique expertise. Letter carrier volunteers are highly sought after to lay out the door to door walk lists; who better than a letter carrier to

help electrician, plumbers and steelworkers know how to walk a neighborhood?

Knocking on doors isn’t the only way to help between now and November 4. Most local Labor2008 organizations will conduct phone banks to contact union members. The response of a union member called by another union member is almost always positive. Labor2008 will also need volunteers at political rallies, to hand out workplace flyers, hang campaign signs, driving voters to the polls on Election Day and a whole lot more . . . it only takes time. Time you need to make available now to ensure your future.

NALC is committed to mobilizing all of us to political action. Most of us are already contributors to COLCPE, enrolled in the eActivist network, and many activists have joined the NALC Carrier Corps. For those who don’t know about NALC Carrier Corps, it is a commitment to volunteer 10 hours of your time to work toward electing labor friendly candidates (Carrier Corps volunteer forms are available on the NALC website.)

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William H. Young, President



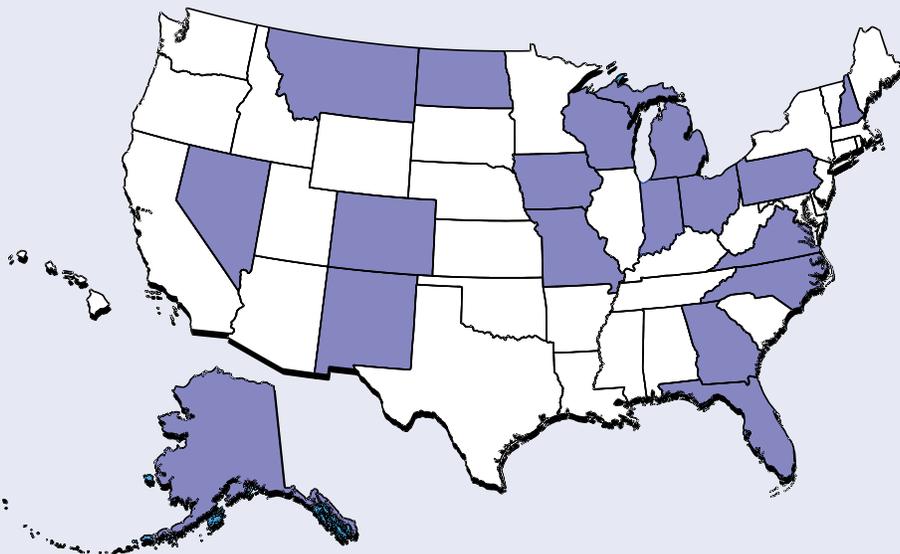
Help Needed in Every State

Your help is needed even if the presidential race is not competitive in your state.

Senate and House races can make the difference in passing legislation to help working families.

You can also volunteer to work at a **local phone bank** and make calls to a neighboring state where a pro-labor candidate needs your help.

Hottest Presidential Battleground States



How do you know the NALC Labor2008 campaign will work?

- The efforts of Labor2006 got the union vote out and made the difference in returning the US House of Representatives to a labor friendly majority in 2006
- In 2006, union households voted 74% to 26% for the union endorsed candidate and union members made up one in four voters
- In 2006 the Labor2006 campaign reached 13.4 million voters in 34 states
- In 2006 when a union member was undecided and contacted by another union member they were 31% more likely to vote for the endorsed candidate when the contact was made by phone,

60% more likely when the visit was face to face.

- In 2006 NALC released 120 letter carriers to the AFL-CIO Labor2006 campaign, working full time to contact union members
- In 2006 NALC outperformed all other unions in released staff. NALC released staff made up 7% of the AFL-CIO campaign staff even though we are only 2.5% of the total AFL-CIO membership

Where can I find out where to work or volunteer?

Make yourself available **early**. NALC's Legislative and Political Department coordinates with the 50 State Chairs and the AFL-CIO Labor2008 staff to identify what needs

to be done. Make **early** contact with your state chair to let them know of your interest and your availability. If you don't know who your state chair is, call your NBA or the NALC legislative department to get the contact number.

