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Branch 111
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The Pavment Pounder



MARCH 2005

Bountiful * Lehi Magna * Midvale * Murray * Salt Lake * Sandy * Taylorsville * Tooele * West Jordan * West Valley

The President's Corner

By: Mike Miller



After over a year of waiting we finally have received the National Arbitrators decision on the National Arbitration concerning the ACO's persistence in asking employees to describe the nature of their illness when calling in sick. Branch 111 alone filed some 40+ grievances, some were held in abeyance here in the Branch Office and some 15 were held in abeyance at the B level and two were sent to the National Level for arbitration. And now finally we have an answer from the National Arbitrator.

First of all I will cite quotes from the Awards Summary of the arbitration dated 1/28/05, which decision comes in three separate parts, and those three issues raised in this case were resolved as follows:

Nature of Illness

In applying ELM 513.332 in the context of the RMD process, ACS's may ask questions necessary to make FMLA determinations and to determine whether the absence is due to an on-the-job injury or for a condition, which requires ELM 865 return-to-work procedures, in a manner consistent with the findings in this decision, but may not otherwise require employees to describe the nature of their illness/injury.

FMLA Second and Third Opinion Process

The Postal Service's current process for initiating FMLA review by a third health care provider, at issue in this case, is not consistent with the FMLA or with ELM 515.1 and 515.54, and implementation of that process violates Articles 5 and 10.2.A of the National Agreement. The Postal Service is directed to rescind that process.

FMLA Paid Leave Documentation

The Unions' contention that the protested Postal Service paid leave documentation policy is improper and impermissible under the National Agreement is rejected.

Since January 28th the ACO has still been requiring employees to describe the nature of their illness or injury in violation of the National Arbitrator's decision, and it needs to stop. I discussed the issue with the ACO and was told that they were going to continue to ask their questions as long as Labor Relations allows them to. When I talked to Labor Relations they tell me that three weeks prior to my conversation with them they gave written and verbal instructions to stop requiring employees to describe the nature of their illness or injury. So someone is lying to me. And I know this because I have received several calls from carriers and stewards informing me that they or their people were asked to do just that, describe what is wrong with them so that the ACO supervisor can better determine how to categorize their illness or injury.

At that time we decided that we would once again start filing grievances on the issue and instructed the stewards to start asking all their people who have called in sick as to what questions they were asked by the ACO Supervisor when they called in. And I would like to ask each and every one of you to start taking notes when you call in as to the questions you are being asked. I want you to write down verbatim as to what is said and give it to your steward when you return to work. On that note I will list the questions that the Labor Relations Office has told me they have instructed the ACO Supervisor's to ask, nothing more and nothing less.

When an employee calls in, the ACO supervisor taking the call should ask the employee the following questions and only the following questions and the carrier is to only answer yes or no:

- **Is this absence the result of an on-the-job illness or injury? Yes/No**
- **Are you requesting FMLA for this absence? Yes/No**

Now, if they say “no” to the FMLA question, read the following and ask them for a yes/no answer at the end:

Is your absence for any of the following reasons?

- **Pregnancy or the birth or placement of a son or daughter with you for adoption or foster care? Yes/No**
- **In order to care for your spouse, son, daughter or parent who has a serious health condition? Yes/No**
- **Due to your own serious health condition which makes you unable to perform the functions of your position? Yes/No**

(If they say yes, open a new FMLA case, etc.)

Then ask:

Is your absence due to any of the following conditions:

- **Communicable or contagious disease?**
- **Mental or nervous condition?**
- **Seizure disorder?**
- **Diabetes?**
- **Cardiovascular disease?**
- **Seizure disorder?**
- **Hospitalization?**
- **Or have you been absent from duty for 21 days or more?**

(If they say “yes” to any of these questions, inform them of the ELM 865 “Return To Work” requirements)

These are the only questions you should be answering when you call in to the ACO office. If they are asking you any other questions, especially if they are asking you to “describe” your illness or injury, inform the ACO supervisor that what they are asking is in violation of the recent National Arbitration ruling and their instructions from the District Labor Relations Office. Then write everything down that was said, and please include the ACO supervisor's name, and give it to your Steward to process.

Your call-in experience should consist of nothing more than what has just been explained in the bold print, and we need to hold the ACO office to this format and nothing more. And the only way we can do this is with the assistance of every letter carrier keeping us informed. If you keep your Steward informed we can make this work and will make this work.

On another note, Headquarters has come out with instructions as to what carriers can take to their cases with them after they punch on the clock, large personal items is at the center of their concerns. We are in the process of work-

ing out a settlement to their new security policy at this time. I have met with the District Manager, Postmaster's in Branch 111 and one of the Regional Administrative Assistant's from the Business Agents office in an effort to hammer out an equitable and realistic settlement concerning past 9/11 security concerns. And I believe we have tentatively reached an agreement we can all live with.

