

**A SHOP
STEWARDS
GUIDE
TO
GRIEVANCE
INVESTIGATION
AND
PREPARATION**

STEWARD'S RESPONSIBILITIES IN GRIEVANCE HANDLING

To best serve the grievance procedure it is important that the steward handling a grievance prepare the grievance as if it were going to arbitration. If a front line steward does not prepare each grievance in this manner, that steward is just passing the buck. It is your responsibility to pay attention to all the training which you are being provided. It is necessary for you to assume the full responsibility of the role of the shop steward, and devote all the attention necessary to each specific grievance.

Contained in this handout you will find a guideline of procedures to use in the processing of grievances. These procedures are required for all grievances which you handle.

Any time an employee contacts you about a problem, or you have reason to believe that a possible grievance situation exists, you have a responsibility to investigate the issue. Your investigation should determine whether a grievance situation exists, or if the matter warrants an other avenue of redress. If you can't make a determination based on your experience you must seek help from other Branch Officers or the National Business Agent's Office. You must tell us what the situation is, and we will give you guidance as to what information is necessary to properly prove the union's position. Follow the direction you are given and keep in touch so this office knows what the status of the grievance is.

You must get into the habit of keeping track of the time limits, and if management does not meet in the specified time, contact them to discuss the case. Do not wait for them to contact you, as there are too many grievances which are appealed to the next step of the procedures because of a lack of a meeting.

ORGANIZING YOURSELF

In this section of your responsibilities you will see an organization of your duties.

- 1) The grievant contacts you with a problem (or you become aware of a problem).
- 2) You contact your supervisor and get permission to speak to the grievant (or possible grievant).
- 3) Discuss the issue with the employee and find out as much information as you can.
- 4) Get a copy of the disciplinary or administrative action which is being investigated (if applicable).
- 5) Get a statement from the grievant which explains the who, what when, where, why, and how questions relative to the issue being investigated.
- 6) Contact your Branch Officers or the National Business Agent's office to get help preparing the grievance. Share what facts you already have available. The Officer will let you know what information you will need to prove the union's position, and what your contentions should be. Listen to that guidance, and make a record of it.
- 7) Speak to your supervisor and find out what he/she knows about the issue. Request to jointly review the "Working Together" Handbooks Volume 1 and 2. Use these as a resource to determine; whether a grievance exists, the appropriate remedy, and information necessary to investigate and process the grievance. Verify your understanding of the findings with your Branch Officers.

- 8) Make an official information request to secure copies of the information which is necessary for the grievance (or possible grievance). This request should be based on the input from the Branch Officer you spoke to, the "Working Together" Handbooks Volume 1 and 2, or the training handouts on specific issues.
- 9) Make sure that you keep a copy of your information request, and make sure that you include it in your grievance file.
- 10) Make arrangements with the supervisor to file the grievance. Notify your supervisor of the facts which you have available, and discuss the information in the manner which your officer explained. Review the "Working Together" Handbooks with your supervisor to strengthen your position with the support of Regionally accepted agreements.
- 11) Tell your supervisor that you had information withheld if that was the case, and request it again so that you have it for the meeting. If information is unreasonably delayed, contact your Branch Officer so that a grievance may be filed in your behalf for the information.
- 12) Listen to management's position, and keep a written record of the facts that they are trying to present. This will give you an indication of the obstacles that you will have to overcome in the handling of your grievance(s).
- 13) Put your notes of your step 1 meeting together with your grievance worksheet and the rest of the information relative to the grievance issue.

GRIEVANCE PROCESSING BASIC OUTLINE

BECOMING AWARE OF A POSSIBLE GRIEVANCE

- I. Approached by an employee
- II. Observation (by Steward)
 - A. Posted Notices
 - B. Stand-up Talks
 - C. Discussions with Managers
 - D. Personal observation of a contractual violation

INVESTIGATION

While conducting interviews, fill out Step 1 Form completely, obtain written statements, if possible, and keep notes of the interviews.

- I. Interview all involved parties.
 - A. Grievant (if any).
 - B. Witness (if any).
 - C. Supervisors.
- II. Review relevant documents.
 - A. Request in writing access to necessary documents. Request to jointly review the "Working Together" Handbooks Volume 1 and 2 with the supervisor involved in the possible grievance:
 - (1) Request time on form 3996 (keep duplicate) and/or "Request For Steward's Duty Time" Form.
 - (2) Request documents on "Request for Information" Form.
 - B. After review, obtain copies of required documents in writing, using an information request form.

- III. After determining if a grievance exists, call your Branch Officers. Explain your understanding of the issues and position, based upon your initial investigation. The purpose of this call is for the following reasons:
 - A. Discipline cases, to obtain guidance based on experience.
 - B. Contract cases, to maintain uniformity of action and remedy and to verify the accuracy of your understanding of the issues. This is also used to clarify any issues that may not be completely clear to you.

GRIEVANCE PROCEDURE TIME LIMITS

Article XV provides the following:

Step 1: Must be discussed with the grievant's immediate supervisor within 14 Days of the occurrence or when the grievant or the Union may reasonably have been expected to have learned of the occurrence.

The immediate supervisor has 5 days to render an oral decision. If the grievance is denied he/she must state the reason for the decision. If the supervisor fails to render a decision the Union must appeal to Step 2 within 10 days from the date the decision was due, unless an extension of time limits is mutually agreed to.

Step 2: If the step 1 grievance is denied the Union must appeal to the Postmaster or step 2 Designee within 10 Days of the date of the step 1 decision, in writing. The appeal must be made on the "Standard Grievance Form" as developed by the parties. The installation head or designee must meet within 7 days following the receipt of the appeal. If no agreement can be reached the employer must furnish a written Step 2 decision within 10 days from the date of the meeting. If no meeting or decision is rendered the Union must appeal to Step 3 within 15 days from the date that a meeting or decision was due.

Corrections and Additions: 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.

NOTE: The filing of Corrections and Additions shall not affect the time limits for appeal to Step 3.

NOTE: The Postal Service is required to provide the following in the step 2 decision letter: (1) all relevant facts, (2) the contractual provisions involved, and (3) the detailed reasons for denial of the grievance.

Step 3: Must be appealed in writing to Regional Director for Human Resources within 15 Days of the receipt of the Step 2 decision.

The Union must adhere strictly to these time limits. Failure to appeal within the time limits is considered a waiver of the grievance by the Union, if the Postal Service raises the issue of timeliness at either Step 2, or-if later-the Step at which the employee or the Union failed to meet the time limits. In such cases NALC will not be able to successfully obtain arbitration of the grievance on its merits.

STEP 1

- I. Grievances must be filed within 14 days of incident or the date on which the grievant or the Union should reasonably have been expected to have learned of the incident.
 - A. If time limits are extended, obtain extension in writing and keep a copy of that extension in the grievance file along with all other documents.
- II Request time to file grievance on form 3996 (keep duplicate) and/or "Request For Steward's Duty Time" Form.
 - A. If information requested has not been supplied, submit 2nd request (mark form "2ND REQUEST")
- III. Present grievance to immediate supervisor.
 - A. Keep notes of meeting.
 - B. Exchange information.
 - C. Attempt to negotiate a settlement.
 - (1) MAKE OFFER FOR SETTLEMENT - KEEP A WRITTEN RECORD
 - D. If grievance is settled, write settlement on Step 1 form, request supervisor to initial settlement.
 - E. The supervisor has 5 days to answer a Step 1 grievance. If no answer is received request answer from supervisor.
 - (1) If either party needs more time at Step 1, time limits may be extended in writing if mutually agreed to by both parties involved.
 - F. If grievance is denied, write the reason on the Step 1 form. Request a reason for denial, if none is given, write "no reason

given" on Step 1 form.

TRY TO RESOLVE GRIEVANCES AT STEP 1

GRIEVANCES DENIED AT STEP 1

- I. Consult with other Branch Office - or the National Business Agent's Office for assistance in determining if the grievance should be appealed.
- II. Request time to write Step 2 by submitting form 3996 (keep duplicate) and/or Request For Steward's Duty Time Form.
 - A. Grievance appeal must be submitted within 10 days from denial at Step 1. Any time limit extension must be in writing from Postmaster or Step 2 Designee.
- III. Write Step 2 Appeal.
 - A. Print or type - Appeal must be legible.
 - B. Leave margins - For duplication purpose.
 - C. Include a list of documents (numbered).
- IV. Send the Step 2 Case File to the Postmaster or Designee (include documentation except Step 1 form and Step 1 notes). Provide a copy of the Case File to your Branch Officers so that they have it available when and if it is necessary to appeal the grievance. Do this at the same time you send the original Case File to the Postmaster.

CONTENTS OF A COMPLETE STEP 2 CASE FILE

When sending a Step 2 grievance to the Postmaster and your Branch Office, include the following in this order:

YOU MUST SEND YOUR BRANCH A COPY OF THE CASE FILE THE SAME DAY YOU SUBMIT MANAGEMENT'S COPY!