Ask your branch president for the number of the local/area central labor council and make yourself available for events it is conducting. The Labor2008 effort in all 50 states needs volunteers, and letter carrier volunteers deliver!

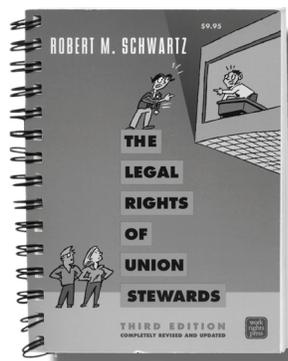
Change is inevitable, either good or bad

Nothing stays the same. The question you must ask yourself as an activist is quite simple; do I stand by and let the dreams of working families evaporate without a fight, or do I stand up and fight to see those dreams again become a reality. The time is short, the need is great—what will you do?



Books for activists

Not everything useful for the NALC activist can be found on the internet—even on the NALC’s helpful site. The following books will be useful for stewards, and anyone else who wants to “work union.”



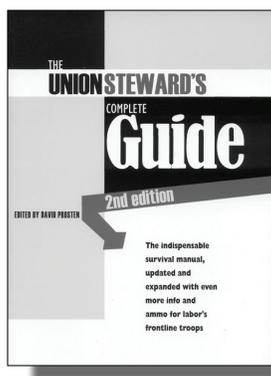
Schwartz, Robert M. **The Legal Rights of Union Stewards.** 4th edition. Cambridge, MA: Work Rights Press. \$15.00.

The union steward’s job is defined not just by the NALC collective bargaining agreement with the US Postal Service; every steward operates within the framework of the many federal laws which cover labor relations in the United States. As the author states in his preface, this book explains the legal rights of union stewards as defined by federal law, and suggests ways to enforce these rights in the workplace.

Schwartz, a well-regarded former labor attorney, offers tips on handling some of the common problems all stewards confront. Chapters focus on topics of crucial importance to any steward trying to protect the rights of letter carriers on the job. Topics covered include the special status of union stew-

ards, the grievance process, the union’s right to information, Weingarten rights (union representation during investigatory interviews), and the duty of fair representation.

Each chapter starts with a clear, concise explication of the subject, followed by pertinent questions and answers. This is the latest edition of a work that was first issued in 1988; the author regularly updates the material with the latest NLRB cases and court rulings. The book should give stewards the confidence to do their very important job.



Prosten, David (ed). **The Union Steward’s Complete Guide: A Survival Manual.** 2nd edition. Annapolis, MD: Union Communication Services. \$22.95.

This book really is a *complete* guide—it moves far beyond the contract and the law in its understanding of exactly how complicated a steward’s job can be. This **Guide** recognizes that the steward is the face of the union for most members, and the duties of the job extend past handling grievance handling.

Not that the book neglects grievances—the essential part of the

steward’s job. The chapter, “Grievance Basics: Your First Moves,” discusses basic approaches to handling a grievance. These tips are relevant no matter the union, no matter the contract, no matter the issue in contention. Another chapter breaks down the common types of grievances; a third discusses dealing with management in the grievance process.

But the book moves on to the changing workplace, with its increasingly diverse workforce, and the problems that can arise on the job. Communication skills, psychology when dealing with others, and ways to manage your time and handle stress all get a chapter. The book ends with the chapter, “Building Unity and Strength,” about fostering union solidarity in the workplace. As the subject of this last chapter suggests, **The Union Steward’s Complete Guide** would actually be of use to anyone active in the NALC. Everyone who attends the Leadership Academy receives a copy.

Not all books for trade unionists are available from Amazon or Barnes & Noble. The books reviewed here, and others of interest to the labor activist, can be obtained from the sources listed below.

Union Communication Services
165 Conduit St.
Annapolis MD 21401-2512
800-321-2545
www.unionist.com

Work Rights Press
PO Box 391066
Cambridge MA 02139
800-576-4552
www.workrightspress.com

YOUR CONTRACT

Minor route adjustments

Many of you were in Boston for the biennial convention, and heard Executive Vice-President Rolando speak about the alternative route evaluation task force. Following the convention a Memorandum of Agreement, *Minor Route Adjustments—Handbook M-39, Section 141* (M-01690) was signed on August 1, 2008. What does it mean?

