ROADMAP TO WINNING

SUCCESS STRATEGIES IN OUR DISPUTE RESOLUTION PROCESS

THE CONTINUING STRATEGY BOOKS

FIFTEENTH IN THE SERIES

WRITTEN BY:

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Revised July 2007

FOREWORD

This Strategy Book, the fifteenth in a series which began in 1987, sets forth the tactics necessary to best utilize the benchmark provisions of Articles 15, 17 and 31 of the Collective Bargaining Agreement to win grievances.

Incorporating our researched and investigated arguments, elements of evidence and applicable CBA requirements into the actual content of our grievance appeals – no later than at Step 2 of the process – will immeasurably enhance and improve our success in defending against discipline and in prosecution of violations.

As with the other series Strategy Books, the intent here is for continual reliance upon the techniques and processes contained within. This Book is not to be read (or skimmed) and then set aside. It is structured and formulated for present and future regular use.

As always, if you have any questions or comments about this or any of the series of fifteen, please contact me.

Only through serious commitment to education will our representation remain vigilant.

Yours in Unionism,

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ACKNOWLEDGEMENTS

My gratitude to Trenton Metro Area Local/New Jersey State Postal Workers Union President **Bill Lewis** for his positive encouragement in the production of this, the fifteenth.

Bill has provided invaluable resource assistance which resulted in the reproduction of the series on CD in time for the August 2006 release.

Without Bill and the Trenton Metro Area Local, the Roadmap to Winning Strategy Book would not have been possible.

I also thank the Clifton, New Jersey Local membership for affording me the privilege of serving as President from 1983 – 1987 (July).

Their faith and confidence afforded me the incredible opportunity to seek National Office in the largest Postal Union in the world. Without their support, that – and the Strategy Book series of fifteen – would never have been possible.

I also express my appreciation to the following Union Leaders whose commitment to high level representation – through high quality education – inspired the production of the Strategy Book series:

John Clark, National Business Agent
APWU

John Jackson, President
Pennsylvania Postal Workers Union

Dave Wigley, President
New Castle Local APWU (PA)

Wayne Maurer, President
Langhorne Local APWU (PA)

Jim Swank, President
Greensburg Foothills Area Local APWU (PA)

Paul Cirino, President
Pennsylvania Postal Workers Union

John Quinn, Past President
Pennsylvania Postal Workers Union

Mark Belland, Esquire
Attorney for Labor Unions

DEDICATION

To the Membership of the American Postal Workers Union – Past and Present. Your faith and support created the portal of opportunity which resulted in this and the other fourteen.

and

To my Parents, **Jane and Herb Kehlert**,

to my second Mother, **Lucy Chirichello**

and to my wife, **Congetta Chirichello** –

All, for always being there.

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CHAPTER 1

The Grievance Procedure: New Evidence/Argument vs. Full Disclosure/Development

Since 1971 and the first Collective Bargaining Agreement negotiated among the Postal Labor Unions and the USPS, the provisions of the grievance procedure have remained almost without significant change. This is especially true in relation to the Parties commitment to lowest possible grievance step resolution, authority to achieve that end and full disclosure/full exchange/full development of the Parties' positions at Step 2. These principles have all remained steadfast for more than 35 years.

During that time, however, while the provisions remained, interpretations and applications of Article 15 by the Parties and our employee Arbitrators have evolved.

For many years the Parties *were not* held to the strict development/disclosure/exchange obligations in accordance with Article 15's original Step 2 language. The USPS and the Union regularly did not fully investigate, disclose or state their positions early in the grievance process. Information was not requested, arguments/contentions were not stated, evidence was not included or exchanged. The Parties, for the most part, presented their arguments and evidence at the Arbitration hearing – not before. The wisdom which created Step 2 of the procedure was lost in the process and with it the lowest possible Step resolution commitment and result.

Review of Article 15's Step 2 provisions reveals the Parties negotiated commitment:

ARTICLE 15.2 STEP 1d

The Union shall be entitled to appeal an adverse decision to Step 2 of the grievance procedure within ten (10) days after receipt of the supervisor's decision. Such appeal shall be made by completing a standard grievance form developed by agreement of the parties, which shall include appropriate space for at least the following:

1. Detailed statement of facts;

2. Contentions of the grievant;
3. Particular contractual provisions involved; and
4. Remedy sought.

ARTICLE 15.2 STEP 2d

At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Article 31. The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. In addition, in cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above.

ARTICLE 15.2 STEP 2f

Where agreement is not reached the Employer's decision shall be furnished to the Union representative in writing, within ten (10) days after the Step 2 meeting unless the parties agree to extend the ten (10) day period. The decision shall include a full statement of the Employer's understanding of (1) all relevant facts, (2) the contractual provisions involved, and (3) the detailed reasons for denial of the grievance.

ARTICLE 15.2 STEP 2g

If the Union representative believes that the facts or contentions set forth in the decision are incomplete or inaccurate, such representative should, within ten (10) days of receipt of the Step 2 decision, transmit to the Employer's representative a written statement setting forth corrections or additions deemed necessary by the Union. Any such statement must be included in the file as part of the grievance record in the case. The filing of such corrections or additions shall not affect the time limits for appeal to Step 3 or arbitration.

ARTICLE 15.4A

The parties expect that good faith observance by their respective representatives, of the principles and procedures set forth above will result in settlement or withdrawal of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end.

The Joint Contract Interpretation Manual further reinforces these requirements:

ARTICLE 15.2 STEP 2(c)

The union representative at the Step 2 meeting shall fully discuss the union's position, including the contractual provisions allegedly violated and the corrective action requested. The union may furnish written statements from witnesses or other individuals who have information pertaining to the grievance. Both parties are required to state in detail the evidence and contract provisions relied upon to support their positions.

The Postal Service is also required to furnish to the union, if requested, any documents or statements of witnesses as provided for in Article 31, Section 3.

ARTICLE 15.2 STEP 2(f)

STEP 2 DECISION

Management must provide the union representative a written decision within ten days of the Step 2 meeting unless time limits are mutually extended. The decision shall include:

1) all relevant facts;
2) contract provisions involved; and
3) detailed reasons for denial

ARTICLE 15.2 STEP 2(g)

ADDITIONS AND CORRECTIONS

Where the union representative believes that the facts or contentions set forth in management's Step 2 decision is incomplete or inaccurate, the representative may file, within ten days of receipt of the Step 2 decision, a written statement with the management Step 2 representative setting forth any corrections and additions to the Step 2 decision.

ARTICLE 17.3

RIGHT TO INFORMATION

Information relied on by the parties to support their positions in a grievance should be exchanged between the parties' representatives at the lowest possible level.

