

Local Grievance # _____

Issue Statement (Block #15 on PS Form 8190):

1. Did management at the **[Station/Post Office]**, violate the Step 4 settlement (Case # H1N-3U-C32763) dated September 10, 1984, (M-00527) via Article 15 and 19 of the National Agreement by unilaterally changing the office break to a street break on **[date]**, and if so, what should the remedy be?
2. Did management at the **[Station/Post Office]** violate Section 242.341 of Handbook M-39 and/or Section 922.51.e of Handbook M-41 via Article 19 of the National Agreement by unilaterally changing the office break to a street break on **[date]**, and if so, what should the remedy be?
3. Did management at the **[Station/Post Office]** violate Article 5 of the National Agreement by unilaterally changing the office break to a street break on **[date]**, and if so, what should the remedy be?

Union Facts and Contentions (Block #17 on PS Form 8190):

Facts:

1. Letter Carriers at the **[Station/Post Office]** negotiated one 10-minute office break and one 10-minute street break on **[date]**.
2. Management unilaterally changed the 10-minute office break to a 10 minute street break on **[date]**. These facts are verified by the **[carrier statements/interviews]** included in the case file.
3. Article 15 of the National Agreement explains:

*A grievance is defined as a dispute, difference, disagreement or complaint between the parties to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the union which involves the interpretation, application of, **or compliance** [Emphasis added] with the provisions of this agreement or any local Memorandum of Understanding no tin conflict with this agreement.*

4. The Step 4 settlement (Case # H1N-3U-C32763) dated September 10, 1984 (M-00527) states in pertinent part:

The negotiated breaks for carriers allow that carriers may take breaks on the street or in the office. If the office option has been properly chosen, the office break must then be taken on office time. However, if the carriers have selected to take either one or both of the breaks on the street, then either one or both of these street breaks may be taken in the office but must be taken on street time and cannot be combined.

5. Section 242.341 of Handbook M-39, *Management of Delivery Services*, states in pertinent part:

The carriers at the delivery unit will receive two 10-minute break periods. The local union may annually opt to have either (a) both breaks on the street or (b) one of the 10-minute breaks in the office and one break on the street. If two 10-minute breaks are taken on the street, they will be separate from each other.

6. Section 922.51.e of Handbook M-41, *City Delivery Carriers Duties and Responsibilities*, states:

Line 18, Break (Local Option). Enter the scheduled office break period, if applicable.

Note: At the option of the local union, the carriers at the delivery unit will receive one 10-minute break period in the office (rather than two such 10-minute breaks on the street). Such break will be scheduled by the employer.

7. Article 5 of the National Agreement states:

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law. (The preceding Article, Article 5, shall apply to City Carrier Assistant Employees.)

8. Pages 5-2 and 5-3 of the JCAM state:

Article 5 may also limit the employer's ability to take a unilateral action where a valid past practice exists. While most labor disputes can be resolved by application of the written language of the Agreement, it has long been recognized that the resolution of some disputes require the examination of the past practice of the parties.

Defining Past Practice

In a paper given to the National Academy of Arbitrators, Arbitrator Mittenhal described the elements required to establish a valid past practice:

- First, there should be clarity and consistency. A course of conduct which is vague and ambiguous or which has been contradicted as often as it has been followed can hardly qualify as a practice. But where those in the plant invariably respond the same way to a particular set of conditions, their conduct may very well ripen into a practice.*
- Second, there should be longevity and repetition. A period of time has to elapse during which a consistent pattern of behavior emerges. Hence, one or two isolated instances of certain conduct do not ordinarily establish a practice. Just how frequently and over how long a period something must be done before it can be characterized as a practice is a matter of good judgment for which no formula can be devised.*
- Third, there should be acceptability. The employees and supervisors alike must have knowledge of the particular conduct and must regard it as the correct and customary means of handling a situation. Such acceptability may frequently be implied from long acquiescence in a known course of conduct. Where this acquiescence does not exist, that is, where employees constantly protest a particular course of action through complaints and grievances, it is doubtful that any practice will be created.*
- One must consider, too, the underlying circumstance which give a practice its true dimensions. A practice is no broader than the circumstances out of which it has arisen, although its scope can always be enlarged in the day-to-day administration of the agreement. No meaningful description of a practice can be made without mention of these circumstances. For instance, a work assignment practice which develops on the afternoon and midnight shifts and which is responsive to the peculiar needs for night work cannot be automatically extended to the day shift. The point is that every practice must be carefully related to its origin and purpose.*
- Finally, the significance to be attributed to a practice may possibly be affected by whether or not it is supported by mutuality. Some practices are the product, either in their inception or in their application, of a joint understanding; others develop from choices made by the employer in the exercise of its managerial discretion without any intention of a future commitment.*

Contentions:

