

SURVIVING



THE POSTAL INSPECTION SERVICE

**A Craft Guide of APWU members' rights when
coming face-to-face with Postal Inspectors.**

By:

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A P W U

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American Postal Workers Union, AFL-CIO

Memorandum

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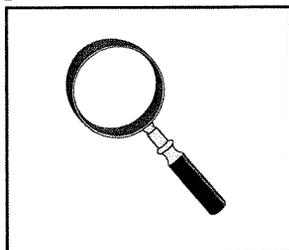
From the Office of JEFF KEHLERT
National Business Agent
Clerk Division
Eastern Region

TO: **BROTHERS AND SISTERS**

SUBJECT: **SURVIVING THE POSTAL INSPECTION SERVICE**

POSTAL INSPECTORS. When workers of the Post Office are faced with meetings, conversations, interviews, audits—a great deal of confusion, concern and unease exists. Over the decade of the 80's up through the present, Postal Inspection investigations have touched and affected ever increasing numbers of Postal Workers from all crafts. The incidents of Inspection Service solicited incriminating statements which result in resignations, firings, arrests and convictions of Postal Workers has reached epidemic proportions.

This report's purpose is to give American Postal Workers Union members a fighting chance to survive the Postal Inspection Service onslaught of intimidation. The report is designed to bring together the information necessary for American Postal Workers Union members to know what rights they have when confronted by the Postal Inspection Service. The report also



gives advice on what to do in a wide array of circumstances and scenarios. The report will prove helpful to Shop Stewards as well as members.

Stewards must know what their responsibilities are when called to represent a worker during a Postal Inspection Service interview. But, even before a steward becomes aware and involved, each worker must exercise contractual rights guaranteed under our National Agreement. That is where the battle is too often lost.

Remember, hundreds and hundreds of APWU members have spoken to Postal Inspectors on their own without Union Representation. Many gave sworn admissions of wrongdoing, gave oral and/or written statements. Most, if not all, were fired. Management may have signed those removals from employment, but the employees fired themselves through their own sworn admissions. Follow the guidelines, the lifelines, contained in these pages and survive as a Postal employee if the Postal Inspectors come for you.

PURPOSE OF THE POSTAL INSPECTION SERVICE AND MEMBERS' CONTRACTUAL RIGHTS

Many misconceptions exist regarding the LAW ENFORCEMENT ARM of the United States Postal Service—the Postal Inspection Service. The mission of the Postal Inspection Service is clear—to enforce applicable laws and regulations as they relate to the U.S. Mail, Postal Service accountable items, Postal Funds and conduct of Postal employees. To accomplish its objective, Postal Inspectors conduct investigations of Postal Employees and citizens outside the USPS. Our focus is on the Postal Inspection Service vs. Postal Workers. Part 666.6 of the Employee and Labor Relations Manual, under Article 19 of the Collective Bargaining Agreement, states:

666.6 Cooperation in Investigations
Employees will cooperate in any postal investigation.

The Contract **requires** Postal Employees to cooperate in all Postal investigations, including those administered by Postal Inspectors. Article 17, Section 3 of the National Agreement provides for a basic employee right when being interviewed by Postal Inspectors.

ARTICLE 17, SECTION 3

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. All polygraph tests will continue to be on a voluntary basis.

*For the language in Article 17.3 to have any **value** to American Postal Workers Union members, they must work and live by the following rule:*

WHENEVER A PERSON IDENTIFIES HIM OR HERSELF TO YOU AS A POSTAL INSPECTOR, DO NOT ENGAGE IN ANY CONVERSATION OR ANSWER ANY QUESTIONS WITHOUT A UNION REPRESENTATIVE PRESENT. YOU MUST REQUEST A UNION REPRESENTATIVE AND ABSOLUTELY REFUSE TO SPEAK WITH POSTAL INSPECTORS, ANSWER QUESTIONS OR COOPERATE IN ANY WAY WITHOUT A UNION REPRESENTATIVE. UNDER NO CIRCUMSTANCES ARE YOU TO GIVE ANY KIND OF ORAL OR

To illustrate the circumstances under which the American Postal Workers Union member may have contact with Postal Inspectors, the following scenarios have been developed. Each is based upon actual circumstances which have occurred or could occur to a Postal Worker.

SCENARIO I

A window clerk is on duty at the window counter waiting on a line of customers. A

person approaches from the workforce and identifies him/herself as a Postal Inspector and begins making some small talk.

WHAT TO DO

The clerk immediately tells the Postal Inspector that he/she wants a Union Representative. The clerk answers no questions and responds with no comments to the Postal Inspector. The Postal Inspector may insist this is not an investigation and that he/she is just being friendly. The clerk must neither accept nor believe that. Postal Inspectors often cover up their intentions with lies and half-truths. If the Postal Inspector continues to persist, the clerk must ignore him/her and/or get the manager and tell the manager the Postal Inspector is disrupting and distracting the clerk from performing his/her duties carefully and exercising reasonable care.

SCENARIO II

A manager or Postmaster approaches an employee on the workroom floor and orders the employee to report to the office because "someone wants to speak to you."