These stated provisions – with JCIM support – require:

1. The Union's detailed statement of facts, arguments, CBA citations/reliance and sought remedies – within the Step 2 appeal;

2. Full exchange/disclosure/development of all evidence (documents, statements, interviews, etc.) each party is relying upon no later than at the Step 2 meeting/hearing;

3. The USPS' detailed statement of facts, arguments and CBA provisions' citations within the Step 2 decision;

4. The Union's detailed corrections and/or additions to the USPS Step 2 decision whenever the Union believes the Step 2 decision is incomplete and/or inaccurate;

5. Commitment of the Parties to achieving lowest possible Step grievance resolution.

Beginning in the mid to late 1990s, Arbitrators increasingly posited that Article 15 required the Parties to fully disclose – no later than at Step 2 of the process – their arguments and evidence. More and more of our hired umpires would no longer entertain arguments and/or evidence presented for the first time at the Arbitration hearing. Even due process and procedural arguments – and related evidence – which had historically been permitted to be raised/presented for the first time in Arbitration were being barred from presentation – if they had not been raised/presented at Step 2 of the grievance procedure.

Today a solid body of arbitral reference and history exists which supports the original Step 2 full disclosure/full exchange/full development commitment of Article 15. Some of those decisions are National Level Awards in which the Arbitrators have ruled on new evidence/new argument in particular cases presented before them. While the issue of "new evidence" itself has not - to date – been litigated at National Level Arbitration, the principles set forth within both National and Regional Awards provides compelling support for the full

disclosure commitment of Article 15 set down by the founding negotiators of the Collective Bargaining Agreement in 1971.

The following is what National and Regional Level Arbitrators have had to say:

ARBITATOR MITTENTHAL **H8N-5L-C 10418 1981**

There remains the Postal Service's claim that the local clause in question is "inconsistent or in conflict with" Article XIII which concerns "assignment of ill or injured regular work force employees." The difficulty here is the lateness of this argument. Article XV describes in great detail what is expected of the parties in the grievance procedure. The Postal Service's Step 2 decision must make a "full statement" of its "understanding of . . . the contractual provisions involved." Its Step 3 decision must include "a statement of any additional . . . contentions not previously set forth . . ." Its Step 4 decision must contain "an adequate explanation of the reasons therefore." In this case, the Postal Service made no mention of Article XIII in Steps 2, 3 and 4. Its reliance on this contract provision did not surface until the arbitration hearing itself. Under such circumstances, it would be inappropriate to consider this belated Article XIII claim.

ARBITRATOR AARON **H8N-5B-C 17682 1983**

The Postal Service advanced other, more credible arguments at the arbitration hearing to support the reasonableness of its decision to assign the disputed work to Summers, but none of these except the later delivery of mail had been raised during earlier steps of the grievance procedure. I am fully in agreement with Arbitrator Mittenthal that the provisions of Article XV requiring that all of the facts and arguments relied upon by both parties must be fully disclosed before the case is submitted to arbitration should be strictly enforced. In this case, therefore, I have given no consideration to any of the arguments advanced by the Postal Service other than those referred to specifically in this and the preceding paragraph.

ARBITRATOR AARON **NC-E-11359 1984**

It is now well settled that parties to an arbitration under a National Agreement between the Postal Service and a signatory Union are barred from introducing evidence or arguments not presented at preceding steps of the grievance procedure, and that this principle must be strictly observed. The reason for the rule is obvious: neither party should have to deal with evidence or argument presented for the first time in an arbitration hearing, which is has not previously considered and for which it had no time to prepare rebuttal evidence and argument. The spirit of the rule, however, should not be diminished by excessively technical construction.

ARBITRATOR DAS **H4C-NA-C 72** **1997**

On balance, I am not persuaded either by the test of the moving papers or the extrinsic evidence in the record that in the Step 4 response, was materially changed from that stated in the written grievance submitted by the Union. Moreover, there is a substantial difference between that issue and the issue formulated by the Union at arbitration. Pursuant to National Arbitration precedent, the Union is barred from presenting such a new issue for the first time at arbitration.

ARBITRATOR LOEB **C98C-4C-C 01231061 2006**

Whether the Service was right or wrong in this case in terms of the employees it called in to work overtime is irrelevant because of how it chose to process this grievance. Its failure to meet with the Union at Step 2 not only cut off the Union's ability to further investigate and develop this grievance, but it left the Union in the position of either having to give up when it might have had a legitimate claim that it was required to pursue on behalf of its members or incur the cost of arbitration only to discover once the hearing began that there had been no violation of the Contract and, therefore, no reason to go to trial. As indicated earlier in this discussion, the situation was made worse by Management's nebulous Step 3 answer which could have been interposed in almost any case where the Union claimed the Employer called in the wrong people to work overtime. It is so universal that it could also be interposed as a defense where the Union is claiming that certain work should or should not have been performed on overtime. The Contract demands much more of the Employer. It demands fair dealing and specificity, the same requirements that it imposes on the Union.

This Arbitrator is not comfortable sustaining a grievance when Management may not have violated the Contract. As indicated in the preceding paragraphs, though, the Arbitrator has been forced into this position by the manner in which the Service processed this grievance. To allow the Employer to introduce the arguments and evidence which it sought to bring up at arbitration under these circumstances would not just make a mockery out of the full disclosure requirements of Article 15, but also would totally pervert the principle underlying the grievance procedure from one in which the goal is to settle disputes at the earliest possible steps in the process to turning every case into a battle to be won or lost at arbitration. The practical impact of the Employer's actions is that the arguments and evidence that it sought to introduce at trial must be ignored. Without them the Service had no way to counter the Union's claims or to contest this grievance.

There may well be times when, even though the Service fails to meet with the Union at Step 2 and/or issue a Step 2 answer, it can effectively cure the dcfect by what it does at Step 3. It is a risky strategy, but it appears to be a risk that the Service, either consciously or because of other factors, has been willing to take with ever greater frequency. When it fails, as it did in

this case, the Employer will pay a penalty in terms of losing a battle that it should have won.

It is for those reasons that the only question concerns the remedy to which the Union is entitled as a result of the violation. For those employees who were bypassed the answer is simple: the individuals who were on the overtime desired list who were bypassed during the time period in question are entitled to be paid at the overtime rate for the number of hours equal to the opportunity missed. The individuals who were improperly required to work overtime are also entitled to relief. Although the JCIM makes no provision for any remedy for them, they too were victims of Management's mistake and they too, therefore, have a right to be made whole. That can only be accomplished by giving them administrative leave for the number of hours they were required to work in place of those individuals on the overtime desired list.

It bears repeating that the Service finds itself in the position it is in not because it may have violated the Wage Agreement with regard to how it scheduled overtime or who it called in to perform the work during the period in question, but because it failed to adhere to the Contract after the grievance was filed.

ARBITRATOR FULLMER **C94T-4C-C 96016904** **2000**

B. The Procedural Issues.
No issues were raised at the hearing concerning the procedural arbitrability of the case. The hearing itself proceeded with admirable efficiency and cooperation between the two advocates and the stipulation quoted in full above was reached. In the stipulation there were the following provisions concerning the procedure followed at the local level:
"8. The parties agree that there was no Step 2 Meeting or response.
....
10. .The file reflects that the information request submitted by the Union was not complied with."

Article 15, Section 2, Step 2 c requires the installation head or his designee to meet with the steward or a Union representative within 7 days of the Step 2 Appeal. Step 2f requires a response within a ten day period. The matter need not be belabored and Stipulation 8 virtually concedes a procedural violation.

