

Stewards' right to information

A basic right, and one of the most useful tools for shop stewards, is the right to obtain information from management. Without access to relevant information, the NALC would be unable fulfill its responsibilities to negotiate and enforce the National Agreement.

Duty to provide information

Generally, the duty to provide information arises from a verbal or written request made by the union for specific information. While verbal requests are valid and must be honored, written requests preserve the record and are more easily enforced. There is usually not a duty to supply information absent a request unless providing certain information to the NALC is required by negotiated agreements.

The National Labor Relations Act (29 USC §158.a.5) requires the employer to “bargain collectively with the representatives of his employees.” Failure of the employer to provide requested information to the union is considered an “unfair labor practice.”

The National Agreement also requires management to provide information. Article 17.3 states:

The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.

Article 31.3 of the National Agreement states:

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement.

When to request

Shop stewards may and should request information to monitor management’s compliance with the

contract. Information may also be requested to investigate whether a grievance exists and to prepare for a grievance meeting. Often, requested information will help stewards to decide whether to drop or proceed with a grievance. Information may also be requested to support bargaining during local negotiations.

Stewards can request a broad range of information including any relevant documents, data, facts, and knowledge that might be useful in itself or that might lead to the identification of other useful information. Information requests must be made in good faith and they must relate to contract bargaining or enforcement. The union must be prepared to explain how the requested information

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Preparing for local negotiations

As we go to press, national contract negotiations have been extended and it is still unknown if we will reach a settlement or have to go down the arbitration road. Nevertheless, NALC branches would be well advised to continue their preparations for local negotiations whether they occur in the next few months or much later in 2012. A previous issue of the *Activist* (Spring 2011) discussed what branch leaders can do to form Local Memorandum of Understanding (LMOU) committees and gather information needed to develop local bargaining strategies. This issue will cover selecting the actual bargaining team and drafting bargaining proposals.

Choosing the team

One of the first things you need to do is determine the makeup of your bargaining team. These are the folks who will actually be at the table during the negotiations as well as those who may provide some technical expertise. The branch should consider very carefully which group of union activists will best represent the member's interests in local negotiations. Limit the team to five members or less; otherwise it may become unwieldy and/or make consensus among the team difficult.

Successful teams contain the following roles:

Chief spokesperson. The chief spokesperson should be the most persuasive talker in the group, someone with successful negotiating experience who has credibility with management. It's not necessary that they are well liked by the other side,

but they need to be someone whose word is their bond.

Recorder. The recorder needs to be a good listener with highly developed note-taking skills. He/she also should be someone who can determine the intent of the discussions that are taking place, identify what's important and articulate that in writing. The recorder doesn't have a speaking role *per se*, but focuses on what the spokespersons from each side are saying while recording the proposals that are being made and the words that are being used to describe them. These notes will serve as the union's record of the negotiations and may be crucial later on if disagreements arise as to the intent of negotiated language.

In addition to the above must-have roles, other traditional roles are found in most negotiations. These include:

Heavyweight. Sometimes during negotiations there is a need to push your agenda a little bit so the other side knows you are serious. At other times, you may need to change the dynamic in a negotiation if the discussion is not heading in the direction you want it to go. In these situations it's often effective to have one of your team members designated to be the Heavyweight, someone who is not afraid to articulate aggression when needed but is ready to allow the Chief Spokesperson to step in and "save" management. This is a variation of the old "good-guy, bad-guy" routine, where the bad-guy is so over the top that the other side

looks to the good-guy for a way out. Of course everyone has heard of this tactic, so to be effective it should be used subtly and sparingly.

Technician. Technicians are those who are called upon to provide expertise on specific issues. Usually they do not sit at the table for the entire negotiations; rather, they may only be brought into the meetings to talk about one or two issues. For example, someone who has expertise in deciphering workload/workhour reports or other pertinent data might be used when the union is trying to convince management that they can allow more carriers off during December. Basically technicians explain data and present facts. Thus they have the appearance of being impartial, almost like a third party.

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

VOL. 24 NO. 4 **Fall 2011**

Published four times annually by:
 National Association of Letter Carriers
 100 Indiana Avenue, NW
 Washington, D.C. 20001-2144
 Fredric Rolando, President



© 1

COMPENSATION

The truth about NRP

We can trace the origins of the National Reassessment Program (NRP) to the Postal Service's 2002 Transformation Plan. The Transformation Plan included a strategy to reduce Postal Service injury compensation costs by implementing, with OWCP, accelerated private sector outplacement of compensably injured employees.

