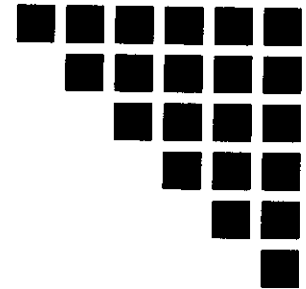


# **HOW TO PURSUE ADMINISTRATIVE AND/OR DISCIPLINARY ACTION AGAINST THAT ABUSIVE SUPERVISOR OR POSTMASTER**



## **PURPOSE OF THIS POSITION PAPER**

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I have often been asked why a supervisor or postmaster can get away with threatening, harassing, intimidating and/or even assaulting a postal employee. The question usually goes on to a second question, that being, and why, if that same type of behavior, is even hinted at by a bargaining unit employee and directed at a manager, the bargaining unit employee is summarily disciplined or discharged?

The simple answer, quite frankly, is that it is not supposed to be that way. All employees regardless of their position in the Postal Service must be treated equally and all can be charged with violating the Code of Conduct, or the Standard of Conduct, or the Joint Statement on Violence and Behavior in the Workplace.

However the reality is that we have accepted the age old premise that management has the exclusive right to discipline or discharge both bargaining and non bargaining unit employees and the Unions are powerless to request/insist on disciplinary action being taken against any manager through the Grievance Arbitration Procedure.

That axiom is by and large true as it relates to requesting/insisting on managers being disciplined for committing violations of provisions of our Collective Bargaining Agreement that don't fall under the purview of threatening behavior. There have been, however, some successes in the area of getting Supervisors/Postmasters disciplined for improper behavior that has been established to be threatening, intimidating, harassing or violent in nature.

All employees have a right to work in an environment that is free from physical violence, the threat of physical violence, the threat of job loss or suspension for non misconduct, the fear of intimidation, constant harassment or any other type of improper behavior that is directed at an employee that makes their work environment feel unsafe or hostile.

This position paper is therefore designed to help the Union Representative combat that type of inappropriate behavior which is directed at a bargaining unit employee by an out of control manager.

## **APPLICABLE CONTRACT LANGUAGE**

*The following contractual citations should be relied upon in order to demonstrate that a contractual violation has occurred based on the fact circumstances of the incident in which an employee feels aggrieved because of some improper action by a manager.*

### **Collective Bargaining Agreement**

#### **ARTICLE 2**

#### **NON-DISCRIMINATION AND CIVIL RIGHTS**

##### **Section 1. Statement of Principle**

*The Employer and the Union agree that there shall be no discrimination by the Employer or the Union against employees because of race, color, creed, religion, national origin, sex, age, or marital status.*

#### **ARTICLE 14**

#### **SAFETY AND HEALTH**

##### **Section 1. Responsibilities**

*It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility.*

##### **Section 2. Cooperation**

*The Employer and the Union insist on the observance of safe rules and safe procedures by employees and insist on correction of unsafe conditions.... The Employer shall make available at each installation the appropriate forms to be used by employees in reporting unsafe and unhealthful conditions. If an employee believes he/she is being required to work under unsafe conditions, such employees may:*

- (a) notify such employee's supervisor who will immediately investigate the condition and take corrective action if necessary;*
- (b) notify such employee's steward, if available, who may discuss the alleged unsafe condition with such employee's supervisor;*
- (c) file a grievance at Step 2 of the grievance procedure within fourteen (14) days of notifying such employee's supervisor if no corrective action is taken during the employee's tour, and/or;*
- (d) make a written report to the Union representative from the local Safety and Health Committee who may discuss the report with such employee's supervisor. Upon written request of the employee involved in an accident, a copy of the PS Form 1769 (Accident Report) will be provided.*

## **Employee and Labor Relations Manual**

### ***665 Postal Service Standards of Conduct***

#### **SECTION 665.16 BEHAVIOR & PERSONAL HABITS**

*Employees are expected to conduct themselves during and outside of working hours in a manner that reflects favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it does require that postal employees be honest, reliable, trustworthy, courteous, and of good character and reputation. The Federal Standards of Ethical Conduct referenced in 662.1 also contain regulations governing the off-duty behavior of postal employees. Employees must not engage in criminal, dishonest, notoriously disgraceful, immoral, or other conduct prejudicial to the Postal Service. Conviction for a violation of any criminal statute may be grounds for disciplinary action against an employee, including removal of the employee, in addition to any other penalty imposed pursuant to statute. **Employees are expected to maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment.***