WHAT TO DO

A. The employee asks the manager/postmaster who it is that they are to speak with. If the answer is a Postal Inspector, then the employee must immediately request Union Representation. If the manager or postmaster refuses to tell the employee, then the employee requests a Union Representative. The employee should not refuse to follow the manager/

postmaster instructions, but should make it clear he/she is requesting the Union Representative. The employee should attempt to have a craft employee witness the request.

B. Once the employee gets to the office, he/she finds the Postal Inspector waiting. Immediately, the employee requests Union Representation and remains absolutely silent until one is provided.

SCENARIO III

Manager or Postmaster tells employee to accompany him/her to the office. Once there, the Postal Inspector is waiting.

WHAT TO DO

Same as Scenario II; Employee requests Union Representation and says nothing until it is provided.

SCENARIO IV

"Customer" comes to the window and says, "I found this in the parking lot (coil, roll, sheet or book of stamps, money order, loose stamps, etc.)."

WHAT TO DO

Clerk immediately brings the "found" item to his/her manager/postmaster or, if none in the office, a call is made to the nearest management official for the office. Postal Inspectors have increased these set up scams to "test" and "ensnare" Postal Clerks. Clerks must never place the found item into their accountabilities even temporarily. If a supervisor or manager tells a clerk to keep it in his/her accountability on a temporary

basis the clerk must insist on that instruction in writing and retain a record copy. Managers, when collaborating in Postal Inspector "Scams", sometimes develop "bad memories" about improper instructions given to employees. If possible, have another employee witness what was turned in and where it is being held.

SCENARIO V

Manager/Postmaster gives a window clerk excess stock that the requisition did not support and corroborate.

WHAT TO DO

Clerk must immediately bring the manager/postmaster "error" to Management's attention. The Postal Inspection Service is involved in the "extra stock" test/scam. A clerk must never retain that extra stock in his/her accountability, even on a temporary basis. If a manager/postmaster tells the clerk to keep the stock, insist on that order in writing. Again, postmasters/managers develop bad memories when collaborating with the Postal Inspection Service.

SCENARIO VI

Postal Employee finds ^a mail article opened on the workroom floor, with cash or other valuables exposed/loose.

WHAT TO DO

Employee must immediately tell the manager/postmaster what was found. If possible, avoid handling the article and especially its contents. Postal Inspectors often "test" employees' integrity by leaving

"set ups" of money, jewelry, tapes, CD's, etc., in opened conditions on the workroom floor.

SCENARIO VII

Postal Employee finds money/stamps on the floor of the Post Office without a mail article.

WHAT TO DO

Employee must immediately turn in whatever was found. Employees must never pocket even a penny or a nickel or a 1¢ stamp found on the workroom floor. Postal Inspectors do oversee "loose funds" scams to ensnare Postal Employees.

SCENARIO VIII

Customer at the window picks up postage due articles and insists he/she does not need a receipt. Customer leaves before a receipt is prepared and given.

WHAT TO DO

Clerk must ensure that the stamp and or meter strip is applied for the amount of postage paid. Clerk should also bring the customer's refusal to management's attention. Postal Inspectors working with Postal Management have run hundreds of postage due scams whereby fictitious companies open Post Office boxes and begin receiving postage due mail. The Postal Inspectors hope to catch a clerk failing to apply postage to postage due receipts so misappropriation of Postal funds can be alleged. All window clerks must run meter strips or apply stamps for postage due

transactions without exception.

SCENARIO IX

Employee gets a phone call at home from a Postal Inspector.

WHAT TO DO

Employee tells the Postal Inspector that he/she will not speak to him or her over the phone. Then, the employee must hang up the phone. The employee then must immediately contact a Union Representative.

SCENARIO X

Employee receives a visit at home from Postal Inspectors.

WHAT TO DO

When the employee answers the door and the Postal Inspectors identify themselves, the employee must not let them in his/her residence or speak to them. Postal Inspectors have ample opportunity to talk with employees at the Post Office, on the clock, with Union Representation. Postal Employees must never speak to Postal Inspectors off the clock at home or anywhere else. The employee must tell the Postal Inspectors he/she will not speak to them or see them off the clock, either at home or at any other location. The employee then must immediately contact a Union Representative.

SCENARIO XI

Postal Inspectors tell an employee that he/she is not entitled to a Union Representative because he/she is not the

subject of the investigation. The Postal Inspectors explain that they must ask some questions about employee _____.

WHAT TO DO

The employee must not answer any questions or discuss anything with any Postal Inspector, unless, once requested, the Union Representative is provided and present. If the employee is told he/she is not the subject of the investigation and is not entitled to Union Representation, the employee must still insist on a Union Representative and not answer questions or cooperate in any way without the Union Representative.

SCENARIO XII

Postal Inspectors refuse Union Representation to an employee during an investigative interview.

WHAT TO DO

The employee must stand fast and refuse to answer any questions, write any statements or respond in any way to Postal Inspector's questions or comments so long as the Union Representative is not present. The employee must remain calm and silent.

SCENARIO XIII

Postal Inspector tells an employee if he/she does get a Union Representative, the Inspection Service will not be able to "help" the employee, i.e., prevent a jail sentence, firing, etcetera.