Up to that time, USPS had felt that its interests were served by always providing limited duty. Otherwise, OWCP paid wage loss com-

OWCP's authority to do this is known as LWEC – lost wage earning capacity. For example, if OWCP compensates an injured employee \$500 and then determines that employee could earn \$250 in an entry-level, low-skilled job, whether the injured worker is employed or not, OWCP could reduce their wage-loss compensation to \$250.

In March 2004, USPS introduced the "Outplacement Pilot." In December 2005, they changed the name to "National Reassessment Program" (NRP). In December

33,777 to 22,678, a 33% reduction, more than double the total career force reduction. Worse, the reduction of injured employees was practically 100% involuntary.

Withdrawal of limited duty

USPS apologists have argued that involuntarily withdrawing employment from injured workers is not a negative thing like being laid off, because these employees receive wage loss compensation from OWCP. Some have even argued that the 75% normally paid by OWCP, since it is tax-free, provides more take home pay than regular wages and should be reduced because it encourages injured workers to remain off work. One Postal Service advocate explicitly compared receipt of wage loss compensation to winning a million dollar lottery.

The reality, however, is ugly. Many letter carriers have been impoverished by the withdrawal of limited duty. There are several reasons why this happens.

In some cases, when the Postal Service withdraws limited duty, it can take months or even years for OWCP to decide whether or not to pay wage-loss compensation. OWCP may have administratively closed the claim due to inactivity. Or, OWCP may have accepted the claim for a strain or sprain when there is, in fact, a more serious underlying condition. In both cases, OWCP will want updated objective

Many letter carriers have been impoverished by the withdrawal of limited duty.

penetration to an injured employee at 75% (usually) of their pay. That cost, plus about 5% OWCP overhead, was charged back to the Postal Service.

With the Transformation Plan, however, USPS calculated that it might save money by withdrawing limited duty jobs. It reasoned that OWCP would provide 'accelerated' outplacement- three months or so of assistance to an employee to obtain private sector employment. At the end of such outplacement, OWCP would reduce injured workers' compensation paychecks by the amount they could make in the identified private sector job, even if they can't find such a job.

2006, USPS implemented NRP nationwide.

Here's where it gets interesting. Postal Service employment statistics paint a grim picture of the realities faced by injured employees. Between 2006 and the end of 2010, the career complement was reduced from 696,000 to 584,000, a 16% reduction. This was accomplished almost totally through voluntary attrition. There were no layoffs, no involuntary separations and no reductions in force – for any classification of employees – except for injured employees.

During the same 2006 through 2010 period, USPS reduced its complement of injured employees from

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STEWARDS' CORNER

Investigatory interviews . . .

Rights and Warnings

One of the most important, yet least understood duties of a shop steward is representing employees in investigatory interviews conducted by managers, postal inspectors, or USPS Office of Inspector General (OIG) agents. It is important for stewards to understand the rights of both the employee and themselves in these situations. It is also critical for stewards to understand the different types of warnings a postal inspector or an OIG agent may issue an employee when an investigatory interview crosses over into the realm of a possible criminal investigation.

Weingarten rights

Most stewards are familiar with the Weingarten rule. The 1975 U.S. Supreme Court decision in *NLRB vs. J. Weingarten* gives each employee the right to representation during any “investigatory interview which he or she reasonably believes may lead to discipline.” The steward cannot exercise *Weingarten* rights on the employee's behalf. Unlike *Miranda* rights (which involve criminal investigations), the employer is not required to inform the employee of the *Weingarten* right to representation.

Employees also have the right under *Weingarten* to a pre-interview consultation with a steward. Federal courts have extended this right to pre-meeting consultations to cover interrogations by the Inspection Service. In a *Weingarten* interview the employee has the right to a steward's assistance, not just a silent

presence. The employer would violate the employee's *Weingarten* rights if it refused to allow the representative to speak, or tried to restrict the steward to the role of a passive observer.

Additionally, Article 17, Section 3 of the National Agreement reads in relevant part: “*If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted.*”

Managers will sometimes inform employees the Employee Labor Relations Manual (ELM) Section 665.3 requires all postal employees to cooperate with postal investigations. ELM 665.3 does

indeed require employees to cooperate; however, the carrier still has the right under *Weingarten* to have a steward present before answering questions in this situation. The letter carrier may refuse to answer questions until a steward is provided.

