

ACTIVIST

NALC

A NEWSLETTER FOR BRANCH LEADERS OF THE NATIONAL ASSOCIATION OF LETTER CARRIERS
VOL. 16, NO. 1

WINTER 2003

Past practice can be an important aid to stewards. See page 11.



MScott

Promoting branch political activity

Every election day brings its share of winners and losers and 2002 was no different. It's no secret that many of the candidates the NALC backed last November did not get into office. So what are branch leaders to do? Pack up their marbles and go home, lick the wounds and wait for another day? Not at all, say NALC political activists across the country.

"People need to realize that the election is just one part of the process," says Kieran Hughes, NALC State Association president in Minnesota and newsletter editor for Minneapolis, MN Branch 9. "Even though there were losses—actually *especially* because there were losses, we need to work harder than ever to get our message through."

Hughes and other NALC local leaders acknowledge that it can be an uphill road to get members to become politically active—whether that activity is something as simple as voting or as time-consuming as working on a candidate's campaign. "You hear a lot of reasons from people about why they can't help with the NALC's

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A message from President Bill Young

I am pleased to introduce the "come back" issue of the *NALC Activist*, an educational periodical designed especially for branch officers and stewards.

The *Activist* will once again be published quarterly with the sole purpose of helping *you* more effectively represent letter carriers. In this regard, it will focus not only on workplace issues such as those related to the administration of the *National Agreement* and the Federal Employees Compensation Act but will also attempt to give practical advice as to

how branch leaders can build stronger, more effective branches.

I urge you to read and study this publication carefully. I am confident that, like the "old" *Activist* published from 1986 to 2000, it will be stimulating and informative. But *your* input, ideas and participation is essential if the *Activist* is to continue to meet the needs of branch leaders. So if you have any suggestions for future articles, please send them to: *NALC Activist*, National Association of Letter Carriers, 100 Indiana Avenue, N.W., Washington, D.C. 20001-2144.

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Politics

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political agenda,” notes Chris Kirby, president of Glen Burnie, MD Branch 4422, who had to counter his share of nay-sayers last fall. Kirby worked for NALC-endorsed candidates in Maryland during the 2002 elections in which Maryland’s key Second Congressional District went to a union-backed aspirant while labor’s choice for Maryland governor lost. Kirby and others offer ideas for arguments to use when members resist political activity, see page xx.

Knowing what to say to enlist help from NALC members is an important factor in building member involvement in legislative and political activity. Branch leaders should also realize that they can enhance opportunities for member involvement in these activities by implementing some simple strategies, including **making political and legislative activities enjoyable, enhancing the connection between members’ daily lives and decisions made in Congress,**

and **staying flexible and allowing members to make up their own minds about whether to take action.**

A good time by all

For Las Vegas, NV Branch 2502 members, the branch-sponsored events that seem to have made the most impact on members are those that are “light, not so serious,” says branch president Jerry Penn. A long-time political activist, Penn has cultivated connections with Nevada’s U.S. senators as well as Congressional representatives. As a result, many of

as long as someone is there to listen to them.”

California State President John Beaumont, who is also secretary-treasurer of San Francisco CA Branch 214, agrees that the personal touch can make a substantial difference. In his work, he credits face-to-face discussions as the most effective way to inform members about the need to become active politically. If the politicians themselves are not available, Beaumont has discovered that the next best thing is getting politically committed NALC members to talk one-to-one with uncommitted members. “If you can get even a handful of members well-educated and armed with information about the need to get involved, you’ve got a potent weapon against apathy and indifference that may be expressed by other NALC members,” he says. Because of the power of face-to-face discussions, smaller branches may have a distinct advantage over branches that are much larger. “For example, if all the carriers in a branch are in a single facility, then talking one-to-one just casually at breaks and other times can create an atmosphere that encourages other people to ask for more information,” he says.