M-01690 provides an interim agreement to the Minor Route Adjustment Process while the task force meets as agreed to in the September 11, 2007 *Memorandum of Understanding Re: Alternative Route Evaluation Process*. In a nutshell—for offices in which minor adjustments are proposed, or have already taken place—there are two parts to this memo. As explained in greater detail below, the first covers the agreed upon sources of data and method used to adjust routes. The second part explains how to handle pending grievances concerning whether routes were properly adjusted under the minor route adjustment process.

What are the agreed-upon sources of data used to evaluate a route using the Minor Route Adjustment process?

All of the agreed upon sources for carrier data are found in *Handbook M-39, Section 141.18*. According to the memo, unless the parties agree otherwise, minor adjustments can only be implemented consistent with Section 141—that is the acceptable data for basis of the adjustment.

What is the agreed upon method for making the adjustment?

Just like the acceptable data for evaluating a route, the method of adjustment must be consistent with Section 141. Section 141.19 provides a simple formula for making the adjustment using the most recent mail count and inspection, as long as the data is reasonably current and the same carrier is on the assignment. If the most recent route inspection data is based on a carrier

Minor Route Adjustment Data Sources

- PS Form 1813
- PS Form 3996
- PS Form 1571

other than the carrier currently on the assignment, a minor route adjustment cannot be made, unless the local parties have agreed otherwise.

What should be done with held grievances?

If a grievance exists from a previous minor adjustment, it must be reviewed by the Formal A representatives. If the carrier on the grieved assignment is no longer on the assignment, or the route has subsequently been adjusted in accord with the provisions of *Handbook M-39, Chapter 2 (Mail Count and Route Inspections)*, the grievance is closed. Upon review, the Formal A representatives will be able to agree what action must be taken to get the route to eight hours. The representatives may determine the route is indeed properly adjusted, or may decide the route needs additional adjustment. If the representatives cannot agree if the route is properly adjusted, or how to accomplish the adjustment, the regular carrier may request and shall receive a six-day route count and inspection. ■

Handbook M-39

141.18 Preliminary Planning Management should carefully review and analyze street management records; PS Form 3997 or electronic equivalent from a nationally approved computer system that provides equivalent information; PS Form 1813, *Late Leaving and Returning Report — First Carrier Delivery Trip*; PS Form 3996, *Carrier-Auxiliary Control*; PS Form 1571, *Undelivered Mail Report*; PS Form 3921, *Volume Recording Worksheet*; PS Form 3921-A, *Daily Delivery Unit Volume Work-*

sheet (Continuation); and carrier timecards. The manager using PS Form 1840, *Carrier Delivery Route — Summary of Count and Inspection*, should prepare a *Summary of Minor Adjustments Worksheet* for each route. The summary should contain the Post Office_ name, ZIP Code, delivery unit name, route number, carrier's name, ID number, age, length of service, length of service on route, route designation, number of trips, type of route, type of vehicle used on route, and other appropriate information as indicated in exhibit 141.18.

For more information, monitor the NALC website. M-01690 can be downloaded from www.NALC.org/Departments/Contract Administration/MRS/.

NALC HISTORY

Strike! - 1970 postal strike comes alive

Members who attended the recent Boston convention had a chance to learn a bit of NALC's past, even as they participated in sessions to chart the union's future. A historical display focusing on the 1970 Postal Strike helped delegates relive this crucial event in NALC and American labor history.

Drawing on the wealth of NALC archival material in its collection, the Walter Reuther Library staff assembled the exhibit, bringing a significant moment of the union's long history to life. People who won't ever have a chance to visit the NALC Archives in Detroit can still see the display. Branches can now borrow *Strike! NALC and the Postal Strike of 1970* and bring the union's past to today's letter carriers right in their hometown.

