

Due Process & the Duty of Fair Representation.

As ruled by the US Supreme Court in **Bounds v. Smith**, 430 U.S. 817, 822 (1977);

“Access to courts does not only protect one’s right to physically enter the courthouse halls, but also insures that the access to courts will be adequate, effective and meaningful.”

This same principle also applies to the grievance/arbitration procedure. Generally, we don’t actually enjoy individual Constitutional Rights, within the workplace. We enjoy rights, which are provided to us through the Union. Therefore, we are dependant upon our Union for achieving workplace Due Process, justice and fairness. Congress set things up this way, as they fashioned federal labor laws.

In turn, our Union has an obligation to provide fair representation toward all of us, individually and collectively. The Union’s “Duty of Fair Representation” provides recourse when it’s actions are arbitrary, in bad faith, dishonest, discriminatory, hostile, negligent with regards to procedural or ministerial acts, fails to raise a meritorious or substantive argument. Unfortunately, most of us don’t have the resources or time to file suit, when the Union breaches it’s DFR. Further, in the words of noted Harvard labor law professor Archibald Cox:

“Individual workers who sue union officials run enormous risks, for there are many ways, legal as well as illegal, by which entrenched officials can ‘take care of’ recalcitrant members.”

So we find ourselves having to police our Union, without incurring the wrath of entrenched officials, while they’re supposed to be policing the employer.

The Adversarial Process -v- the Dispute Resolution Process.

We all know of the numbers-game played by US Postal Service supervision. A vast body of supervisors and managers are employed merely to provide artificial numbers, demonstrating the need for their own existence. Craft employees have been carrying them for decades. Mail can backup throughout the DPS endless loop of errors, provided someone’s numbers say that it is moving. Service can be nonexistent, provided someone’s numbers say the public is happy with the prospect of receiving their mail after dark.

Well, while Management has been busy running the Postal Service into bankruptcy, the grievance procedure apparently got expensive. That what happens when you ignore the collective bargaining agreement, while chasing numbers to justify your next bonus. So now Management wants to cut the cost of the grievance/arbitration procedure. Of coarse, a simple fix would be to stop violating the contract.

Unfortunately, the Union also wants to cut the cost as well. So now we have the employer and the Union both motivated to reduce the amount of money spent on arbitrations. Enter the Dispute Resolution Process!

Normally, before DRP the employer was motivated by profit and the Union was motivated by its Duty of Fair Representation. At least we would hope this was the case. In essence, the employer was fighting against our rights and the Union was fighting for our rights. If they couldn't find common ground, they'd take it to an arbitrator. An adversarial process settled by a neutral. Both sides were somewhat compelled to bargain reasonably because, if they went too far, the arbitrator would bring them back to reason. Likewise, if an arbitrator strayed too far from reason then he or she would find themselves seeking work elsewhere.

Now the adversarial process has gone caput, because both sides are now motivated to avoid arbitrations. Now the Union talks numbers, just like Management. How do we cut the number of grievances filed, how do we clear the backlog of grievances, etc, etc, etc. So much for the Duty of Fair Representation and Due Process. Dispute Resolution Team members from both sides are now motivated to dispose of grievances.

Of course, you may expect this kind of numbers-game from Management's designee, this is standard operating procedure from the US Postal Service. However, the Union's designee has a duty to letter carriers, not to the numbers. Yet letter carriers have little recourse when the Union's designee fails to fulfill their DFR.

Problem issues created by the DRP.

ISSUE 1: DRT Step B decisions providing a double standard.

Fairness is an indispensable ingredient of the collective bargaining process. All participants must have confidence that the process is fair and just. In contract cases, the Union must only prove its case through a preponderance of evidence. In lay terms, this simply means that the evidence must show that some argument is more likely than not. The Union is not required to prove anything to some absolute certainty.

Conversely, in a disciplinary case Management is charged with a much higher standard of proof. That difference exists because the employee faces a loss of his/her property rights. In this country, taking someone's property (ie; their job, their pay, their right to work, etc.) is a serious business and requires a high degree of Due Process.

There has been a severe double standard applied by the DRP. Often, when Management's Step A designee fails to include information favorable to the USPS arguments, the cases get remanded. However, in contradiction when the Union's Step A designee fails to include even minor or insignificant information and documents, then the grievance simply fails.

ISSUE 2: DRT Step B decisions failing to remand for additional information.

Recently, the Union's DRT members and KIM Region national business agent have been asserting that Remands will occur less often in the future. As mentioned above, there already exists a double standard regarding remands.

Article 15 Section 2 Step B: (b) states in relevant part;

“It is the responsibility of the Step B team to ensure that the facts and contentions of grievances are fully developed and considered, and resolve grievances jointly.”

This makes it clear that the Union’s DRT members has a Duty of Fair Representation to assure that a grievance is fully developed and that Management’s DRT members must cooperate in that effort. Article 15 Section 2 Step B: (b) also states in relevant part;

“The Step B team may 1) resolve the grievance 2) declare an impasse 3) hold the grievance pending resolution of a representative case or national interpretive case or 4) remand the grievance with specific instructions. In any case where the Step B team mutually concludes that relevant facts or contentions were not developed adequately in Formal Step A, they have authority to return the grievance to the Formal Step A level for full development of all facts and further consideration at that level”.