Members who are armed with information are a potent weapon.

these political leaders are willing to come to branch functions such as picnics and dinners held before branch meetings. “Branch members really seem to get a kick out of sitting down with politicians and just informally talking about issues and getting to know them as people,” Penn says. Although most of Branch 2502’s monthly meetings usually draw about 70 members and therefore constitute a desirable swath of eligible voters, political candidates in Nevada are usually willing to attend gatherings that are much smaller—down to about a dozen people. “These are really friendly people,” Penn says of the politicians. “They are willing to come out and present their views, and talk

Make it relevant

One of the biggest sticking points that nearly all NALC political activists encounter these days is a pervasive feeling among letter carriers that decisions made “inside the Beltway”—that is, in the U.S. Congress and Senate—have very little effect on letter carriers’ day-to-day lives. “It’s a big hump to get over,” says Minnesota’s Kieran Hughes. “A lot of carriers view politicians with suspicion anyway, so already you’re starting from behind. Then, too, with the exception of retirement benefits, there haven’t been that many NALC

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William H. Young, *President*



issues that have come close to a vote in Congress recently.” However, the future is decidedly uncertain, Hughes notes. “Now that President Bush has appointed a Postal Commission, it’s more important than ever that we win friends on Capitol Hill.”

Jerry Kerner, president of Baltimore, MD Branch 176, agrees. He found it more difficult to interest members in local issues because local government has very little impact on the lives of letter carriers. In the national arena, however, carriers are deeply concerned about the overall survival of the Postal Service, an issue that could very well come to a head with the creation of the Postal Commission. “Now it’s beginning to look like there may be a fight on the national level just to keep what we have,” agrees Glen Burnie, MD president Chris Kirby. “It’s critical to get through to all our members that the national political arena is tightly tied to our own contract—in terms of benefits and rights, and even our continued existence.” Even if Congress is not actively debating the future of the Postal Service, Kirby believes that NALC support of Congressional representatives will ultimately pay off. “Whatever contacts NALC members can make now will only help in the future,” Kirby says. “If we can get not just branch leaders, but individual members to make connections with people in Congress, then we’ll be that much stronger when our issues do come up.”

Staying flexible

Any political campaign requires a multitude of resources, not the least of which is volunteers. At the same time, motivating people to get involved can be tricky business. One way to stir peoples’ interests is to play to their strengths. Not everyone is cut out to make phone calls or knock on doors, but they may be good at organizing volunteers or mapping out walking routes. There is no shortage of things that need to get done. Tapping into peoples’ strengths allows us to maximize our effectiveness.

NALC political activists also need to realize that a “hard sell” approach may itself be a turn-off for some members, especially those carriers who may already lack even a basic commitment to the political process. “Younger letter carriers, especially those in the under-35 age group, are statistically among the group that is less likely to vote in any case,” notes California’s John Beaumont. “If you push too hard with some of these carriers, you can do more harm than good.” That’s why it’s important to “read” the roots of resistance in such carriers and make appropriate responses, he believes. It is essen-

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USPS

BY THE NUMBERS

USPS Operations—PFY-2002	Number	Chg from SPLY*
Total mail volume year-to-date (YTD) (Billions of pieces)	201.8	-3.1%
Mail volume by class (YTD in billions)		
<i>First-Class</i>	101.8	-2.0%
<i>Priority Mail</i>	1.0	-11.8%
<i>Express</i>	0.1	-11.5%
<i>Periodicals</i>	9.7	-4.4%
<i>Standard A (bulk mail)</i>	86.8	-4.1%
<i>Packages</i>	1.1	-3.0%
<i>International</i>	0.9	-17.2%
Daily delivery points	138.0 mil.	1.2%
<i>Percent city</i>	74.1%	—
<i>Percent rural</i>	25.9%	—
City carrier routes	165,829	-3.1%
Rural carrier routes	69,369	0.5%
Estimated Net Income (\$mil.)	-\$953.5	—
<i>Total Revenue</i>	\$66,054	0.1%
<i>Total Expense</i>	\$67,008	-0.9%
Employment/Wages—AP3-2003		
City carrier employment	232,299	-3.0%
<i>Percent union members</i>	92.4%	—
<i>Percent career employees</i>	99.9%	—
City carrier casual/TE employment		
<i>Casuals</i>	5,582	-9.2%
<i>Percent of bargaining unit</i>	2.4%	—
<i>Transitionals</i>	99	-73.6%
<i>Percent of bargaining unit</i>	0.1%	—
City carrier per delivery supervisor	17.3	-2.8%
Career USPS employment	747,187	-3.1%
City carrier avg. straight-time wage \$20.23/hour		3.4%
City carrier overtime ratio (OT hrs/total work hours)	14.0%	—
<i>Ratio SPLY</i>	13.6%	—

*SPLY = Same Period Last Year

This information compiled by the NALC Research Department from USPS Reports.