It is important for stewards and branch officers to educate their branch members of these critical rights afforded to them under *Weingarten*. Many branches have made small laminated cards to serve as a reminder of these rights. An example of such a reminder could read something like the box to the left.

Warning

When an investigatory interview is being conducted by law enforcement officers such as a postal inspector or OIG agent, an employee may be read warnings. Stewards should understand what each of these warnings mean so they can best advise the employee.

First, stewards and NALC representatives should always remember **they are not attorneys** and cannot offer legal advice to employees facing potential criminal charges. To do so could put stewards and branches in a legally vulnerable position. Stewards should immediately inform the employee that he or she may wish to seek legal advice if there is any possibility the Postal Service will bring criminal charges against the employee. Stewards should also advise the carrier not to answer any questions asked by

KNOW YOUR WEINGARTEN RIGHTS

If called to a meeting with management, postal inspectors, or an OIG agent, read the following before the meeting starts:

“If this discussion could in any way lead to my being disciplined or terminated, or affect my personal working conditions, I respectfully request that my Union representative, officer, or steward be present at this meeting. Without my Union representation present, I respectfully choose not to answer any questions or participate in this discussion.”

postal inspectors until he/she has had an opportunity to consult with an attorney.

Miranda warnings

The most common and well known warning is *Miranda*. Most people are familiar with this warning from watching crime programs on television. The *Miranda* warning is:

You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to have an attorney present before any questioning. If you cannot afford an attorney, one will be appointed to represent you before any questioning.

Once the warning is given, anything the individual says can be used in a court of law to prove guilt.

Postal inspectors and OIG agents often present a PS Form 1067, *Warning and Waiver of Rights* and request that employees sign it. By signing this form postal employees waive their *Miranda* rights. **Shop stewards should always advise carriers not to sign a PS Form 1067.** If an employee does sign a PS Form 1067 anything said from that point forward can be used against them in a court of law.

Kalkines warnings

Since ELM Section 665.3 requires all postal employees to cooperate with postal investigations, the Postal Service may take disciplinary action against an employee when he/she fails to cooperate during a normal investigatory interview that does not cross the threshold into a criminal investigation. This would appear to put the employee in an impossible position. Should an employee answer ques-

tions even if the answers may result in criminal charges, or should the employee refuse to answer risking the possibility of discipline for "failure to cooperate" in an investigation?

This problem was resolved by the federal courts in the *Kalkines* and *Garrity* decisions.

The *Kalkines* warning requires employees to make statements and cooperate even if it could lead to being disciplined or discharged, but provides **criminal immunity** for their statements. A *Kalkines* warning (the exact wording may vary) could read something like this:

You are being questioned as part of an internal and/or administrative investigation. You will be asked a number of specific questions concerning your official duties, and you must answer these questions to the best of your ability. Failure to answer completely and truthfully may result in disciplinary action, including dismissal. Your answers and any information derived from them may be used against you in administrative proceedings. However, neither your answers nor any information derived from them may be used against you in criminal proceedings, except if you knowingly and willfully make false statements.

This warning means the employee must be truthful, but can do so without their answers being used against them in a criminal proceeding. Remember, the employee is always entitled to representation by a steward under *Weingarten*.

Garrity warnings

A *Garrity* warning advises suspects of their criminal and administrative liability for any statements made, but also advises

suspects of their right to remain silent on any issues which may implicate them in a crime. A *Garrity* warning (again the exact wording may vary) could read something like this:

You are being asked to provide information as part of an internal and/or administrative investigation. This is a voluntary interview and you do not have to answer questions if your answers would tend to implicate you in a crime. No disciplinary action will be taken against you solely for refusing to answer questions. However, the evidentiary value of your silence may be considered in administrative proceedings as part of the facts surrounding your case. Any statement you do choose to provide may be used as evidence in criminal and/or administrative proceedings.

The *Garrity* warning helps to ensure suspects' constitutional rights. It also allows federal agents to use statements provided by suspects in both administrative and criminal investigations.

If a letter carrier is given a *Garrity* warning, shop stewards should advise the carrier to consult with an attorney before answering any questions.

Understanding these rights and warnings will help stewards and NALC representatives become better prepared to represent letter carriers and educate the membership on their rights during an investigatory interview.