- [] 1. Step 2 Appeal Form/Cover Sheet.
- [] 2. Facts Form (includes reason for step 1 denial).
- [] 3. Contention Form.
- [] 4. Letter of Charges/Notice of Administrative Action.
- [] 5. Statement of grievant (if any) and/or interview notes.
- [] 6. Statement of witness (if any) and/or interview notes.
- [] 7. Statement of supervisor (if any) and/or interview notes.
- [] 8. Documentation to support position.
- [] 9. 2608, Step 1 grievance summary form used by management.
- [] 10. Information request forms with notations of what has been received.
- [] 11. Copies of time limit extensions (if any).
- [] 12. Step 1 Form (ONLY TO NALC!).
- [] 13. Notes from step 1 meeting (ONLY TO NALC!).

STEP 2 MEETING

- I. Postmaster must schedule within 7 days of receipt of appeal.
 - A. If no meeting is scheduled, contact Postmaster and request meeting. If meeting is to be held beyond the 7 day time limit **KEEP TRACK OF THE TIME LIMITS AND KEEP THE OFFICERS OF YOUR BRANCH POSTED. OBTAIN ALL TIME LIMIT EXTENSION IN WRITING AND KEEP A COPY OF THE EXTENSION IN THE GRIEVANCE FILE!**
- II. At Step 2 meeting use "Step 2 Report Form" - **KEEP NOTES!**
 - A. Make settlement offer (refer to bottom line), keep a written record.
 - B. Keep a written record of Management offers.
- III. Immediately after Step 2 meeting, communicate with your Branch Officers to determine what the proper course of action should be.
 - A. The Step 2 Meeting Form and Notes are essential in the event a Letter of Additions and Corrections is required upon receipt of the Step 2 Decision. This information is also used to determine whether or not to appeal a denied Step 2 grievance to Step 3.

PREPARING THE APPEAL TO STEP 3

- I. Review the employer's Step 2 decision.
 - A. If the employer's Step 2 decision is not correct or does not address all the information discussed during the Step 2 meeting, you must prepare an "Additions and Corrections" to the Step 2 decision.
 - B. The additions and corrections must be sent to the Postmaster within ten (10) days of your receipt of the Step 2 decision letter.
- II. Request time to prepare your Step 3 appeal by submitting form 3996

(keep duplicate) and/or Request for Steward's Duty time.

- A. The grievance **must** be appealed to Step 3 within 15 days of your receipt of the employer's Step 2 decision. Preparing an additions and corrections letter does not extend the 15 day period.
- B. If you have not received the Postmaster's Step 2 decision letter within 10 days of the Step 2 meeting, then the tenth (10th) day following the Step 2 meeting becomes your first days of the 15 days to appeal your grievance to Step 3.

III. Prepare your Step 3 appeal.

- A. Compile all of the information that you prepared for the appeal to Step 2.
- B. Add all of the information that you secured since the appeal to Step 2.
- C. Write the facts and contentions as per the guidelines you will see herein.

IV. Mail your appeal.

- A. You must send a copy of your appeal to the USPS addressed as follows:

Director, Human Resources
400 Oyster Point Blvd.
South San Francisco, CA 94099-4401

- B. You must send a complete copy of your Step 3 appeal to the NALC addressed as follows:

Dale P. Hart
NBA - NALC
3636 Westminster, Suite "A"
Santa Ana, CA 92703

- C. You must send a copy of only the additions and corrections, and the Step 3 appeal to your postmaster.
- D. All of these copies must go out on the same day. On some occasions the NBA's office does not get a copy of your grievances until they are brought to our attention by management.

CONTENTS OF A COMPLETE STEP 3 APPEAL

As per Article 15, Section 2, Step 3:

"(a) Any appeal from an adverse decision in Step 2 shall be in writing to the Regional Director for Human Resources with a copy to the Employer's Step 2 Representative, and shall specify the reasons for the appeal."

YOUR BRANCH MUST ALSO PROVIDE A COPY OF THE APPEAL TO THE NATIONAL BUSINESS AGENT AT THE TIME OF YOUR APPEAL TO STEP 3. IF YOU FAIL TO DO THIS IT DELAYS THE PROCESS OF MEETING AT STEP 3.

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To assist the National Business Agent's office in meeting on these grievances, it is requested that you use the following checklist to insure that all the necessary information is included in the file. Further, it is requested that you place the information in the order of appearance below to assist the step 3 representatives.

- [] 1. Grievance case summary (a post step 2 denial form available from NALC supply department). **Do not include this form with your appeal to the Regional Director of Human Resources, but you should include this form in the copy of the appeal as sent to the National Business Agent's Office.**

- [] 2. Step 3 appeal form. If your facts and contentions do not fit in the space provided on the form itself, do not try to cram the necessary information in those spaces. Attach additional pages identified as additional facts or contentions and the grievance number, grievant name, and city employed.

NOTE: When you write your appeal to step 3, please identify in your grievance what additional documentation was included in your appeal to step 3 that was not already listed in your appeal to step 2. This assists your union in proving what information was shared at the lowest level possible so as to prove that it was provided to the employer as documentation in support of the union's position.

- [] 3. A copy of the Letter of Additions and Corrections, if one was prepared in response to the step 2 decision letter.
- [] 4. A copy of the employer's step 2 decision letter, inclusive of any attachments which were included with the employer's step 2 response.
- [] 5. A copy of the Union's step 2 appeal form. Again, if your facts and contentions do not fit in the space provided on the form itself, do not try to cram the necessary information in those spaces. Attach additional pages identified as additional facts or contentions and the grievance number, grievant name, and city employed.

NOTE: When you write your appeal to step 2, please identify in your grievance what additional documentation was included in your appeal to step 2. This assists your union in proving what information was shared at the lowest level possible so as to prove that it was provided to the employer as documentation in support of the union's position.

- [] 6. A copy of the Letter of Charges if the grievance involves discipline (the letter of warning or suspension or emergency suspension or removal) or in the case of a contractual violation, include a copy of the administrative action in question (the Restricted Sick Leave Letter, Revocation of Driving Privileges, Letter of Demand or any other letter being grieved).

NOTE: If the grievance involves discipline, and if the discipline refers to "Elements of Past Record", (prior disciplines issued to the grievant) **include copies of the elements of past record as cited as well as any grievance settlements on the elements of past record.** For example, a suspension might cite a prior letter of warning, which we know was rescinded or it was agreed to remove that discipline after a certain period of time, and the discipline should therefore not have been cited (see discipline tracking memo of 1984 National Agreement).

- [] 7. Statement of the grievant or statement of interview of the grievant explaining his/her side of the story in response to the charges against him/her or in the case of a contractual violation, a statement by the grievant or interview of the grievant, explaining what took place in regards to the grievance being appealed.

- [] 8. Statement of witnesses, if any, or interview notes of the witness.
- [] 9. Statement of supervisor(s), if any, or interview notes explaining what management says happened.
- [] 10. Documentation to support your position. Please be sure to refer to the documentation in the written appeal to step 2 or step 3.
- [] 11. Copies of information requests proving that the union has requested the information necessary for the grievance as appealed. If the information has been received, make notations indicating what was received and notations indicating what information was not received and or refused by the employer, if any. If you can get your supervisor to sign on or initial the request for information form to prove that they received it.
- [] 12. Copies of extensions of time limits, if any. **ALL EXTENSIONS OF TIME LIMITS SHOULD BE IN WRITING TO PROTECT OUR INTERESTS**
- [] 13. A copy of the step 1 form prepared by the Union at step 1. (a copy of this form is to be sent with your appeal to the National Business Agent's Office Only).
- [] 14. Notes by the steward of what information was discussed at the step 1 meeting, what information was shared, and what the employer's explanation was at the step 1 of why they denied the grievance. (a copy of these notes are to be sent with your appeal to the National Business Agent's Office Only).
- [] 15. A copy of the employer's 2608 (USPS Step 1 summary) and 2609 (USPS Step 2 summary).

GRIEVANCE INVESTIGATION - DISCIPLINE

This section is provided to assist you in the investigation of your discipline

based grievances, but the methods and procedures provided in this handout should not be regarded as your only obligation in handling discipline. There is a need as a Union to properly develop all grievances in accordance with the National Agreement.

I. INITIAL INVESTIGATION

- A. Read the charges to clearly understand what the grievant is being charged with. Many times we don't take the time to understand the specifics of the charges against the grievant.
- B. Interview the grievant and his/her witnesses.
 - 1. Does the grievant agree with the facts specified in the charge letter against him/her? If so, have the grievant explain why he/she did what he/she is accused of.
 - 2. If the grievant does not agree with the facts in the charges against him/her, have the grievant state what actually took place.
 - 3. In either of these two categories, ask the grievant to provide you with a written statement in support of their position in relation to the charges.
 - 4. If the grievant is unwilling to provide you with a statement, take notes of your interview. At the conclusion of your interview, read back your interview notes to the grievant to verify that you got the story right. If the grievant states that the statement is accurate, make a notation on the interview notes of who conducted the interview and when the interview took place. Make this interview a part of the grievance package.
 - 5. Does the grievant have any witnesses that support the grievant's side of the story? If so request time to interview them and conduct the interview as above.
 - 6. Does the grievant have any documentary evidence which supports his/her side of the story? If so secure copies and include them as part of the grievance package.