Counter member arguments against political involvement

NALC local leaders who are also effective activists in the political and legislative arenas agree that obtaining member commitment and involvement in these areas is an ongoing process. A key part of that process is a dialogue—preferably one-on-one—with members who show some resistance to involvement in political issues. In such dialogues, uncommitted union members tend to offer the same reasons for not getting involved. Therefore, local union leaders beginning the process of increasing members' political involvement should be familiar with these arguments and have effective rebuttals prepared, as outlined below:

Politics and politicians are sleazy and scandalous. I want to stay as far away as possible from those types.

It's true that there are always going to be political scandals as there are scandals in other aspects of American life.. But that doesn't mean we should give up on the political process. Politicians are going to have a key role to play in our future—especially in determining what happens to our jobs as letter carriers. Issues concerning our retirement have already been debated in Congress, and the future is likely to bring even more critical issues to the floor. Now is the time to work on educating these people about what is important to us, so they will be our friends when push comes to shove.

NALC has top-notch Washington-based political operatives. They're supposed to take care of my interests, so why should I do anything more?

Yes, NALC has a tremendously effective legislative lobbying program. However, the reason our union has won such respect is because Congressional representatives know that our lobbyists are only the tip of the iceberg, representing a huge number of rank-and-file voters who can make their interests known by sending letters and making phone calls. Moreover, members of Congress want to hear directly from the people who actually voted for them. That's why it's important that ordinary letter carriers like you keep up the pressure by making an impact as an individual, as well as by supporting our efforts through COLCPE donations.

But I am only one person. What kind of impact can I make?

This is perhaps the easiest protest to answer. Just look at the 2000 Presidential election, and the key importance of individual votes in Florida. There are dozens of other elections in which the outcome rested on just a handful of votes. Don't ever think that one vote, one letter, or one phone call goes unnoticed or uncounted. History is living proof of the fallacy of that view.

Well, nonetheless, I just don't have time to get involved.

We aren't asking for a lot of your time. At election time, you simply need to vote—we'll give you a ride to the polling place, or bring you the materials so you can register—whatever it takes, it will only take a few minutes. And it could mean the difference between having a job or not—or having a decent retirement or not. When you set a few minutes of your time against the entire rest of your

life—what are you going to decide to do?

NALC political activists also note that an effective strategy can be to organize the proposed activity so that each individual member need only commit a few minutes or a very limited portion—such as helping out with a phone bank for only half an hour, or bringing hot dog buns to the branch picnic. Once a member has gotten involved even in such a limited way, that member is much more likely to extend his or her commitment. For example, members who are asked to commit only a half hour to a lobbying activity often decide to stay on because they discover that they enjoy what they are doing.

I'm not interested in working for (voting for) this candidate because I don't like his/her stand on a particular issue.

Hot-button issues such as gun control can be extremely divisive, NALC political activists note. The trick is to take the focus off that particular issue and emphasize where the candidate stands on issues that affect the member as a letter carrier or a retired letter carrier. Again, this is a process of respecting the member's right to his or her opinion, but at the same time pointing out that the member may be overlooking issues such as retirement that are really much more important in the long run.

Even if there are some reasons to care about who's in Congress, I don't see why I need to pay attention to local and state politics.

