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Training for Supervisors

Duty to Provide Information to the Union in Grievance Matters

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United States Postal Service



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A. General principles

Sources of obligation



Sources of principles:

- National Labor Relations Act
- Collective bargaining agreement

What information must be provided

Management must provide information to a requesting union when required by:

- ✓ the collective bargaining agreement ("contract")
- ✓ or the National Labor Relations Act ("NLRA")
- 👉 Although the contract and the NLRA largely overlap, one sometimes does impose obligations upon management that the other does not.

Requirements

- ✓ Request
- ✓ Potentially relevant information
- ✓ Continuing nature of duty to respond
- ✓ Time for complying with request

A. General principles (cont'd)

Request

- A request must be made.
- Ⓒ Under the NLRA, no duty to provide a union information arises until a request or a demand has been made.

CAVEAT: Even prior to a request, management has the duty to develop and disclose relevant facts.

- Once a request is made, both union and management . . .
. . . must develop "all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Article 31."

– *Article 15.2.Step 2(d) of major National Agreements*

- ☞ A union may request information . . .
- to investigate an existing grievance *and* . . .
- to investigate a matter in order to determine whether or not to bring a grievance.
- ☞ The NLRB's definition of information necessary to process grievances is much broader than the definition under the collective bargaining agreement.

A. General principles (cont'd)

Relevant information

Management must almost always provide a union with . . .

- requested information . . .
- that is potentially relevant in the investigation of . . .

Ⓒ a grievance . . .

Ⓒ or a *possible* grievance.

☞ What is relevant:

A document is relevant when it reasonably . . .

- could **contain** useful information . . .
- or could **lead to** useful information.

A supervisor's disagreement as to a document's relevance does not necessarily make the document irrelevant to the union, nor provide a valid reason not to disclose it. The union needs to show that the document is *possibly* relevant to its pending or potential grievance.

When an information request includes a demand for **both relevant and irrelevant** information:

- ✓ the whole request cannot be denied;
- ✓ management must provide the information that is relevant.

A. General
principles
(cont'd)

Relevant information (cont'd)

- ☞ As examined below in Part D, confidentiality concerns and claims of privilege may affect how or even whether relevant information is disclosed.

Continuing nature of duty

Duty to respond to information requests is **continuing**.

Management still has duty to respond to information requests at further stages of grievance process (Step 3, arbitration).


A. General principles (cont'd)

Time for complying

Timeliness: Management has an obligation to respond to an information request in a timely manner.

What is timely?

- No concrete guidelines:
 - ✓ Depends on situation and reason
 - ✓ Delay of a few weeks may violate NLRA.
- Apply a rule of reason to difficult requests.
 - ✓ Examples: Archived information, voluminous information, information requiring the aid of individuals on vacation, etc.

 **Unnecessary delay** in completing an information request will result in the filing of an unfair labor practice charge with the National Labor Relations Board.

- Therefore, all requests must be promptly answered, and in all cases must be answered within 21 days.
- If a longer period of time is needed, a letter should be sent to the requesting party explaining the reasons for the delay.

B. Information
that is
presumed
relevant

Presumption of relevance

Certain information is presumed to be relevant. This means:

- ☞ Unless management has a good reason for not disclosing it, it must be provided to the union upon request.

Presumed to be relevant information:

☒ pertaining to the wages, hours, and working conditions . . .

☒ of individuals represented . . .

☒ by the requesting union.

Overcoming the presumption

- The presumption of relevance can be defeated.

- The burden is upon management to show:

☒ that the information requested, . . .

☒ even though it concerns individuals represented by the union, . . .

☒ is in fact irrelevant.

B. Information
that is
presumed
relevant (cont'd)

**When the relevance is
questionable, question**

When the relevance of requested information is not obvious or apparent, it is **proper, wise, and safe** to:

- ✓ first ask the union, **in writing**, to explain the relevance of the information sought

When the request is **unclear**:

- ✓ ask the union, **in writing**, for clarification as to the nature of its request;
- ✓ do not deny the request merely because the relevance of the information requested is unclear.