Therefore, any policy refusing to remand a grievance is contractually flawed, when the DRT members make decisions without assuring that a grievance is fully developed. Further, in any such case, the Union’s member would be breaching the Union’s duty of fair representation.

ISSUE 3: DRT Step B decisions refusing to remedy violations in favor of INTERVENTION.

Still writing!!!

The Dispute Resolution Page

Phil has suggested that I publish a monthly critique of selected grievance decisions. This is risky. The purpose of a Branch Newsletter is to inform and unite the members. Well this would certainly inform, but I'm not sure that it would unite anyone. Phil said that I'm just not allowed to call the DRT members Mo-Fos. We'll see!

In order for me to do this, I will seek the permission of anybody that I'm writing about. Also, please keep in mind that I'm not a steward at this time. I don't know the details of every grievance filed. So if you have some exceptional grievance, don't assume that I know about it.

Case 1: This month, I've selected Jeff Stehle's grievance #W-1140, which is about his 1st Round vacation pick. Essentially, when Jeff got the vacation board, he picked his 5 weeks. However, 4 of his weeks were in the choice period (prime). We're only allowed 3 weeks during the choice vacation period. Well, management just approved 3 weeks and disapprove 1 week, without bothering to tell Jeff. Nice, real smooth. Management never returned his Form 3971's. Several weeks later, Jeff noticed that he was not on the vacation board for one of his weeks and he filed a grievance.

Well, our Local Memorandum of Understanding is quite clear on this matter. **Article 30 part B, Item #10** states, regarding the issuance of official notices to each employee of the vacation schedule approved for such employee, that;

"A duplicate copy of the carrier's Form 3971, signed by the responsible supervisor, shall be returned to the carrier within 72 hours of its submission. Otherwise, the form shall be deemed approved."

Editorial note: It is strongly advise that everyone make sure to **get an approved copy of your Form 3971 from your supervisor**. Remember, they screwed Jeff. They'll screw you! There is no honor in Postal management or, as we'll see, on the DRT.

So even though Jeff made a simple mistake, local management failed to properly deny his 3971 and return it to him within the required 72 hours. Therefore, in accordance with our local, ***"the form shall be deemed approved."*** This is what is known as an open and shut case. The only question at issue should be, what is the remedy? No remedy was agreed to at Step A, so it was appealed to DRT.

Enter the Dispute Resolution Team of George Kujan (USPS Step B designee) and Gary Craig (NALC Step B designee). I'm sorry Phil, but these Mo-Fos can't even read a Local Memorandum of Understanding.

The first thing to note, about their decision, is that DRT states that they received the appeal on 12/17/02. Well, they issued their decision on that same day. Then DRT criticized Jeff for having over 21 years of seniority and not knowing that he is only permitted 3 weeks in prime. They also criticized that the 3971 has notations on it ***"9:00am 11/8/02 KLK"*** and complained that Branch 758 has previously filed grievances regarding improper annotations on PS Form

3971. Well this is totally irrelevant to this case. However, Branch 758 has filed and won grievances over Management making notes on 3971's submitted for sick-leave. But this is a request for vacation-leave. Our local requires that the time and date of submission be included on such vacation requests.

Besides, local management never argued any of this stuff. They pretty much admitted that they screwed up. Tony Viers just argued that Jeff was well aware of what he was doing and implied that Jeff was trying to pull a fast one. Of course, Tony provided no evidence defending this argument, because there isn't any. It didn't matter. DRT would have screwed Jeff, regardless of the circumstances. It is somewhat depressing when you consider that a union official signed the decision.

Editorial: Fairness is an indispensable ingredient of the collective bargaining process. All participants are supposed to have confidence that the process is fair and just. In contract cases, the Union must only prove it's case through a preponderance of evidence. In lay term, this simply means that the evidence must show that some argument is more likely than not. The Union is not required to prove anything to some absolute certainty.

Conversely, in a disciplinary case Management is charged with a much higher standard of proof. That difference exists because an employee faces a loss of his/her property rights. In this country, taking someone's personal property (ie; their job, their pay, their right to work, etc.) is a serious business and requires a high degree of Due Process.

The issue above was a simple contract case. The Union was only required to show that a violation probably occurred. Well, in local management's own statement they say "*Management agrees that they did not ask which week he wish to give up*". Local Management also admitted in the undisputed facts of the grievance that "*Grievant submitted 4 separate requests for annual leave on PS Form 3971, one approved – not signed by Mgmt, one arbitrarily disapproved and two neither approve or disapproved*". This is an admitted violation of the National and the Local Agreements. Yet DRT refuses to remedy the violation. In fact, DRT refuses to even acknowledge a violation.