Some NALC political activists run into this argument because they actively work for a variety of politi-

Arguments

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 cians at the local, state and federal levels. In such cases, the activists have recognized the importance of building strong friendships early in the political process. Helping a mayoral candidate get elected can generate a lot of political good will that the union can cash in on down the road when that mayor decides to run for a seat in Congress. At the same time, local and state politicians can be much more accessible and available to branch members. And local and state issues, even though they may not be directly related to a letter carrier's job, can still have a huge impact on other parts of an NALC member's life. Such issues might be a way to "hook" members to begin taking

interest in the political process—while also encouraging members to work at a level in which their individual impact may be more readily apparent.

To sum up, NALC local leaders need to be thoughtful in addressing individual member concerns about political activities. At the same time, there are some clear answers to each of the above objections that members may raise. By being thoroughly educated on political issues and familiar with all the political players, local union leaders can help members recognize the value of political and legislative activity and begin to build a strong local union presence in these areas. ■



Br. 214 Secretary-Treasurer John Beaumont (r.) campaigns with successful House candidate Dennis Cardoza in California.

Politics

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tial, Beaumont points out, because the bottom line is "these people in Washington do control our lives to a certain extent and need to hear from all of us, not just the usual players."

That's one reason why Beaumont stresses the need to remain informed

Keep up a steady flow of information.

and up-to-date on what is happening in Washington. "The more informa-

tion you have, the more flexible you can be in convincing people that they need to take some personal action," he says. It's also important to keep up a steady flow of information to all branch members through a variety of outlets, adds Chris Kirby. "The elections may be over, but the need to keep people informed doesn't stop," he says. "Letters from branch officers to members, information about upcoming bills in Congress, newsletter articles—all these are ways to keep our point of view in members' minds, to make sure everyone knows the NALC agenda."

In some ways, the losses in last November's election may actually help NALC branch leaders in their ongoing efforts to "politicize" branch members. "Sometimes you get more support when you can position yourself as the underdog," says Beaumont. "It's obvious we don't have the luxury of resting on our laurels, but the last election also showed that we do have more power, perhaps, than we

are conscious of," Beaumont says, noting that in California, the union-backed candidates swept all races from the Governor on down. "We figures that at least 25 percent of voters in California last November were union members," Beaumont says. "So our efforts to target union members—including NALC members—were really successful."

Minnesota's Kieran Hughes offers his perspective, honed over almost 25 years of political activity and also reflecting a less than cheery election results in Minnesota: "It's just the beginning of the game as I see it," he says. "Sure, the election gets a lot of attention, but what counts from here on out is how we play our pieces now that the election is over." Maybe NALC's candidates didn't all get in, but that's a greater reason to keep in the game, Hughes argues. "When we lose in an election, it's kind of like a spur—an extra push to step up our engagement and keep us on our toes." ■

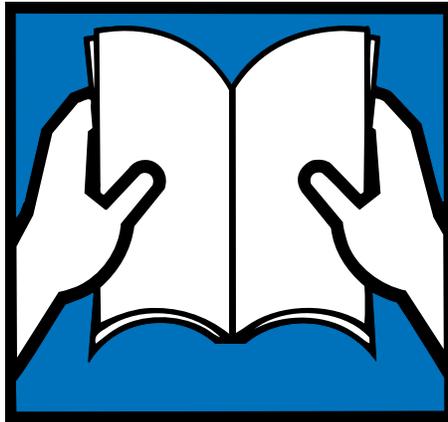
The case of the missing overtime

For those letter carriers looking for extra cash either to pay their regular bills or to save for that “special something,” working overtime has a strong attraction. Fortunately, overtime opportunities have generally been available for those carriers anxious for extra work—as long as they sign the Overtime Desired List.

Carriers know that by signing the list they agree to a bargain with management as set forth by the rules in Article 8, Section 5 of the National Agreement. Carriers, if on the OTDL, must be available for management-assigned overtime throughout the quarter. Management, however, must keep its part of the bargain by distributing overtime hours fairly—“equitably,” says the contract—among those carriers on the list.

This bargain is essential to letter carriers and to management. USPS receives assurance that certain carriers will work overtime when needed. Carriers who desire overtime work get assurance that management will distribute overtime in a rational and well-understood way. The “equitability” requirement is designed to prevent favoritism or arbitrariness in this process.