The truth about NRP

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medical findings along with a rationalized medical opinion that connects those findings with the accepted injury. OWCP may also require second opinion medical examinations and later even referee medical exams. In the interim, the employee is left without income from either employment or compensation.

Almost two years ago, the NALC had an NRP case go to arbitration for just such an employee. The letter carrier had been in a full-time limited duty assignment for over 10 years delivering express mail, doing a collection run and handling all the growth management issues for his city. USPS withdrew this work from the injured carrier when it locally implemented the NRP and used PTFs and TEs on overtime to do the same work.

When the carrier filed a claim and tried to collect compensation, he learned that OWCP had administratively closed his claim due to inactivity. Because USPS had always provided him with full time limited duty employment, he had never claimed compensation. This letter carrier went without income for the better part of a year as he fought to have his claim reopened and the recurrence claim accepted.

At the arbitration hearing, the letter carrier calmly testified how he and his wife had run through their life savings in order to survive. They lost their home, family car and had to move into a one-bedroom apartment with their daughter and her little girls. Their daughter supported the extended family working the window at a fast-food joint. They ate timed-out food from the restaurant five nights a week. The letter carrier described

all of this in a matter-of-fact way. He broke down and wept, however, when he told how his five-year-old granddaughter had asked why they no longer got the Cartoon Network and he had to explain to her that there was no money for it.

Lost wage-earning capacity

Other letter carriers have been financially devastated by Postal Service withdrawal of limited duty because OWCP has issued zero LWEC determinations based on the same limited duty positions that were later withdrawn. In these cases, OWCP had determined that the wages earned in the limited duty position fairly and reasonably reflected the employee's capacity to earn those wages on the open job market.

FECA regulations authorize OWCP to make formal LWEC determinations based either on actual earnings, or else based on constructed positions. In the former, OWCP determines that the actual wages earned in a limited duty job (or, in some cases, a new job outside the employing agency) **fairly** and **reasonably** represent the injured worker's capacity to earn wages. In the latter, OWCP applies the factors in 5 USC 8115(a) (including the employee's qualifications for, and the availability of, other employment) and determines a reasonable wage earning capacity.

The concept of LWEC may be counterintuitive, but it is not complicated. Under normal circumstances, OWCP wage loss compensation is **reduced by all actual wages** earned. If a married letter carrier is totally disabled from all work, OWCP generally pays wage loss compensation at 75% of date of injury salary. If the letter carrier

is partially disabled (defined as the inability to perform the full duties of a letter carrier, but able to perform limited duty) and USPS provides full eight hour workdays, there is no loss of earnings and OWCP pays no wage loss compensation. However, if the Postal Service provides less than eight hours per day of limited duty work, OWCP pays wage loss compensation minus any actual earnings.

Similarly, if the Postal Service provides no work but the letter carrier has earnings from outside employment, but less than full letter carrier wages, OWCP subtracts those earnings from wage loss compensation. The normal principal is that OWCP wage loss compensation is reduced by all earnings, including a reduction to zero if earnings equal or exceed the date of injury salary. That was a mouthful but activists need to understand how our members are being harmed.

Imaginary wages

When an LWEC decision is issued, wage loss compensation is **reduced by imaginary wages**. Stated another way, wage loss compensation is reduced by an amount that represents the employee's **capacity** to earn wages, as determined by OWCP, irrespective of whether the employee is actually able to obtain employment.

For example, a letter carrier might suffer an on the job injury that results in a lifting restriction of 10 pounds. If the Postal Service does not provide limited duty, OWCP might identify a job that does not require lifting more than 10 pounds (e.g., the greeter at a big-box store), and determine that it is reasonably available on the open job market in the employee's

commute area. Once it has determined that a private sector job is within an employee's restrictions and that the job is reasonably available, OWCP reduces the employee's wage loss compensation by the average amount that job pays, whether or not the employee is able to obtain that employment.

Remember the example earlier in this article? In some cases where the Postal Service does provide limited duty, OWCP determines that the wages earned performing the limited duty job represent the employee's capacity to earn wages. Since USPS regulations provide saved rate for limited duty employees, such wages always equal date of injury wages if eight hours of daily work are pro-

NRP. For most of this time she performed higher level functions such as supervising rural route inspections, performing AMS audits and working on the CORS team. She received four Superior Performance Awards for her work during the six years prior to being sent home. One award stated that she had saved the Postal Service tens of thousands of dollars that year through her innovative restructuring of existing programs. At hearing, the NRP District Team Leader testified that this innovative work was unnecessary make work.