It is sad to think that a select few fanatics in this world can affect our lives so much that we have to go to such extremes as to force us to change out daily routines. It is sad to think that the hatred of others and their desire to bring

harm to others has driven us to such security extremes. Like it or not, things have changed and it sounds like they are now planning to bring violence here to our doorsteps, and we must prepare for it now. Those changes will be printed in the next Pavement Pounder once signed off on by all parties, and will be discussed in stand-ups in each and every work unit in Branch 111.

I am asking that we all keep an open mind in times like these and cooperate to help make our work environment safe for everyone. Change can be tough at times, but at times change is necessary for the good and well being of everyone.

Vice President Article

1. What does Weingarten Right's give to us as carriers.

- A. The right to wear green tag shoes.
- B. The right to drink wine.
- C. The right to have a steward with you during investigative interview.
- D. The right to drive a car in Japan.

2. Who can invoke their Weingarten Rights?

- A. The shop steward.
- B. The union President.
- C. Your mother.
- D. You the carrier.

3. Weingarten Rights give you what rights.

- A. Gives you the right to have a shop steward in with you during an official discussion.
- B. Gives you the right to have a steward with you during an investigative interview.
- C. Gives you the right to use the restroom as many times as you want because you've been drinking wine.
- D. Gives you the right to call in sick.

4. When can you invoke your Weingarten Rights?

- A. Whenever the supervisor talks to you.
- B. When your steward wants to talk to you.
- C. Whenever you reasonable believe that discipline could result from the investigatory interview.
- D. When the police show up.

An employee must be given a reasonable amount of time to consult with his or her steward, and such reasonable time may not be measured by a predetermined factor. (**Step 4, H1C-3W-C 44345, May 9, 1985, M-00303**)

Weingarten Rights

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*) The *Weingarten* rule does not apply to other types of meetings:

- **Discussions.** Article 16, Section 2 provides that "for minor offenses by an employee ... dis-

cussions ... shall be held in private between the employee and the supervisor. Such discussions are not discipline and are not grievable.” So an employee does not have *Weingarten* representation rights during an official discussion. **See National Arbitrator Aaron, H1T-1E-C 6521, January 6, 1983, C-03769.**

- Employees do not have the right to union representation during fitness-for-duty physical examinations.

***The Weingarten rule applies only when the meeting is an investigatory interview*—when management is searching for facts and trying to determine the employee’s guilt or decide whether or not to impose discipline.** They do not apply when management calls in a carrier for the purpose of issuing disciplinary action—for example, handing the carrier a letter of warning.

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.

The steward cannot exercise *Weingarten* rights on the employee’s behalf. And unlike “*Miranda* rights,” which involve criminal investigations, the employer is not required to inform the employee of the *Weingarten* right to representation.

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

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.

Although ELM Section 666.6 requires all postal employees to cooperate with postal investigations, the carrier still has the right under *Weingarten* to have a steward present before answering questions in this situation. The carrier may respond that he or she will answer questions once a steward is provided.

Understand that you are the only one that can ask for your steward to be in the interview with you, but remember that you have to think that it can lead to discipline. You can invoke these rights even if you are out working on the street and the supervisor or any other postal official approaches you and wants to ask you questions and you believe that it could lead to discipline. Always ask to see your steward prior to answering any questions

Answers 1-c , 2-d , 3-b , 4-c

We as union members need to help out the new PTF’s. When they come into your zone help them out, show them the ropes, the do’s and don’ts of being a good carrier. Give them as much information about the job as well as what you plan to give them if you’re giving away time. Be fair in what you are giving them; treat them the way you would want to be treated.

Remember we were all PTF’s at one time. Remember the carrier that helped you out, better yet remember to one that didn’t, the one who hammered you every time he could. Let’s help each other out and welcome them into the membership of this great union with a positive outlook for the future of the union and the post office. Remember the ones you treat fairly are the ones that will have your back when the time comes.

Solidarity Always
Kirk McLaughlin



On January 4, 2005 Congressman John McHugh (R-NY) along with Chairman Tom Davis (R-VA), Ranking Member Henry Waxman (D-CA), and Congressman Danny Davis (D-IL) reintroduced H.R. 22, the Postal Accountability and Enhancement Act. H.R. 22 is nearly identical to H.R. 4341, a bill with the same name introduced in the last Congress.

A full committee mark-up session is expected as early as mid-March. In the meantime, the legislative department has continued to meet regularly with the Administration, the Postal Service, mailers, employee groups, and Congressional staff to ensure that we stay involved throughout the process. In the Senate, Chairman Collins and Senator Carper are expected to reintroduce their bill in the very near future.