There has been a severe double standard applied by the DRT. Often, when Management's Step A designee fails to include information favorable to the USPS arguments, the cases get remanded. However, in contradiction when the Union's Step A designee fails to include even minor or insignificant information and/or documents, then the grievance simply fails. DRT is clearly looking for any pretext to justify denying a grievance. This is not fairness. This is not justice.

As ruled by the US Supreme Court in **Bounds v. Smith**, 430 U.S. 817, 822 (1977);

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achieving workplace Due Process, justice and fairness. Congress set things up this way, as they fashioned federal labor laws.

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"Individual workers who sue union officials run enormous risks, for there are many ways, legal as well as illegal, by which entrenched officials can 'take care of' recalcitrant members."

So we find ourselves having to police our Union, without incurring the wrath of entrenched officials, while they're supposed to be policing the employer.

recalcitrant member

OK, OK. Yes, I did have to look up the word recalcitrant. Webster says it means defiant. That sound like me, doesn't it?

NALC Branch 758 Newsletter, January 2003

The Dispute Resolution Page

Last month was the debut of this Newsletter's Dispute Resolution Page. In response, we received a letter from a past president of NALC Branch 529 in Port Huron. Ken Harris noted that members of his Branch had to file Unfair Labor Practice charges at the NLRB and EEO complaints against the DRT Step B team. Sound familiar! He also noted a good "Branch Items" article in the November 2002 edition of NALC's Postal Record from Branch 3825 in Rockville Maryland. Actually, there have been a large number of articles which are critical of DRT, in Branch Items.

If anyone is interested, try going to the internet site of www.nalcwatch.org and check out the DRP-DRT Page. It has a lot of DRT related articles reprinted, including the one from Rockville explaining "*Interest Based Decision Making*" (IBDM). IBDM is the newest process used by Step B Teams, to assure that they dispose of our grievances in the best interests of the Postal Service. Regardless of the interests of it's employees. That's why we call them DiRT. Branch 203 has a related article in the same edition.

Case 2: Grievance #W-618 has a somewhat lengthy history. It involved 6 requests for information, made by this Union between September 6th and October 15th of 2001. These requests followed on the heels of a Labor-Management Intervention, which was held at the request of the DRT members. During that Intervention, Management promised, yet again, to provide information to our Branch in accordance with past settlements, Court orders, etc., etc., etc. In other words, DRT found that Management had routinely failed and/or refused to provide information to the Branch and then DRT let them off the hook with an Intervention and yet another promise! So our Branch began documenting additional violations occurring after the promise, hence grievance #W-618. This is not a difficult task in our Post Office.

Of course, what would stop DRT from doing the same thing again? How about an "End Run". We filed Unfair Labor Practice charges with the National Labor Relations Board. We already had several NLRB orders and a US Court of Appeals order against management, thanks to former president Zysk. So we just went around the DRT and filed new charges at the Board. In fact, some of the charges at the Board were taken word for word from grievance #W-618. What did DRT do when they received grievance #W-618? Well, they held another Intervention! Fool me once, shame on you – fool me twice, shame on me! So, at the Intervention, DRT and Management were told that they can have all the Interventions they want, but that won't stop the NLRB charges. "End Run" DRT had just become irrelevant, in any issues also having jurisdiction under the NLRB.

So grievance #W-618 was Impassed by DRT, because they couldn't agree on a remedy and it was appealed to arbitration. Meanwhile, the NLRB is still processing the charges of Contempt of Court against Management over #W-618 and various other violations. Yes, Management became so arrogant, thanks to the DRT members and their Interventions, that Management just kept on violating the Court order. And we kept on filing NLRB charges.

So now over 16 months later and we get a Pre-arbitration settlement of grievance #W-618, with pretty much the same language that the DRT members had rejected. That's why we

call them DiRT. The “End Run” NLRB cases are still pending. Oh! Yes, Management still fails to provide information. So much for promises.

Editorial: So, it is a shame that we have to execute “End Runs” around our own union. National president Young has recently announced that NALC is going to hold Management accountable for every single phrase within our National Agreement, yet our KIM Region national business agent and our Union members serving on DRT have missed that point. Numbers have become the only issue at DRT. At the most recent meeting of Detroit area NALC Branch presidents, the national business agent and DRT members were applauding themselves on reducing the Detroit District caseload to just one grievance. How wonderful! Dispose of grievances just to clear the books, not to administer the contract. What about our right to an adequate, effective and meaningful grievance procedure? What about justice?

So is it time to look into some other “End Runs”? How about “Whistle-blowing” statutes, which are enforced by the MSPB? How about the US District Court to enforce regulations? How about EEOC cases filed against the Union’s DRT members?

NALC Branch 758 Newsletter, February 2003

The Dispute Resolution Page

Well, apparently Bob Czartoryski (president of NALC Branch 232 in Jackson, Michigan) liked the first Dispute Resolution Page. When I took over as the acting editor, I sent out copies to some of the other Detroit area Branch presidents. “Cut and Roll!!” Bob wrote about us, and other small branches, in his Branch Items article of the March 2003 Postal Record. Their branch and our’s both have the same DRP team making Step B decisions on our grievances.