#### **665.24 Violent and/or Threatening Behavior**

*The Postal Service is committed to the principle that all employees have a basic right to a safe and humane working environment. In order to ensure this right, it is the unequivocal policy of the Postal Service that there must be no tolerance of violence or threats of violence by anyone at any level of the Postal Service. **Similarly, there must be no tolerance of harassment, intimidation, threats, or bullying by anyone at any level. Violation of this policy may result in disciplinary action, including removal from the Postal Service.***

#### **665.23 Discrimination**

*Employees acting in an official capacity must not directly or indirectly authorize, permit, or participate in any action, event, or course of conduct that subjects any person to discrimination, or results in any person being discriminated against on the basis of race, color, religion, sex, national origin, age (40+), physical or mental disability, marital or parental status, sexual orientation, or any other nonmerit factor, or that subjects any person to reprisal for prior involvement in EEO activity.*

## **Administrative Support Manual**

### **SECTION 228.13**

#### **DISCIPLINARY ACTION OF EMPLOYEES**

***Employees assaulting or threatening other employees or postal customers may be subject to remedial or disciplinary action, including discharge and prosecution under federal, state, or local laws.***

## JOINT STATEMENT ON VIOLENCE AND BEHAVIOR IN THE WORKPLACE

We all grieve for the Royal Oak victims, and we sympathize with their families, as we have grieved and sympathized all too often before in similar horrifying circumstances. But grief and sympathy are not enough. Neither are ritualistic expressions of grave concern or the initiation of investigations, studies, or research projects.

The United States Postal Service as an institution and all of us who serve that institution must firmly and unequivocally commit to do everything within our power to prevent further Incidents of work-related violence.

This is a time for a candid appraisal of our flaws and not a time for scapegoating, finger-pointing or procrastination. *It is a time for reaffirming the basic right of all employees to a safe and humane working environment. It is also the time to take action to show that we mean what we say.* We openly acknowledge that in some places or units there is an unacceptable level of stress in the workplace; that there is no excuse for and will be no tolerance of violence or any threats of violence by anyone at any level of the Postal Service; and that there is no excuse for and will be no tolerance of harassment, intimidation, threats, or bullying by anyone.

We also affirm that every employee at every level of the Postal Service should be treated at all times with dignity, respect, and fairness. The need for the USPS to serve the public efficiently and productively, and the need for all employees to be committed to giving a fair day's work for a fair day's pay, does not justify actions that are abusive or intolerant. *"Making the numbers" is not an excuse for the abuse of any one.* Those who do not treat others with dignity and respect will not be rewarded or promoted. Those whose unacceptable behavior continues will be removed from their positions.

We obviously cannot ensure that however seriously intentioned our words may be, they will not be treated with winks and nods, or skepticism, by some of our over 700,000 employees. But let there be no mistake that we mean what we say and we will enforce our commitment to a workplace where dignity, respect, and fairness are basic human rights, and where those who do not respect those are not tolerated.

Our intention is to make the workroom floor a safer, more harmonious, as well as a more productive workplace. We pledge our efforts to those objectives. Dated: February 14, 1992

PLEASE POST ON BULLETIN BOARDS IN ALL INSTALLATIONS

## HISTORY OF THE JOINT STATEMENT ON VIOLENCE

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When the Joint Statement was first proposed to the APWU by the USPS, the APWU chose not to be a signatory to the document because, quite frankly, we knew that the USPS would apply the principles of the Joint Statement against bargaining unit employees and not against managers. In other words, we believed the Joint Statement would be used to discipline our members and would not be used to discipline managers who violated its terms.

However, the National Association of Letter Carriers (NALC), and the Mailhandlers Union (MHU) did sign the Joint Statement with the USPS, along with the D.C. Nurses Association, the Federation of Postal Police Officers, the National Association of Postal Supervisors, the National Association of Postmasters of the United States, the National League of Postmasters of the United States and the National Rural Letter Carriers' Association.

The NALC and the MHU found out that the APWU was correct in that the USPS did apply the Joint Statement in a disparate fashion. The NALC's stewards found themselves filing grievances claiming violations of the Joint Statement by managers and the Service wouldn't take any administrative or disciplinary action.

The NALC was forced by the USPS to take the issue of the Service's disparity, and the NALC's attempts to get justice by using the Grievance Arbitration Procedure, to headquarter level arbitration.

The USPS took the position that the NALC had no right to use the Grievance Arbitration Procedure in order to enforce the Joint Statement and/or to request administrative or disciplinary action to be taken against managers.