1. Management violated Article 15 of the National Agreement by failing to comply with the Step 4 settlement (Case # H1N-3U-C32763) dated September 10, 1984 (M-00527).
2. Management violated Section 242.341 of Handbook M-39 via Article 19 of the National Agreement when they unilaterally changed the 10-minute office break to a 10-minute street break.
3. Management violated Section 922.51.e of Handbook M-41 via Article 19 of the National Agreement when they unilaterally changed the 10-minute office break to a 10-minute street break.
4. Management violated Article 5 of the National Agreement by unilaterally changing the 10-minute office break to a 10-minute street break.
5. The union contends a negotiated past practice of allowing Letter Carriers to take a 10-minute office break has been established at the **[Station/Post Office]**.
6. Management's changing of the local break option at the **[Station/Post Office]** on **[date]** in violation of the National Agreement, changed the base office and street times from the last adjustment done on **[date]**.

Remedy (Block #19 on PS Form 8190):

1. That management cease and desist violations of Article 5 of the National Agreement by unilaterally changing a negotiated office break option.
2. That management cease and desist violations of Article 15 of the National Agreement by failing to comply with a nationally agreed settlement that allows for a properly negotiated office break in the office.
3. That management cease and desist violation of Article 19 when they failed to abide by office break language found in Section 242.341 of Handbook M-39 and Section 922.51.e of Handbook M-41.
4. That Letter Carrier(s) **[name]** be paid a lump sum of \$50.00 for each violation to serve as an incentive for future compliance.
5. That all payments associated with this case be made as soon as administratively possible, but no later than 30 days from the date of settlement.
6. That proof of payment be provided to **[NALC Official]** upon payment.

Add the following issue statement, facts, contentions, and remedy request if we can prove the violation is repetitive:

Issue Statement:

Did management violate Article 15.3.A of the National Agreement along with policy letter M-01517 by failing to comply with the prior Step B decisions or local grievance settlements in the case file, and if so, what should the remedy be?

Facts:

1. Article 15.3.A of the National Agreement states in relevant part:

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

2. M-01517 states in part:

Compliance with arbitration awards and grievance settlements is not optional. No manager or supervisor has the authority to ignore or override an arbitrator's award or a signed grievance settlement. Steps to comply with arbitration awards and grievance settlements should be taken in a timely manner to avoid the perception of non-compliance, and those steps should be documented.

3. Included in the case file are **[Arbitration Awards/Step B decisions/local grievance settlements, etc.]** in which management was instructed/agreed to cease and desist violating Article 5 of the National Agreement and/or Article 19 of the National Agreement by unilaterally changing the negotiated office break to a street break.

Contentions:

1. Management violated Article 15.3.A of the National Agreement and M-01517 by failing to abide by the previous Step B decisions/local grievance settlements in the case file. When management violates contractual provisions despite being instructed/agreeing to cease and desist these violations, they have failed to bargain in good faith.
2. The Union contends that Management has had prior cease and desist directives to stop violating Article 5 of the National Agreement and/or Article 19 of the National Agreement by unilaterally moving the office break to a street break. The Union also contends that Management's actions are continuous, egregious, and

deliberate. The Union has included past decisions/settlements in the case file to support their claim.

Remedy:

1. That management cease and desist violating Article 15 of the National Agreement.
2. That Letter Carrier(s) **[Name(s)]** each be paid a lump sum of \$100.00 for each violation to serve as an incentive for future compliance.



National Association of Letter Carriers Request for Information

To: _____
(Manager/Supervisor)

Date _____

(Station/Post Office)

Manager/Supervisor _____,

Pursuant to Articles 17 and 31 of the National Agreement, I am requesting the following information to investigate a grievance concerning a violation of Article 15:

1. A copy of the Adjustment Analysis for the **[Station/Post Office]** implemented on **[date]**.
2. A copy of the workhour/workload report (All routes) for the **[Station/Post Office]** on **[date]**.

In addition, I am also requesting time to interview the following individuals:

1. **[Name]**
2. **[Name]**
3. **[Name]**

Your cooperation in this matter will be greatly appreciated. If you have any questions concerning this request, or if I may be of assistance to you in some other way, please feel free to contact me.

Sincerely,

Shop Steward
NALC

Request received by: _____

Date: _____



National Association of Letter Carriers Request for Steward Time

To: _____ Date _____
(Manager/Supervisor)

(Station/Post Office)

Manager/Supervisor _____,

Pursuant to Article 17 of the National Agreement, I am requesting the following steward time to investigate a grievance. I anticipate needing approximately _____ (hours/minutes) of steward time, which needs to be scheduled no later than _____ in order to ensure the timelines established in Article 15 are met. In the event more steward time is needed, I will inform you as soon as possible.

Your cooperation in this matter will be greatly appreciated. If you have any questions concerning this request, or if I may be of assistance to you in some other way, please feel free to contact me.

Sincerely,

Shop Steward
NALC

Request received by: _____

Date: _____