The Step B team has two members. George Kujan is the USPS designee, who insists on taking every opportunity to insult stewards and grievants. A typical management type. You know, they don’t know anything about anything, but they like screwing carriers and their favorite line is *“because I said so”*. A DICKtater! He refuses to acknowledge any hirer-level precedence and actually believes that his DRT decisions are final & binding, no matter how flawed. Of course, he can’t read an important part of the contract, which states that **“arbitration”** decisions are final & binding. There is no such phrase anywhere stating the same thing about Step B decisions. The second member is Gary Craig, the NALC designee. George writes them and Gary signs on. Apparently Gary’s only asset is that he can sign his name, very quickly and very often. Whatever horses—t George can smear onto paper, Gary will sign it. Kind of like that 70’s add “Give it to Mikey, he’ll eat anything!”. Well *“Give it to Gary, he’ll sign anything!”*.

A very common decision lately, signed by our guy Gary, says that the local union has failed to carry it’s burden because it failed to include some meaningless shred of information. This is usually just a pretext for Gary to sellout our member, but lets take this at face value.

First, Article 15 Section 2 Step B(b) states, in relevant part, *“...It is the responsibility of the Step B team to ensure that the facts and contentions of grievances are fully developed and considered, and resolve grievances jointly.”*. The same section also states, in relevant part, *“...In any case where the Step B team mutually concludes that relevant facts or contentions were not developed adequately in Formal Step A, they have authority to return the grievance to the Formal Step A level for full development of all facts and further consideration at that level.”*. Hmm! This sounds suspiciously like Gary has a job to do and that job doesn’t include selling out our members. These designees don’t seem to have a problem remanding grievances when management leaves documents out.

The United States Supreme Court has ruled in Vaca v Sipes that, in the workplace, employees are stripped of conventional forms of redress and are therefore dependant upon the Union to provide them with due process. That case further found that employees are not bound by decisions where the Union breaches it’s duty of fair representation. The US Court of Appeals for the Sixth Circuit (our area) has expanded upon Vaca v Sipes with its Ruzicka v General Motors Corp. 523 F.2d 306 (6th Cir. 1975). Further, in Malone v USPS 526 F.2d 1099 [at 1110] (6th Cir. 1975) the court cited both as;

“ Thus an employee is not bound if the union’s handling of his grievance is marked by malice, bad faith, or arbitrariness. Moreover, we recently held that if the union negligently fails to take any action at all to process an employee’s grievance, it has breached the duty of fair representation. ”.

In **Vencl v. International Union of Operating Engineers, Local 18**, ELECTRONIC CITATION: 1998 FED App. 0064P (6th Cir.), the US Court of Appeals ruled;

“ The NLRA imposes a duty of fair representation upon unions. *Storey v. Local 327, Int'l Brotherhood of Teamsters*, 759 F.2d 517, 518 (6th Cir. 1985). A union breaches that duty by acting arbitrarily. *Ruzicka v. General Motors Corp.*, 649 F.2d 1207, 1209 (6th Cir. 1981) ("*Ruzicka II*"). A union acts arbitrarily by failing to take a basic and required step. *Id.* at 1211. Timely filing is both basic and required. In *Ruzicka II*, the union failed to file a timely grievance. The court noted that "absent justification or excuse, a union's negligent failure to take a basic and required step, unrelated to the merits of the grievance, is a clear example of arbitrary and perfunctory conduct which amounts to unfair representation." *Id.* (citation omitted). As an example of a viable excuse, the court held that the union's untimely filing could be excused if a prior course of dealing reasonably indicated that the employer would accept a late filing. *Id.* ”

So on the face of the Step B decision, the NALC designee has signed an agreement stating that the cases were not properly developed at Step A and then he breached his duty of fair representation by failing to remand the cases in accordance with the responsibility placed upon him by Article 15.

Now what happens when the local steward does provide every shred of documentation, dots every i and crosses every t ? Grievance #W-616 was filed back in September of 2001. It was filed in an attempt to convert several PTF's because management had allowed our compliment to drop to historical lows and was refusing to convert PTF's even though they were being worked beyond the law by exceeding 60-hours per week. We had lost a few grievances by not providing enough documentation, so we documented everything. Daily workload reports for every PTF and Casual for over a year, work-schedules, overtime usage, etc, etc etc. The grievance statement itself was 5 type-written pages and the supporting documents were about 3-4 inches thick. It took over \$8.00 in postage to send it to DRT. Well after about six months, I wrote a letter to Jim Korolowicz, the NALC National Business Agent, and complained that DRT was sitting on the grievance. Then DRT promptly issued a decision, which did nothing more than complain about the size of the grievance and ignored the merits. When I raised hell with Korolowicz in May of 2002, he conceded that the grievance was extremely well written, deserved a proper hearing and arranged for DRT to review it, along with several others. Phil met with DRT and they agreed to reopen the case and send it to Impasse. Well, our PTF's are still waiting. Its been a year and a half since the grievance was filed, over six months since they agreed to send it to the higher-ups. Well, our PTF's are still waiting. This should really encourage them to pay union dues.