C. Certain information is *not* presumed relevant

Certain information is generally presumed to be *not* relevant

- Information about matters which are not grievable because they are excluded from the grievance procedure
- Information about employees not represented by the requesting union

CAVEAT: In some matters, e.g., a jurisdictional dispute between unions concerning work assignments, or claims of more favorable discipline of a supervisor, this information may be clearly relevant.

- Information about postal hiring practices
- Information relating to a grievance matter that has become moot

Matters excluded from grievance process

- Information about matters . . .
 - that are not grievable . . .
 - because those matters are excluded from the grievance procedure (e.g., probationary employees).

C. Certain information is *not* presumed relevant (cont'd)

Employees not represented by requesting union

- Union carries the burden to show the information and documents are relevant; only if it meets that burden is there an obligation to disclose.

Postal hiring practices

- Information about postal hiring practices

 **unless** . . .

- ✓ the union indicates that it is investigating . . .
- ✓ and the requested information is relevant in determining . . .
- ✓ whether there is EEO-type discrimination operating in those matters.

Moot grievance

- Information relating to a grievance matter that has become moot.



Moot = no longer remains an issue that can be remedied in the grievance procedure

After a grievance matter has become moot, there is no duty to produce information about that grievance.

C. Certain information is *not* presumed relevant (cont'd)

Moot grievance (cont'd)

- ✓ Example: If a discipline grievance is settled, a later request going to the basis for the discipline need not be honored, due to mootness.

CAVEAT: If the request is relevant when made, but later becomes moot, delay in providing the information may nonetheless violate the NLRA.

☞ Keep in mind:

- What may appear to be a clearly winning procedural defense (e.g., timeliness) or a winning defense on the merits (e.g., the contract clearly does not say what the union contends) will not render a matter irrelevant. The union has the right to make its full case, and to conduct a relevant investigation in order to do so.
- There may be rare occasions when the very burdensomeness of a request could justify its refusal. That determination should be made with the approval of Labor Relations.

D. Privilege and confidentiality concerns

Exercise caution

Certain information is privileged and/or confidential and may not be disclosed.

- ☞ If you are unsure whether certain information is privileged or confidential, or whether circumstances require disclosure, contact Labor Relations.
- ☞ The Law Department is available to consult with Labor Relations and/or postal supervisors as complex legal questions arise.

Privileged information

Certain information is privileged and must not be disclosed.

Examples of privileged information:

- the identity of confidential informants
- internal management communications about the strengths and weaknesses of management's grievance and arbitration positions
- documents covered by the attorney-client privilege

D. Privilege and confidentiality concerns (cont'd)

Confidential information

Certain information is confidential and may not be subject to disclosure.

Examples of confidential information:

- Social security numbers
- Medical and psychological records
- IQ tests

☞ What to do when the union requests confidential information:

- ✓ Don't flatly refuse to provide it. A flat refusal to provide even confidential information will be considered a violation of the NLRA.
- ✓ Instead of denying it automatically –

C identify the confidential information and . . .

C invite the union, in writing, to explore ways with you to . . .

C produce the information that will minimize or avoid the confidentiality problem . . .

C while meeting the union's **legitimate needs**.

D. Privilege
and
confidentiality
concerns (cont'd)

**Accommodating confidentiality concerns
and information needs**

Some examples:

- Seeking the consent of the individual to whom the confidential matters pertain for their release
- Sanitizing the diagnosis of a medical condition (e.g., cancer or AIDS) from an OWCP form when all the union needs to know are the employee's work restrictions
- Releasing information to a medical professional retained by the union who can perform an independent review for the union (perhaps determining that a medical diagnosis does or does not support certain work restrictions) while yet being ethically bound not to release the medical diagnosis itself

E. The
magnitude
and cost of
information
requests

Both parties' duty

It's the duty of the union, as well as management:

- Under the NLRA, a union has the same obligation as management to provide relevant information upon request.

Limits on fishing expedition

- Management may deny an information request that constitutes a "fishing expedition."
- Union must have some reasonable basis for suspecting the information is relevant.
- **Use caution** in denying a request on this basis:
 - Ⓒ Clear cases of "fishing expedition" are rare.
 - Ⓒ Consult Labor Relations before denying the request.