As to data, Article 15, Section 2, Step 2d requires the parties "to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Article 31." That Article in turn requires the Employer to make available for inspection of the Union all relevant information necessary to determine whether to file or to continue the processing of a grievance. As was the case with the "Step 2" matter, the matter need not be belabored since Stipulation # 10 virtually concedes a second procedural violation.

Presumably not every single violation by a party of the procedural provisions of Article 15 necessarily need result in the loss of a case by that party. But, the arbitrator is frequently asked by the Employer to declare grievances procedurally inarbitrable because they were not filed within 14 days specified and the arbitrator has written many such awards. It seems to the

arbitrator that the two violations by the Employer's operational officials covered by the two stipulations were relatively serious with respect to the operation of the grievance procedure.

ARBITRATOR FULLMER **C94C-1C-C 97123817** **2004**

VI. CONCLUSION

Here there were only two documents in the grievance trail, i.e. the Union's Step 2 grievance appeal form and its appeal to arbitration. (Jt. 2, p. 3-4 and p. 2 respectively). The Employer did not schedule a Step 2 meeting or provide a Step 2 answer and there was no record of any proceedings at Step 3. For the reasons discussed above, it is held that the Employer presented no arguments during the course of the grievance procedure and thus is precluded under the doctrine of the Aaron case (NC-E-11359, January 30, 1984) from raising arguments for the first time during the course of the grievance procedure. This conclusion precludes the necessity of discussing the substantive issues of this case.

To the extent that it may not otherwise be clear, the first of the issues set out above is answered in the affirmative, i.e. the Employer is precluded from presenting arguments on the merits on the basis of the doctrines of the Aaron case and the provisions of Article 15.2 Step 2 (d) and (f). The award draws its essence from the arbitrator's interpretation of Article 15 of the parties' agreement.

ARBITRATOR HARRIS **A00C-4A-C 05083533** **2005**

In a contract interpretation case, the Union bears the burden of proof. In the instant case, since Management did not present a written denial at Step 2, and its denial at Step 3 had no substance, the Union has a relatively light burden. Many arbitral awards, including at the National level, make it clear that new arguments cannot be introduced at Arbitration.

ARBITRATOR SIMMELKJAER **A00C-4A-C 03117871** **2003**

Insofar as the Service's request to cross-examine the ten (10) employees with respect to their statements submitted on 3/21/03, the Arbitrator finds that this information would constitute new evidence. Since the Service asserted inter alia in its Step Two summary that "employees could have reported if they made a diligent effort" and "groups of employees were not prevented from working," the Arbitrator maintains that the Service had an opportunity during its investigation to interview these employees, review their statements, and challenge their reasons for absence set forth on Form PS 3971 prior to the arbitration hearing.

The Union observes that no Step 2 answer was provided by the Postal Service in the case. Rather, only a 2609 was issued. Therefore, on this basis it argues that no new argument may be made by the Postal Service to rebut its prima facie case. It buttresses its argument by providing Ex. U-2, a Step 4 decision in Case No. HIC-3U-C-6106. The Union's argument would be appealing were it not for two (2) factors. Initially, my reading of the Step 4 is at variance with the Union's. At paragraph 3, it states: "[t]he question in this grievance is whether the Postal Service must grant the Union's request for copies of the PS Forms 2608 and 2609 (Grievance Summaries - Step 1 and Step 2)." While reinforcing the parties' full disclosure obligations, nowhere does it support the Union's construction.

In addition, the record amply demonstrates that the Shop Steward treated the 2609 as a denial of the grievance at Step 2. She filed a Step 3 Appeal on April 4, 2002, which was several days after the 2609 was mailed to her residence. She clearly treated it as the Step 2 answer. Therefore, for the purposes of this discussion, and on these facts, the Postal Service should not be prohibited from attempting to rebut the Union's case. That said, I have appropriately only considered Management's arguments related to its position as set forth at block 17 of the 2609, with one exception.

The Postal Service has raised a potent challenge to arbitrability on substantive grounds. Very simply, it argues that I have no authority to hear the case, as it is governed by FECA, 5 U.S.C. 81, and administered by the OWCP. Substantive challenges to arbitrability are most properly raised at the hearing. In my view, a distinction must be drawn between "new" factual arguments, and ultimate arbitrability determinations. Any other result encourages form over substance. In that regard, Arbitrator Aaron said it best, in what may be the seminal case on this issue. In USPS and APWU, Case No. NC-E-11359 (Aaron, 1984), Arbitrator Aaron issued this often-quoted language in his National Award, when he said at page 4 :

> [t]he reason for the rule is obvious: neither party should have to deal with evidence or argument presented for the first time in an arbitration hearing, which it has not previously considered and for which it has had no time to prepare rebuttal evidence and argument. The spirit of the rule, however, should not be diminished by excessively technical construction. ****

Thus, the data establishes that in every pay period cited during the six (6) month period, PTFs and Casual(s) worked a minimum of one (1) full-time, five (5) day, forty (40) hour week. This shows that one (1) FTR position was available for conversion, and requires a finding of fact that the APWU has established a prima facie case by a preponderance of the credible evidence. The burden now shifts to the Postal Service to prove its affirmative defenses.

In that regard, the Union has raised a strenuous challenge to the introduction of new arguments by the Postal Service in general, and to the testimony of the Postmaster, in

particular. Accordingly, it contends that these arguments were not offered below, and that Management should be limited to the arguments raised at Step 2, per Article 15.2 Step 2d. (APWU brief at pages 6-7). This language provides inter alia, for a "full and detailed statement of facts and contractual provisions relied upon," by both advocates.

It is well settled in Postal arbitrations, that this provision serves as an absolute bar to raising new argument or introducing surprise evidence for the first time at the arbitration hearing. See, USPS and NALC, Case No. H8N-5L-C 10418 (N8-W-0406)(Mittenthal, 1981)(Union Ex.); See also, USPS and NALC, Case No. NC-E-I 1359 (Aaron, 1984)(Union Ex.); USPS and APWU, Case No. KAL96357 (Loeb, 2001)(Union Ex..); APWU and USPS, Case No. A98C-4A-C-99135890/99194 (Thomas, 2000)(Union Ex..); USPS and APWU, Case Nos. C94V-IC-C-C97083357/MVP 101 & C94V-IC-C97080516/MVP 102 (Drucker, 1998)(Union Ex.); USPS and APWU, Case No. G94T-I G-C 97028953/73303 (King, 2000)(Union Ex.).

Therefore, the only arguments that have been entertained are those that the Postal Service raised in Ms. Rowan's Step 2 denial.

ARBITRATOR HARRIS **A00C-1A-D 03085006 2003**

The Union was unable to provide an effective defense to the Service's contention that the Grievant was involved in a physical altercation on the workroom floor. It is unclear who was responsible for starting the incident, but it is also clear that neither participant passively received physical abuse from the other. There is no doubt: the Grievant violated ELM Section 666.2.