WHAT TO DO

The employee must never believe any Postal

Inspector when such "promises" or "assurances" are given. Postal Inspectors are in the business to get convictions of Postal employees. Postal Inspectors are in the business to get resignations of Postal Employees and to obtain evidence and confessions leading to firings of Postal Employees. Postal Inspectors will often use the false ploy of "promising" employees certain conditions or results if the employees "cooperate", ie., give sworn admissions to misconduct and/or illegality. Such "promises" and "assurances" are summarily denied by Postal Inspectors in court and at arbitration. The employee must insist on Union Representation, remain silent, and not cooperate in any way without Union representation.

SCENARIO XIV

Postal Inspectors tell an employee that they have an audio or video tape of the employee in the act of some wrongdoing and that an admission will benefit the employee's situation.

WHAT TO DO

The employee must never accept any threat of an audio or video tape on the part of Postal Inspectors as factual. Postal Inspectors regularly use fabricated video or audio tapes as threats to intimidate employees into admissions.

SCENARIO XV

An employee is approached on the workroom floor by a uniformed repair person, delivery person, Postal worker, civilian, that does not work at the installation, making small talk and asking

questions.

WHAT TO DO

The employee must ask the person to identify him/herself. The employee should not engage in any discussions with an unknown person on the workroom floor. Postal Inspectors often pose as citizens, Postal employees, visiting managers, delivery persons, etc., to infiltrate the Post Office and gain the confidence of workers.

SCENARIO XVI

Postal Inspectors tell an employee there is no Union representative available and that cooperation is required without delay.

WHAT TO DO

The employee must tell the Postal Inspectors he/she will cooperate, but only with a Union Representative present. Often, Inspectors will attempt to coerce responses to questions when they allege no Union representative can be found. The employee must stand fast and assure the Postal Inspectors he/she will cooperate once the Union Representative becomes available. This is regardless of whether the availability occurs in hours, days or weeks.

THE FOLLOWING ARE THE DO'S AND DON'TS OF SURVIVAL WHEN POSTAL INSPECTORS APPROACH YOU:

DO always insist on Union Representation whenever anyone identifies him/herself as a Postal Inspector;

DON'T ever speak to Postal Inspectors without Union Representation;

DON'T ever take a lie-detector test (polygraph) under any circumstances;

DON'T ever give a written or oral statement when requested by Postal Inspectors.

Americans, as law-abiding citizens, believe for the most part that law enforcement officials like Postal Inspectors are honest, fair servants of the public good. Contrary to that belief, Postal Inspectors are not part of the symbolism and image portrayed by the picture of the helpful policemen we all remember from our childhood.

Postal Inspectors are in the business of causing resignations and firings, arrests and convictions of Postal Workers. That is their function. Postal Inspectors are not in business to assist workers or protect workers' rights. Postal Inspectors will use any and every means at their disposal to justify their existence, their employment and the resources and monies expended in the course of their investigation. They will misrepresent, threaten, promise and outright lie to serve their purpose of obtaining a resignation, firing or conviction.

Postal Inspectors **must** never, never be trusted or relied upon by Postal Workers.

* * * *

The Questions/Answers portion of this report is reprinted from the original Pennsylvania State APWU Shop Steward Training Manual. I also thank Mark Primerano, President of the St. Mary's, Pennsylvania APWU for his contribution to the concept of this report.

If you have any questions or need additional copies of this report, please contact me:

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Cherry Hill, NJ 08003**

or call: (856) 427-0027

Yours in Unionism, I am

Jeff Kehlert
National Business Agent
Clerk Craft

JDK:svv
OPEIU #2
afl-cio

ARTICLE 17, SECTION 3

"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. All polygraph tests will continue to be on a voluntary basis."

The foregoing is an excerpt from the National Agreement and it raises some questions of significant importance to the craft employees represented by the American Postal Workers Union.

Some of the most frequently asked questions are:

1. Q: When should I request a union representative?

A: As soon as an individual identifies himself to you as a Postal Inspector and advises you he would like to ask you some questions. This request should include incidents (for window clerks) in which inspectors count your stamp stock where you could become the subject of an investigation.

2. Q: Are inspectors required by contract language to advise you that you are entitled to have a union steward present during an interrogation?

A: No. They are not required to inform the employee, nor will they inform the employee. The responsibility rests with the employee to know specifically what his rights are.

3. Q: What are your rights during an interrogation by the inspection service in which you could possibly be the subject of a criminal investigation?

A: The best possible advice to an employee during this type of situation is to remain silent. Advise the inspector that you intend to seek legal counsel. Then, when you have engaged the services of an attorney, you will cooperate with their investigation. One rule to remember is that if enough evidence has been gathered to establish

criminal culpability, they will advise you of your rights under law and proceed with formal criminal arraignment. If, on the other hand, they continue the interrogation, in general terms, they probably are still fishing for evidence.

4. Q: What is PS1067, US Postal Inspection Service Warning and Waiver of Rights; and should I sign this form if requested?

A: The PS1067 is commonly referred to as the Miranda warning; essentially, it is an official warning before you are asked any questions and constitutes a waiver by the employee of his rights. (A copy of PS1067, numbered addendum 1, is part of this guide.) Under no circumstances should an employee sign this form until he has engaged legal counsel.

5. Q: When is the Inspection Service required to give an employee under interrogation a "Miranda" warning?

A: A Miranda warning must be given at the outset of any investigatory interview conducted by a law enforcement authority, such as the Inspection Service, where the answers may be used to establish a criminal conviction against the employee. If the employee is not provided with a Miranda warning at this time, none of the information gained as a result of the interview may be admitted in a criminal proceeding against the employee. Some arbitrators have also held that evidence taken in violation of an employee's Miranda rights cannot be used to establish just cause for discharge.