It's a safe bet that most people reading this issue of the *Activist* weren't working for the Postal Service in 1970. Many of our members weren't even born, much less involved in the strike. If they hear the phrase "postal reform," they probably think of the recent Postal Accountability and Enhancement Act, not the 1971 Postal Reform Act which started it all. And they almost certainly didn't learn much labor history in school.

The Display

All NALC members should clearly understand that the union has a proud past. It has faced—and triumphed—over trying times before. *Strike! NALC and the Postal Strike of 1970* is not just a history lesson. The display is a tangible way to remind NALC members of

what the union can accomplish when we all work together.

The twelve-panel display uses dramatic images, supplemented by brief historical commentary, to trace developments before, during and after the strike. The story begins with conditions in the 1960's. The cost of common household items is contrasted with letter carriers' poor pay.

NALC photographs, contemporary editorial cartoons and newspaper clippings combine to recreate a sense of the letter carriers' sour mood as government efforts to transform the Post Office Department dragged on. The recommendation of a paltry 5.4% wage increase was the proverbial straw landing on the camel's back. Or in this case, on the backs of the members of New York's Branch 36, and it broke their willingness to put up with substandard wages and intolerable working conditions.

The letter carriers felt they had no choice but to walk out if they were to attain a decent wage. So the illegal wildcat strike began. The strike's effect across the country can be traced through newspaper headlines and pictures of tubs of unsorted mail. Gradually, letter carriers went back to work. Branch 36, the first to go out, was fittingly, the last to return to delivering mail.

But that's not the end of the story. Once the mail was moving again, tough negotiations started in Washington. The final panels cover the efforts to pass postal reform legislation. The US Postal Service



Interested delegates study the history display in the registration area at the recent convention in Boston.

was born from the former Post Office Department. Then, the NALC and other postal unions negotiated their first collective bargaining agreement, establishing the labor-management framework which still exists today.

It's a dramatic story, and one with which all NALC members should be familiar. *Strike! NALC and the Postal Strike of 1970* makes it easy to educate your members about the event which, in many ways, made the NALC the union it is today. The display can be borrowed from the NALC Information Center at no cost; all your branch has to pay is the return postage.

The display will be shipped in three boxes. It's light, and easy to assemble (instructions are included). Each panel is approximately 30" x 42". Four panels are linked together to form three larger groupings. They can be placed on tables, or hung on the wall.

A time line of the strike is available, which can be duplicated and used as part of an educational program, or handed out to members who wish more information. The images from the display are also available in digital format. If you're interested in borrowing the display for your branch, you'll find contact details at the end of this article.

Branch Activism

History can increase branch unity and foster activism. With little effort, the display can act as

out, the strike affected everyone. And workers today continue to enjoy the benefits resulting from the daring of those letter carrier activists from 1970, who risked their jobs, fines and imprisonment to improve the working conditions for all postal employees.

Working men and women have made tremendous progress in the United States since its founding over 200 years ago. Nothing has been given to American workers – letter carriers and all other workers have had to struggle to attain decent benefits and wages.

The 1970 postal strike is but one example of the battles labor has fought. And the struggle continues. The Postal Service is once again facing trying times, and postal workers will inevitably be put under increased stress as USPS confronts a bad economy, declining mail volume, changing technology, and rising gas prices. *Strike! NALC and the Postal Strike of 1970* provides a graphic demonstration that NALC is capable of rising to meet any challenge.

Postal Pay for Typical Carrier Falls Below U.S. Standards



Victor Iizary could make more on relief LIFE, 3 April 1970



2 Mailmen Seek City Welfare, Saying They Can't Live on Pay New York Times, 17 October 1969
By FRANCIS X. CLINES

Two letter carriers applied for welfare yesterday to demonstrate that under the present pay scales young family men can qualify for relief in the form of income supplementation.

Labor leaders of the letter carriers, accusing President Nixon of reneging on a campaign promise to increase postal salaries, said that as many as 3,500 of the 50,000 postal workers in the metropolitan area already received partial welfare aid.

The two petitioners, James W. Warden, a father of three, and Victor Iizary, a father of six,

“... I realize that a strike is illegal and that we could be jailed for this ... I'm prepared for that if it comes. I think it'd be well worth going to jail for.”