However, Management, by failing to fashion a detailed defense in its Step 2 denials against the Union's numerous due process charges in its Step 2 appeals, left itself vulnerable to those charges. As Arbitrator Richard Mittenthal wrote in a USPS/NALC 1981 National Award:

> Article XV describes in detail what is expected of the parties in the grievance procedure. The Postal Service's Step 2 decision must make a "full statement" of its "understanding of . . .the contractual provisions involved." (H8N-5L-C 10418)

The implementation of Mittenthal's ruling means that neither party has the right to introduce new evidence or arguments at an arbitration hearing when it failed to make a "full statement" earlier. Arbitrator Benjamin Aaron wrote in a USPS/NALC 1984 Award:

It is well settled that parties to an arbitration under a National agreement between the Postal Service and a signatory Union are barred from introducing evidence or arguments not presented at preceding steps of the grievance procedure, and that this principle must be strictly observed. (NC-E-11359)

Aaron properly added a qualifier: "The spirit of the rule, however, should not be diminished by excessively technical construction."

In the instant case, the Parties stipulated (see above) that the Service did not refute all of the contentions about due process violations Steward Tyrell made in her Step 2 appeals. I judge that

there is some merit in the Union's charges, although I do not agree the Service is guilty of disparate treatment. I find there is reason, therefore, to reduce the severity of the discipline.

Based upon a thorough review of the record, including testimony and exhibits, I conclude that there is not just cause for the Notice of Removal.

As you can see, this school of Arbitral opinion does not permit a party to raise new arguments/evidence at arbitration which were not raised at Step 2 of the process.

Now that we are aware of the beginning and evolution of our grievance/arbitration procedure as it relates to the barring of new evidence and arguments, we turn to utilization of the requirements of Articles 15, 17 and 31 to greatly enhance our opportunities to win our cases during the process.

CHAPTER 2

REQUESTING INFORMATION

Crucial to the success of any processed grievance is the Request for Information as the starting point. Our ability and responsibility to obtain information is grounded within both Article 17 Section 3 and Article 31 Section 3 of the Collective Bargaining Agreement:

ARTICLE 17 SECTION 3

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 SECTION 3

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.

Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or his designee.

A. THE REQUEST FOR INFORMATION

Each Request for Information must be in writing utilizing the standard Union Request for Information form (see illustration on page 17) or a locally devised hybrid form or through written correspondence.

We must ensure that our access to information is documented under Articles 17 and 31 or we may later face management challenges to our evidence on the basis that we obtained it outside the Collective Bargaining Agreement.

Without Requests for Information as the initiating documentation toward gaining access, the USPS may argue the evidence we include was obtained/facilitated outside the Collective Bargaining Agreement and that it should be excluded from the grievance procedure.

With our Requests for Information as documentation, we bring the included evidence into the Collective Bargaining Agreement's umbrella and take the first step toward its proper inclusion into our grievance.

You must complete and submit a Request for Information listing specifically the information you wish to obtain. This again may seem self-evident, but many, many grievances are processed without Requests for Information. And your Request for Information must list the evidence with enough specificity so as to leave no doubt as to its identity. The Request for Information is of particular value in the event you are denied access to the evidence. The USPS creates one of our most powerful and successful procedural and due process arguments when it denies information/witnesses we request. If your RFI is incomplete or unclear as to what/who you are requesting, as well as to the purpose of your request, you may enable the USPS to successfully defend its denial. Don't let this happen. Be thorough. Be specific. Be clear.

B. HERE IS A REQUEST FOR INFORMATION FOR POTENTIAL EVIDENCE:

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Grievant/Union	Nature of Allegation
Class Action APWU	Overtime violation, Article 8

8/1/2006
Date of Request

To: John Doe Title: Supervisor

From: Bill Lewis Title: Shop Steward, Tour II

Subject: REQUEST FOR INFORMATION & DOCUMENTS RELATIVE TO PROCESSING A GRIEVANCE

We request that the following documents and/or witnesses be made available to us in order to properly identify whether or not a grievance does exist and, if so, their relevancy to the grievance:

1. Tom White Mail Processing Clerk
2. Jane Doe Mail Processing Clerk
3. Rick Jones Supervisor, Distribution Operations
4. Mike Black Manager, Distribution Operations
5. OTDL 3rd Quarter 2006

TACS/Time & Attendance Records for above named employees for week of 7/22 – 7/28/2006.

Note: Article 17, Section 3 requires the Employer to provide for review all documents, files, and other records necessary in processing a grievance. Article 31, Section 3 requires that the Employer make available for inspection by the Unions all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement. Under 8a(5) of the National Labor Relations Act it is an Unfair Labor Practice for the Employer to fail to supply relevant information for the purpose of collective bargaining. Grievance processing is an extension of the collective bargaining process.

( ) REQUEST APPROVED ( ) REQUEST DENIED

(date) (signed)

Always include this Request for Information with your Step 2 Appeal.

C. WHEN INFORMATION IS DENIED

Whenever management denies information in the form of witness access for interviews or for documents, our due process rights to conduct investigations in grievance processing are violated. In the course of an investigation to determine whether to file a grievance or for evidence gathering in support of a grievance, the Union has the right to access all relevant information. Often, management denies the Union access to witnesses or documentary evidence. This denial by management constitutes a very serious due process breach which prevents the best possible defense in a disciplinary case or best possible pursuit of a contractual violation - through full development of all arguments.

Under the Collective Bargaining Agreement, the Union has contractual rights to all relevant evidence including witnesses and documents and management creates one of our most successful Due Process defenses when it denies us access to information. Should management deny information, then several arguments are born:

1. Negative Inference Created

The negative inference argument is best defined as a presumption that the evidence withheld by management would either prove the Union's case or seriously damage the employer's ability to meet its Just Cause burden of proof in a disciplinary instance.

> **Example**: Management denies the Union access to the attendance records of a disciplining supervisor and several craft employees in the course of the Union's investigation into an attendance-related removal.

The negative inference drawn is that examination of those attendance records for the supervisor and the craft employees would reveal disparate or unfair treatment to the grievant. The act of withholding by management casts shadow and doubt on the reasons for the withholding--that management does not want to let the facts be known as those facts will damage management's case. The Union must also argue that the withheld information would have proven - if it had been produced - precisely what the Union contended the information would have revealed.

2. Lowest Possible Step Resolution Fatally Damaged

Resolution of grievances at the lowest possible step is the cornerstone of Article 15's Grievance/Arbitration procedure. When management denies access to the Union of relevant information, then full development of all the facts, arguments and Collective Bargaining Agreement reliance cannot be achieved. Without such full development, and without everything being placed before the parties for discussion at the lowest possible step, there can, in actuality, be no real probability of lowest possible step resolution of a grievance.

Thus, Article 15.4's basic principle is violated and with it the due process rights of the grievant, the grievance and of the Union to benefit from that possibility of lowest possible step resolution.

3. Contentions/Arguments Denied Development

Articles 15, 17, and 31 all provide the Union with the ability to fully develop all the facts through evidence gathering to ensure every available argument is set forth in a grievance. When management denies the Union access to relevant information, it prevents the Union from formulating and ultimately presenting the best possible case. Such denial violates the basic due process right of the Union to pursue contractual violations and defend against discipline.