E. The magnitude and cost of information requests (cont'd)

Limits on costs to USPS

The Postal Service may charge for reasonable expenses incurred in providing requested information to a union.

- ✓ Allowed by Article 31.3 of major National Agreements
- ☞ In determining what to charge, follow the Administrative Support Manual (ASM) Section 352.7 regarding Freedom of Information Requests.
- The ASM provides that with respect to a given request:
 - Ⓒ The first two hours of search time and the first 100 pages of photocopying are free.
 - Ⓒ For additional time or copies, specified charges can be imposed.
- Should a sizable union request for information be made, review the question of charging for it with Labor Relations.
- ☞ For a voluminous request, a good practice is to provide the union a detailed estimate of the costs to be incurred for the information, with an inquiry to the union as to whether it still desires the information. The supervisor at this time can also request that the union provide payment if it still wants the information.

E. The
magnitude
and cost of
information
requests (cont'd)

Nonlocal requests

Refer them to national level.

- Under Article 31.3 of the major agreements, when a union requests information that is not purely local to the installation where the request is made, that part which is not local "shall be directed by the National President of the Union to the Vice President for Human Resources."

F. Practical advice

- ☞ Keep in mind:
 - If you have any questions or reservations, seek the advice of Labor Relations and/or the Law Department.
 - Even if you think a request is meritless, do not ignore it!
 - Treat all requests in a timely manner.
- ☞ Keep a log of all requests and responses. To better track whether and when information is provided, designate someone to log in all requests, noting when the information has been provided or, if not, the reason for the denial.
- ☞ This training material is only a guide. You may well face information requests that are difficult to categorize or go outside of the situations covered here. Information requests regarding confidential information can be especially difficult to handle. In those cases, seek the advice of Labor Relations professionals before responding to the requests.
- ☞ Among the most troublesome cases involving the Postal Service that are brought before the National Labor Relations Board, the agency that enforces the NLRA, are those arising from information matters. In many

F. Practical advice (cont'd)

cases, relevant information requested by a union either was not provided or was not provided in a timely manner. When requests are handled in this way, these are difficult cases to defend. Even if you think a request is improper, do not ignore it.

- ☞ Because of the volume of requests, the local relationship with a union, or past disputes about the time or even the fact of the transmission of information given in response, it is a good idea to maintain a log of a union's requests and of your responses. It is also advisable to have the union's representatives sign receipts when information has been provided.
- ☞ Finally, when in doubt, call Labor Relations. The Law Department is available to consult with Labor Relations and/or postal supervisors as complex legal questions arise.

- G. Checklist
- 9 Has the **union made a request** for information?
 - 9 Is the information **potentially relevant** to the investigation of a **grievance** or a **possible** grievance?
 - 9 May any document requested **reasonably contain useful information** or information that **could lead** to useful information?
 - 9 Does the information requested pertain to the **wages, hours, or working conditions** of **individuals represented** by the union?
 - 9 If the request is **questionable**, have I **asked the union in writing to explain** the relevance of the information sought?
 - 9 If the request is **unclear**, have I **asked the union in writing for clarification** of the nature of the request?
 - 9 Is the information requested **confidential**?
 - 9 If so, have I written to the union, **inviting it to discuss** ways to produce the information which may **avoid the confidentiality problem**, while meeting the union's legitimate needs?
 - 9 Is the information **privileged**?

G. Checklist (cont'd)

- 9 If the information is confidential, privileged, ambiguous, or of questionable relevance, or the request is so **broad** as to appear to be a **fishing expedition**, have I **conferred** with **Labor Relations**?
- 9 If the information sought is **not purely local**, have I referred this to the national level?
- 9 If a demand for **both relevant and irrelevant** information has been made, have I provided the relevant information?
- 9 If the request is voluminous, have I provided the union with a detailed estimate of the costs and asked the union if it still wants the information?
- 9 Have I provided the information in a **timely** manner?
- 9 Have I **kept a log** of the union's requests and our responses?
- 9 Have I obtained a **signed receipt** for provided information from the union representative?