How about another one. In January of 2002, management notified the Union that they were cutting Southgate Auxiliary route #78 and adding it to several other routes. Grievance #W-729 was filed over the dozens of violations. In essence, the routes were all at or over 8-hours already and management didn't have any recent route inspection data to support making the additions. In fact, when I pulled the workload reports for the period that management claimed they were using, the reports showed some of the routes needed to be cut. Grievance #W-729 was 13 type-written pages with about 2 inches of supporting documentation, including National

Arbitrations and Step 4 Decisions backing up every union assertion. It was more like a legal brief than a grievance. About 5-6 months later, I got a call from NALC Step B designee Tim Bailey, who said the grievance was extremely well written, but his counterpart wouldn't agree to changing the routes back so they were going to Impasse the grievance and appeal it to arbitration. OK! So we wait another 6-7 months and somehow a Remand comes back on this grievance, signed by our pal Gary. How did #W-729 get into his hands, when Bailey's team already saw it and were supposed to be Impassing it? Now don't get this wrong because I don't have much respect for Tim Bailey either, but apparently since Tim wouldn't play ball somebody said ***"Give it to Gary, he'll sign anything!"***. Well Phil met on the Remand, local management wanted him to let them off the hook, to bad Phil appealed it back to Step B. Grievance #W-729 was fully developed and should never have been remanded to Step A. Southgate carriers are still waiting. We should have been to arbitration by now. Instead, our postmaster is now trying to justify cutting more routes and he still doesn't have recent route exam data.

Like I said in the first Dispute Resolution Page article, as ruled by the US Supreme Court in **Bounds v. Smith**, 430 U.S. 817, 822 (1977);

"Access to courts does not only protect one's right to physically enter the courthouse halls, but also insures that the access to courts will be adequate, effective and meaningful."

The same holds true for the grievance/arbitration procedure. Or we'd like to think so! Just remember that you don't get to vote for Tim Bailey or even Gary ***"Give it to Gary, he'll sign anything!"*** Craig. But you do get to vote for a National Business Agent. Jim Korolowicz just doesn't get it, so maybe he shouldn't!

NALC Branch 758 Newsletter, March 2003

The Dispute Resolution Page

Apparently, I'm a meany. I guess last month's Dispute Resolution Page wasn't well received and I managed to offend some DRT members. Of course, at the same time several NALC Branch presidents thought that the article was right on the money. I guess that it all just depends on your perspective. ***"Give 'em hell"*** Harry Truman used to say that he just told the truth on 'em and they just thought it was hell. Of course, I'm no Harry Truman. But I'm proud to say that I'm no ***"give to him, he'll sign anything"*** either.

The point of these articles has concerned the Union's ***"Duty of Fair Representation"***. Any Union official charged with the responsibility of collective bargaining is also charged with an obligation to provide Fair Representation to each and every member. Their duty is not to the Postal Service, not to political allies, not to Interest Based Decision Making. Their duty is to we the members! If they don't understand that, well then they are traitors and thieves. Then they need to be replaced. If our National Business Agent doesn't get it, and I don't think that he does, well then he needs to be replaced as well. I'm so mean that I'm going to try to make it happen. So if there are any local presidents or serious union advocates that understand the obligations of union office and have any aspirations towards becoming our next KIM Region National Business Agent, then please write me a letter or email me. I'm looking for a candidate to back. Because I think that it is "mean" to breach the Duty of Fair Representation. Oh, by the way, Gary Craig and Tim Bailey need not apply.

How many Branch Presidents have complained to Jim Korolowicz about DRT members or about the poor quality of DRT decisions? And then let me guess what you were told. Gee, nobody else is complaining. Of course, every time that you talk to another Branch President, they have the same complaints as you. If you keep complaining, well maybe you'll get an INTERVENTION. Won't that be nice. We've had three or four, I've lost track. If your real specific and real persistent about any obvious and blatantly bad DRT decision, well Jim may actually agree to look into revisiting the case. Of course, we've been waiting for almost a year on the batch of bad decisions that we were promised would be revisited. I especially liked the DRT decision that ignored the merits and just complained about the grievance being over two inches thick. Even Korolowicz conceded that it was a very well written grievance. Yet eighteen months later on that one and were still waiting. Maybe after everybody retires.

I think that maybe its time for our Detroit area Branch Presidents and Stewards to start unionizing. The essence of a Union involves members banding together for greater strength. Well, our individual concerns are certainly not being taken seriously by our present NBA. Maybe if the Detroit area Branch presidents approached Korolowicz collectively then Jim may begin to get it and start taking action on DRT members who forget which side their on. If not, then maybe the Branch presidents can begin finding a candidate who will.

NALC Branch 758 Newsletter, April 2003

The Dispute Resolution Page

This case concerns a proper DRT decision (that's a switch), which is being misinterpreted by our membership. NALC has an ongoing dispute with Management. The issue involves whether Management can require a Park & Loop carrier to deliver "*pre-sequenced addressed circulars*" as a 3rd bundle. Management wrongfully says yes. The Union says no.