In her NRP exit interview, management assured this carrier that it would help her obtain the

vice's jargon she had been "reassessed," in her heart, mind and pocketbook it was as if she had been fired.

A more recent development involves the Postal Service withdrawing a limited duty job offer and then asking OWCP to issue a retroactive zero LWEC based on the same limited duty job being withdrawn. In some cases, OWCP has complied with such requests and the employees are left with no income.

The Postal Service's ongoing targeting of injured employees is troubling in the presence of President Obama's Executive Order 13548, which requires Federal agencies to increase employment of individuals with disabilities, and specifically requires special efforts to ensure the retention of those injured on the job. It is even worse in light of the fact that many of the injured employees who are still provided limited duty have had their hours reduced to as little as one hour per day. Recent news reports that USPS has made provision for as much as \$641 million for probable losses arising from claims and lawsuits, particularly the McConnell EEOC class action NRP case, only serves as an exclamation point.

Last year the NALC was forwarded an email from a District that bragged that they met their goal by reducing the number of injured workers by 25%. More insulting, the email was accompanied to the banjo tune of "Cripple Creek." Injured letter carriers are not a statistic. They are real people, with real injuries. It's not enough that their lives have been turned upside down by their injuries, NRP has impoverished many and that is the truth about NRP. ■

While in the Postal Service's jargon, the letter carrier had been "reassessed," in her heart she felt she'd been fired

vided. In these cases, OWCP issues a zero lost wage earning capacity determination. Later, when the Postal Service withdraws the limited duty job, OWCP subtracts the imaginary wages of the limited duty position, and the employee is left with no wages and no wage loss compensation.

Zero LWEC

In an early NRP case that involved a zero LWEC, USPS had provided the letter carrier with limited duty for over 12 years before it sent her home due to no work available under the local implementation of the

OWCP compensation she was entitled to. Her entitlement turned out to be nothing because she had received a formal zero LWEC decision from OWCP. As is almost always the case, she had no idea what the formal LWEC decision meant when OWCP had sent it to her several years earlier. The LWEC forced her to seek disability retirement. She lost her dream home and life savings as she struggled for most of the year to get the retirement approved. She did not even have the funds to visit her son in the military who had been wounded in the line of duty. While in the Postal Ser-

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is relevant. To obtain information the union should only need to give a reasonable description of what it needs and make a reasonable claim that the information is needed to enforce or administer the contract. The JCAM states that the union must have a reason for seeking the information—it cannot conduct a “fishing expedition” into Postal Service records.

There should also be a presumption of relevance on management's part with regard to information requests. In a national arbitration case, Arbitrator Snow wrote:

A duty to disclose relevant information in the bargaining context has its roots in Section 8 (d) of the National Labor Relations Act . . . [A] key test of disclosure is that the information meet the requirement of relevance . . . [T]here is a presumption of relevancy if the requested information pertains directly to a subject about which there is a mandatory obligation to bargain . . . [A]lthough the requirement of discovery has been narrowed by the rule of relevancy, the NLRB and courts have defined “relevancy” broadly . . . [T]he requested information should be disclosed “unless it plainly appears irrelevant” . . . [T]he parties have added to statutory requirements to share information by including a contractual provision covering the duty to do so . . . [quoting articles 31.3 and 17.3] . . . [T]he parties have implicitly adopted a broad definition of “relevancy” as it has emerged in modern discovery rules. [H7N-5C-C 12397 (C-10986)]

What can be requested

Shop stewards are entitled to examine a wide variety of records to

investigate a grievance or prepare for bargaining. Examples include:

- . accident reports
- . photographs
- . attendance records
- . payroll records
- . documents in an employee's personnel file
- . bidding records
- . disciplinary records
- . route inspection records
- . reports and studies
- . seniority lists
- . overtime desired list
- . work assignment list
- . handbooks and manuals
- . interview notes
- . leave requests
- . wage and salary records

which refer to or reflect the factors causing you to reject this grievance," or "Please provide all documents, reports, and other evidence utilized in making the decision to discipline the employee."

For disciplinary grievances it may be a good idea to request a copy of the contents of the grievant's personnel file. If there is a question of disparate treatment, also request the names of all other employees who have committed similar offenses and the penalties imposed. In some circumstances you may want to request information about non-unit employees, such as supervisors, if the same rule applies to all employees regardless of bargaining unit.