—James Warden, New York Letter Carrier



JAMES WARDEN Newswatch, 30 March 1970

A Hard Life

Letter carriers did not have an easy life in 1970. Their wages were near the poverty line and were among the lowest of all Federal employees. Carriers often held a second job or third job, and many more qualified for food stamps, Medicaid, or other public assistance. Already famous for working in all types of weather, these poor conditions of employment resulted in extremely poor morale. Faced with extreme financial hardships and empty promises from their employer, the Federal Government, the members of the National Association of Letter Carriers were pushed to the end of their patience.

Intolerable job conditions

- * Post offices without adequate heat or air conditioning
- * Trucks without heat in winter
- * Truck breakdowns
- * Lack of women's restrooms (even where women make up half the work force)
- * Tyrannical managers
- * Accident rate twice the National Safety Council's industry average



Joe Roe of Paterson, N.J. offers his opinion New York Times, 27 March 1970

\$3 an Hour to Start, \$4 After 21 Years

By DONALD FLYNN

When postal workers are asked why they're striking, it comes out in a flood:

- * You start at \$3 an hour and after 21 years you get \$4 an hour—top,” said William Steinwendler, 40, of Franklin.
- * The Bureau of Labor Statistics says a family of four needs \$13,000 to get by. I've got four kids, and I'm getting \$7,400,” said Melissa Tom Grunman, 39 of Queens.
- * “We actually just exist,” said Mrs. Sylvia Collis, 38, of Manhattan.

New York Daily News, 19 March 1970

“The system is badly in need of experienced people, but because of the pay structure, one-third of the employees do not have even three years experience.”

—James H. Rademacher, c. 1970



YOUR LETTER CARRIER SAVED 142 MILLION AMERICANS TWICE DAILY

NATIONAL ASSN. OF LETTER CARRIERS BRANCH 1 - DETROIT

Federal Workers Starting Salary Comparisons 1969-1970	
Letter carriers (Nationwide) (\$3.42 after 21 years)	\$ 6,176
Sanitation workers (NYC)	\$ 7,870
Police and firefighters (NYC)	\$ 9,500
Transport workers (NYC)	\$ 10,000
Street Sweepers (Oakland, CA)	\$ 8,000
Bus Drivers (Washington, DC)	\$ 10,000

“It's a race with catastrophe...”

—Postmaster General Larry O'Brien, c. 1967

Each display panel combines brief historical commentary with dramatic images to present the strike's compelling story.

the centerpiece for a branch history program. Your branch retirees can help put the display in its local context, by providing personal details about working for the Post Office Department before the strike, and information about how the strike played out in your area. Even if your particular branch did not go

To borrow the display, contact:

Nancy Dysart, Director
Information Center
100 Indiana Ave NW
Washington DC 20001
202-662-2879
dysart@nalc.org



August 25, 2008

7-Day No Time-Off Suspension— Attendance

Romeo Anderson
FTR City Letter Carrier
Richville, WI Post Office

In accordance with Article 16 of the National Agreement, this 7-Day No Time-Off Suspension is issued to you for the following reason:

FAILURE TO MAINTAIN AN ACCEPTABLE ATTENDANCE RECORD

Since last November 15th you have called in for unscheduled sick leave on four occasions—

- November 15, 2007 for 8 hours
- November 16, 2007 for 8 hours
- December 24, 2007 for 8 hours
- February 1 and 2, 2008 for 16 hours

At your pre-disciplinary interview on February 3, 2008 you stated that your 12/24/07 and 02/1-2/08 absences were due to the fact that you were having problems with your diabetes. Although I was the attending supervisor and recall that you had mentioned your diabetes when you called in sick on those dates, your explanation is unacceptable.

The following elements of your past record have been considered in taking this action:

- Letter of Warning- Express Mail Failure dated January 14, 2006
- Official Job Discussion-Failure to Maintain an Acceptable Attendance Record-discussion held January 3, 2006

Your actions were in direct violation of the following provisions:

Employee and Labor Relations Manual

665.4 Attendance

665.41 Requirement of Regular Attendance

Employees are required to be regular in attendance. Failure to be regular in attendance may result in disciplinary action, including removal from the Postal Service.