Management will often attempt to provide the Union information after a particular step in the Grievance/Arbitration procedure. Our position, whether we accept access to the tardy data or not, must be that the due process violation cannot be corrected as the lowest possible step for resolution is gone forever through the passage of time and the Collective Bargaining Agreement's time limits. Nor should we accept remands to a prior step for further discussion accompanied by the information we were originally denied. Such a remand will negate our due process argument for denial of information.

In arbitration, we must argue that denial of evidence at any stage of the Grievance/ Arbitration procedure precludes the presentation of that evidence at the arbitration hearing. Due to management violations of Articles 15, 17, and 31, and management's denial of due process to the Union, grievance, and grievant, it would be wholly inappropriate and unfair for an arbitrator to even be exposed to denied information.

WHAT TO DO

When a request for access to information is denied, we must ensure that the "hook is set" through very deliberate action. That action includes:

1. File an additional grievance citing Articles 15, 17, and 31 on the information denial.

In that grievance, request as a remedy:
(1) The information be provided so long as such access is given no later than at the Step 2 grievance meeting for the original grievance and,
(2) Should the information not be provided no later than at the Step 2 grievance meeting, then the original grievance be sustained in its entirety.

Obviously, if a volume of requested information is provided to the Union at the Step 2 meeting time to review that information must also be provided. A Steward cannot be expected to review in detail - and formulate contentions - at the meeting with no prior review opportunity. In instances such as this a continuance/extension of the meeting is

reasonable and appropriate. Management denial of such an extension/continuance would constitute an additional Due Process breach.

Although it can be argued that an additional/repetitive grievance is neither necessary nor reasonable under our Collective Bargaining Agreement, many arbitrators will ask the question and let management off the hook if the Union did not file the repetitive grievance.

2. Correspond With Follow up Requests For Information

Follow the initial Request for Information with a personalized letter taking the Request for Information form to a more specialized level. In this manner, an arbitrator will notice the Union made a persistent, "second effort" to obtain the information. It is a good idea to submit at least two (2) follow-up correspondence in addition to the original Request for Information prior to the Step 2 meeting. At least one of the two should be to the immediate superior of the addressee to the original Request for Information. You may wish to file a second request to the superior and even file a request with the superior's boss. In this way, we can point out to the Arbitrator we were making every effort including affording a higher level manager(s) the opportunity to rectify the lower level supervisor's failure.

3. Include Denial of Information Reference in the Original Grievance's Step 2 Appeal

Following the full disclosure commitment of the parties in Article 15 and our responsibility to present fully developed grievances at Step 2 (as far as is possible), we must ensure that each bit of information we are denied access to during our attempted investigation is referenced as part of our contentions in our Step 2 appeal. We must cite the violations of Articles 15, 17, and 31 and argue the three major due process arguments: Negative inference, fatal damage to lowest possible step resolution and development of defenses/prosecutions denied.

Specifically citing the Articles' 15, 17, and 31 argument in our Step 2 appeal will prevent management from successfully arguing that the denial of information issue is a new argument and not proper for consideration by the Arbitrator. Remember, request all data you believe to be relevant. We then determine what we will use.

While most arguments on information denials will seem self-evident based upon review of management comments on the requests for information, coupled with a "denial" signature or initials, the interview is crucial when there is no such notation. Further, the interview can strengthen our case when management supports its denials through responses. Some examples are:

- You did deny the information?

- You have the information requested on the Request for Information in your possession?

- You relied on that Information in issuing the removal?

- You interviewed Postal Inspector Arnold prior to issuing the Notice of Removal?

- You did not provide the Union with access to Postal Inspector Arnold?

- Doesn't Article 17.3 give the Union access to the witnesses?

- Are you saying Postal Inspector Arnold is not relevant to the Union's grievance?

- What Collective Bargaining Agreement article did you rely upon in denying the Union access to Postal Inspector Arnold?

Denial of information is often a Catch-22 for management and our interview process enables management to really damage their defense of the denial. The interview also ensures management is prevented from presenting some innovative excuse for the denial at arbitration. We not only want proof of denial in our Step 2 appeal, but we want to cement management's reasons for denial. This will greatly enhance our pursuit of this due process violation.

Management, when it denies any evidence, violates the Collective Bargaining Agreement and creates very strong due process breaches. Many times, the arguments management creates by denying us information are far more beneficial to our grievance's chances than the information would be had it been obtained.

CHAPTER 3

EVIDENCE WITHIN YOUR GRIEVANCE

No matter how extensively a grievance is researched, investigated or written, that construction is of no value if the gathered evidence is not melded into the actual body of the grievance. Proper inclusion and incorporation is critical, as technical defenses by the USPS will challenge unsupported arguments and/or general inclusion of documentation in case files where specific elements of evidence and CBA citations/reliance are not tied to specific arguments.

THE INCORPORATION PROCESS:

STEP BY STEP

The following is the recommended STEP by STEP process for inclusion and incorporation of your EVIDENCE INTO THE GRIEVANCE:

1. Include Your Request For Information – Both The Original And A Clear, Word-Processed Copy (If Possible) With Your Step 2 Appeal.

2. Include Copies of Your Gathered Evidence, i.e. Interviews, Statements, Records, Documents, etc. With Your Step 2 Appeal.

3. Specifically Identify And List The Request For Information On The Union's Step 2 Appeal Form In The "List Of Attached Papers As Identified" At The Bottom Of Item 12 "Detailed Statement Of Facts/Contentions Of The Grievant" Section.

4. Specifically Identify And List The Gathered Evidence Elements On The Union's Step 2 Appeal Form In The "List Of Attached Papers As Identified" At The Bottom Of The Item 12 "Detailed Statement Of Facts/Contentions Of The Grievant" Section.

   In this way, the USPS cannot object – successfully – to the Evidence Elements as "new evidence" not cited within the Step 2 Appeal Form.

For example:

12 DETAILED STATEMENT OF FACTS/CONTENTIONS OF THE GRIEVANT
List of attached papers as identified:
Paper Item1. Request for Information dated 8/7/2004
Paper Item 2. Interview conducted 8/10/2004 with Joe Johns – SDO
Paper Item 3. Transcribed (clean) copy of Johns' Interview
Paper Item 4 OTDL 3rd Quarter 2006
Paper Item 4 TACS/Time & Attendance Records for week of 7/22 – 7/28/2006
13 CORRECTIVE ACTION REQUESTED

5. Specifically Include And Reference Each Element of Evidence Within The Body Of The "Detailed Statement Of Facts/Contentions Of The Grievant" (Item 12) Of The Union's Step 2 Appeal Form.

When writing the Contentions of the Union – the WHO, WHAT, WHERE, WHEN, WHY and HOW of the grievance –each element of evidence must be cited for its role as evidence in support of Union defenses or prosecution/CBA violation pursuit. Inclusions such as:

"The Interview of John Doe established /proved /supported/refuted/rebutted, etc." are necessary.

Should we fail to include the Evidence Elements as referenced evidence within the Step 2 appeal's body of contentions the USPS will argue that the Evidence – while included as "attached papers" still represents "new evidence/argument" and is barred based upon Article 15.2 Step 2d's commitment to 'mutual, full exchange and development' of the Parties' positions, evidence, arguments, etc.

