

Note on Weingarten Rights Grievance Starter:

The issue statement, facts, contentions, and remedy from this grievance starter should be integrated into discipline grievances if the grievant's *Weingarten* rights were violated.

Local Grievance # _____

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

Did Management at the [Installation name] Installation violate Articles 5 and 17 of the National Agreement by denying the grievant his/her *Weingarten* rights on [Date], and if so, what should the remedy be?

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

Facts:

1. On [Date], management questioned Letter Carrier [Name] about [subject of questioning].
2. Letter Carrier [Name] reasonably believed the questioning could result in disciplinary action, and therefore requested that his/her shop steward be present during the questioning.
3. Management [denied the request/restricted the steward/did not allow a pre-interview consultation] and continued with the investigatory interview. These facts are documented by Steward [Steward name] and/or Letter Carrier [Name's] written statement(s) in the case file.

4. Article 17 of the JCAM explains the *Weingarten* rule:

Federal labor law, in what is known as the Weingarten rule, gives each employee the right to representation during any investigatory interview which he or she reasonably believes may lead to discipline (NLRB v. J. Weingarten, U.S. Supreme Court, 1975).

5. Article 17 of the JCAM continues:

An employee has Weingarten representation rights only where he or she reasonably believes that discipline could result from the investigatory interview. Whether or not an employee's belief is "reasonable" depends on the circumstances of each case. Some cases are obvious, such as when a supervisor asks an employee whether he discarded deliverable mail.

6. Article 17 of the JCAM further explains *Weingarten*:

Employees also have the right under Weingarten to a pre-interview consultation with a steward. Federal Courts have extended this right to premeeting consultations to cover Inspection Service interrogations (U.S. Postal Service v. NLRB, D.C. Cir. 1992, M-01092).

In a Weingarten interview the employee has the right to a steward's assistance—not just a silent presence. The employer would violate the employee's Weingarten rights if it refused to allow the representative to speak or tried to restrict the steward to the role of a passive observer.

7. National Arbitrator Bernstein ruled in case number H1N-5G-C 14964:

Article 5 of the National Agreement serves to incorporate all of the Service's "obligations under law" into the Agreement, so as to give the Service's legal obligations the additional status of contractual obligations as well. This incorporation has significance primarily in terms of enforcement mechanism--it enables the signatory unions to utilize the contractual vehicle of arbitration to enforce all of the Service's legal obligations. Moreover, the specific reference to the National Labor Relations Act in the text of Article 5 is persuasive evidence that the parties were especially interested in utilizing the grievance and arbitration procedure spelled out in Article 15 to enforce the Service's NLRB commitments.

Contentions:

1. Management violated Article 17 of the National Agreement by **denied the request/restricted the steward/did not allow a pre-interview consultation**. **Explain what happened in detail**
2. Management's failure in this regard not only violates the National Agreement, it flies in the face of a decision from the United States Supreme Court (*NLRB v. J. Weingarten, U.S. Supreme Court, 1975*).
3. The Union contends *Weingarten* is an "obligation under the law" as defined by National Arbitrator Bernstein; therefore, management violated Article 5 of the National Agreement as well.

Remedy (Block #19 on PS Form 8190):

1. That management cease and desist violating Articles 5 and 17 of the National Agreement.
2. That the **[list discipline]** dated **[date]** issued to Letter Carrier **[name]** for the charge of **[list charge(s)]** be rescinded and expunged from all employee records and files from the date of issuance.
3. That Letter Carrier **[Name]** be paid a lump sum of \$100.00 to serve as an incentive for future compliance.
4. 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.
5. That proof of payment be provided to **[NALC Official]** upon payment, and/or any other remedy the Step B team or an arbitrator deems appropriate.

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.

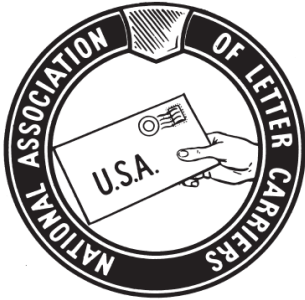
3. Included in the case file are **[Arbitration Awards/Step B decisions/local grievance settlements, etc.]** in which management was instructed/agreed to cease and desist violating Article 17 of the National Agreement.

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 Articles 5 & 17. 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], [Name], and [Name]** each be paid a lump sum of \$100.00 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 Articles 5 & 17:

1. A copy of both the written and typed investigatory interview notes performed on Letter Carrier **[Name]** on **[date]**.

Additionally, I am also requesting 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,

Request received by: _____

Shop Steward
NALC

Date: _____