Because overtime is so important to both postal employees and managers and because Article 8, Section 5 is complex, the overtime distribution rules are often the subject of contention in the grievance procedure. A recent regional arbitration decision illustrates a situation in which carriers were the victims of inequitable overtime distribution, and they used the grievance procedure to remedy management’s contract violations. (C-20543, Regional Arbitrator Lawrence Roberts, March 18, 2000.)



The facts

Three carriers in Silver Spring, Maryland filed grievances in 1999 after data from the year’s first quarter showed that they received far less overtime than other carriers on the OTDL. All three grievances alleged that management had violated Article 8, Section 5.C.2.b by failing to make every effort to distribute overtime equitably among carriers on the OTDL. (See “Know Your Contract” on page 8.) Each carrier requested as a remedy that each carrier be paid for the number of overtime hours he or she should have worked during the quarter.

The NALC had been tracking overtime meticulously in Silver Spring, and management agreed with the union’s method for logging both opportunities and overtime hours worked. On March 1, 1999, the start of the first quarter’s final month, the shop steward showed management the count of overtime hours, pointing out discrepancies that needed to be corrected by the end of the quarter.

Management did not correct the imbalances and at the end of the quarter, the OTDL carrier with the most overtime had 36 overtime opportunities and 84 hours of overtime work—

considerably more than any of three grievants, whose overtime records for the quarter were as follows.

Grievant A - 20 opportunities and 61.5 hours.

Grievant B - 27 opportunities and 62 hours.

Grievant C - 30 opportunities and 67 hours.

When the three carriers filed their grievances protesting the imbalance, management denied at each level of the grievance procedure that it had violated Article 8, Section 5.C.2.b.

Union arguments

At the hearing before regional arbitrator Lawrence Roberts, the union based its case on two main factors. First, it contended that the figures showed a significant disparity between the three grievants’ overtime opportunities and hours and actual overtime of other carriers on the OTDL during the first quarter of 1999. The numbers alone showed a violation of Article 8.5.C.2.b.

Second, the union carefully pointed out that the parties had a standing procedure for monitoring overtime and that in this instance management had simply dropped the ball. Further, the union had gone to managers on March 1 and let them know of disparities, but management had failed to act effectively to address the problem.

The union thus showed not only that management had made a contractual error, but also that the union had shown its good faith by informing management of the problem before it became a violation of the National Agreement. Even with this information in hand and the power to correct the problem, management had failed to follow the contract.

USPS arguments

The Postal Service denied any violation Article 8.5.C.2.b. First, it argued that because the contract did not require overtime hours to be equal, the number of overtime hours worked is not the sole criterion for determining equitability. USPS further argued that despite its efforts, it was unable to give letter carriers more overtime because in many cases the employees were unavailable. USPS argued that some employees had asked for special accommodations regarding overtime, while others took either annual or sick leave. In light of these circumstances, the employer reasoned, it had made every effort to distribute the overtime equitably and had not violated the National Agreement.

The employer also cited a regional arbitration award previously decided by arbitrator Roberts. In the prior case the arbitrator had found no violation of Article 8.5.C.2.b despite disparities in overtime hours, because the Postal Service had shown other logical reasons for the unequal overtime distribution such as the amount of leave taken by the grievant, which made him unavailable for additional overtime. USPS asked arbitrator Roberts to apply the same reasoning to the present case.

The arbitrator rules

Regional arbitrator Lawrence Roberts ruled for NALC and three grievants, based largely on management's failure to offer good reasons for its failure to correct the overtime imbalance even after the union warned the employer about the problem on March 1.

The arbitrator first reviewed the national rules concerning management's obligation under Article 8.5.C.2.b. He examined in particular

the *Joint Contract Administration Manual* text explaining the provision. That language summarizes those rules, which came largely from two national arbitration decisions. In the first, National Arbitrator Neil Bernstein ruled that in determining "equitable" distribution of overtime, the number of **hours** as well as the number of **opportunities** must be considered. (C-06364).