There have also been some new members assigned to our oversight committees. In the house the following freshman members have been assigned to the Committee on Government Reform: Rep. Kenny Marchant (R-TX), Rep. Lynn Westmoreland (R-GA), Rep. Patrick McHenry (R-NC), Rep. Charles Dent (R-PA), Rep. Virginia Foxx (R-NC), and Brian Higgins (D-NY). Additionally, there are new members on the committee that are not new to Congress; these members are: Rep. Darrell Issa (R-CA), Rep. Ginny Brown-Waite (R-FL), and Rep. Jon Porter (R-NV).

In the Senate, new to the Committee on Homeland Security & Governmental Affairs (formerly the Committee on Governmental Affairs) are: freshman Senator Tom Coburn (R-OK), and new to the committee but not new to the Senate, Senator Lincoln Chafee (R-RI), Senator Pete Domenici (R-NM), and Senator John Warner (R-VA).

A second important issue on the agenda for 2005 is the debate over Social Security privatization. Social Security is a key component of the retirement, disability and survivor benefits earned by letter carriers covered by the Federal Employees' Retirement System (FERS). FERS carriers now represent 75 percent of all letter carriers. Protecting Social Security is vital to ensuring the financial security of all working people, letter carriers included.

In 2005 Congress is expected to debate proposals to allow workers under the age of 55 to divert a third of their Social Security payroll taxes into private accounts managed by the government. It is not clear how the Social Security Trust Fund will make up for the loss of revenues stemming from this diversion.

Although NALC supports retirement savings programs such as the Thrift Savings Plan, such programs are designed to supplement guaranteed benefits provided by Social Security and employer pensions. Moreover, diverting Social Security payroll taxes into private accounts would make Social Security's financial problems much worse, not better. The resulting budget deficits would add trillions to the national debt.

NALC's officers and staff are working on a program to educate members about the Social Security debate and the need to constructively strengthen Social Security over the long run. NALC activists will be crucial to the success of that program.

In Solidarity,

William H. Young
President

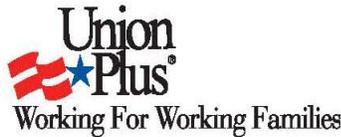
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THE PAVEMENT POUNDER POLICY AND NOTICES

Union meetings are held at the Union Labor Center on the second Thursday of each month.

NALC Branch #111
 2261 S Redwood Rd #14
 Salt Lake City UT 84119-1330

Business Hours:

Mon, Wed, Fri 7:30 AM – 6:00 PM
 Tues, Thursday 9:00 AM – 6:00 PM

Please call before visiting the Branch office to ensure someone is there.

Change of address: Please send your new address to the branch office if you have moved recently or are planning to move in the near future.

Statement of Policy

The Pavement Pounder newsletter is published twelve times a year. The Pavement Pounder is a publication of Branch 111. The articles printed in the newsletter are submitted by the senior union officers, members and Auxiliary of the branch to inform the members of events, news, educational matters and other material deemed for the good of the association. The appropriateness of articles published is determined by the editor. The Editor reserves the right to edit or reject articles submitted based on appropriateness. Articles attacking or criticizing others will not be published. The Pavement Pounder will not be allowed to be used as a weapon against anyone or group of people. The Pavement Pounder is to be used to educate and edify the membership of the branch. The opinions expressed in the newsletter are not necessarily the opinions of the NALC or of Branch 111 or of its officers or editor.

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NALC National Food Drive 13th Annual Drive Set for May 14, 2005

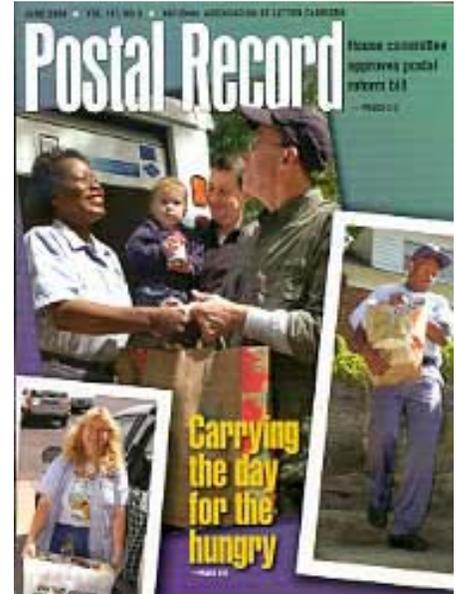
Young Encourages Branches to Join Effort; Along with the U.S. Postal Service, Campbell Soup and Valpak Direct Marketing Return as Major Corporate Supporters

NALC President William H. Young encourages every NALC branch in the nation to get involved in the 13th annual NALC National Food Drive held annually on the second Saturday in May.