- C. What evidence does the employer have in support of the charges against the grievant?
1. Who are the employer's witnesses, if any?
 2. Make a written request for the time to interview these witnesses and include a copy of the request as part of the grievance package. If the witness is a customer, you have the right to interview that person.
 3. Ask these witnesses what they saw, or had personal knowledge of. Ask for them to provide you with a written statement, and make that statement part of the grievance package.
 4. If they are unwilling to provide you with a statement, take notes of your interview. At the conclusion of your interview read back your interview notes to the witness to verify that you got the story right. If the witness states that the statement is accurate, make a notation on the interview notes of who conducted the interview and when the interview took place. Make this interview a part of the grievance package.
 5. Does the employer have any documentary evidence which supports their version of what happened? If so make a written request for that information and include a copy of the written request as part of the grievance package.
- D. Research: Is the discipline for "Just Cause?"

II. Article 16 of the National Agreement provides:

In the administration of this Article (16), a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this agreement, or failure to observe safety rules and regulations. Any

such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

The previous is the language found in the National Agreement in Article 16. This Article explains to you what forms of discipline can be given to employees for infractions of work rules. They are:

1. Official discussion
2. Letter of warning
3. Suspension
4. Termination (Removal)

An official discussion can not be grieved as far as the subject matter discussed and is not technically considered formal discipline. Failure to make the discussion private, however, can and should be grieved. The remaining 3 forms of discipline are subject to grievance. To best serve the interest of the employee who is being represented by you, you must establish that the grievant is not guilty of the charge contained in the letter of charges (the letter of warning, suspension or termination), or if the grievant is guilty of the charges against him/her, you must develop as much mitigation as is possible to show that the discipline is not warranted. To do that you must investigate the facts which took place.

III. Establishing Whether Just Cause Exists.

What is just cause? The dictionary definition of just cause is:

1. right or fair; equitable; impartial
2. righteous; upright
3. deserved; merited
4. legally right; lawful; rightful
5. proper; fitting, etc.

6. well founded; reasonable
7. correct or true
8. accurate; exact

In the NALC's Contract Administration Manual the following is found:

"While the definition of 'just cause' necessarily varies from case to case, some arbitrators have listed these tests for determining whether the Employer has "just cause" for disciplining an employee:

- (1) Was the employee adequately warned of the consequences of his conduct?
- (2) Did management investigate before administering the discipline? Did the investigation produce substantial evidence or proof of guilt?
- (3) Were the rules, orders, and penalties applied even-handedly and without discrimination?
- (4) Was the penalty reasonably related to the seriousness of the offense and the past record?

A Postal Arbitrator has held that when a Postal Service employee is disciplined or discharged on the basis of criminal charges or convictions such disciplinary action does not meet the just cause concept unless the criminal charges or convictions (a) involve an on-the-job action, or (b) if not, are job-related to the extent that they have an adverse impact on employee or public relations, efficiency, etc., or poses a threat to Postal Operations, property or personnel."

With the above you have a general guideline for understanding how Our National Agreement looks at the term "just cause". Management on many occasions misunderstands the meanings of the principles of just cause. Ask a supervisor why he disciplined an employee, and you might get an answer like "just 'cause I wanted to". This is not what the just cause principle is based on.

In addition to the language in the agreement we have provided a checklist

which many arbitrators use to judge the Employer's decision to issue discipline.

In section 1 of the arbitrator's checklist the issue of adequate warning appears. Your investigation should begin there. Find out if the grievant was warned of the consequences of his/her misconduct. Find out if the employee understood what the consequences of misconduct were. Ask the grievant if the employer had held discussions where he/she was told that violations of certain work rules would result in different forms of discipline. Ask the grievant if he/she knows what forms of discipline exist.

In section 2 of the arbitrator's checklist the issue of when the investigation took place is important. Was the investigation conducted after the issuance of discipline, or the decision to discipline? Was the investigation done to justify the action after the fact? After these two questions are answered you see that the issue of guilt needs to be addressed. In our investigation we need to determine if the employee has committed the infraction which he/she is charged with. If the employee has not committed the infraction you need to establish that there is a doubt that the employee did so, or if possible, you must establish that the employee did not break any work rule, or law. If the grievant violated a rule or failed to follow an instruction, find out if he/she understood what management expected, or if he/she understood the instruction. Was the instruction clear?

In section 3 of the arbitrator's checklist, the issue of fair application of work rules appears. Find out if any other employees have been in a similar situation where management was aware of the other employee's actions. How did the employer react to the misconduct of that other employee. Was the employer as fair with your grievant as with the other employees? Get documentation through witness statements or personal interviews with your managers. If your proof comes from interviews, reduce the subject matter of your interview to writing and sign it. You also have the right to request copies of discipline for other employees that you believe was less severe for the same infraction.

In section 4 of the arbitrator's checklist, the issue of penalty (degree of discipline) is dealt with. Does the penalty relate to the offense? Does the grievant have any discipline still on record? Is the previous discipline related to the offense? Has management progressed from minor discipline (official discussion) to heavy discipline (suspension, etc.) for repeat violations? Were there any grievances filed on the disciplines cited in the "elements of past record" and what were the results of those grievances?

Did management honor the grievance settlements, or bargain in bad faith?

IV. GRIEVANT & WITNESS INTERVIEWS

Most of the information needed in the 4 sections discussed above will be attained through interviews. Your interviews should not be limited to the grievant and should not exclude any management officials. You should not fear questioning management, but you must prepare yourself before you meet. Go over the material supplied by the grievant and formulate questions which address material you need to defend your grievant.

Begin your interviews with the grievant since that is the person that you are defending. Read the charges in the letter of discipline, then ask the grievant to tell you his/her story. Have them go in chronological order. To do an effective job, you have to interview the grievant with an open mind. When you first interview the grievant you must listen to the story of what happened from their point of view. Take notes while you are listening, and if you hear the grievant mention witnesses, write their names down.

A good way to interview is as follows:

1. Give the grievant a good hearing.
2. Listen-Don't Interrupt.
3. Take notes, record names, places, times and instructions.
4. When s/he finishes, ask questions, but take no position.
5. Ask the grievant to repeat the story.
6. Repeat the essentials of the story to the grievant in your own words to make sure that you have listened correctly. While you are doing this it is important that you attempt to put the story in its order of events.

The interview will give you most of the information that you need for your grievance. The importance of clarifying the order of events can become crucial when the employer has cited the employee for failing to follow instructions (eg., did the employer give instructions relative to safety before or after an accident?).

After the interview get the grievant to put into writing the story of what happened, keeping in mind the important portions of the interview which

will help the grievant. Be cautious about how the grievant writes his/her statement. If the statement is incriminating, it will not help the grievant's case. Do not put words into the grievant's mouth, but help the grievant phrase his words so that he/she explains his/her actions without incrimination.

After the interview with the grievant, and obtaining the written statement, review the charge letter. Based on the interview and the written statement determine what facts you need to prove and which other employees and/or managers you need to interview. Get the facts from the handbooks and manuals, office policies, and your Branch Officers. If you still need assistance contact the National Business Agent's Office.

Rely on the following sources of information:

1. Your Local Memorandum of Understanding
2. The National Agreement
3. Working Together Handbooks Volume 1 and 2, (and updates).
4. Check for posted policies of the employer
5. Check previous grievance settlements for precedent and or parity.
6. Interview the managers who charged the grievant
7. Interview the other managers to determine if there is a consistent interpretation and application of the policies in your office
8. Interview other employees who you believe may have been involved in a similar situation. If this is confirmed ask if they received discipline. If so request access to that discipline from your employer.
9. Interview witnesses who may have seen what the grievant claims (not all people who the grievant claims were witnesses may have really seen the incident).
10. The National Business Agent's Office where their resources are available as well as their advice.

With all the facts available, organize your material and review what you have. When you call to seek advice have all the facts available. You will be discussing how to establish innocence, or how to best argue the case when the grievant is guilty and you are looking for the best settlement that you can attain for the grievant. Please do not hold back any information. Make all the facts available to this office so that a fair and thorough determination of the case can be made. Holding back facts which will appear at a later step of the grievance-arbitration procedure denies the Union the opportunity to prepare arguments relative to those facts. You also jeopardize the ability to use those facts if they have not been addressed in the grievance procedure raised prior to arbitration.

V. REVIEW OF YOUR FINDINGS

The previous investigation, when properly done by a steward, should give most of the material necessary for the steward or the Union to evaluate the action of the employer. Below you will find questions that need to be addressed.

These questions should be standard in your evaluation of all the facts available, so that you can articulate cause for a good settlement (rescinding the discipline and any mention thereto, or reaching a good settlement by reduction of the penalty). These questions are:

1. Was there sufficient proof, or was management's action based on hearsay?
2. Did management investigate and verify the charge before taking action or did they "shoot from the hip" first and then investigate after the fact to support their action?
3. If so, did management selectively stack the deck by over emphasizing certain facts and points (out of context) while down playing those factors which would favor the grievant so as to justify their premature charge after the fact?
4. Did management act on emotion rather than objectivity?
5. If so, was the discipline punitive and vindictive rather than corrective and remedial?

6. Was the discipline timely, or was the employer guilty of waiting so as to have enough to "hang" the grievant?
7. Was the discipline progressive in nature or excessive?
8. Did the penalty violate our contract (National or Local) or any known applicable laws?
9. Did the penalty cause or threaten to cause irreparable harm?
10. Was the penalty arbitrary, capricious, unjust, unfair, unreasonable, or inequitable?
11. Did the discipline adversely affect the welfare of the grievant, the Union, or the individual or collective rights of the employees in the bargaining unit?
12. Is the employer action a sign of evenhanded discipline?
13. Did management punish all for the actions of a few?
14. Does the punishment fit the crime?
15. Is discipline appropriate and related to the seriousness of the offense?
16. Does the discipline fit the grievant's past record?
17. Is the grievant's account of the story believable?