Management does not have the right to refuse information requests because the union could get the

The employer must respond promptly to the union's request for information.

- . OSHA logs
- . Training manuals
- . time cards
- . clock rings reports
- . videotapes
- . work rules
- . Inspection Service Investigative Memoranda (IM's)
- . OIG Report of Investigation (ROI)

Management must answer relevant factual inquiries, such as the names and addresses of witnesses and descriptions of their testimony. Management must also respond to general inquiries, such as "Please supply all documents and records

same information from its members, the request is too large, the grievance "has no merit," the grievance is not arbitrable, or the materials are "privileged."

The Privacy Act

Sometimes management refuses to provide requested information to the union claiming that the Privacy Act bars USPS from disclosing medical records or other confidential information. Often managers tell NALC representatives they will not release personal information without the written consent of the affected person. These management excuses are flatly wrong because

the Privacy Act's regulations authorize disclosure to the union of most records containing personal information. The Privacy Act does require federal agencies to restrict access to certain records that contain information about individuals, but the AS-353 [Guide to Privacy, the Freedom of Information Act and Records Management] makes it clear that providing information to the union is a "routine" use and is therefore an authorized disclosure under the Privacy Act.

One important exception: OWCP claim file records are covered by OWCP regulations and can only be released to the union if the claimant provides management with a written release of that information. The CA-810 [Injury Compensation for Federal Employees] states that OWCP claim information may properly be released in accordance with the regulations contained in 29 CFR parts 70-71. OWCP records are created for the administration of FECA [Federal Employee Compensation Act] and the use of those records must be consistent with the purpose for which those records were created.

No unreasonable delays

The employer must respond promptly to a union's request for information. The definition of a prompt response changes, however, depending on the information requested. Simple information such as clock rings for two carriers on a particular day should be provided as soon as possible. Unreasonable delay can constitute an unfair labor practice even if the employer does eventually provide the information.

Article 17 of the JCAM also requires management to provide requested information in a timely manner and as soon as reasonably possible. The JCAM states:

Management should respond to questions and to requests for documents in a cooperative and timely manner. When a relevant request is made, management should provide for the review and/or produce the requested documentation as soon as is reasonably possible.

Costs

Management must supply the union with relevant data even if it will take time to retrieve and compile it. Management, however, can require the union to reimburse its costs in certain situations. Currently the AS-353 4-6.5 provides for a waiver of information fees for:

- 1) the first 100 pages of duplication and the first two hours of search time,
- 2) the costs for searching (manual and computer searches), and
- 3) for duplication (currently 15 cents per page).

If a large volume of information is requested, instead of making printed hard copies, the parties in many instances have agreed to use electronic media such as CDs or thumb drives to transfer requested information. This can reduce the expense and time for both parties.

Failure to provide

Management's refusal to provide relevant information to a union is considered a failure to bargain with the union and an unfair labor practice under 29 U.S.C. 158.a.5. One of the most common Section 8.a.5 unfair labor practice charges involves the allegation that an employer has failed or refused to furnish information. Form NLRB-501 is used for filing such charges; it can be found at www.nlr.gov. If repeat violations are persistent, the branch president may want to reach out to their NBA for assistance.

Preparing for local negotiations

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Alternates. Every negotiating team should have at least one alternate, someone who attends every planning and negotiating session, but does not actually participate in the negotiations at the table. Their role is to step in should one of the other team members miss a negotiation session or become unavailable – which is not uncommon. Additionally, because they are not actually sitting at the table and involved in the negotiations, they are less likely to get caught up in any emotions that might surface. They can observe the negotiating process and provide some valuable insight to your team during caucuses.

Developing strategy

Assuming that you have already collected the information you will need for negotiations (e.g. leave records, schedules, workload reports, volume projections, past bargaining records – see earlier article) and you have polled your membership for their thoughts and ideas, the next action you will need to take is to list and prioritize what your branch would like to achieve through bargaining.

One way to do this is to develop a wish list of everything that your bargaining committee would like to see changed in your local memorandum. You might write down things like: "increase the percentage of carriers allowed off on annual leave during prime time," "allow annual leave during December," or "establish annual leave quotas during non-choice period." Put every idea up on the board, or flipchart, even those that may seem unimportant. Then the negotiating committee should discuss each one and prioritize them in order of importance.