6. Q: If a craft employee is temporarily assigned to management position (e.g. Officer in Charge or Acting Supervisor) is he covered by the provisions of the National Agreement with respect to union representation during an interrogation?

A: Yes. An employee on a temporary assignment to a management position has all the rights applicable to his regular position, not those applicable to the temporary position.

7. Q: What is an Investigative Memorandum?

A: After the completion of an investigation, criminal or otherwise, an investigative memorandum is furnished to local management. It serves as a formal record of the inspector's findings. Also, it serves to present evidence in support of charges that may be issued by the Postmaster or other administrative official against an employee. The union has every right to request copies and review all material relied upon to support the reason for an advance notice from the Postmaster or other administrative official of a proposed suspension or discharge. All facts, including affidavits or other exhibits, must be made available. (See a copy of An Official Investigative Memorandum Addendum #2.)

8. Q: Are there any situations in which an employee should agree to a polygraph test?

A: In accordance with the National Agreement, polygraph tests are voluntary. It is not a good idea to volunteer for the polygraph examination until the employee obtains the advice of legal counsel. NO!

9. Q: What is the role of a union steward/representative during an investigatory interview?

A: This is perhaps one of the most important functions that a union steward/representative is confronted with. (Refer to Addendum #3 and #4.) The union steward/representative should not remain a passive observer. Although the union steward/representative has every right to participate in an investigative interview, the facts of life are that the inspection service uses intimidating tactics in an attempt to reduce any input the union person might have. The union has an obligation as the collective bargaining representative to take an active part on behalf of the employee being interviewed.

However, once an employee has been read a Miranda warning, the role of a steward/representative becomes limited. The representative should advise the employee to exercise his right to remain silent and to consult with an attorney. Once the attorney arrives, the union representative's role is limited to assisting the attorney in finding evidence establishing the employee's innocence.

Under no circumstances should a union representative offer advice to employees as to their rights under the criminal law.

10. Q: Are all Postal Service employees required to cooperate in postal investigations?

A: Yes. All Postal Service employees are required to cooperate in a Postal Service investigation. When an employee has been arrested for violation of criminal law, or when the investigation of a violation of criminal law has reached the accusatory state, (e.g. the investigation has begun to focus on the employee as a suspect in the investigation), the employee must be informed of his constitutional rights against self-incrimination. He is entitled to remain silent thereafter or to refuse to answer questions except in the presence of his attorney. (See Addendum #1). This warning is based upon the United States Supreme Court decision of *Miranda vs. Arizona*, 348US436. All law enforcement officers are required to give persons under investigation an explanation of their constitutional rights.

11. Q: Do I have the right to a union representative when I am being interrogated by supervisors, rather than Postal Inspectors?

A: Yes, you have a legal right to steward representation under the National Labor Relations Act if you are the subject of the interrogation and the questions could lead to discipline against you. The right was established by the Supreme Court in *NLRB and Weingarten* 420 US 251.

12. Q: When an employee requests union representation, is he required to continue to answer Inspection Service inquiries?

A: No. Once the employee requests union representation, the interview must be terminated until the steward or other representative arrives. The employee may refuse to answer or to otherwise cooperate with the investigation during the period between the request for representation and the appearance of the representative.

13. Q: Can the union decline to represent non-members in providing representation with the Inspection Service?
- A: No. The union cannot discriminate against non-members in providing representation and assistance in investigative interviews.
14. Q: How do I know when questions by a supervisor could lead to discipline?
- A: Simply by asking. If you are not given complete unequivocal assurances that the answers you give to the supervisor's questions will not lead to discipline against you, you should request steward representation and decline to answer any questions until the steward arrives.
15. Q: Can an employee request the presence of a union steward and an attorney during questioning?
- A: Yes, the employee is not required to make an election between having an attorney or a union steward/representative present; he is entitled to the presence of both.
16. Q: Should a union steward or representative in an investigative interview witness a confession or otherwise assist the Inspection Service in its investigation?
- A: No. The representative's duty is solely to the employee under investigation. While the representative should not participate in hiding or covering up relevant evidence, he also should not provide the Inspection Service help in establishing the employee's guilt by witnessing confessions or eliciting incriminating responses from the employee.
17. Q: Are Postal Inspectors authorized to issue letters of charges or recommend disciplinary action against an employee?
- A: No. Inspectors are not authorized to issue letters of charges or recommend disciplinary action against an employee.

18. Q: Is an employee required to make a written statement when requested by the Postal Inspection Service?

A: No. It is the position of the union that there is not a requirement, legal or contractual, to submit a written statement to the Postal Inspection Service when they should make this request. Any statement written or recorded is voluntary. It should be of extreme importance for the employee to consult an attorney if this situation should arise. Consult an attorney before giving a statement, written or oral, or before you sign a statement prepared by the inspector. They will construct statements which look harmless but can be construed as the employee admitting to wrongdoing.

19. Q: What is an observation gallery?

A: An observation gallery is used solely in investigations involving criminality against the Postal Service. Only Postal Inspectors are permitted in the galleries. Galleries have been in use for over one hundred years. All Post Offices do not have observation galleries. The inspectors are required to be looking for a particular action, not casual observation.