The preceding questions are given for you to use habitually when interviewing your grievant and your managers. This information will be useful when you meet with your supervisor at step 1, or the Postmaster's designee at step 2. Getting into the habit of asking key questions makes the investigation process easier to deal with. Set your goal at complete removal of all charges against the grievant, then organize your material so that you can accomplish that goal.

Many grievances do not have a grievant's statement nor your statement relative to an interview with a manager (in the event that a manager does not want to give you written confirmation of a fact which is crucial to the grievance being handled at the time). It is important for you to supply the

Union and the Employer with a grievant's statement (only if there is no incriminating information) since your words will not speak for the grievant. It is the grievant's statement which will explain what he/she did, not your words. Your words are contentions based on contract language and the grievant's statement. Without the grievant's words you are just alleging what took place since you were probably not there.

On the following page a "just cause" and "defenses to discipline" worksheet checklist is provided. Use this when reviewing a disciplinary notice to initially determine which issue apply in the instant grievance. Answer yes or no in the column as to whether that provision of just cause was met, or whether that particular "defense" applies in the instant grievance. If these issues apply in the instant case, it is imperative that you include them in you arguments in the case from the very beginning. This will allow us more latitude in addressing all the issues if the case goes forward to arbitration. This is extremely important.

VI. DISCIPLINE/JUST CAUSE CHECKLIST

"SEVEN TESTS FOR JUST CAUSE"

- 1) NOTICE TO EMPLOYEE OF CONSEQUENCES OF CONDUCT.
- 2) REASONABLE RULE OR ORDER.
- 3) INVESTIGATION PRIOR TO ISSUANCE OF DISCIPLINE.
- 4) THOROUGH, FAIR, AND OBJECTIVE INVESTIGATION.
- 5) PROOF OF CHARGES (BURDEN OF PROOF) SUBSTANTIVE FACTUAL EVIDENCE.
- 6) EQUAL TREATMENT/FAIR APPLICATION OF WORK RULES.
- 7) APPROPRIATE PENALTY, CORRECTIVE IN NATURE, PROGRESSIVE.

TECHNICAL "DEFENSES TO DISCIPLINE"

- 1) DISCIPLINE WAS NOT TIMELY ISSUED.
- 2) DISCIPLINE WAS ORDERED BY HIGHER MANAGEMENT.
- 3) MGMT'S REPRESENTATIVE LACKED THE AUTHORITY TO SETTLE GRIEVANCE.
- 4) DOUBLE JEOPARDY.
- 5) FAILURE TO "REVIEW AND CONCUR".
- 6) INSUFFICIENT OR DEFECTIVE CHARGE.
- 7) EMPLOYER FAILED TO RENDER A PROPER GRIEVANCE DECISION.
- 8) IMPROPER CITATION OF PAST ELEMENTS.

- [] 9) EMPLOYER FAILED TO DISCLOSE INFORMATION.
- [] 10) CONDUCT CITED FOR WHICH DISCIPLINE MAY NOT BE IMPOSED.
- [] 11) GRIEVANT WAS PROVOKED BY ANOTHER.
- [] 12) INFRACTION BASED ON LACK OF, OR IMPROPER TRAINING.
- [] 13) LONG PRIOR SERVICE, GOOD PRIOR RECORD, OR BOTH.
- [] 14) CONDUCT WAS NOT INTENTIONAL.
- [] 15) GRIEVANT WAS EMOTIONALLY IMPAIRED.
- [] 16) GRIEVANT WAS IMPAIRED BY DRUGS OR ALCOHOL. "USE ONLY WITH CAUTION AS IT IS AN ADMISSION OF AN ACT WHICH COULD CAUSE SEPARATE CONSEQUENCES.

BASIC FACTS IN A DISCIPLINE GRIEVANCE:

FACTS

- #1. On ___/___/___ the grievant, John/Mary Carrier, received a (Letter of Warning/Suspension/Notice of Removal). The specific charges of the Disciplinary notice are: (list charges).
- #2. Specific Sections of (any handbooks/manuals cited) are: (list any sections cited in the discipline, and explain what each section is).
- #3. The text of the discipline states that the grievant: (explain what the narrative of the discipline says the grievant did and when it allegedly happened).
- #4. The grievant states that: (use the grievant's statement to rebut the charges. When used in the context of "the grievant states," pertinent parts of the grievant's statement can and should be presented in the facts as well as contentions).
- #5. There is no documentation provided to support the Employer's charge that: (explain anything the employer has charged or alleged that hasn't been substantiated with factual documentation).
- #6. Cite any pertinent sections of the National Agreement or any of the handbooks or manuals that apply. Use these pertinent parts of contractually binding language as facts following anything in the disciplinary notice that is in conflict or violative of such contractually binding language. Be specific, list each applicable section of contractual language after each cited section of conflicting language as it appears in the disciplinary notice. Be sure to include in the case file any supportive evidence/documents cited. Also include any arbitration or step 4 decisions that support the Union's position, and include a copy in the grievance appeal.
- #7. Cite any issue that "cannot yet be determined because the information requested by the union necessary to make such a determination has not yet been provided by the employer."
- #8. PROCEDURAL NOTE: (if applicable) The Union has requested information relative to the processing of this grievance. To date the

employer has not provided all of the information requested. Based on the employer's failure to honor Articles 15, 17 and 31, the grievance is incomplete due to the lack of information provided. If the instant grievance is not sustained due to this contractual and procedural violation, the Union hereby reserves the right to entertain any and all information denied, including but not limited to information cited on the original request, at the time of its receipt, and may at that time add to the facts and contentions as well as contractual issues in dispute for this grievance.

#9. Time limits were mutually extended (only if this applies).

BASIC CONTENTIONS DISCIPLINE GRIEVANCE:

CONTENTIONS

- #1. The Union contends that the disciplinary (Letter of Warning/Suspension/Removal) is not for just cause.
- #2. Cite any inconsistencies (sections cited, dates, times) in the text of the disciplinary notice.
- #3. Start listing your arguments, one by one. Argue the charges in the order they appear in the disciplinary notice. Refer to the "Defenses to Discipline" handbook or the "Discipline Contentions" in this "Steward's Guide" as a checklist of possible arguments and for appropriate language/structure of arguments.
 - a. Start your defenses with any contentions that the discipline contains procedural deficiencies and should be dismissed without regard to the merits of the case.
 - b. Proceed with defenses on whether the grievant's conduct, if proven would constitute a basis for which discipline may be imposed.
 - c. Proceed on to defenses about the lack of correctness or completeness of the facts used to justify the discipline. This means that you argue the charges and narrative, as necessary, in the disciplinary notice, issue by issue.
 - d. Finish with defenses of "mitigating circumstances" that, even if the grievant acted improperly, must be taken into consideration to either dismiss or reduce the discipline.
 - e. Clearly define each one and identify what supports it. (Use Defense's to Discipline)
- #4. Identify what management allegations haven't been supported by factual documentation and cite them as "cannot be accepted a true and factual based on the lack of supportive evidence."
- #5. Identify what Union charges that management has not objected to or

made any attempts to rebut and cite them as "in light of the Employer's lack of rebuttal to the union's arguments, these must be accepted as fact."

- #6. Close with a summation of why the Union's position is correct, and why the remedy requested is proper.

- #7. **PROCEDURAL NOTE:** The employer has the burden to prove that it had "JUST CAUSE" for the action taken against the grievant and along with that burden of proof is the requirement to make available information and all pertinent material to the Union. This the employer has failed to do. The Union has requested information relative to the processing of this grievance. To date the employer has not provided all of the information requested. Based on the employer's failure to honor Articles 15, 17, and 31, the grievance should be sustained without consideration of it's merits, as this grievance is incomplete due to the lack of information provided. If the instant grievance is not sustained due to this contractual and procedural violation, the Union hereby reserves the right to entertain any and all information denied, including but not limited to information cited on the original request, at the time of its receipt, and may at that time add to the facts and contentions as well as contractual issues in dispute for this grievance.

DISCIPLINE CONTENTIONS

The following examples of contentions for disciplinary grievances are provided to assist you in the preparation of the contentions (arguments) in your grievance dealing with discipline.

SECTION #1: Technical defenses unrelated to the merits of the discipline:

- 1) If discipline was untimely, the following argument would be appropriate:

The disciplinary action was not timely issued. The National Agreement gives management the right to discipline and/or discharge for just cause. One of the provisions of such must be a timely response to discovery of a letter carrier's misconduct. If management does not do so, it waives whatever rights it may have had to impose discipline. Memories fade with the passage of time, witnesses become difficult to locate so as to reconstruct the events in question. The employee must be given a meaningful opportunity to respond to and defend the charges. The employee must have the right to expect that the result of an investigation or the charge under consideration will be promptly communicated. If the employee has committed an offense worthy of discipline by the employer, then he or she must know it promptly after the wrongdoing. This is part of due process or fairness in the employment setting, an unsettled charge must not be kept pending unduly long. The grievant in the instant case was denied due process as a result of management's failure to address the alleged misconduct in a timely manner.