So Branch 758 filed a Class Action (#W-662) in late 2001. As it turned out, the Union had a similar grievance pending at the National level. So DRT did what they are supposed to do. Randazzo and Kujan, amazing! They ordered that the grievance, along with any/all further grievances dealing with the same issue, be held at the local level pending the outcome of the National case. It DOES NOT say don't file any more grievances on this issue.

I do not believe that #W-662 specifically involved the "*Detroit Weekend Direct – Shopwise*" but they would also be covered by the same grievance. There are also minor differences because "*Shopwise*" is not delivered house-to-house. In either case, the M-39 and a Work-method Memorandum prohibit Management from requiring a Park & Loop carrier to do this, except for dismount (ie., apartments). So Management was wrong and still is wrong to give such orders.

So in the light of DRT decision #W-662, now in some stations Management has started forcing carriers to 3rd Bundle their Shopwise. Our Branch president has been advocating that carriers file grievances every time that Management does this. A few carriers have. Other carriers, apparently after talking to their supervisors, have wrongfully concluded that no grievances should be filed because one already exists.

You file because their wrong. You ask for damages every time that they violate the contract. You ask for a steward every time Management gives you the instruction. Management can pay you and the steward to process the grievance. Why? Management would call this frivolous. Management will say, wait till the grievance is resolved. That's because Management is content to screw you while the matter is in dispute. Why doesn't Management wait until the grievance is resolved? They'll screw you as long as it doesn't cost them anything.

So you file so that it will cost them. Grievance #W-662 won't pay you damages for all the times that Management violates the contract, it will just stop them sometime in the future. Till then you file in protest. Till then you file for damages (\$10-\$20 every time). If you don't really want the money then give it to a charity. You file to provide a cost to Management for their contract violations. You file to show Management that you expect them to comply with the contract. You file to act like a Union member!

Riddle me this. If every time Management gave such an instruction and then all of you, like a Union, began requesting your stewards and filing grievances (thereby costing productive time from you and your steward), how long do you think Management would keep it up?

NALC Branch 758 Newsletter, May-June 2003

Are NALC's DRT members inspiring the issuance of more discipline?

We've all heard complaints about DRT. We even have a monthly newsletter article, which tracks a few of their departures from sanity. Every month the Postal Record prints Branch Items, which discuss and complain about DRT decisions. In our offices, we have been at odds with DRT far longer than most of the country. That's because our region was the test site and we've been under DRT longer than most. We've also been exposed to several DRT sponsored Interventions. We were handed a few early decisions, which appeared promising (ordering management to cease & desist certain violations, provide information to the union, meet on grievances, yada-yada-yada). We've also seen the fail to back-up such decisions. Well, local management has seen this as well. It has become all too apparent to everyone that the NALC's DRT members will not fight for simple contract violations. Oh, they'll occasionally give us a simple overtime case. But not the vast majority of contract cases. In a contract case, the burden of proof is on the union. But the standard of proof is only through a preponderance of evidence (more likely than not to a reasonable person), like in a civil lawsuit. In a disciplinary case, the burden is on management and the standard is supposed to be much higher, like in a criminal case. Our contract cases are being held to a much higher standard. No matter how much evidence the union provides, DRT simply says that the local union failed to prove the case. Of course, it may be too much to expect DRT to understand the (more likely than not to a reasonable person) standard. Who says their reasonable!

Now we know contract cases in this office, because that used to be all we filed. We've proven thousands and we used to only fail less than 10% of the time. Often with far less evidence than is used today. And while those thousands were being filed, discipline was rare. Generally, only stewards and presidents got disciplined. We proved those cases as well, although sometimes it takes an EEO and sometimes it even takes years. But the key is that discipline was rare.

But now we have DRT. Now we're lucky if we prove even 10% of the contract cases, even when we actually still prove most of them. It has appeared as if our DRT members have been saying that anything goes except discipline. It's like they've bought into the theory that the Postal Service is in trouble so we have to back down. If the Service is in trouble, it's because we have a management staff that can't follow a contract and can't run a business. Instead they find meaningless reasons to pay themselves bonuses. Well, so far NALC's DRT members have still been imposing discipline cases. Of course, they've had to do it far more often lately. You see, local management has noticed how willing DRT is to sell us out. Since DRT lets them get away with hundreds of contract violations, local management has become daring with handing out discipline. In fact, it's becoming common place for them to jump procedure and go straight to a suspension or removal.

Of course, I've heard plenty of members bad-mouthing those being disciplined. Kind of reminds me of that article that I submitted about the Wolf attacking the outer edges of the herd. Just keep bah-bah-bad-mouthing your fellow carriers and sooner or later that Wolf will be getting round to you. I said that another Wolf would be along shortly. Oh, that's right, I almost forgot how many of you have clued me in that Taurence isn't a Wolf. That discipline just happens on its own.