In addition, when grievances are reviewed at later stages of the grievance process – Step 3, Direct Appeal, Pre-arbitration and at Arbitration – the Union's stated arguments, supported by and connected to specific evidence elements, will be easily discerned and very reviewer friendly.

6. Compartmentalize Each Element Of Evidence To Be Utilized Within The Particular And Specific Argument/Contention Of The Grievance.

This is the further - and critical - incorporation of specific evidence elements into the grievance. It also "locks in" your evidence and interweaves each important and applicable element into each specific contention of the grievance.

NON-COMPARTMENTALIZATION ILLUSTRATION:

The APWU contends that on 7/1/2006 three (3) Tour 1 OTDL clerks were denied non-scheduled day overtime opportunities. They were not worked that day. Three (3) non-OTDL clerks were utilized on their non-scheduled day (7/1/2006) for eight (8) hours overtime each.

This violated Article 8.5G.

COMPARTMENTALIZATION ILLUSTRATION:

The APWU contends that on 7/1/2006 three (3) Tour 1 OTDL clerks – Smith, Jones, Green – were denied non-scheduled day overtime opportunities. (see: attachment/exhibit #1: Tour 1 OTDL 3rd Quarter)

They were not worked that day. (see: attachment/exhibit #2: TACS/Time Records for Smith, Jones, Green – 7/1/2006)

Three (3) non-OTDL clerks – Gray, Doe, Blue – were utilized on their non-scheduled day (7/1/2006) for eight (8) hours overtime each. (see: attachment exhibit #3: TACS/Time Records for Gray, Doe, Blue 7/1/2006)

This violated Article 8.5G of the Collective Bargaining Agreement:

ARTICLE 8.5 SECTION G

> Full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the "Overtime Desired" list:
>
> 1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5F); and
>
> 2. excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.
>
> However, the Employer is not required to utilize employees on the "Overtime Desired" list at the penalty overtime rate if qualified employees on the "Overtime Desired" list who are not yet entitled to penalty overtime are available for the overtime assignment.

All attachments/exhibits are also listed within the Step 2 Appeal under:

"LIST OF ATTACHED PAPERS AS IDENTIFIED" directly above #13 on the Step 2 Appeal Form.

What the compartmentalization strategy illustration has done is include – specifically in the grievance appeal – those Elements of Evidence which we are relying upon as evidence to prove our overtime desired list violation.

When you write Step 2 grievance appeals in the recommended manner prescribed above, you will meet the requirements of Article 15.2 Step 1d which requires our grievance appeals to include our detailed contentions and facts.

Article 15.2 Step 1 (d) states:

> "The Union shall be entitled to appeal an adverse decision to Step 2 of the grievance procedure within ten (10) days after receipt of the supervisor's decision. Such appeal shall be made by completing a standard grievance form developed by agreement of the parties, which shall include appropriate space for at least the following:
>
> 1. Detailed statement of facts;
> 2. Contentions of the grievant;
> 3. Particular contractual provisions involved; and
> 4. Remedy sought."

In addition, you will meet the full disclosure requirement of Step 2 in anticipation of our Step 2 Hearing.

Article 15.2 Step 2 (d) states:

> "At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Article 31. The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. In addition, in cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above."

and you will do it not later than at Step 2 of the process as is required by our Collective Bargaining Agreement and by so many Arbitrators.

Unless management presents rebuttal evidence at the Step 2 hearing against our arguments and evidence elements, they should be unable to successfully refute/rebut the evidence supported arguments within our grievance. They will be unable to successfully mount any defense.

If the USPS evidence is not presented at the Step 2 hearing, it is barred by our Collective Bargaining Agreement from later introduction and reliance.

When you specifically include arguments supported by Elements of Evidence in your Step 2 appeals, you will tremendously improve your prospects for successful resolution of your grievances.

CHAPTER 4

THE STEP 2 HEARING/MEETING

In the past the educational focus on grievance processing has been the Step 2 appeal with some discussion of additions and corrections to the USPS Step 2 decision. The Step 2 hearing itself has been almost forgotten, receiving little attention. Yet the Step 2 hearing is the crucial juncture at which we are able to further enhance our chances for success through due process protections.

The founding negotiators of the Collective Bargaining Agreement back in 1971 envisioned a process whereby the Parties would actually hold a hearing – almost a mini arbitration (without a neutral, third party) – at which everything would be presented, discussed and considered – all facts, evidence, arguments, CBA reference/reliance and remedies sought. The founders believed this all inclusive, committed process would result in resolution of virtually all disputes very early in the grievance procedure. Unfortunately, Step 2 became just another stop on the road to Arbitration. The founders' intended commitment and result – through the Step 2 hearing - was not realized.

Yet, the negotiated language of the Step 2 hearing remains undisturbed – after more than 35 years.

That language – that Step 2 hearing process without an Arbitrator – is there today for us to utilize as an invaluable asset in successful pursuit of remedies for our grievances.

A. THE THREE FORMS STRATEGY

This strategy manifests itself – and is anchored by – the use of three forms developed and introduced herein for our purpose:

1. SUPPLEMENT TO THE STEP 2 APPEAL

2. STEP 2 HEARING RECORD

3. CORRECTIONS AND/OR ADDITIONS TO THE USPS STEP 2 DECISION

1. FORM: SUPPLEMENT TO THE STEP 2 APPEAL

This form must be completed and either forwarded to the USPS prior to a Step 2 hearing or presented at a Step 2 hearing – whenever the Union has arguments and/or evidence in addition to those included within the Step 2 appeal. Late development, subsequently requested/received information, additional research/investigation – all these are reasons for which the Union may have additional arguments/evidence beyond those contained within the original Step 2 appeal.

It is imperative that any such arguments/evidence be formally set forth and be formally sent/given to the USPS as part of our Step 2 presentation process.

The Supplement form must be completed in the same manner as the Step 2 appeal. Each argument must be specifically supported by the applicable element(s) of evidence. The form must be accompanied by each element of evidence the Union is relying upon. Failure to cross reference the evidence elements and/or include them as exhibits/attachments with the form will open the door to successful USPS procedural challenges. These arguments/evidence are distinguishable from those we raise verbally for the first time at the Step 2 hearing. The Step 2 Hearing Record and Corrections and/or Additions forms will address those.

Here is the **Supplement to the Step 2 Appeal** Form:

AMERICAN POSTAL WORKERS UNION

SUPPLEMENT TO THE STEP 2 APPEAL

GRIEVANT: _____ **GRIEVANCE #** _____

OFFICE: _____

In addition to the Union's Step 2 Appeal – previously forwarded to the Postal Service – the Union submits the following contentions and evidence in support of the instant grievance:

SUPPLEMENTAL
CONTENTIONS:
(WITH ELEMENTS OF EVIDENCE AND CBA PROVISIONS)

_____
_____
_____
_____
_____

ELEMENTS OF
EVIDENCE INCLUDED:
(ATTACH ALL ELEMENTS OF EVIDENCE)

_____
_____
_____
_____
_____

UNION REP'S SIGNATURE: _____ DATE: _____

2. FORM: THE STEP 2 HEARING RECORD

To memorialize raised arguments/presented evidence by the Union at the Step 2 hearing, we must use this form. To limit USPS argument to only that which was presented at the Step 2 hearing we must use this form. To prevent the USPS from raising arguments and/or presenting evidence at later grievance stages – which were not presented at Step 2 – we must utilize this form.