Handbook M-41, City Delivery Carriers Duties and Responsibilities

112.2 Diligence and Promptness

112.25 Be prompt, courteous, and obliging in the performance of duties. Attend quietly and diligently to work and refrain from loud talking and the use of profane language.

Your actions are a serious violation of Postal rules and regulations.

You must realize that such actions cannot be condoned. This 7-Day No Time-Off Suspension is being issued in an attempt to correct your deficiencies, and a copy will be placed in your Official Personnel Folder. Any further deficiencies may result in further discipline, up to and including removal from Postal Service employment.

Juliet Wittenburg
Postmaster, Richville, WI Post Office

Reading a disciplinary notice

It's 7:30 a.m. on September 7th, and letter carrier Romeo Anderson has just come to see you, his shop steward. He gives you the disciplinary notice reprinted on the page to your left. He's upset and wants you do something about it right away. You ask your supervisor for steward time to speak with the grievant, and the supervisor okays your request.

Q: What should you do first?

A: Read the disciplinary notice.

It may seem obvious, but this is always the first step when you investigate discipline. Don't assume you know what's at issue until you read the notice. Typically, a steward will want to take a few minutes and read every word in the charge thoroughly.

Please do that right now—read the disciplinary notice on page 8—before continuing with this article. . . Hopefully, you saw that the notice is rife with errors, because it was designed as an instructional tool. Many of these errors are common, even though they usually appear just one or two at a time in the real world.

A steward's first question should be: Do I have still have time to challenge the discipline? Here, the discipline is dated August 25th, and you received it on September 7th. Counting August 26 as day 1, your grievance must be filed on September 9th, or before, to be timely.

You'll have to investigate and write up the grievance in two days because Romeo brought you the notice so late. In some cases your

supervisor may object to giving you a big chunk of the day without prior warning, and may offer an extension of time to file as an alternative. If you agree, get the extension in writing.

Back to the disciplinary notice. Let's go through the errors, one at a time:

Generally, management waives its right to issue discipline when it waits too long after the incident in question.

1. Timeliness. Why did management wait from the time of the pre-disciplinary interview, February 3rd, until August 25th, to issue the discipline? This opens management to a union claim that the discipline was untimely issued. Generally, management waives its right to issue discipline when it waits too long after the incident in question. This rule protects the grievant's right to prepare a defense when memories are still fresh. And issuing the discipline so long afterwards should make a steward wonder—is management upset with the grievant over some other issue, and dredging up this old stuff because it can't think of anything else?

2. How many absences? The notice claims the grievant has called in sick on four occasions, but there are actually two absences lasting two days apiece, in November and February, plus a one-day absence in December. Perhaps the grievant called in twice in November, and once in February . . . but this is not clear from the notice. This is worth investigating because there appear to be three absences, not four.

3. Past elements. Management has really messed up here. The Letter of Warning was issued more than two years ago, so it is stale under Article 16, Section 10, if the grievant has been discipline-free for two years.

If the letter of warning had been more recent, the steward could still argue "apples and oranges." A failure to deliver Express Mail on time and a failure to keep a regular schedule are so different that management must stretch logic to connect them. And the Letter of Warning was issued almost two years before the grievant took the unscheduled sick leave; presumably, it long ago achieved its corrective effect.

Article 16, Section 10 Employee Discipline Records

The records of a disciplinary action against an employee shall not be considered in any subsequent disciplinary action if there has been no disciplinary action initiated against the employee for a period of two years.

(Continued on page 10)

Reading a Disciplinary Notice

(Continued from page 9)

Then there is the official discussion. As explained in Article 16, Section 2, the contract does not allow management to cite an official job discussion as a past element in discipline.

4. Explanation of diabetes—a serious health condition covered by the FMLA. The notice states that the grievant explained the reason for for the December and February absences—problems with his diabetes. As management admits, Anderson gave this as the reason for he called in sick, and then repeated the explanation during his pre-disciplinary interview on February 3rd.