National Level Arbitrator Snow ruled:

*"Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Joint Statement on Violence and Behavior in the Workplace constitutes a contractually enforceable agreement between the parties. Accordingly, the Union shall have access to the negotiated grievance procedure set forth in the parties' collective bargaining agreement to resolve disputes arising under the Joint Statement."*<sup>1</sup>

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<sup>1</sup>Case # Q90N-4F-C 94024977/94024038, Arbitrator Carlton J. Snow, dated 8/16/96.

Thereafter, the NALC has successfully pursued supervisory misconduct through the Grievance Arbitration Procedure.<sup>2</sup>

The Mailhandlers took a different approach, in March of 1997 their President wrote the Postmaster General after the passage of a resolution made by the MHU Local Presidents. The resolution read:

**“WHEREAS, since the signing of the so-called “Joint” Statement on Workplace Violence, this instrument has been unjustifiably used to discipline Mail Handlers, while disrespect, intimidation, threats and other forms of psychological violence by Management against Labor are routinely ignored as violative of this Joint Statement,**

**BE IT RESOLVED, that the National President of the National Postal Mail Handlers Union shall correspond with USPS national management renouncing the NPMHU as signatory to the Statement”**

In rejecting the MHU attempt to repudiate their participation as a signatory to the Joint Statement the Vice President of Labor Relations for the USPS, Joseph Mahon, Jr., wrote back to the MHU quoting Arbitrator Snow from the NALC case, stating that the Joint Statement *“constituted a contractually enforceable agreement between the parties.”* He further wrote:

*“According to the Snow rationale, your attempt at withdrawal or renouncement is beyond your authority. However, as we have discussed, the Postal Service is committed to the joint statement being fairly and equally applied across all employees in the organization.”*

## **DOES THE JOINT STATEMENT APPLY TO THE MEMBERS WE REPRESENT**

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In every discipline or discharge case I have handled involving an alleged threat or an alleged act of violence the USPS has successfully introduced into evidence, over my objection, the Joint Statement and that individual District’s permanent bulletin board posting which prohibits threats or violence. Arbitrators accept that the APWU is not a signatory to the Joint Statement and recognize that any District’s directive forbidding threats or violence are unilaterally promulgated by the Postal Service and are not the subject of bilateral negotiations.

Nevertheless Arbitrators, by and large, accept the documents into evidence and hold the members

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<sup>2</sup>These NALC cases will be discussed later in this position paper.

we represent to the requirements of the Joint Statement and whatever unilaterally developed non violence directives the District has as permanent postings. I believe the simple theory accepted by arbitrators is, whether you signed the Joint Statement or not, or regardless, if you had any input on developing the District equivalent statement or not, all employees know if you threaten violence or are involved in violence, you have violated a serious work rule, stated or not, agreed to or not, posted or not.

Arbitrator Byars talked about the fact that the APWU did not sign the Joint Statement, she said:

“The Union's decision not to join with other unions and management groups in the **Joint Statement on Violence and Behavior in the Workplace** and their objection to the admissibility of that document on those grounds does not create any shelter for an employee who engages in acts of violence or threats of violence.”<sup>3</sup>

Arbitrator Talmadge wrote:

“I find that the Grievant, as an employee of the Postal Service, had a responsibility to become familiar with these postings and regulations and can be held accountable for, and on notice of, the information contained in the Joint Statement and the Code of Conduct, contained in Section 666.2 of the ELM.”<sup>4</sup>

Arbitrator Gold opined:

“Undoubtedly, had this incident occurred ten or twenty years ago, it may have been treated with greater leniency. In the past few years, however, every Postal worker has been made aware of the Service's zero tolerance level for any threatening or aggressive behavior at the workplace. As noted in Central Florida's Performance Cluster "Zero Tolerance" Policy, Any form or manner of threatening remarks or gestures in the workplace is unacceptable.

There is no excuse for and will be no tolerance of violence or any threats of violence by anyone at any level of the organization.

It is important that such a policy be enforced in a consistent manner, thereby ensuring employees that they will work in an environment free from hostility and threat and that when violations of the policy occur, they will be dealt with firmly and upheld at every level. Given this fact, the Grievant's termination from service must stand, thereby sending the message that similar incidents will not be condoned in the

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<sup>3</sup>Case # H94T1HD97011176, Arbitrator Linda S. BYARS, dated 07/24/1997

<sup>4</sup>Case # A98C1AD00183238 Arbitrator: SHERRIE ROSE TALMADGE, dated, 11/16/2000

future.”<sup>5</sup>

## **CAN THE APWU REQUEST/INSIST THAT THE USPS TAKE ADMINISTRATIVE OR DISCIPLINARY ACTION AGAINST MANAGERS WHO VIOLATE THE JOINT STATEMENT**

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Initially it must be pointed out that this area is a relatively unexplored area by the American Postal Workers Union. Further it's important to note that the Joint Statement is but a set of principles openly embraced in order to do just that, make a STATEMENT. This statement however is nothing more than a further articulation of what is already a part of our Collective Bargaining Agreement via the Code of Conduct. All Postal employees were always required to perform their duties without threatening violence or performing violence upon one another.