20. Q: Does the Inspection Service have a responsibility to provide postal personnel with a safe working environment (personal safety)?

A: Yes, the Postal Inspection Service has a responsibility to provide employees with a safe working environment. Employment related assaults on employees including both physical assaults (assault & battery) or non-physical assaults (threats of physical violence) have an adverse effect on the efficiency and morale of postal employees.

21. Q: When are financial discrepancies reported to the Inspection Service?

A: Discrepancies of \$100 or more in financial responsibilities (shortage or overage) are reported by Postmasters on form 571 to the Inspector in Charge.

22. Q: Does a former employee have an obligation to repay an indebtedness to the Postal Service?

A: Yes, if a former employee is indebted to the Postal Service because of postal law violations, the Postal Inspection Service immediately notifies the Postmaster to annotate item 30 of Standard Form 50. If the possibility exists that there may be a government loss involved with a former employee who has been removed, resigned or retired, the Postmaster will annotate form 2526 to "withhold funds." The monies are supposed to be collected from the employee's final check (e.g. retirement fund, annual leave, etc.). The employee should receive the balance of his paycheck for hours worked unless there is insufficient money for amount due.

23. Q: What does the term "set-off" mean?

A: If an employee is indebted to the Postal Service at the time of separation from the Postal Service and is unwilling to make full restitution, the Postal Service is authorized to collect all debts due under the provisions of established law. Any funds due the former employee from unpaid salary, savings bond deductions and payment for accrued annual leave may be "set off" without his written consent.

24. Q: How does "set off" affect an employee who has less than five years service, more than five years service or elects optional retirement?

A: If the former employee has less than five years service, retirement "set-off" can be affected without an application from him for refund of his retirement deductions.

If an employee has more than five years service, "set-off" can be affected only when he makes formal application for refund (Form 2802).

If an employee elects optional retirement, he is entitled to an immediate annuity and his retirement record must be released to the postal data center. The annuity is subject to "set-off", however, and the payment may be sent to the Postal Service until the indebtedness is liquidated.

25. Q: Do Postal Inspectors become involved in vehicle accidents and what rights does the employee have if he should become involved in an accident?

A: In serious vehicle accidents involving postal employees and vehicles, the Inspection Service becomes involved. Personal injuries incurred by a postal employee in the performance of his official duties are covered under the Federal Employee's Compensation Act. This protection is afforded employees whether they are operating a vehicle on official business or injured while performing a non-vehicle assignment. It is immaterial whether the employee is operating a government owned vehicle, a leased vehicle or personally owned vehicle.

26. Q: Does the Postal Service protect an employee against damage to his privately owned vehicle in performance of his duty?

A: No. The Postal Service does not normally protect an employee against damage to his personally owned vehicle while operating it in the performance of official duties. It is incumbent upon the employee to provide collision insurance if he so desires.

ADDENDUMS

- #1 Warning and Waiver of Rights**
- #2 Investigative Memorandum**
- #3/#4 Correspondence Between the Parties; APWU – USPS**
- #5 Interpretation of Article XVII Section III**
- #6 Letter From Chief Postal Inspector**
- #7 The Miranda Rights**

- Step 4 Decision Between the Parties**
- National Labor Relations Board Judgement**

ADDENDUM #1

UNITED STATES POSTAL INSPECTION SERVICE WARNING AND WAIVER OF RIGHTS

Place: Shuakville Pa

Date: Sept 8, 1981 Time: 1 PM

WARNING

BEFORE YOU ARE ASKED ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

- You have a right to remain silent.
- Anything you say can be used against you in court.
- You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.
- If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.
- If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

(Date) (Time)

WAIVER

(Signature)

I have read this statement of my rights (This statement of my rights has been read to me) and I understand what my rights are. I am willing to discuss subjects presented and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

(Signature)

(Time)

(Date)

Witnessed by: [Signature]

Title: Postal Inspector

Witnessed by: [Signature]

Title: Postal Inspector

Understands his rights but refuses to sign any part of
of the form

ADDENDUM #2

IV-4-8 Exhibit A (Investigative Memorandum)

Confidential Field Manual

(For transmittal of complete Investigative Memorandum in cases in which the Postmaster or other administrative official is requested to inform you of the action taken.) (See IV-4-8.12 and 8.14)

OUR REF: _____

DATE: _____

SUBJECT: (Name of employee, title, and place of employment)

TO: Mr. (Postmaster, Installation Head or District Manager/Postmaster)
(Address)

Herewith is an Investigative Memorandum (and exhibits) relating to the conduct of (Subject). The information is submitted for your consideration and decision as to whether disciplinary action is warranted.

Please advise me, in writing, of your decision in this matter. If you do to initiate disciplinary action please furnish me a copy of the letter to employee and your final decision letter. Additionally, if your original decision is subsequently modified in any way as the result of a grievance appeal or arbitration proceeding, please advise me of the final results and the action taken.

Postal Inspector

Enclosure: Investigative Memorandum

18 April

ADDENDUM #3

CBR 82-4
6/15/82

Addendum No. 21

File Under: Article 17, J.



American Postal Workers Union, A.P.W.U.