- 2) If discipline was ordered by higher Management, the following argument would be appropriate:

The disciplinary action was ordered by higher management. The decision whether to impose discipline, and the decision as to the degree of discipline to be imposed, should be made by the grievant's immediate supervisor. While higher authority may advise, if asked, it is improper for officials above the immediate supervisor to initiate discipline or to override the immediate supervisor's recommendation as to extent of penalty. In the instant case, the decision to impose the discipline was not made at the immediate supervisor's level; it

was made by (explain circumstances). This makes it clear that the grievant's immediate supervisor exercised no independent judgment. When he signed the disciplinary notice, he was merely following instructions.

Article 16, Section 8 of the National Agreement requires discipline to be proposed by lower-level supervisor and concurred in by higher-level authority.

- 3) If management's representative lacked the authority to settle the grievance, the following argument would be appropriate:

The grievant's immediate supervisor clearly lacked the authority to settle the grievance, due to _____ (state reason).

The prescribed language of Article 15, Section 2, Step.1(a) and (b) of the National Agreement, clearly bestows upon the grievant's supervisor the authority to settle a grievance at Step 1. Failure to comply with such prescribed language cannot be viewed as harmless error and non-prejudicial to the rights of the grievant. Rather, this failure goes to the very heart of the grievance process in that the grievant is thereby denied the contractual right to have his/her grievance considered independently and objectively at the outset of the grievance procedure by his/her supervisor who is generally most familiar with his/her work record. Any removal of the supervisor's authority is a violation of both the letter and the spirit of the Agreement, and as such gives sufficient cause to sustain the grievance without consideration on its merits.

- 4) If there is an issue Double Jeopardy, the following argument would be appropriate:

The employer has twice imposed discipline for the same alleged act. (explain circumstances). The employer may not twice impose discipline for the same act of alleged misconduct or deficiency. Having implicitly set the penalty for the alleged offense, the employer may not subsequently add to that penalty. Doing so subjects the grievant to a form of "Double Jeopardy," which constitutes a blatant and gross violation of the grievant's due process rights. This disregard for the basic intent of such rights is of such magnitude as to demand that the grievance be sustained in full without

consideration on its merits.

- 5) If Higher Management failed to "review and concur" prior to imposing the suspension/removal, the following argument would be appropriate:

The Notice of Removal/Suspension was issued without being reviewed and concurred in by higher management.

Article 16 Section 8. of the National Agreement, states: "In no case may a supervisor impose suspension or discharge upon an employee unless the proposed disciplinary action has first been reviewed and concurred in by the installation head or designee."

While it is up to the immediate supervisor to initiate disciplinary action, before a suspension or removal is imposed it must be reviewed and concurred in by higher-level management. Concurrence is a specific and formal contract requirement to the issuance of a suspension or a discharge. It must occur before the issuance of the discipline and not afterwards. The requirement is not met merely because a superior agrees with the discipline. It must be demonstrated that he was requested to concur, and that he reviewed the matter in light of all the current information at the time of concurrence, and that he gave his consent to the issuance of discipline. While the contract does not require a writing to accomplish this, it is the Employer's burden to demonstrate it occurred. (further explain how the facts relate to this defense) The Employer in the instant case has failed to meet this requirement, and as such, the discipline imposed should be disallowed and the grievance sustained in full.

- 6) The charge in the disciplinary notice is insufficient or defective contention:

The charge in the disciplinary notice is (insufficient/defective) in that it fails to explain the basis for the discipline with sufficient specificity that the grievant may make a defense. A proper charge must contain the specific act or offense for which the discipline is being imposed, and the specific rule or behavior violated that is subject to discipline. A narrative style relating of what the employer believes to have occurred, as is related in the instant case, is not sufficient to base any disciplinary action on. (explain how this defense relates)

- 7) If the Employer failed to render a proper grievance decision (this applies to all steps, although the references are to the Step 2 & 3) the following argument would be appropriate:

The Employer failed to render a proper grievance decision. In doing so management deprived the Union representative of the final analysis of the Employer's representative's reasoning in reaching the decision. Article 15 requires that management state certain information in its Step 2 and Step 3 grievance decisions;

"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."

The Employer's written Step 3 decision "shall state the reasons for the decision in detail and shall include a statement of any additional facts and contentions not previously set forth in the record of the grievance as appealed from Step 2.

The parties to the National Agreement are bound to comply with its clear and unambiguous procedural provisions designed to insure that due process is accorded to employees charged with disciplinary offenses. Failure to comply with such procedures forms a sufficient cause to sustain the grievance without consideration on its merits.

- 8) If the Employer failed to properly investigate before imposing discipline, the following argument would be appropriate:

The Employer failed to conduct a full, fair, and impartial investigation before imposing discipline. (explain fact circumstances that support this contention)

The real heart of the procedural due process is not a question of the grievant's guilt or innocence, it is how the employer goes about arriving at its decision. When the decision is to impose a penalty, care must be taken that all relevant facts and evidence are considered. Discipline issued without a complete investigation or

without affording the employee an opportunity to be heard falls short of minimum standards.

The reasons why due process require that an investigation be made into all the relevant facts and circumstances, including the employee's explanation, before action is taken are several. If this is not done, the employer risks nondisclosure of essential elements of the issue. A thorough investigation reduces the chance of impulsive and arbitrary decisions by the employer and permits deliberate, informed judgment to prevail. By giving the grievant an opportunity to present his side of the story and point out mitigating factors raises the possibility that the employer would have been dissuaded from taking action in the first place. The same evidence presented prior to decision may have a more important effect than when offered at the grievance level. This is so simply because it is human nature to stick to and defend a decision already made. This reluctance to reconsider, even in the light of new information, is more pronounced in the grievance procedure because the Employer has an additional institutional interest to stand firm and defend the authority of the supervisor who made the decision to take the action. In light of the overwhelming supportive evidence, that this essential part of the Grievant's rights to full and complete due process was clearly and completely omitted by the Employer, the only fair and reasonable decision to arrive at is to disallow the discipline and sustain the grievance in full without consideration on it's merits.

- 9) If there was an improper citation of "past elements", the following argument would be appropriate:

The Employer has cited elements in the disciplinary notice that are improper to include in the discipline as an element of prior adverse record. (choose one or all of the below, as pertinent, and explain how they apply to the instant case)

- a) It is improper to cite discussions as an element of past discipline in support of another disciplinary charge, as Article 16 Section 2 of the National Agreement provides that "...such discussions may not be cited as an element of a prior adverse record in any subsequent action against an employee..".
- b) It is improper to cite discipline in it's original form where that

discipline has been reduced, or overturned on appeal. The 1987 National Agreement contains a Memorandum of Understanding RE:"Discipline Tracking System," that provides, in pertinent part; "In situations where disciplinary action has been overturned on appeal, records of the appealed disciplinary action will not be accessible for use in future promotional or disciplinary actions. In situation where disciplinary actions have been modified on appeal, only records of the modified disciplinary actions will be accessible from the Discipline Tracking System for use in future promotional or disciplinary actions."

- c) It is improper to cite discipline which has been grieved but not finally settled or adjudicated as a past element.

Whereas these improper elements were cited, and it has had a prejudicial impact on the fair evaluation of the charges against the grievant, it is necessary that the discipline should be rescinded.

- 10) If the Employer failed/refused to disclose information (or hid the information) to the Union, the following argument would be appropriate:

The Employer has failed/refused to disclose pertinent information to the Union.

Article 15 of the National Agreement provides; "The parties' representative 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."

Article 17 Section 3 of the National Agreement provides: "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 of the National Agreement provides, in pertinent

part; "The Employer will make available for inspection by the Unions 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 continue the processing of a grievance under this Agreement..."

The Employer has the burden to prove that it has "JUST CAUSE" for the action taken against the Grievant and concomitant with that burden of proof is the requirement to make available information and all pertinent material to the Union. This the Employer has failed to do. The Union has requested information relative to the processing of this grievance. To date the Employer has not provided all of the information pertinent to the instant case. Based on the Employer's failure to honor Article 15, 17, and Article 31, the grievance should be sustained without consideration of its merits, as this grievance is incomplete due to the lack of information provided. If the instant grievance is not sustained, the Union hereby reserves the right to entertain any and all pertinent information denied, including but not limited to information cited on the original request, at the time of its receipt, and may at that time add to the facts and contentions as well as contractual issues in dispute for this grievance.

- 11) If there were procedural arguments, the following summary would be appropriate:

The procedural defects cited in the instant grievance cannot be overlooked as being insignificant. They are of serious concern because they are in violation of both the letter and spirit of the National Agreement, and importantly they deprived the grievant of his/her right to due process. In absence of such due process the grievance must be sustained without any consideration on its merits.

SECTION #2: Disputes whether Grievant's conduct, if proven, would constitute a proper basis for the imposition of discipline. If this situation exists, the following opening argument would be appropriate:

If the Employer has charged the Grievant with a particular act, or form of conduct, for which discipline may not be imposed contention:

The Employer has charged the grievant with a form of conduct that, in and of itself, does not constitute a proper basis for the imposition of discipline. The alleged "offense" is neither violative of the labor agreement or existing rules or regulations, or subject to review for the imposition of discipline. (Argue the facts of your case)

EXAMPLES:

- 1) If the employee was charged with "Failure to meet 18 and 8 standard", the following argument would be appropriate::

The USPS and the NALC have agreed that an employee cannot be disciplined simply because the employee "failed to meet the 18 and 8 standards." Section 242.332 of the M-39, reads as follows: "No carrier shall be disciplined for failure to meet standards, except in cases of unsatisfactory effort which must be based on documented, unacceptable conduct that led to the carrier's failure to meet office standards.