In another national award, arbitrator Howard Gamser declared that the employer must pay employees deprived of equitable hours for the overtime hours of which they were deprived, but *only* when management has shown "a willful disregard or defiance of the contractual provision, a deliberate attempt to grant disparate or favorite treatment to an employee or group of employees, or caused a situation in which the equalizing opportunity could not be afforded within the next quarter." In all other cases, Gamser held, the proper remedy is to provide "an equalizing opportunity in the next immediate quarter, or pay a compensatory monetary award if this is not done ." (C-03200)

Arbitrator Roberts also cited language from his prior award prescribing rules for deciding these types of cases. First, the arbitrator had ruled, the union must show actual discrepancies in the overtime distribution between different carriers. Once that is shown, "... the burden of proof shifts to the Service to clearly show a well reasoned foundation to explain the difference in total hours. The reasoning must be in accordance with the aforementioned guidelines [i.e., the Bernstein and Gamser national awards]."

Applying these principles to the present case, the arbitrator concluded,

"In my opinion, the Employer failed to meet their required burden of proof in that regard. The entire theme of Management's case in chief alleged that factors such as sick leave, annual

leave and Employer leniency, was a direct factor in the disparity. However, the evidence in each of these grievances failed to support those claims of the Service. . . . the Employer in this case simply failed to offer a credible defense to the inequity."

Arbitrator Roberts also blamed the employer for making "little attempt to correct" the inequity after the union brought it to light during the final month of the quarter.

The remedy

The Postal Service advocate argued that if the grievants deserved any remedy, it should be in the form of overtime opportunities offered during the next quarter—rather than any payment for the lost overtime hours. However, the arbitrator granted the monetary remedies requested by the NALC.

Once again the arbitrator's reasoning was based on the employer's behavior in the case.

"In this case . . . instead of the Employer attempting to correct inequity in the second quarter of 1999, management argued there was no violation of the agreement. Therefore, the Grievants herein were not afforded that opportunity within that second quarter to work to make up those contractually deprived hours."

The arbitrator therefore rejected the employer's call for a "makeup" remedy in the case:

"Any attempt by me to author "work opportunity" remedies to these violations, at this point in time, would only negate the spirit and intent of the precedent . . . The only contractually prescribed remedy, upon the conclusion of the following quarter, would be monetary in nature. Since that following quarter has since passed, the only prescribed remedy, recommended by authority, is that of monetary reimbursement."

The arbitrator ordered management to pay each of the grievants time-and-one-half for the difference between the total overtime hours worked by the grievant versus those worked by the highest-overtime carrier during the quarter.

Note to stewards

As pointed out in “Know Your Contract,” generally the remedy for a single quarter of inequitably distributed overtime is an “equalizing opportunity” during the next quarter. This means that during the makeup quarter the affected carrier must get the extra overtime missed during the first quarter, and as a separate matter, also receive an equitable amount of overtime during the second quarter.

Yet given the circumstances of this case, arbitrator Roberts ordered monetary remedies for all three of the grievants. He reasoned that management had failed to correct the overtime imbalance even though the union had given USPS adequate and timely notice of the problem. He also relied on the fact that management denied the violation completely in the grievance procedure and, as a consequence, carriers were denied the opportunity for makeup opportunities in the following quarter. Because time had passed without a remedy while the grievance was being discussed and appealed, arbitrator Roberts faulted the Postal Service for failing to provide the makeup remedy during the subsequent quarter.

Beyond this contractual rationale, the arbitrator also appeared to fault the Postal Service for its “bad faith” or unfair behavior in the case. The union had presented evidence that although its own behavior was honest and forthright, management’s behavior was not. So one of the union’s arguments in the case was, in effect, that the Postal Service had come to

arbitration with “unclean hands” (a term used by lawyers), since it had learned of its good, yet failed to act quickly to fit, and, finally, stonewalled by refusing to admit its mistake or remedy it. The employer further dirtied its hands before the arbitrator by listing justifications and then failing to offer any evidence to back them up. As a result, the Service should not be allowed to benefit from its own bad behavior. In contrast, the union had “clean hands,” as it document by showing that it acted cooperatively to help management avoid a violation, rather than sitting back and letting management

goof and then playing “gotcha.”