Long before the Joint Statement employees were disciplined and discharged for threats and violence. In those disciplinary actions the employer cited the above referenced sections of the ELM and the ASM. Those same sections are applicable today, in addition to the Joint Statement.

Whether the APWU is a signatory to the Joint Statement or not, the employees we represent are held to the standards articulated in the Joint Statement, as discussed previously. Further the Employer and each management association are signatory to the document, in which they have pledged to follow the requirements of the Joint Statement.

The Service has told us in the Joint Statement and in their reaffirmation of the Joint Statement by their Vice President of Labor Relations, Joseph Mahon that the service will apply the Joint Statement fairly and equally to ALL employees.

The Elkouris' have told us that discipline must be assessed equally, they wrote:

## **UNEQUAL OR DISCRIMINATORY TREATMENT**

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<sup>5</sup>Case # H94C1HD96028515 Arbitrator: CHARLOTTE GOLD, date,12/12/1996



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It is generally accepted that enforcement of rules and assessment of discipline must be exercised in a consistent manner; all employees who engage in the same type of misconduct must be treated essentially the same unless a reasonable basis exists for variations in the assessment of punishment (such as different degrees of fault or mitigating or aggravating circumstances affecting some but not all of the employees.) In this regard, Arbitrator Benjamin Aaron declared: Absolute consistency in the handling of rule violations is, of course, an impossibility, but that fact should not excuse random and completely inconsistent disciplinary practices."<sup>6</sup>

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## **REGIONAL ARBITRATION AWARDS IN WHICH SUPERVISORS/POSTMASTERS RECEIVED ADMINISTRATIVE ACTION OR DISCIPLINE FOR INAPPROPRIATE CONDUCT**

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**C7T-4G C 8685, Arbitrator Robert W. McAllister, dated 10/17/90, Indianapolis, IN.**

The Arbitrator found a violation of the Code of Ethical Conduct and the Standards of Conduct but held no further remedy appropriate as the supervisor had been reassigned.

**E90N-4E C 94054971, Arbitrator Kenneth M. McCaffree, dated 4/16/96, Renton, WA.**

The employer was ordered to cease and desist from such behavior and to write an apology to the grievant and to restore 48 hours of sick leave to her balance.

**A90N-4A C 95008050, Arbitrator Rose F. Jacobs, dated 5/15/96, New Brunswick, NJ.**

The Arbitrator ordered a cease and desist and a reevaluation of whether the supervisor should continue to oversee letter carriers. She further ordered a formal written apology and retraining of the Supervisor in management duties. In addition, she ordered the placement of the arbitration decision in the supervisor's Personnel file and posting of the arbitration award and the written apology on bulletin boards for 30 days.

**B90N-4B-C 96012210, Arbitrator Garry J. Wooters, dated 12/10/96, Boston, MA.**

Ordered that the Postal Service counsel the supervisor for a violation of the Joint Statement for his abusive and disrespectful conduct.

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<sup>6</sup>Elkouri and Elkouri, How Arbitrator Works, Fifth Edition, Page 934.

**F94N-4F D 96078781/96088089, Arbitrator Donald E. Olson, Jr., dated 1/8/97, San Carlos, CA.**

A letter carrier disciplinary case in which the removal was overturned with full back pay and the Supervisor was required to issue a written apology to the grievant and post it by the time clock for 15 days.

**F90N-4F C 95065124, Arbitrator Kenneth M. McCaffree, dated 1/28/97, North Hollywood, CA.**

Found that the Postal Service had violated the Joint Statement and ordered that the supervisor be admonished by the Employer to cease and desist from threatening to fire workers and the Award in the case be posted on official bulletin boards.

**G94C-4G C 96019934, Arbitrator Leonard C. Bajork, date 6/23/97, San Antonio, TX.**

Restricted the supervisor from performing the duties of any position which includes the core activity of dealing or working with carrier employees.