- 2) If the employer has charged the employee with being "Accident-prone", the following argument would be appropriate:

The Employer cannot discipline an employee simply for being what it considers to be "accident-prone". The service may charge an employee with physical inability to perform assigned duties, with psychological disabilities to perform assigned duties or with specific acts of negligence or violations of established safety standards. However, the Service is not entitled to concoct a bastardized form of infraction in order to discipline or remove employees it considers to be accident-prone.

- 3) If the Steward is disciplined for actions he/she engaged in while acting in an official capacity as the Steward, the following argument would be appropriate:

The Employer cannot discipline a Steward for insubordination when the Steward, acting as a Steward, displays a loss of temper or uses profanity towards a supervisor. A Steward, acting as Steward and not a letter carrier, and in private with the manager, may display a loss of temper and/or use profanity and still be protected from discipline. The Steward is entitled to the same deference and latitude as the supervisor. While acting as a Steward in a discussion with management, the Steward is the employer's equal, and can therefore not be charged with insubordination, as that would require that the grievant was "subordinate" to the manager at the time of the act with which he/she is charged.

- 4) If the grievant is charged with Attendance deficiencies, the following argument would be appropriate:
 - a) The employer cannot discipline an employee for absences which are legitimately caused by physical incapacity of an employee up to at least the point where that employee exhausts his/her accumulated Sick Leave Benefits. To hold otherwise would make it possible for the employer to say to an incapacitated employee, "although you have accumulated Sick Leave available, you cannot use it because to do so would make your attendance unsatisfactory." Certainly, such a conclusion is not in accord with either the intent or spirit of the negotiated Sick Leave benefit.
 - b) The employer cannot discipline an employee for absences which are legitimately caused by an injury suffered while on duty and one which he/she had no control over and from which he/she appears to have fully recovered. To hold otherwise would be punitive in nature rather than corrective.

SECTION #3: Disputes about the correctness or completeness of the facts used to justify the discipline. Defense on the merits.

- 1) If the Employer failed to prove the Grievant acted as charged (burden of proof), the following argument would be appropriate:

The Employer has failed to prove that the Grievant acted as charged. In industrial discipline, as in the criminal justice system, an employee is deemed to be innocent of charges against him/her until proven otherwise, and the burden of proof lies with the employer in industrial discipline, as it does with the State in the criminal system. Before any discipline will be allowed, management must prove that the grievant actually engaged in the misconduct with which charged. The employer's proof must be in the form of evidence. Arguments, assumptions, guesses, conjecture, allegations or speculations are not sufficient to conclude that management has met its burden of proof. The employer in the instant case has failed to provide clear and convincing evidence sufficient to meet it's burden of proof for the discipline imposed, and as such, the discipline should be disallowed and the grievance sustained in full.

- 2) If the Grievant acted as charged, but was provoked by another, the following argument would be appropriate:

Consideration must be given to the fact that, even if the Grievant was found to be guilty of the charges, he/she was provoked into the misconduct by another. While there is no authorization under any circumstances to "come out fighting" in any confrontation, the human element of emotion sometimes overrides both knowledge of the rules and good judgement. Given such circumstances, if a supervisor acts improperly toward an employee by publicly criticizing him, and also violates the employee's right to be treated with a reasonable amount of respect, as happened in this case, any subsequent overreaction on the employee's part is subject to mitigation in direct proportion to the seriousness of the supervisor's breach of accepted practice and policy.

SECTION #4: Allegations that, because of mitigating circumstances, the discipline imposed is too harsh, or no discipline is warranted.

- 1) If the Grievant acted improperly, but did so as a result of lack of, or improper, training (Including Claims That The Grievant "Didn't Know It Was Wrong"), the following argument would be appropriate:

Even if the Grievant acted improperly, it was directly due to the lack of, or improper, training (explain how this applies) It is a basic tenet of labor management relations that prior to the imposition of discipline, an employee must be aware that the employer considers his/her action or conduct violative of the labor agreement or existing rules and regulations, and he/she must know of the possibility that discipline may result. An employee should not be disciplined for violating a rule of which he/she was not aware. Where an employee believes his/her actions and conduct are justified and no indication has been given that persistence in that course of conduct can and probably will result in discipline, subsequently imposed sanctions must be set aside, as the entire burden cannot be shifted to the Grievant for his/her failure to investigate what should have been communicated by supervision. This failure on the Employer's part to properly train or inform the employee raises serious reservations as to just what the Grievant can be reasonably held accountable for.

- 2) If the Grievant has long prior service, good prior record, or both, the following argument would be appropriate:

The grievant has served the employer for over _____ years without any citeable past discipline. In this instant case of long, good service, it must be recognized that a single violation should not warrant disciplinary action. As such the grievant deserves a more moderate response to a single transgression than does a new-hire. It must also be recognized that a single violation, even a serious one, may occur without an assumption that such a violation has caused destruction of the trust necessary to the continued employment relationship. This consideration must be applied in the instant case, and with it, at least a reduction in degree of the imposed discipline.

- 3) If the Grievant's conduct was not intentional, the following argument would be appropriate:

Even if the Grievant is guilty of the "act" for which the discipline was imposed, he/she committed such act without knowledge that it was one for which discipline might be imposed. That is to say that the grievant's misconduct was not of a willful and intentional effort to circumvent or thwart the fundamental purpose of his/her job. It is a basic tenet of labor management relations that prior to the imposition of discipline, an employee must be aware that the employer considers his/her action or conduct violative of the labor agreement or existing rules and regulations, and he/she must know of the possibility that discipline may result. An employee should not be disciplined for violating a rule of which he/she was not aware. Where an employee believes his/her actions and conduct are justified and no indication has been given that persistence in that course of conduct can and probably will result in discipline, subsequently imposed sanctions must be set aside, as the entire burden cannot be shifted to the Grievant for his/her failure to investigate what should have been communicated by supervision. This failure on the Employer's part to properly train or inform the employee raises serious reservations as to just what the Grievant can be reasonably held accountable for. (explain how the instant case relates to this defense)

- 4) If the Grievant was emotionally impaired, the following argument would be appropriate:

During the period in question the Grievant was under severe stress and emotional tension. This is corroborated by (explanation of the related facts). The Grievant was not intentionally violating any rule or order, but merely reacting to an overwhelming emotional burden. As such, the Grievant is guilty of no more than negligence and the appropriate consideration should have been given prior to the decision as to the degree of discipline imposed.

- 5) If the Grievant was impaired by drugs or alcohol (including claims that "alcoholism" was the cause of grievant's misconduct) contact your Branch officers or the National Business Agent's Office for advice:

THIS CONTENTION IS AN ADMISSION OF ALCOHOL INTERFERENCE. THIS CONTENTION SHOULD NOT BE USED UNLESS IT FITS THE SITUATION APPROPRIATELY. IF YOU HAVE THE SLIGHTEST DOUBT, CONTACT YOUR BRANCH OFFICERS OR THE NATIONAL BUSINESS AGENT'S OFFICE.

- 6) If the Grievant was disparately treated (treated differently than other employees under similar circumstances), the following argument would be appropriate:

The grievant was disparately treated. (explain how the grievant was treated differently, who the other employees were that were not disciplined, when the time frame of their infractions were, and which managers were aware of the infraction of the other employees but did not issue discipline or issued a lessor degree of discipline). As a general rule, unequal application of discipline for similar alleged misconduct fails to meet the Just Cause provision of the National Agreement. Therefore, the charge should be rescinded as it is discriminatory in nature and punitive.

- 7) If the rule the Grievant broke was otherwise unenforced, the following argument would be appropriate:

The Employer has charged the Grievant with violation of a rule that in this particular office was historically otherwise unenforced (explain the history of the unenforced rule). When any such practice is condoned it simply cannot be considered a fair and reasonable act, to place upon the shoulders of such a small percentage of the workforce, the entire burden of the correct, necessary, and entirely justifiable determination of the Employer to bring such a practice to a halt. The employer has the right to enforce reasonable regulations. However, the Employer also carries an equal obligation to inform employees clearly, without equivocation, and without the possibility of misunderstanding, when rules which have been ignored are to be enforced, and when wrongful practices which have been condoned are to cease.

It is a basic tenet of labor management relations that prior to the imposition of discipline, an employee must be aware that the employer considers his/her action or conduct violative of the labor agreement or existing rules and regulations, and he/she must know of the possibility that discipline may result. An employee should not be disciplined for violating a rule of which he/she was not aware. Where an employee believes his/her actions and conduct are justified and no indication has been given that persistence in that course of conduct can and probably will result in discipline, subsequently imposed sanctions must be set aside, as the entire burden cannot be shifted to the Grievant for his/her failure to investigate what should

have been communicated by supervision. The Employer has failed to meet its obligations to properly inform the Grievant of "a change of rules" prior to the alleged offense that precipitated the imposition of discipline. As such, there can be no other decision than to disallow the discipline and sustain the grievance in full.