The form itself becomes a valuable element of evidence as it is the Union's written record as to what transpired at the Step 2 hearing. It is also used in consort with Article 15 Section 2 Step 2g's Additions and Corrections to the USPS Step 2 decision.

Here is the **Step 2 Hearing Record** Form:

AMERICAN POSTAL WORKERS UNION
STEP 2 HEARING RECORD

GRIEVANT: _____ **GRIEVANCE #** _____

OFFICE: _____ **USPS STEP 2 DESIGNEE:** _____

The following details the Parties exchange at Step 2 – with the exception of Step 2 Appeal included arguments and supported evidence:

I. THE UNION'S PRESENTED ARGUMENTS – NOT PRESENTED WITHIN THE STEP 2 APPEAL: (INCLUDE ALL ARGUMENTS WITH RELATED CBA REFERENCE AND EVIDENCE FOR EACH)

_____

_____

_____

II. THE UNION'S PRESENTED EVIDENCE – NOT INCLUDED WITHIN THE STEP 2 APPEAL: (INCLUDE DOCUMENTS, INTERVIEWS, LIVE WITNESSES, RFIs, ETC.)

_____

_____

_____

III THE USPS' PRESENTED ARGUMENTS AT THE STEP 2 HEARING: (INCLUDE EACH STATED USPS POSITION)

_____

_____

_____

IV THE USPS PRESENTED EVIDENCE AT THE STEP 2 HEARING: (INCLUDE ALL EVIDENCE USPS GIVES AT MEETING)

_____

_____

_____

Recorded by Union Step 2 Representative: _____
on _____. **The Step 2 Meeting began at** _____ **and ended at** _____.

UNION REPRESENTATIVE'S SIGNATURE **DATE**

_____ _____

As with the other critical forms which make up our Step 2 strategy – the Request for Information, Step 2 Appeal, Supplement to the Step 2 Appeal and Corrections and Additions to the Step 2 Decision – the Step 2 Hearing Record form must be completed in its entirety. It must be signed and dated. And, it must be specifically referenced within the Union's Corrections and Additions to the Step 2 decision.

IMPORTANT:

In the event there is no USPS rendered Step 2 decision, the Union's Step 3 Appeal or Step 2 Appeal to Arbitration must include reference to your Step 2 Hearing Record form. This could be accomplished as part of a written reference somewhere on the Appeal form

or

with a "see attached" reference.

Corrections and Additions to a non-existent Step 2 decision are extra contractual and thus any reference to your Step 2 Hearing Record form within said Corrections and Additions – to a non-existent Step 2 decision – would also be extra contractual and likely be barred from the process.

Reasons for appeal on a Step 3/Step 2 to Arbitration Appeal are proper.

IMPORTANT:

Be sure to physically give management all evidence you are relying upon no later than at the Step 2 hearing. Whether it is included with your Step 2 appeal, with your Supplement to the Step 2 appeal or whether it is at the Hearing and not included with either of those forms, all your relied upon evidence must be given to management's Step 2 designee. Even if management just gave the evidence to you as per your request or even if management never asked for your evidence, you must give them your evidence.

You must ensure you give the USPS Step 2 designee a copy of your Step 2 Hearing Record form – at the end of the Step 2 hearing. The form must also include reference of its submission to management. Should management refuse the form said refusal must be referenced with your Additions/Corrections – unless the USPS Step 2 decision reflects USPS refusal of the form.

The full disclosure/full exchange requirement of Article 15.2 Step 2d mandates providing to the USPS all your evidence. Failure to provide (whether you are asked or not) your evidence will result in USPS successful challenges to your evidence at Arbitration and lost cases.

3. FORM: CORRECTIONS AND/OR ADDITIONS TO THE STEP 2 DECISION

Simply stated, Corrections and Additions to the USPS Step 2 decision are among the most important elements of evidence for the Union in grievance processing. They are also very damaging to the USPS.

YOU MUST, WITHOUT EXCEPTION, RESPOND WITH SPECIFIC CORRECTIONS AND/OR ADDITIONS TO THE USPS STEP 2 DECISION –

unless, of course, the USPS issues a perfect, absolutely accurate and inclusive Step 2 decision. (I have never seen one of these.)

This is very, very important. The following scenarios regularly and consistently occur:

1. The USPS presents no evidence at the Step 2 Hearing.

2. The USPS makes arguments at the Step 2 Hearing while submitting no supporting evidence.

3. The USPS makes "new" arguments within its Step 2 decision – unsupported by any evidence.

4. The USPS Step 2 Decision included "new" arguments were never stated at the Step 2 Hearing.

And, in many cases, the Union files no Article 15.2 Step 2(g) Corrections and/or Additions to the Step 2 decision.

With our arguments supported by specific elements submitted as evidence, the filing of Corrections and/or Additions to the USPS Step 2 decision is particularly important.

Article 15.2 Step 2(g) states:

"If the Union representative believes that the facts or contentions set forth in the decision are incomplete or inaccurate, such representative should, within ten (10) days of receipt of the Step 2 decision, transmit to the Employer's representative a written statement setting forth corrections or additions deemed necessary by the Union. Any such statement must be included in the file as part of the grievance record in the case. The filing of such corrections or additions shall not affect the time limits for appeal to Step 3 or arbitration."

Here are some important guidelines for our Corrections and/or Additions filing:

1. Should the USPS present no rebuttal documents, interviews, statements, and/or testimony at the Step 2 hearing, to our Evidence Elements, state that in your Corrections and/or Additions.

2. Should the USPS make rebuttal argument unsupported by any evidence at the Step 2 hearing, state that in your Corrections and/or Additions.

3. Should the USPS make rebuttal argument in the Step 2 decision unsupported by any evidence presented at the Step 2 hearing, state that in your Corrections and/or Additions.

4. Should the USPS make rebuttal argument in the Step 2 decision not made at the Step 2 hearing, state that in your Corrections and/or Additions.

Our filing of Corrections and/or Additions is crucial to ensure there is a written record of what the USPS presented and argued – and failed to – during the seminal Step 2 meeting process. Our Corrections and Additions will help to lock the evidence presented into our grievance and lock out USPS rebuttal later.

There will be instances in which we present our elements of evidence at the Step 2 hearing - with no prior written inclusion in the Step 2 appeal. This would occur if the requested information was not provided or was not processed until after our appeal. If this should occur, a written supplement to the Step 2 appeal must be brought to the hearing and submitted in person to the USPS Step 2 designee.

The Step 2 Hearing Record form as well as Corrections and/or Additions then must be filed to reflect submission of the Evidence at the hearing – unless the USPS Step 2 decision specifically details the Union's "LIVE" submission of the Evidence at the Step 2 hearing. (very highly unlikely)

Management is required to detail its position at Step 2 within its Step 2 decision.