This is potentially a fatal flaw in the discipline. The grievant has stated clearly that the same medical condition has caused repeated absences. Because it had this information, USPS management was obligated by the Family and Medical Leave Act to investigate further, and learn whether the absences were covered by the FMLA. (See 29 CFR § 825.302(c), on the Contract CD under FMLA.)

Investigation would show that diabetes is a chronic condition that easily qualifies as a “serious health condition” under the law. Management has the right to request documentation of Anderson’s condition, of course. However, the Postal Service is absolutely prohibited from disciplining Anderson for sick leave taken due to his diabetes problems.

Article 16, Discipline Procedure Section 2. Discussion

... While such discussions may not be cited as an element of prior adverse record in any subsequent disciplinary action against an employee, they may be, where relevant and timely, relied upon to establish that employees have been made aware of their obligations and responsibilities.

Experienced stewards know that when facing discipline for a bad attendance record, it is essential to dig into each separate absence and its justification. Each absence represents a fraction of the factual case against the grievant. The steward can chip away at the foundation of management’s case by providing justification for one or more of the absences cited. Say, for example, that the steward found out the November absences had been scheduled well in advance. This would have taken away two of the five absences, undermining management’s case.

In this case, by management’s own admissions, three of the five days of absence were due to a serious health condition and protected by the FMLA.

5. The alleged violations. Disciplinary notices should state the rule or rules which the grievant allegedly violated. In this case management “piled on” by citing two rules. The first appears proper, for it requires employees “to be regular in attendance” (ELM Section 665.41).

The second violation cited, however, is curious. ELM Section 112.15 requires employees to “prompt, courteous, and obliging” while performing duties, and warns then to “refrain from loud talking and the use of profane language.” That hardly relates to unscheduled sick leave. This is probably a case of management “piling on” citations and alleged violations, hoping that one or more will stick.

6. The charge. Then there is the charge itself. Management has charged the grievant specifically with “Failure to Maintain an Acceptable Attendance Record.” As steward, you should ask: Does this charge fit the facts of the case and the violations listed in the disciplinary notice?

In this case the charge does fit ELM Section 665.41. Excessive unscheduled absences, if proven, would undermine an employee’s record of regular attendance. So the charge is correct insofar as it names the correct type of misconduct.

That is not always the case. Sometimes management dumps a slew of violations onto a case that cannot support them. How many stewards have read disciplinary notices that begin by charging a letter carrier with extending a break, and then add charges of fraud or delaying the mail? Some managers throw the book at the grievant, taking the equivalent of a parking ticket and escalating it to manslaughter.

In this case, the steward should investigate what management means by “irregular in attendance.” There is no hard-and-fast standard in the ELM, or the contract. So this kind of charge is open to interpretation. The steward may want to look at other, similar discipline, the attendance records of other employees, and so forth.

The steward should also request information about the “locally set business rule,” a computer-based tool that triggers a supervisor’s review of an employee leave record. This is part of the Resource Management Database (RMD) and its web-based counterpart, enterprise Resource Management System (eRMS). The national prearbitration settlement, M-01468, September 9,

Training Seminars & State Conventions

Listed below are the educational and training seminars for the remainder of 2008. For more information, contact your National Business Agent. Regions not listed have no training scheduled at this time.

Region 2—NBA Paul Price, (363) 892-6545
Alaska, Utah, Idaho, Montana, Oregon, Washington
Oct 5-10 Regional Assembly, Olympia, WA

Region 3—NBA Neal Tisdale (309) 762-0273 Illinois
Oct 28-31 Fall Statewide Training Seminar, Peoria

Region 4—NBA Wesley Davis (501) 760-6566
Arizona, Arkansas, Colorado, Oklahoma, Wyoming
Sept 12-13 Regional Rap Session, Oklahoma City
Nov 1 Oklahoma State Training, Oklahoma City

Region 5—NBA Mike Weir (314) 872-0227
Missouri, Iowa, Nebraska, Kansas
Oct 18-19 Nebraska State Fall Training, Grand Island
Oct 26-28 Iowa State Fall Training, Coralville