So there is a lesson here somewhere. If you file thousands of grievances, you get bad mouthed by your own union and sometimes even by your own members, but your members don't get hurt. Sometimes people even mistake you for the Wolf. However, if you try and cut grievances or if your members get fed up and stop filing grievances, then management (the real Wolf) gets more aggressive and starts handing out discipline. I'd rather handle hundreds of contract cases rather than even one disciplinary case. As always, the incentives within the Postal Service are FUBAR. The only difference is that NALC's DRT members have bought in.

NALC Branch 758 Newsletter, May-June 2003

The Dispute Resolution Page

The Politics of Merger? On June 26th 2003, the membership of NALC Branch 320 (about 400 members) voted on whether to merge with NALC Branch 3126 (about 1000 members) in an attempt to become Michigan's second largest branch. The merger failed by a narrow margin even though it had been backed by Branch 320 president Dave DeGroat. However, merger has become a recurring theme in NALC branches.

Facts are facts, Branch 1 (Detroit), Branch 2184 (Western Wayne) and Branch 3126 (Royal Oak) are NALC's political powers of Michigan. After all, National Business Agent(s) (NBA) are elected positions. Politics plays an important role in everything that they do. The NALC KIM Region NBA appoints his Regional Administrative Assistants, arbitration advocates and recommends DRT representatives from within the largest and most politically powerful branches. When Phil took office, I recall him stating that "politics is everything" and he was right. Branch 758 members have plenty of knowledge and resources. The problem is that in the politics of NALC's KIM Region (covering Kentucky, Indiana and Michigan), Branch 758 has very few votes.

Historically, Branch 758 has been firmly independent. We have managed to develop a strong background of knowledge, collective-bargaining history, litigation history and (in the past) we have enjoyed a great deal of success, far more than most. We have enjoyed an entrepreneurial spirit which has served us well. However, trends in recent years should have us all reconsidering our options. The DRT process has drastically changed the way that Branch 758 and its members are treated. Smaller branches like ours tend to be ignored. Its not what you know, its who you! Well, you get the idea. After several years of neglect by DRT on contractual issues, Management is now entering a frenzied mode of issuing discipline. Discipline used to be reserved for our Stewards and Officers. And even then, suspensions only amounted to delayed-payment vacations. I used to enjoy having an additional three or four weeks of paid vacations every year. I just didn't like not having any choice in when I would be suspended. Well, times have changed. Discipline is at an all-time high, as are removals. Management is going after everyone and we all have to depend on the sellout artists at DRT.

We now have several choices available. (1) We can continue with our independent tradition. However, status quo leaves us at the mercy of the DRT process. We would have to find better ways to hold DRT members accountable. Frankly, I think that if we remain independent then we need our own attorney. We are not receiving any representation at DRT or at KIM Region and Management knows this as well as we do. (2) We can probably merge with NALC Branch 2184. This is the most reasonable choice of the larger branches. Most of the other Downriver offices already belong to 2184. They've courted us for decades, their current office is in Taylor (although they will probably sell and relocate somewhere else in the area), they have political power (although they seldom assert it) and they have some talented members. Branch 3126 is too far away (Oakland & Macomb counties). Branch 1 has far too many problems of their own and very few solutions. (3) In a third option we could try to get other smaller branches, who are in the same boat, to merge with us. Unfortunately, Branch 2184 is way ahead of us and the remaining independent branches are few and far between. I believe that Allen Park is the only other independent branch Downriver. They haven't shown any recent

interest in joining with us and, even if they did, we'd still be a very small branch. We are often allied with Jackson and Monroe has also been independent. But even if we combined with Allen Park, Monroe & Jackson (its not likely considering the distances involved) we would still be a small branch.

Our best option appears to be a merger with Branch 2184. We could be arrogant and ask them to merge with us, but I don't think they'll buy it. Their 7 or 8 times our size. Branch 2184 does have it's own problems. Despite recent mergers, they continue to lose members (as do we and many other branches including our own). There are also vast differences in the level of representation at it's different offices. If the office has an experienced steward then they get better results, but this same thing happens everywhere. They also get sold out by DRT (which probably explains the loss of members). But at least when they voice their displeasure, the KIM Region NBA pays attention. He has to. Because if he doesn't then he will find himself back on his route following the next election. Far to many votes in 2184 to ignore. Branch 2184's most glaring weakness appears to be that they don't understand their own importance in Michigan NALC politics. Maybe we can change that.

Of course, if we joined Branch 2184 our voices would be diluted. We would become part of a much larger group, which means that we have less of a say in matters. We could negotiate the right to keep custody of the Branch 758 notebook computers at each of our offices, as a precondition for merger. Our experience with the computerization of union-steward resources would also bring a new dimension to Branch 2184. Our experience in such matters could probably solve their problems of inconsistent representation with our knowledge and experience in computerization and make us all greater than the sum of our parts.