Article 15.2 Step 2(f) states:

"Where agreement is not reached the Employer's decision shall be furnished to the Union representative in writing, within ten (10) days after the Step 2 meeting unless the parties agree to extend the ten (10) day period. The decision shall include a full statement of the Employer's understanding of (1) all relevant facts, (2) the contractual provisions involved, and (3) the detailed reasons for denial of the grievance."

When we reference and include specific Elements of Evidence at Step 2 – and they are unrebutted with USPS evidence – such as documents, statements, interviews or "live" witnesses - cite the USPS failure to rebut in your Corrections and/or Additions. It serves to reemphasize the evidentiary nature of our Evidence as well as the USPS failure to present any evidence at Step 2 in rebuttal.

This is the **Corrections and/or Additions** form:

AMERICAN POSTAL WORKERS UNION

CORRECTIONS/ADDITIONS TO THE USPS STEP 2 DECISION

GRIEVANT: _____ **GRIEVANCE #** _____

OFFICE: _____

1. The following Union arguments were raised at the Step 2 hearing, yet were not included with the USPS Step 2 decision:

   (LIST UNION STEP 2 ARGUMENTS RAISED AT THE STEP 2 HEARING – NOT INCLUDED WITHIN THE USPS STEP 2 DECISION)

2. The following Union arguments were raised at the Step 2 hearing, yet were not accurately included within the USPS Step 2 decision:

   (CORRECT ANY USPS STEP 2 DECISION MISSTATED/MISINTERPRETED UNION ARGUMENTS)

3. The following Union evidence was presented at the Step 2 hearing in support of Union arguments:

4. USPS arguments presented at the Step 2 hearing:

5. USPS evidence presented at the Step 2 hearing:

6. The following USPS Step 2 decision arguments were not raised by the USPS during the Step 2 meeting: (LIST ALL USPS POSITIONS WHICH ARE INCLUDED WITHIN THE STEP 2 DECISION WHICH WERE NOT RAISED BY THE USPS AT THE STEP 2 HEARING.)

7. The following USPS evidence - which the USPS included with its Step 2 decision - was not presented by the USPS in support of any position at the Step 2 hearing:

   (On occasion, the USPS will attach/include *evidence* with its Step 2 decision – evidence the USPS never presented at the Step 2 hearing.)

UNION REPRESENTATIVE'S SIGNATURE: DATE:

_____ _____

Remember, when incorporating your Evidence Elements into the grievance:

1. **INCLUDE** your Request for Information with your Step 2 Appeal.

2. **CITE** your Request for Information in your Step 2 appeal in the List of Attached Papers as Identified in Item 12 above the Corrective Action Requested section.

3. **INCLUDE** your Elements of Evidence with your Step 2 Appeal.

4. **CITE** your Elements of Evidence in the List of Attached Papers as Identified in Item 12 above the Corrective Action Requested section.

5. **CITE** specific Elements of Evidence and their importance/relationship/role to the Union's arguments and position in your Step 2 Appeal. Cross reference with specific Collective Bargaining Agreement/Handbook-Manual provisions.

6. **ENSURE** the USPS receives your Elements of Evidence with the Step 2 Appeal but in no case no later than at the Step 2 meeting.

7. **COMPLETE** your detailed Step 2 Hearing Record form and include with your Additions and/or Corrections or reference and include with your Step 3 Appeal or Appeal to Arbitration.

8. **RESPOND** with specific Additions and/or Corrections to any Step 2 decision which:

    a. does not relate/address the evidence supported contentions of the Union's Step 2 appeal and/or that which was presented by the Union at the Step 2 meeting;

    b. makes new USPS argument not made at the Step 2 hearing;

    c. makes USPS arguments not supported by evidence at the Step 2 hearing;

    d. includes USPS evidence not presented at the Step 2 hearing.

Utilization of the Step-by-Step Strategies detailed here – grounded within our Collective Bargaining Agreement's grievance procedure – will tremendously enhance and improve your opportunities to achieve favorable resolutions for your cases.

CHAPTER 5

THE FORMS

These template forms are for reproduction. Utilize them to ensure that the roadmap strategy is a success.

AMERICAN POSTAL WORKERS UNION

SUPPLEMENT TO THE STEP 2 APPEAL

GRIEVANT: _____ **GRIEVANCE #** _____

OFFICE: _____

In addition to the Union's Step 2 Appeal – previously forwarded to the Postal Service – the Union submits the following contentions and evidence in support of the instant grievance:

SUPPLEMENTAL
CONTENTIONS:

_____
_____
_____
_____
_____
_____
_____

ELEMENTS OF
EVIDENCE INCLUDED:

_____
_____
_____
_____
_____
_____
_____

UNION REP'S SIGNATURE: _____ DATE: _____

AMERICAN POSTAL WORKERS UNION
STEP 2 HEARING RECORD

GRIEVANT: _____ **GRIEVANCE #** _____

OFFICE: _____ **USPS STEP 2 DESIGNEE:** _____

The following details the Parties exchange at Step 2 – with the exception of Step 2 Appeal included arguments and supported evidence:

I. THE UNION'S PRESENTED ARGUMENTS – NOT PRESENTED WITHIN THE STEP 2 APPEAL:

_____
_____
_____

II. THE UNION'S PRESENTED EVIDENCE – NOT INCLUDED WITHIN THE STEP 2 APPEAL:

_____
_____
_____

III THE USPS' PRESENTED ARGUMENTS AT THE STEP 2 HEARING:

_____
_____
_____

IV THE USPS PRESENTED EVIDENCE AT THE STEP 2 HEARING:

_____
_____
_____

Recorded by Union Step 2 Representative: _____
on _____. **The Step 2 Meeting began at** _____ **and ended at** _____.

UNION REPRESENTATIVE'S SIGNATURE **DATE**

_____ _____

AMERICAN POSTAL WORKERS UNION

CORRECTIONS/ADDITIONS TO THE USPS STEP 2 DECISION

GRIEVANT: _____ **GRIEVANCE #** _____

OFFICE: _____

1. **The following Union arguments were raised at the Step 2 hearing, yet were not included within the USPS Step 2 decision:**

   _____
   _____
   _____

2. **The following Union arguments were raised at the Step 2 hearing, yet were not accurately included within the USPS Step 2 decision:**

   _____
   _____
   _____

3. **The following Union evidence was presented at the Step 2 hearing in support of Union arguments:**

   _____
   _____
   _____

4. **The following USPS arguments were presented at the Step 2 hearing:**

   _____
   _____
   _____

5. **The following USPS evidence was presented at the Step 2 hearing:**

   _____
   _____
   _____

6. **The following USPS Step 2 decision arguments were not raised by the USPS during the Step 2 meeting:**

   _____
   _____
   _____

7. **The following USPS evidence - which the USPS included within its Step 2 decision - was not presented by the USPS in support of any position at the Step 2 hearing:**

   _____
   _____
   _____

UNION REPRESENTATIVE'S SIGNATURE: **DATE:**

_____ _____