217 14TH STREET, N. W., WASHINGTON, D. C. 20005

May 10, 1982

Joseph Morris
Senior Assistant Postmaster General
Employee and Labor Relations Group
U.S. Postal Service Headquarters
Washington, D.C. 20260

Dear Mr. Morris:

The United States Postal Service Inspection Service has adopted policy that stewards or union representatives under the Collective Bargaining Agreement are prohibited from participating in investigative interviews of bargaining unit employees. Stewards or union representatives are instructed to remain silent, participating as passive observers throughout the interview.

This issue has been resolved in several court decisions, including Malgoubran and Toacco. In the Toacco decision the Court stated:

A single employee confronted by an employer investigating whether certain conduct deserves discipline may be too fearful or too inarticulate to relate accurately the incident being investigated, or too ignorant to raise extenuating factors. A knowledgeable union representative could assist the employer by eliciting favorable facts, and save the employer production time by getting to the bottom of the incident occasioning the interview.

In refusing to permit the representative to speak, and relegating him to the role of a passive observer, the respondent did not afford the employee the representation to which he is entitled, (NLRB v. Toacco, Inc., 108 LRRM 2850 (October 16, 1981)).

Please notify the appropriate postal officials that stewards or union representatives may not be relegated to a role of passive observers in investigative interviews, however if there is disagreement as to the interpretation or application of the above stated provisions, please respon

Joseph Morris
Senior Assistant Postmaster General
Employee and Labor Relations Group

May 10, 1982

page 2

In writing that we may invoke applicable procedures to resolve such dis
I am available to discuss this issue and may be reached at
842-4250.

Sincerely,

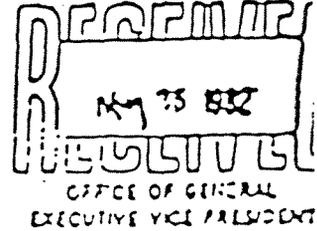
William Barris,
General Executive Vice Pres

WB:dc

ADDENDUM #4



CHIEF POSTAL INSPECTOR
Washington, DC 20260



May 24, 1982

Mr. William Burrus
General Executive Vice President
American Postal Workers Union, AFL-CIO
817 14th Street, N.W.
Washington, DC 20005

Dear Mr. Burrus:

This replies to your May 10, 1982, letter to Senior Assistant Postmaster General Joseph Morris concerning the role of stewards or union representatives in investigatory interviews. Specifically, you expressed concern that the Inspection Service has adopted a policy that union representatives be limited to the role of a passive observer in such interviews.

Please be assured that it is not Inspection Service policy that union representatives may only participate as passive observers. We fully recognize that the representative's role or purpose in investigatory interviews is to safeguard the interests of the individual employee as well as the entire bargaining unit and that the role of passive observer may serve neither purpose. Indeed, we believe that a union representative may properly attempt to clarify the facts, suggest other sources or information, and generally assist the employee in articulating an explanation. At the same time, as was recognized in the Texaco opinion you quoted, an Inspector has no duty to bargain with a union representative and may properly insist on hearing only the employee's own account of the incident under investigation.

We are not unmindful of your rights and obligations as a collective bargaining representative and trust that you, in turn, appreciate the obligations and responsibilities of the Inspection Service as the law enforcement arm of the U. S. Postal Service. In our view, the interests of all can be protected and furthered if both union representative and Inspector approach investigatory interviews in a good faith effort to deal fairly and reasonably with each other.

Sincerely,


K. H. Fletcher

ADDENDUM

CBR 80-2 Addendum No. 28
6/1/80

File Under: Article XVII,
4th Pa

I N T E R P R E T A T I O N Article XVII, Section 3

Page 51

A8-S-0595

(H8C-3W-C-11331)

Jacksonville, Florida

STEWARD HAS RIGHT TO REPRESENT EMPLOYEE DURING POSTAL INSPECTOR INTERROGATION

Article XVII, Section 3., 4th Paragraph:

"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. All polygraph tests will continue to be on a voluntary basis."

The issue involved in this grievance concerns the denial of a steward or Union official who is designated to represent an employee during an interrogation is entitled to actively represent the individual, not merely sitting silently and passively during the course of the interrogation.

Management contended the new language in Article XVII, Section 3 only gives a steward the right to be "present", if requested, by an employee during an interrogation by the Inspection Service.

Step 4 disposition April 24, 1980:

After reviewing the information provided, it is our mutual position to consider this grievance closed with the understanding that management must comply with the April 5, 1979 memorandum signed by the Chief Inspector, copy attached."

NOTE: Letter from Chief Postal Inspector Benson, April 5, 1979 was contained in CBR 79-1, 4/17/79, Addendum No. 2.

FHN
5/80

ADDENDUM #6

CBR 79-1 Addendum No. 2
4/17/79

File Under: XVII 3, Par. 4



CHIEF POSTAL INSPECTOR
Washington, D.C. 20260

April 5, 1979

Mr. Ernest Andrews
General President
American Postal Workers Union, AFL-CIO
817 Fourteenth Street, N.W.
Washington, D.C. 20005

Dear Mr. Andrews:

Reference is made to the telephone conversation between you and Deputy Chief Inspector, Kenneth H. Fletcher, on March 30, 1979, regarding the role of union representatives in Inspection Service interrogations.