NALC Branch 758 Newsletter, July 2003

The Dispute Resolution Page

There is an arrogance permeating the DRT decisions lately. Clearly, Branch 758 and it's members are no longer being represented by NALC at Step B. We know it and unfortunately local management knows it as well. The most recent DRT decisions openly boast that Management has failed to support any of it's claims but the Union loses anyway. Most other Branches have ceased even appealing grievances to DRT unless they have absolutely no choice. During the April "*Committee of Presidents Meeting*" held by national president Bill Young in Las Vegas, one branch president after another voiced their concerns about the DRT process, about discipline being up 100% in many offices, about forced overtime, about the centralized call off system (we haven't had to deal with that one yet), about route additions, about excessing carriers 600 miles, etc. In response Bill Young stated that all of these do not compare to the main concern, which is the existence of the Postal Service. Young stated that we must make saving the Postal Service our number one priority. Well now you know where DRT's arrogance comes from.

Does this mean that the Union's DRT representative is breaching the Duty of Fair Representation (DFR). Well some Branch presidents, stewards and grievants believe so. Actually, when you can't tell the difference between the language of Management and the Union, that goes beyond a simple breach of their DFR. That's considered a "Company Union". Federal labor law requires that any such Union be disbanded and it's officers be barred from union activities. But DFR lawsuits are tough to win and very few people are willing to sue their own Union. Its questionable whether a Branch can actually sue the National anyway. Once before, Branch 758 tried to file Unfair Labor Practice charges against the national NALC but the charges were dismissed by the NLRB, who said that we can't file against ourselves (we're part of NALC). The same thing would probably happen in a DFR lawsuit. This is why all the other labor charges against NALC have been filed by individuals. So how do we deal with being sold out by our national ?

Well, some have been resigning their memberships in NALC. I think that this is a big mistake. Some carriers never join the union. That because, well, they're just scabs. Some carriers join the union and pay their dues without ever getting involved. Its not that they don't care. They just have other stuff to do and they expect that the rest of us will handle things properly. They don't actually know Bill Young or Jim Korolowicz or Tim Bailey or Gary Craig. Some of us do get involved. And some get tired of being screwed and simply resign their membership.

One of my best friends resigned his NALC membership in protest. I do understand such an action, I have resigned as steward twice in protest. Once after the Royal Oak shootings (its a long story but I consider NALC-KIM Region responsible for those deaths) and another time when a friend of mine sold out our PTF's (another long story). But when it comes to your Union membership, I know that the only way anything will ever change in NALC is if those of us who understand whats wrong go out and fix it. Well, whats wrong is that some bad people are in control of NALC. The only thing that's going to change this is the votes of the members. If you know whats wrong but you're not a member then we don't have your vote. People like Bill Young and Jim Korolowicz stay in control. And that means people like Tim Bailey and Gary Craig stay on DRT.

The only option available is to vote people like Bill Young and Jim Korolowicz out of office. We could put them up on charges, but they and their friends control the process. So, your vote is the only tool that you have. Send them back to their routes!

NALC Branch 758 Newsletter, August 2003

The Dispute Resolution Page

Here we go again. Anybody remember grievances #W-729 and #W-738. These were filed about the Southgate route adjustments of late 2001 and early 2002. I believe their still active. Its hard to say because DRT has remanded them so many times. So much for the **“Resolution”** in Dispute Resolution Process. Well, at least they get the **“Dispute Process”** part of it because DRT sure can generate disputes. The primary issue at the time was that Management didn’t have reasonably current 1840’s from full-blown route inspections. In fact, Management had actually lost the 1840’s from 1997-1998. Basically, Article 41 section 3S requires Management to adhere to the M39 when making adjustments. M39 part 242.122 requires that **“All regular routes should consist of as nearly 8 hours daily work as possible”**. M39 part 141.19 requires **“reasonably current”** data which includes an 1840 as the starting point for the process. National arbitrator Mittenthal has defined **“reasonably current”** as being within the past 18 months. This means that no route can be adjusted, unless a full-blown (week long) inspection has been done within the past 18 months. In Southgate, I believe that means only one route. The same route that DRT has been ordering Management to adjust since 2001. Managements actually done several inspections on that route.

So here we are, years later. DRT has excelled at their **“Dispute Process”**, Management has excelled at their mis-management and the Jim Korolowicz - Bill Young “Interventions” have been so incredibly successful that Management has decided to go for it again. Still no reasonably current 1840’s and Saint Michael **“Lord of the Flies”** Taurence decides to do Minor Route Adjustments again. Well, why not! After all, Jim Korolowicz - Bill Young and our NALC DRT Representatives haven’t shown Management any signs that NALC is willing to enforce our contract. On the contrary, they both talk about the survival of the Postal Service as being the priority of NALC. Funny, I thought that their legal priority was to represent us, NOT the Postal Service. I guess that it’s a little much to expect that Management should run the Postal Service and actually comply with the contract at the same time. Just like its too much to ask NALC to negotiate a contract and then to actually enforce it. When is the next election anyway?

Well, everybody remember to file a grievance and make sure you timely cause you can bet the house that they’ll sell you out if your not!

NALC Branch 758 Newsletter, September 2003