**I90N-4I-C 95043033, Arbitrator Alan Walt, dated 7/16/97, Milwaukee, WI.**

The postmaster was ordered to post a notice for a six month period, addressed to all employees, stating that management would scrupulously adhere to their obligations as set forth in the Joint Statement. The supervisor in question was no longer at the facility.

**F94N-4F C 97033030, Arbitrator Charles M. Rehms, dated 11/3/97, Yucaipa, CA.**

The former Officer in Charge was required to cease and desist violating Article 14 and the Joint Statement and either hold a stand-up apology or post a written apology on the bulletin boards.

**F94N-4F C 97017883, Arbitrator Edward E. Hales, dated 11/10/97, Riverside, CA.**

Supervisor now a bargaining unit employee in another state, but nonetheless his conduct was found to be a violation of Joint Statement and management further warned to take appropriate action if other violations occur in the future.

**E90N-4E C 94051426, Arbitrator Claude D. Ames, dated 2/19/99, Henderson, NV.**

Found a violation of Joint Statement and ordered management to counsel the Postmaster that any further incident of being in possession of firearms on postal premises will result in immediate and summary removal. The Postmaster submit to a Fitness for Duty (physical and mental) with result going to Labor Relation and the Union's National Business Agent.

If found unfit he shall not return to duty. If he is returned to duty he is restricted from supervising Letter Carriers and that he issue a written apology to all Carriers.

**A98V- 1A C 99226333, Arbitrator Joseph Cannavo, dated 6/4/00, Queens, NY**

The Arbitrator found that the supervisor violated the Zero Tolerance Policy and all other rules and regulations regarding violence and threats of violence in the work place. The Arbitrator also finds that the supervisor violated the Code of Ethical Conduct. The Arbitrator directs the supervisor to cease and desist from any such conduct in the future in regards to this Grievant or any other employee.

**G94N-4G-C 98112857, Arbitrator Elvis C. Stephens, dated 8/26/00, Mandeville, LA.**

The arbitrator did not award the \$25,000 in punitive damages the Union asked for but he did hold that he would retain jurisdiction until management supplied evidence of what corrective action/discipline they issued to the supervisor in question and reserved the right to issue a harsher action, if he felt the management action was not sufficient.

**I94N-4I C 99136168, Arbitrator Bernice L. Fields, dated 11/1/00, West Milwaukee, WI.**

The Arbitrator ruled that the supervisor be suspended for ninety (90) days from supervising Letter Carriers. That he be sent for a Psychological Fitness for Duty and anger management training. Train all supervisors regarding the effect on workers and production of prolonged and unacceptable levels of stress and training in dispute mediation techniques. Manager to give stand-up apology to employee for condoning supervisor's behavior by his silence. Post Award for 30 days on bulletin boards.

**H94N-4H-C 95041405, Arbitrator Leonard C. Bajork, dated XXXXXXX, Memphis, TN.**

Manager ordered demoted to supervisor and prohibited his promotion for a period of five years, and warned supervisors that they would be subject to forfeiting bonuses, promotions and were subject to removal for future violations.

## **WHAT DOCUMENTATION SHOULD BE CONTAINED IN THE CASE FILE**

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- 1) Copies of all Witness Statements
- 2) Stewards interview notes of all witnesses and charged supervisor/postmaster
- 3) Evidence of prior misconduct/EAP referrals
- 4) Any arrest or court records
- 5) Office of Inspector General Report of Investigation and/or Postal Inspection Service's Investigative Memorandum
- 6) Doctors' reports, medical records, hospital reports

## **APPROPRIATE REMEDIES DEPENDING ON THE OFFENSE**

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The remedy for a proven infraction should be commensurate with the infraction itself. Requesting the supervisor/postmaster's removal because of a terse interaction with an employee would be regarded as going overboard. Remember all discipline is meant to be corrective in nature, not punitive. We should attempt to progressively approach this task, provided the initial behavior is not egregious.

Depending on the inappropriate behavior, you should request as a corrective remedy one or more of the following:

- 1) Cease and desist.
- 2) Management take the appropriate administrative actions. (This remedy allows the Union to insist that management take whatever action, under the circumstances, they believe is appropriate, yet still allows the Union to judge whether their actions are significant enough and we can still appeal the case if we think the action is too lenient.
- 3) Retraining the supervisor/postmaster in the appropriate area/course that we contend the supervisor/postmaster is deficient.

- 4) Reassignment the supervisor/postmaster from supervising clerical employees.
- 5) Reassignment from the installation.
- 6) Removal from the Postal Service.

Yours in protecting our members' rights,



Mike Gallagher  
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