- 8) If the Employer failed to follow the principles of progressive discipline, the following argument would be appropriate:

Article 16, section 1, of the National Agreement states;

"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for this Agreement, which could result in reinstatement and restitution, including back pay."

The above mentioned directive from the National Agreement is mandatory. It is not discretionary. The employer does not have a choice as to whether it will issue corrective discipline or not. It has been held many times by arbitrators that, for discipline to be corrective, it must be progressive.

The progression of discipline upon which the disciplinary action in the instant case is based does not properly conform to the principles of progressive discipline that would warrant an action. Progressive discipline means that each succeeding disciplinary measure is of a more severe degree so that an employee may know precisely where they stand in the progression. If supervision decides to issue a lesser degree of discipline than the last, the progression then begins again at that point. The most recent previous disciplinary element in this instant case was _____, and as such the next properly progressive step can be no more than _____.

CORRECTIVE ACTIONS FOR DISCIPLINE

LETTER OF WARNING: That the Letter of Warning be rescinded and that any mention thereto be removed from all files.

SUSPENSION: That the suspension notice be rescinded and that the grievant be made whole for all lost wages fringe benefits and seniority rights plus interest on back pay. Also that the Union be provided with proof of completion of appropriate back pay forms required.

EMERGENCY SUSPENSION: That the notice of emergency placement in an off-duty status be rescinded, and that the grievant be made whole for all lost wages, fringe benefits and seniority rights, and interest for wages delayed. Also that the Union receive proof of completion of appropriate back pay forms required.

REMOVAL\TERMINATION: That the notice of removal be rescinded and that the grievant be made whole for all lost wages, fringe benefits, and seniority rights plus interest on back pay. Also that the Union be provided with proof of completion of appropriate back pay forms required.

SPECIAL NOTE: If the discipline involves A.W.O.L. charges, you must file a separate contract grievance, requesting payment of any leave denied.

GRIEVANCE INVESTIGATION - CONTRACT

This handout is provided to assist you in the investigation of your contract based grievances, but the methods and procedures provided in this handout should not be regarded as your only obligation in handling contractual issues.. There is a need as a Union to properly develop all grievances in accordance with the National Agreement.

I. INITIAL INVESTIGATION

- A. Establish clearly what the contractual issue is. Many times we don't take the time to understand the specifics of the alleged contractual violations. If the issue is one of an adverse administrative action (Step Deferral, Restricted Sick Leave...), that contains some form of notice of and/or reason for the action, read the notice to clearly understand the basis presented for the action.

- B. Interview the grievant and his/her witnesses.
 - 1. Does the grievant agree with the facts specified in the notice, or position presented by the employer? If so, have the grievant explain why he/she did what he/she is accused of.
 - 2. If the grievant does not agree with the facts in the charges against him/her, have the grievant state what actually took place.
 - 3. In either of these two categories, ask the grievant to provide you with a written statement in support of his/her position in relation to the dispute.
 - 4. If the grievant is unwilling to provide you with a statement, take notes of your interview. At the conclusion of your interview, read back your interview notes to the grievant to verify that you got the story right. If the grievant states that the statement is accurate, make a notation on the interview notes of who conducted the interview and when

the interview took place. Make this interview a part of the grievance package.

5. Does the grievant have any witnesses that support the grievant's side of the story? If so request time to interview them and conduct the interview as above.
6. Does the grievant have any documentary evidence which supports his/her side of the story? If so secure copies and include them as part of the grievance package.

C. What evidence does the employer have in support of their position?

1. Who are the employer's witnesses, if any?
2. Make a written request for the time to interview these witnesses and include a copy of the request as part of the grievance package. If the witness is a customer, you have the right to interview that person.
3. Ask these witnesses what they saw, or had personal knowledge of. Ask for them to provide you with a written statement, and make that statement part of the grievance package.
4. If they are unwilling to provide you with a statement, take notes of your interview. At the conclusion of your interview read back your interview notes to the witness to verify that you got the story right. If the witness states that the statement is accurate, make a notation on the interview notes of who conducted the interview and when the interview took place. Make this interview a part of the grievance package.
5. Does the employer have any documentary evidence which supports their version of what happened? If so make a written request for that information and include a copy of the written request as part of the grievance package.

II. INTERVIEWS

Begin your interviews with the grievant since that is the person that you are representing. Study the issues in the administrative notice, or facts as they have been presented to you, then ask the grievant to tell you his/her story. Have him/her go in chronological order. Use the same interview techniques identified in the discipline interview section.

After the interview with the grievant, review the issue being grieved, your interview and the written statement. Determine what facts you need to prove and which other employees and/or managers you need to interview. Get the facts from the handbooks and manuals, office policies, or call the National Business Agent's Office for assistance.

III. ESTABLISHING A VIOLATION

Rely on the following sources of information:

1. Your local memorandum of understanding
2. The National Agreement
3. Working Together Handbooks Volume 1 and 2.
4. Check for posted policies of the employer
5. Check previous grievance settlements for precedent
6. Interview the managers who initiated the action
7. Interview the other managers to determine if there is a consistent interpretation and application of the policies in your office
8. Interview other employees who you believe may have been involved in a similar situation. If this is confirmed ask if they received similar action/response. If so request access to records of that action from your employer.
9. Interview witnesses who may have seen what the grievant claims (not all people who the grievant claims were witnesses may have really

seen the incident).

IV. REVIEWING AND ORGANIZING YOUR MATERIAL

With all the facts available, organize your material and review what you have. When you call to seek advice have all the facts available. You will be discussing how to establish your position to best argue the case in looking for the best settlement that you can attain for the grievant. Please do not hold back any information. Make all the facts available to this office so that a fair and thorough determination of the case can be made. Holding back facts which will appear at a later step of the grievance-arbitration procedure denies the union the opportunity to prepare arguments relative to those facts. You also jeopardize the ability to use those facts if they have not been addressed in the grievance procedure raised prior to arbitration.

The above investigation, when properly done by a steward, should give most of the material necessary for the steward or the Union to evaluate the action of the employer.

BASIC FACTS IN A CONTRACT GRIEVANCE:

NOTE: Make sure your "corrective action" is appropriate. Refer to the "Corrective Actions" handout or call the National Business Agent's Office for assistance in formulating the appropriate corrective action language. Final settlement language will appear in the decision letter or settlement letter. Also make sure that the grievance form/cover sheet is completely and accurately filled out.

FACTS

- #1. Explain what the basic issue is and who is involved, and the time involved in the violation. (examples):
 - a. During the week of ___/___/___ route inspections were conducted at the _____ Post Office.
 - b. On ___/___/___, the grievant,(identify), was issued (an A.W.O.L. Charge/A Notice of Placement on Restricted Sick Leave/A Step Deferment/A Negative 4584/.....
 - c. The Employer has issued a (new/change of past) policy concerning _____.....
 - d. On ___/___/___ or during the period of ___/___/___ to ___/___/___/ the grievant(s) worked _____ hours (in the dark/mandatory overtime/in excess of 12 hours/in excess of 60 hours/only _____ hours while light/limited duty work was available/.....

- #2. Specific parts of the text of any "paper" issued to the grievant that is in error: (explain what part is in error and why) Include any "paper" in the case file. Cite any specific sections of the National Agreement or any of the handbooks or manuals that apply to the issue in dispute. List any sections in the National Agreement, ELM, M-39, M-41, ASM, DSM, any other handbook or manual, Any Memorandum, Any Agreement from the local level to Step 4 decisions and Regional or National Arbitration Awards, that applies to the issue in the instant grievance. Use these as facts following anything in the employer's arguments that is in conflict or violative of such contractually binding language. Be specific, list each applicable "section" of contractual language after each cited conflicting language as it is or has been

presented by the employer, whether verbally or by written notice. Be sure to include any supportive documents cited in the case file.

- #3. The grievant/witness states that: (use the grievant's and or witness' statement to support our position and/or to rebut theirs. When used in the context of "the grievant/witness states," pertinent parts of the grievant's/witness' statement can and should be presented in the facts as well as contentions). Grievant/witness statements must be included in the case file.
- #4. There is no documentation provided to support the Employer's charge that: (explain anything the employer has charged or alleged that hasn't been substantiated with factual documentation). As there is no factual documentation to support the employer's position/charges, it cannot be accepted as fact.
- #5. Cite any issue that "cannot yet be determined because the information requested by the union necessary to make such a determination has not yet been provided by the employer."
- #6. **PROCEDURAL NOTE:** The Union has requested information relative to the processing of this grievance. To date the employer has not provided all of the information requested. Based on the employer's failure to honor Articles 15, 17, and 31, this grievance is incomplete due to the lack of information provided. If the instant grievance is not sustained due to this contractual and procedural violation on the employer's part, the Union hereby reserves the right to entertain any and all information denied, including but not limited to information cited on the original request, at the time of its receipt, and may at that time add to the facts and contentions as well as contractual issues in dispute for this grievance.
- #7. Time limits were mutually extended.

BASIC CONTENTIONS IN A CONTRACT GRIEVANCE:

CONTENTIONS

- #1. The Union contends that the Employer has taken/committed an inappropriate administrative action by (explain what the employer has done that is in violation). OR The Union contends that the (explain

the action taken) is an inappropriate administrative action.