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Or, you might group them according to those items you “must do,” those that would be “good to achieve” and those that would be “nice to have, but not necessary.” In general you want to think in terms of what you want to gain, what you want to retain, what you are willing to give up (to get something else you want) and what you think is a realistic outcome. From these you will begin to develop your bargaining strategy - how you will go about convincing management’s negotiators to agree with your proposals.

It goes without saying that your list of bargaining goals and priorities should not be discussed outside of your bargaining committee. There is a chance that someone could pass this information on to management, which would certainly weaken your position in the negotiations. It would be like showing your poker hand before the bets are placed. Once you have your prioritized list of bargaining goals, you will need to draft your proposals.

Drafting contract proposals

There are two important factors when it comes to drafting your proposals: the tactics you will use and the actual language you will propose.

Tactically, you will need to consider how the bargaining process works. In many ways, it’s like other types of negotiations, whether you are buying (or selling) a car or home, or haggling over the price of an item at a yard sale. There are the initial proposals (the list price and a much lower counter-offer), a concessionary phase where each side gives a little ground (there may be several rounds of this) and finally

the parties reach an agreement. With this in mind, it is wise to develop an initial opening position that aims high, an intermediate proposal that is more in line with what you hope to achieve, and a bottom line proposal that represents the minimum you would be willing to accept.

You should also give some serious thought to what management will try to achieve. They may have already telegraphed this to you by things they have said previously in grievance or labor-management meetings. Just like any other negotiation, the more you know about your counterpart’s goals and objectives, the better prepared you will be for the negotiations that take place. So ask yourself, what do they want? Then think about whether or not this would be acceptable to you and whether you could concede this to them in order to achieve what you want. If it is unacceptable to you, then what facts or information are you going to need to counter their proposal and what arguments are you going to make against it?

The actual contract language you propose is another important factor when drafting proposals. The best contract language should be clear and concise, easy to understand and definite in the way it applies in certain circumstances. Vague language that can be interpreted different ways may lead to the provision being misunderstood and/or misapplied.

Choose your words carefully. Words like *can*, *may* and *should* imply a choice and allow for discretion, where words like *shall*, *must* and *will* are directive and leave no room for alternatives. Other terms that are commonly misunderstood include can be found in the box to the right.

CONTRACT LANGUAGE

Choose your words carefully.

WHEN APPROPRIATE – could be interpreted to allow full discretion to management.

WHEN PRACTICAL – only slightly more compelling than “when appropriate.” Though there is some room for argument that something is practical, management still decides what is practical.

WHEN PRACTICABLE – really means “workable” which is decided by management, but leaves some room for argument.

NORMALLY – allows management to decide when the situation is other than normal.

TO THE MAXIMUM EXTENT

PRACTICAL – allows management to decide if the action is “practical.”

TO THE MAXIMUM EXTENT

POSSIBLE or **WHEN POSSIBLE** if it can be done, it will be done. This is very compelling. The only argument for inaction would be that it is not possible, a very difficult position to support.

Developing talking points

Once you have drafted your proposals, you should develop talking points for each one. You want to prepare persuasive arguments for each issue or proposal you discuss. It’s not a good idea to just “wing it”; things can get fuzzy in the heat of negotiations, so you want to have some notes written down to help you stay on track. For each issue you should identify the problem and explain how your proposal would address it – how it would work. You will want to give some specific examples so there is no misunderstanding of the intent of the proposal.

Training Seminars & State Conventions

Listed below are the training sessions, educational seminars, and state conventions scheduled for January—April 2012. For more information on any event scheduled, please contact your business agent. Regions not listed have not reported any training scheduled for this time period.

Region 1—NBA Chris Jackson, (714) 750-2982
California, Hawaii, Nevada, Guam
March 22 State Board Meeting, Oakland, CA
March 23-4 CSALC-NBA Training/Rap Session, Oakland, CA
March 25 CSALC Congressional Breakfast, Oakland, CA

Region 2—NBA Paul Price, (360) 892-6545
Alaska, Utah, Idaho, Montana, Oregon, Washington
Jan. 15 Oregon Mid-Winter Rap Session, Eugene, OR
March 11-5 OR State Stewards College, Silver Falls, OR
March 18-22 OR State Stewards College, Silver Falls, OR
April 8-12 UT State Stewards College, Midway, UT
April 19-22 OR State Convention, Salem, OR
April 22-26 WA State Stewards College, Goldbar, WA
April 30-May 3 ID State Stewards College/State Convention, Lewiston, ID