Young notes that NALC members conduct what has become the greatest community service activity in the entire labor movement, an effort that has done much to alleviate hunger in America. In so doing, the union has become the major catalyst for millions of Americans who want to help Stamp Out Hunger by delivering their donations to local food banks and pantries in all 50 states, the District of Columbia, Puerto Rico, the Virgin Islands and Guam.

"Many of the recipients are from working families -- people who just need a helping hand to get through some tough times," Young said. "In the 2004 drive, letter carriers collected over 70.9 million pounds of donations, an incredible result. But this year we are determined to go even higher."

Questions about the drive should be directed to Drew Von Bergen, the food drive's National Coordinator at NALC headquarters - (202) 662-2489 or vonbergen@nalc.org.



Presidents Miller Report from the February 10th union meeting

- No agreement on the rural grievances, the rural carriers are fighting harder. So they might be going to arbitration.
- The steak fry is set for Aug. 27th at the Gathering Place (Gardner Village) same place as last year. Prime Rib, Au Gratin potatoes, vegetable, lemonade and cheese cake for dessert. Pay bar outside and a magic act again this year new tricks. Cost is going to be \$10.00 per person, two tickets per member.
- Nation arbitration on the ACO asking the nature of your illness, it has been settled. We won two of the three parts. They have the right to ask you if it is on the job injury or FMLA they may not ask you the nature of the illness. They can not have you get a third opinion on FMLA claims. We lost the FMLA documentation part. It is 45 pages long and you can get a copy at the union hall. This months steward training will be on this so come to the meeting stewards.
- The district commended carriers for doing a great job in the recent days with all the snow and ice.
- The issues of taking large personal items on the workroom floor is being discussed. Richard Doucette has been appointed to represent all the nstallations.
- State Convention is coming up April 29th and 30th . The last day will be training on how to write step b grievances, by the step b person from Seattle Susan Wellhouse and Jamie Lumm. Mike is requesting that all stewards even if you are not a delegate to State Convention please put in for leave to come to the training.

There are some used uniforms at the union office for those in need of them. You can come to the office to pick them up.

The letter Carrier band is in need of new members. If you or your family member or friends would like to become a member just contact the names listed below.

Howard Gray Jr. 277-1868
Robert (Bob) Swenson 968-4914

PAVEMENT POUNDER ARTICLES

Any branch 111 member may submit articles to the pavement pounder for publication. All articles submitted must comply with the pavement pounder "statement of Policy". No articles attacking or criticizing another member of the branch will be printed in the Pavement Pounder. Articles rejected by the Editor may be taken to the Executive Board.

Gean Ryans
Editor

Vice Pres. grievance Report

Thirteen grievances settled since last month meeting.

- 5 express mail failure
- 3 irregular attendance
- 5 safety related

A lot more were not settled. Be safe and do your job safely. Thanks to the stewards who are doing a great job. Local survey are coming out –it is up to the individual if they want to participate or not. This should be voluntary.

Kirk McLaughlin

Safety and Health by :Arlynn Venema

We are doing really well this year. Accidents are down from same time last year. Six less injuries and seven less motor vehicle accidents from the same time last year.

Accident repeater list.

Anyone who is on the repeater list because of bee stings, parked illegally or two or less dog bites have been removed. Twenty people came off the list because of this. We will review the new people who are going on the list. The only way that you will know if you are on the list is if your supervisor tells you. If you think that you might be you can ask your steward. You can come off the list if you no longer have 5 accidents in 5 years. The reason for having the list is so your supervisor can monitor your safety habits, that means street observations. If you are on there wrongfully you have the right to grieve it.

Drawing winners – February branch meeting

- Retirees Progressive drawing \$50.00 George Ready (not present) – next month drawing \$75.00
- Brookfield Progressive drawing \$120.00 - Ed Graham (not present) – next month drawing \$135.00
- Union Meeting Progressive drawing \$475.00 blank line on last page (no winner) – next month the progressive drawing will be for \$500.00
- \$25.00 door prizes winners : Frank Glenn, Alan Crocker and Bob Valdez
- Skaggs \$50.00 gift cert. Winner was Ron Jones
- Donuts winners were : Wendy Tadlock, Jim Fraser and Keith Warner

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Branch111.com

MARCH 2005 CALENDAR

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3 Exec. Board Meeting 6:00 PM	4	5
6	7	8	9	10 Union Meeting 6:00 PM	11 Pay Day _ 5	12
13	14	15	16 Stewards Meeting 6:00 PM	17	18	19
20 Palm Sunday Spring Begins	21	22	23	24	25 Pay Day _ 6	26
27 Easter Sunday	28	29	30	31		