- #2. Cite any inconsistencies (sections cited, dates, times) in the text of any "paper" notice issued to the grievant(s).
- #3. Start listing your arguments, one by one. Argue the issues in the order in which they appear in writing or as they have been verbally presented by the employer. Clearly define each one and identify what supports it. Reference each argument to the pertinent supportive evidence previously cited in the facts.
- #4. Identify what management allegations haven't been supported by factual documentation and cite them as "cannot be accepted as true and factual based on the lack of supportive evidence."
- #5. Identify what Union charges/arguments/contentions have been made that management has not objected to or made any attempts to rebut and cite them as "in light of the Employer's lack of rebuttal to the union's arguments, these must be accepted as fact."
- #6. Close with a summation of why the Union's position is correct, and why the remedy requested is proper. In regards to money remedies, the following should be included:

The Union argues that a monetary remedy is appropriate and quotes Regional Level Arbitrator Eaton in support of its requested remedy. Mr. Eaton writes the following:

"...It is an ancient and accepted maxim of the law in any form, be it common law, statutory law, or the law and practice of collective bargaining, that 'without a remedy, there is no right.' The parties to the National Agreement did not fashion empty provisions, nor did they intend that violation of the rights therein provided should occur, or continue, without impunity."

- #7. **PROCEDURAL NOTE:** The Union has requested information relative to the processing of this grievance. To date the employer has not provided all of the information requested. Based on the employer's failure to honor Articles 15, 17, and 31, the grievance should be sustained without consideration of its merits, as this grievance is incomplete due to the lack of information provided. If the instant

grievance is not sustained due to this contractual and procedural violation, the Union hereby reserves the right to entertain any and all information denied, including but not limited to information cited on the original request, at the time of its receipt, and may at that time add to the facts and contentions as well as contractual issues in dispute for this grievance.

CONTENTION FOR A MONEY REMEDY

The Union argues that a monetary remedy is appropriate and quotes National Level Arbitrator Eaton in support of its requested remedy. Mr. Eaton writes the following:

"...It is an ancient and accepted maxim of the law in any form, be it common law, statutory law, or the law and practice of collective bargaining, that 'without a remedy, there is no right.' The parties to the National Agreement did not fashion empty provisions, nor did they intend that violation of the rights therein provided should occur, or continue, without impunity."

CONTRACT - CORRECTIVE ACTIONS

NOTE: Make sure your "corrective action" is appropriate. Refer to the suggested remedy listed below for the appropriate contract case or contact the National Business Agent's Office for assistance in formulating the appropriate corrective action language if not found here. Final settlement language will appear in the decision letter or settlement letter. Also, make sure that the grievance form/cover sheet is completely and accurately filled out.

STEP INCREASE DEFERRAL: That the notice of step increase deferment be rescinded and that the grievant be granted the step increase retroactively to the originally scheduled date. Also that the grievant be made whole for all lost wages and fringe benefits directly resulting from the notice, plus interest on back pay. That the Union be provided proof of completion of appropriate back pay forms required.

MEDICAL CERTIFICATION REQUESTED: That the grievant be reimbursed for all expenses incurred in securing the documentation required, including but not limited to, doctor/hospital bill, mileage to and from the medical unit, and all personal time spent securing the documentation requested and that the grievant be re-credited with personal leave used to secure the medical certification by having that leave converted to administrative/compensatory leave.

RESTRICTED SICK LEAVE: That the notice of placement on Restricted Sick leave be rescinded immediately. Also that the grievant be made whole for all expenses incurred in compliance with the notice, including but not limited to the cost of the medical bill, mileage to and from the medical unit, and all personal time spent securing the documentation requested and that the grievant be re-credited with personal leave used to secure the medical certification by having that leave converted to administrative/compensatory leave.

ANNUAL LEAVE DENIED (NO AWOL): That the grievant be immediately granted the annual leave requested. If the period of time that the grievant was denied has already passed, then that the grievant be granted administrative/compensatory leave equivalent to the amount of leave that he/she was denied, to be taken at the discretion of the grievant, regardless of the leave board complement.

ANNUAL LEAVE DENIED (AWOL): That the AWOL charge be stricken

from the record and the grievant be immediately granted the leave requested.

SICK LEAVE DENIED (NO AWOL): That the grievant be immediately be granted the sick leave requested plus interest on any monies delayed.

SICK LEAVED DENIED (AWOL): That the AWOL charge be stricken from the record and the grievant be immediately be granted the sick leave requested, plus interest on any monies delayed.

AWOL CHARGE (NON-DISCIPLINE): That the AWOL charge be stricken from the record and that the grievant be granted the leave requested for all hours in question. (sick leave, annual leave, C.O.P., court leave, ... etc.)

ROUTE INSPECTION DENIED OR DELAYED: That the grievant be granted a special route inspection immediately and that the grievant be compensated at the rate of \$10.00 per day/6 days per week for any delays in conducting the inspection, beginning on the 29th day following the request for a special inspection, and ending with the completion of the inspection.

ROUTE ADJUSTMENT DENIED OR DELAYED: That the grievant's route be properly adjusted in accordance with the M-39, and that the grievant be compensated at the rate of \$10.00 per day/6 days per week beginning on the 53rd. day following the completion of the inspection, until such time as the route is appropriately adjusted.

DENIAL OF OPTING PRIVILEGES: That the grievant be granted the opt for the preferred assignment immediately, and that the grievant be made whole for all wage loss directly resulting from the denial, plus out of schedule premium for all hours worked out of the opted for schedule, and double time for all hours worked off of the opted for assignment.

SUSPENSION/REVOCAION OF "OF-346": That the OF-346 be reinstated immediately and that the grievant be made whole for any lost wages and/or overtime opportunities missed. Further that the grievant be appropriately compensated for the inconvenience of being denied his/her right to perform the full duties of the assignment he/she holds in accordance with Article 41, Section 1-C-4.

DENIAL OF TRANSFER REQUEST: That the grievant be granted the transfer requested immediately. Further that he/she be granted seniority

rights retroactively to the date of the improper transfer denial. Also that the grievant be paid out of schedule pay for all hours worked out of the preferred assignment that was improperly denied.

HARASSMENT: That the harassment of the grievant cease immediately and that the Employer desist from any further tactics of the same or similar nature. Also that the Employer take the appropriate steps to insure that the grievant is treated in a manner of mutual respect and that the Employer make The grievant whole for the sick leave used because of the stress caused by the inappropriate conduct by management.

OVERTIME WORK DENIED TO AN OVERTIME DESIRED EMPLOYEE: That the grievant be paid at the appropriate rate for overtime work performed by non-overtime desired employees on _____ (or during _____ through _____), when the grievant was available to perform the overtime work.

OVERTIME WORK DENIED TO A WORK ASSIGNMENT OVERTIME DESIRED EMPLOYEE: That the grievant be paid at the appropriate rate for overtime work performed on his/her assignment by other overtime desired employees or non-overtime desired employees on _____ (or during _____ through _____), while the grievant was available to perform the overtime work.

NON-OVERTIME DESIRED EMPLOYEE FORCED TO WORK OVERTIME: That the grievant be granted double time and compensatory/administrative leave for all overtime performed on _____ (or during _____ through _____), where auxiliary assistance was otherwise available.

WORK ASSIGNMENT OVERTIME EMPLOYEE FORCED TO WORK OFF THEIR ASSIGNMENT: That the grievant be granted double time and compensatory/administrative leave for all overtime work performed off of his/her assignment on _____ or during _____ through _____), where auxiliary assistance was otherwise available.

OVERTIME DESIRED LIST EMPLOYEE DENIED OVERTIME IN PENALTY STATUS BY USE OF NON-OVERTIME DESIRED PERSONAL OFF OF THEIR ASSIGNMENTS IN AN OVERTIME STATUS: That the employer honor the language of April 11, 1986, decision by Richard Mittenthal, by not avoiding penalty time work to an overtime desired employee through the use of non-overtime desired personnel off of his/her regular assignment, or use of work assignment overtime personnel off of his/her work

assignment. Also that the grievant be granted payment at the appropriate rate for all lost hours of work on _____ (or during _____ through _____), directly resulting from the employer's action, and that the Union receive written assurances of compliance with this grievance.

QUARTERLY OVERTIME EQUITABILITY (Branch Grievance) : That the employees on the overtime desired list for the _____ quarter of 19____ be compensated for hours that they were improperly denied, at the appropriate rate of pay for all hours below the median average. Also that the Union be provided proof of completion of appropriate pay forms used.

WORK IN EXCESS OF 10 HOURS: That the grievant be granted payment at an additional 50% of the base hourly rate plus compensatory / administrative leave for all overtime hours worked on _____ (or during _____ through _____), in excess of 10 hours. That the employer provide the Union with written assurances that the 10 hour work limit will be honored. Also that the Union be provided proof of completion of appropriate pay forms used.

WORK IN EXCESS OF 12 HOURS IN A DAY: That the employer cease and desist using employees beyond 12 hours in a service day and that the grievant be granted payment at an additional 50% of the base hourly rate.

WORK IN EXCESS OF 60 HOURS IN A WEEK: That the employer cease and desist using employees beyond 60 hours in a service week and that the grievant be granted payment at an additional 50% of the base hourly rate.