The Inspection Service recognizes that a bargaining unit employee has a right to have a union representative present during the course of an Inspection Service interrogation if the employee so requests. In our view, the union representative's purpose, or role, in such interrogations is to safeguard the interest of the individual employee who perceives a threat to job security and to protect the interests of the entire bargaining unit. With respect to the individual employee, we believe that a union representative may attempt to clarify the facts, suggest other sources of information, and generally assist the employee to articulate his/her explanation. At the same time, exercise of the employee's right may not interfere with legitimate Inspection Service prerogatives, and the Inspector has no duty to bargain with any union representative. An Inspector may properly insist upon hearing only the employee's own account of the matter under investigation and need not listen to the representative's version of what has transpired.

In criminal matters, employees are entitled to exercise their Constitutional rights against self-incrimination by remaining silent or refusing to answer questions except in the presence of their attorney. Before conducting a custodial interrogation of an employee during a criminal investigation, the Inspector must

CBR 79-1 Addendum No. 2
4/17/79

advise the employee of the procedural safeguards articulated in the Miranda case to secure the employee's privilege against self-incrimination. Included is his/her right to the presence of an attorney, either retained or appointed. The presence of a union representative does not discharge the Inspection Service's obligation required under Miranda. Thus, a union representative should not and cannot properly assume an attorney's role. The employee is entitled to the presence of both.

In sum, the interests of all can be protected and furthered if both union representatives and Inspectors approach such interrogations in a good faith effort to deal fairly and reasonably with each other. In this regard, please be assured that the Inspection Service requires that Inspectors comply fully with the letter and spirit of the National Agreement, including the provision pertaining to union representation. And I am confident that union representatives will likewise comply fully with the Agreement.

We are not unmindful of your obligations as a collective bargaining representative and trust that you appreciate the obligations and responsibilities of the Inspection Service as the law enforcement arm of the Postal Service. If you have any suggestions as to how the Inspection Service and your Union may foster a better understanding of each other's responsibilities and a more cooperative relationship in this area, I would welcome hearing from you.

Sincerely,

C. Neil Benson

for
C. Neil Benson
Chief Postal Inspector

Memorandum

0178
W

Telephone
(202) 842-4225

From the Office of MICHAEL G. ZULLO
Research & Education Director

THE MIRANDA RIGHTS

ADDED
7

Miranda

The Miranda decision grew out of a criminal case where the following question was decided:

Can a law enforcement officer interview a citizen and use the result of the interview against him in a criminal prosecution without providing the person with

- (a) The opportunity to remain silent
- (b) The opportunity to consult with counsel and
- (c) Informing him of the rights of a and b

These rights are articulated in the following statement, which must be given to any subject of a criminal investigation:

Before you are asked any question you must understand your rights. You have a right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning. If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish. If you decide to answer questions now, without a lawyer present, you will still have the right to stop answering at any time until you talk to a lawyer.

Failure to give the above warning, and rights set forth in the warning, renders inadmissible any information gathered through or as the result of such interview. The evidence is considered "tainted."

The Postal Inspection Service is a criminal investigatory unit and employees subjected to criminal investigations conducted by Postal Inspectors are entitled to Miranda rights. If the employee interviewed is to be prosecuted,

However, there are questions as to whether failure by the Inspection Service to give Miranda warning is grounds for excluding evidence in a non-

criminal proceeding, such as an arbitration or Labor Board hearing. The Labor Board and most arbitrators have sidestepped the issue.

The rationale of the Miranda decision, according to the Supreme Court, is that "a lone individual is subjected to unfair pressures when he is compelled, without being given the right to informed assistance, to submit to an interview about alleged shortcomings with trained interrogators empowered to cause him to suffer adverse consequences." Accordingly, Miranda rights exists only after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way or where special circumstances exist which render the law enforcement official's behavior such as to overbear the person's will to resist and bring about a confession not freely self-determined. Stewards consulted by employees under investigation for suspected criminal activity should advise such employees to invoke their right to remain silent until they have received advice from legal counsel.

Notably, under Miranda, an individual being interrogated by the Postal Inspection Service or other law enforcement agents may terminate their participation in the interview at any time, even when the interview is attended by the counsel when he/she requested.

Miranda rights do not extend to inquiries conducted by supervisors in regard to unacceptable behavior, attendance, deficiencies, or job performance or other actions which are not grounds for criminal penalties.



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

April 24, 1980

Mr. Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union, APL-CIO
817 - 14th Street, N. W.
Washington, D. C. 20005

Re: K. Schroff
Jacksonville, FL
AS-S-0595/S8C3WC1133:
APWU 0595

Dear Mr. Wilson:

On April 3, 1980, we met on the above-captioned case at the fourth step of the contractual grievance procedure set forth in the 1978 National Agreement.

During our discussion, we concluded that at issue in this grievance is a steward's right to represent an employee who is being questioned by the Inspection Service.

After reviewing the information provided, it is our mutual position to consider this grievance closed with the understanding that management must comply with the April 5, 1979 memorandum signed by the Chief Inspector, copy attached.

Please sign the attached copy of this letter as your acknowledgment of the final disposition of this case.