Region 5—NBA Dan Pittman, (314) 872-0227
Missouri, Iowa, Nebraska, Kansas
Feb. 24-6 Rap Session, Kansas City, MO
April 20-2 NE State Convention, Grand Island, NE
April 27-8 KS State Convention, Kansas City, KS
April 29-May 1 IA State Training, Altoona, IA

Region 6—NBA Patrick Carroll (586) 997-9917
Kentucky, Indiana, Michigan
April 13-4 IN State Convention, Bloomington, IN

Region 7—NBA Chris Wittenburg, (612) 378-3035
Minnesota, North Dakota, South Dakota, Wisconsin
April 14-5 SD Spring Training, Cedar Shores, SD
April 30-May 4 Regional Training, Minneapolis, MN

Region 8—NBA Peter Moss, (256) 828-8205
Alabama, Louisiana, Mississippi, Tennessee
Feb. 26-9 Rap Session, Tunica, MS
April 19-21 MS State Convention, Hattiesburg, MS

Region 9—NBA Judy Willoughby, (954) 964-2116
Florida, Georgia, North Carolina, South Carolina
Feb. 3-5 GA State Training Session, Savannah, GA
March 22-4 NC State Training Session, Winston-Salem, NC

Region 10—NBA Kathy Baldwin, (281) 540-5627
New Mexico, Texas
Feb. 18-20 Regional Training Seminar, Houston, TX

Region 11—NBA Dan Toth, (440) 282-4340
Upstate New York, Ohio
March 26-8 OH State Congressional Reception, Washington DC
April 6-10 NY State Congressional Reception, Washington, DC

Region 12—NBA Bill Lucini, (215) 824-4826
Pennsylvania, Central and South New Jersey
Feb. 26-8 Region 12 Training Seminar, Atlantic City, NJ
March 27-9 NJ Congressional Breakfast, Washington, DC

Region 13—NBA Tim Dowdy, (757) 934-1013
Delaware, Maryland, Virginia, West Virginia, Washington DC
Feb. 1-2 New Stewards Training, Charlottesville, VA
Feb. 20 DE Steward Training, Location TBA
Feb. 27-8 MD/DC Steward Training, Hagerstown, MD
March 8-9 VA Steward Training, Richmond, VA

Show how your proposal would benefit both parties and ask management if it has any questions about what you've said.

You will need to determine what documentation you will need to support each proposal (e.g. seniority rosters, leave charts, workload/workhour

reports, prior LMOU's) and prepare copies to give to management during negotiations.

Next steps

Much of what we've discussed so far can be completed weeks or even

months ahead of the actual negotiation period. In the next issue of the *Activist*, we will get down to the actual nuts and bolts of the local negotiation process and what you can do to increase your chances of success.

ACTIVIST

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USPS

BY THE NUMBERS

Operations

End of FY 2011	Number	Change from SPLY*
Total mail volume YTD (Millions of pieces)	167,934	-1.7%
Mail volume by class (YTD in millions)		
First-Class	73,520	-6.4%
Periodicals	7,076	-2.7%
Standard (bulk mail)	84,691	2.6%
Packages	675	2.8%
Shipping Services	1,473	6.1%
Workhours (YTD in thousands)		
City Delivery	399,010	-2.3%
Mail Processing	215,221	-4.2%
Rural Delivery	177,384	0.1%
Customer Service/Retail	150,203	-6.5%
Other	207,019	-2.4%
Total Workhours	1,148,837	-2.9%

*SPLY=Same Period Last Year

Finances

FY 2011 — End of Year (millions)

Operating Revenue	\$65,553	-2.0%
Controllable Operating Expenses	\$68,154	1.0%
Controllable Operating Income	- \$2,443	
PSRHBF Expenses	\$0	
Workers' Comp adjustments	\$2,480	
Net operating loss	-\$5,067	

Employment

FY 2011 — End of Year	Number	Change from SPLY*
City carrier employment	183,574	-4.4%
Full Time	165,665	-3.7%
PT Regular	763	-6.6%
PTF	17,146	-10.9%
Transitional	6,272	-1.4%
MOU Transitional	7,526	-0.0%
City carriers per delivery supervisor	18.3	
Career USPS employment	557,250	-4.6%
Non-career USPS employment	88,700	0.7%