Region 6—NBA Pat Carroll (248) 589-1779
Kentucky, Indiana, Michigan

Sept 13-14 Michigan UP Training
Oct 11-13 KIM Fall Training, Troy, MI

Region 7—NBA Ned Furr (612) 378-3035
Minnesota, North Dakota, South Dakota, Wisconsin
Sept 12-14 S. Dakota State Training, Chamberlain
Oct 5-8 Minnesota State Convention, Deerwood
Oct 26-28 North Dakota State Training, Williston
Oct 31-Nov 2 Wisconsin State Training, Neenah

Region 9—NBA Judy Willoughby (954) 964-2116
Florida, Georgia, North Carolina, South Carolina
Oct TBA NC State Legislative Training, Location TBA

Region 10—NBA Gene Goodwin (281) 540-5627
New Mexico and Texas
Oct 11-13 Fall Regional Rap Session, Kerrville TX

2002 (Q98N-4Q-C 01051141), states in part:

When requested, the locally set business rule, which triggers a supervisor's review of an employee's leave record, will be shared with the NALC branch.

7. No appeal rights. The notice fails to inform the grievant of his right to challenge the discipline through the contractual grievance procedure. The November 2005 JCAM states on p. 16-5:

Arbitrator Fasser held in NB-E 5724, February 23, 1977 (C-02968) that a letter of warning which fails to advise the recipient of grievance appeal rights is procedurally deficient.

A steward can argue that a suspension letter is no different.

8. Review and concur? The notice does not state whether higher management reviewed and concurred in the Postal Service's decision to issue the discipline. While the contract does not require management to confirm its review and concurrence in writing, this is a matter the steward should cover in his or her investigation.

Next Steps

This analysis helps the steward identify the key issues in the case and leads him or her toward the next steps—a thorough and focused investigation. The steward should ask for paid time to investigate, and begin by seeking at least the following:

- Forms 3971 for all of the absences;
- Forms 3972, Absence Analysis, covering the years in question;
- eRMS records;
- TACs reports;

You can see how a careful reading of the disciplinary notice is the essential first step in challenging discipline. The notice itself may contain errors revealing weaknesses in the case. Even when there are no errors, the notice is the starting point for a thorough and effective investigation. ■

USPS

BY THE NUMBERS

Fiscal Year 2008— 3rd Quarter

<u>USPS Operations</u>	<u>Number</u>	<u>Change from SPLY*</u>
Total mail volume year-to-date (YTD) (Millions of pieces)	155,028	-3.8%
Mail volume by class (YTD in millions)		
<i>First-Class</i>	47,311	-4.3%
<i>Priority Mail</i>	661	-4.9%
<i>Express</i>	36	-14.3%
<i>Periodicals</i>	6549	-2.0%
<i>Standard (bulk mail)</i>	75,415	-3.7%
<i>Packages</i>	849	-3.3%
<i>International</i>	689	6.5%
Daily delivery points	149 mil.	1.7%
<i>Percent city</i>	67%	-0.8%
<i>Percent rural</i>	30%	2%
<i>Percent Highway Contract</i>	2%	0.1%
City carrier routes	163,479	0.2%
Rural carrier routes	76,390	3%

*SPLY = Same Period Last Year

<u>USPS Operations</u>	<u>Number</u>	<u>Change from SPLY*</u>
Estimated Net Income (\$mil.)**	\$(1,105)	
<i>Total Revenue</i>	\$17,910	-2.4%
<i>Total Expense</i>	\$19,015	1.0%
City carrier employment	214,406	-3.4%
<i>Percent union members</i>	91.9%	-0.6%
Transitional	15,006	n/a
<i>Percent of bargaining unit</i>	6.4%	n/a
City carriers per delivery supervisor	16.3	-0.9%
Career USPS employment	669,372	-2.5%
City carrier avg. straight-time wage	\$23.96/hr	3.2%
City carrier overtime ratio (OT hrs/total work hours)	11.2%	—
Ratio SPLY	14.6%	—



A NEWSLETTER FOR BRANCH LEADERS OF THE NATIONAL ASSOCIATION OF LETTER CARRIERS



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