Sincerely,



Daniel A. Kahn
Labor Relations Department



Kenneth D. Wilson
Administrative Aide, Clerk
Craft
American Postal Workers Union,
APL-CIO

APR 2

26



UNITED STATES POSTAL SERVICE

475 L'Enfant Place SW
Washington, DC 20260

REC.FI
DEC 10
CLERK DI

ARTICLE _____
SECTION _____
SUBJECT _____
Wingate

DEC 9 1986

art. 11

Mr. Robert L. Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: D. Smith
St. Louis BMC, MO 63200-9998
H4C-4X-C 11812

Dear Mr. Tunstall:

On July 21, 1986, and again on November 10, 1986, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management improperly denied the grievant's request for a union representative during an investigatory interview.

The parties at this level agree that under the Weingarten rule, the Employer must provide a union representative to the employee during the course of its investigatory meeting where the employee requests such representation and the employee has a reasonable belief that discussions during the meeting might lead to discipline (against the employee).



Whether or not an employee reasonably believes that discipline will result from the investigatory interview is a factual dispute suitable for regional determination based upon the particular circumstances.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Mr. Robert L. Tunstall

2

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Sincerely,

Muriel A. Alkens
Muriel A. Alkens
Labor Relations Department

Robert L. Tunstall 1-13-87
Robert Tunstall
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO

Wingate
1/20/88



RECEIVE

FEB 18 1988

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20250-4100

APWU
CLERK DIVISION

17

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

FEB 12 1988

WINGATE

Re: S. Nelems
Apple Valley, CA 92307
H4C-5L-C 47004

Dear Mr. Connors:

On February 10, 1988, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether the grievant was denied union representation upon her request to have a union steward present during a fact gathering interview with a postal inspector.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. There is no dispute between the parties at Step 4 relative to the meaning and intent of Article 17.3 which provides in 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."

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,


James L. Rosenhauer
Grievance and Arbitration
Division


James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO



NOTICE TO EMPLOYEES



POSTED PURSUANT TO A JUDGMENT OF THE
UNITED STATES COURT OF APPEALS
ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Case 32-CA-10209(P)

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT refuse to permit union representatives to consult with employees prior to investigatory interviews conducted by Postal Inspectors which the employees reasonably believe will result in disciplinary action and WE WILL NOT refuse to permit employees to speak with union representatives prior to such interviews.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights under Section 7 of the Act.

UNITED STATES POSTAL SERVICE

(Employer)

Dated 4/6/93 By William J. Jones
 (Representative) (Title)
 Manager Contract Administration
 APWU / MCH

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office.

National Labor Relations Board - Region 32
2201 Broadway, Second Floor, P.O. Box 12983
Oakland, California 94604 Telephone (510) 273-7200

REPORTS' BY JEFF KEHLERT

American Postal Workers Union ☎ 10 Melrose Avenue ☎ Suite 210 ☎ Cherry Hill, NJ 08003 ☎ (856) 427-0027

The following reports are available, upon request, from my office:

1. **Sky's the Limit**
Produced with former National Business Agent for the Maintenance Craft, Tim Romine. This report addresses our ability to obtain "restricted" forms of documentation necessary for enforcement of the Collective Bargaining Agreement with particular emphasis on medical records/information.
2. **Your Rights in Grievance Investigation and Processing**
An alphabetical compilation of Step 4 Interpretive Decisions on shop stewards' rights and related subjects.
3. **More Rights in Grievance Investigation and Processing**
A second volume of the Your Rights report including numerous Step 4 decisions.
4. **Grievances in Arbitration**
A compilation of arbitration decisions on various subjects with a brief synopsis of the awards included.
5. **Vending Credit Shortages and Other Issues**
A report on multiple subjects including the title subject, use of personal vehicles, Letters of Demand, etc.
6. **Letters of Demand - Due Process and Procedural Adherence**
A history in contractual application of the due process and procedural requirements of the Employer in issuing Letters of Demand including numerous arbitration decision-excerpts and the application of the principle of due process to discipline.
7. **Ranking Positions to a Higher Level**
Utilization of Article 25 and Employee and Labor Relations Manual Part 230 to upgrade Bargaining Unit Positions to Higher Levels based upon work being performed. (With authoritative arbitral reference.)
8. **Winning Claims for Back Pay**
Applying Part 436 of the Employee and Labor Relations Manual in conjunction with our Grievance Procedure to obtain denied pay and benefits, up to six years in the past.
9. **Letters of Demand -- Security and Reasonable Care**
As Management corrects due process and procedural errors when issuing letters of demand, we must turn to other methods of prosecuting grievances for alleged debts. This report addresses F-1 and DMM regulations to enable us to prove security violations exist.
10. **Surviving the Postal Inspection Service**
This report brings together the crucial information (Situations, Questions and Answers, National APWU Correspondence) necessary for employees and shop stewards on what rights must be utilized when Postal Inspectors come calling. Its goal is to enable Postal Workers to Survive and not lose their livelihood.
11. **Out-of-Schedule Compensation, Strategies for Winning Pay When our Collective Bargaining Agreement is Violated.**
This report places into a readily accessible package the controlling Collective Bargaining Agreement provisions, arbitral reference, contractual interpretation and strategies necessary to pursue violations of the National Agreement in which out-of-schedule compensation would be an appropriate remedy.
12. **A Handbook: Defense vs. Discipline: Due Process and Just Cause in our Collective Bargaining Agreement**
The arguments, Collective Bargaining Agreement references, investigative interviews, and arbitral authority brought together to provide the best possible defenses when discipline is issued.