Stewards can apply this lesson about good faith and bad faith in a variety of situations. Of course, all stewards know very well that fairness alone is seldom enough to win a grievance—“It’s not fair!” does not mean “It’s a valid grievance.” Yet in many situations a contract violation has a history that shows the union, the employee or both acted honestly and in good faith toward management. When this is the case, stewards can use this kind of evidence to paint a picture that enhances the strength of a grievance. ■

Know your contract

As noted in the accompanying story, Article 8, Section 5.C.2 sets forth the Postal Service’s duty to make “every effort” to “equitably distribute the opportunities for overtime among those on the ‘Overtime Desired’ list.”

5.C.2.b During the quarter every effort will be made to distribute equitably the opportunities for overtime among those on the “Overtime Desired” list.

The *Joint Contract Administration Manual* explains that this provision’s “equitability” requirement

... does not mean that actual overtime hours worked must be distributed equally. National Arbitrator Bernstein ruled in H1N- 5G-C-2988 (C-06364) that in determining “equitable” distribution of overtime, the number of hours of overtime as well as the number of opportunities for overtime must be considered.

Certain types of overtime are not counted or considered in making the determination of equitability: (1) overtime worked on a letter carrier’s

own route on a regularly scheduled day; and (2) the eight hours of overtime worked on the sixth day of an opt.

National arbitration decisions have prescribed remedies for violation of the equitability requirement. National Arbitrator Howard Gamser ruled in NC-S-5426, April 3, 1979 (C-03200) that the Postal Service must pay employees deprived of “equitable opportunities” for the overtime hours they did not work only if management’s failure to comply with its contractual obligations under Article 8.5.C.2 shows “a willful disregard or defiance of the contractual provision, a deliberate attempt to grant disparate or favorite treatment to an employee or group of employees, or caused a situation in which the equalizing opportunity could not be afforded within the next quarter.” In all other cases, Gamser held, the proper remedy is to provide “an equalizing opportunity in the next immediate quarter, or pay a compensatory monetary award if this is not done...” ■

Finding your way through the maze of workers' compensation

Dealing with an on the job injury is a daunting task, both for the injured employee and his or her branch leaders. It can seem as if they are trapped in a maze that has no clear path outlined and seems to go on for ever. The confusion, frustration and complex regulations are just too much to handle.

An injured letter carrier is not sure which way to turn, so the first place he or she is going to turn is you, as a branch leader since you have the responsibility of assisting your members who experience problems when filing a claim with the U.S. Department of Labor's, Office of Workers' Compensation Programs (OWCP). Remember that if the carrier is unable to get assistance at the start, the maze will get more complicated and success much less likely.

Don't be afraid! You can arm yourself before entering the maze by acquiring a good working knowledge of injury-reporting procedures, and by becoming aware of where problems with OWCP are most likely to occur. You can also help your members by letting them know what actions to take when filing a claim and what pitfalls to avoid so that their claims can be processed with the least amount of delay.

One of the most valuable services a branch leader can perform is helping letter carriers who get injured on the job right from the very beginning. This initial assistance is crucial to successfully navigating the OWCP process. Future issues of the *Activist* will provide branch leaders with information on some of the more fre-



quent pitfalls that injured letter carriers face when filing a claim with OWCP.

Choosing the form

Choosing the correct form for submitting an OWCP claim may seem a relatively minor issue, but filing an improper form may result in a denial of benefits or at least a longer delay in having a claim approved.

CA-1 "Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay"

A traumatic injury is defined as a wound or other condition of the body caused by external force, including stress or strain. The injury, which must be to an identifiable part of the body, must be caused by a specific event or incident or series of events or incidents within a single work day or work shift and must be identifiable by time and place.

The purpose of the CA-1 is to notify the supervisor of a traumatic injury. The CA-1 also serves as the report to OWCP when: (1) the employee has sustained a traumatic injury which is likely to result in a

medical charge against the compensation fund; *or* (2) the employee loses time from work on any day after the injury date, whether the time is charged to leave or to continuation of pay; *or* (3) disability for work may subsequently occur; permanent impairment appears likely; *or* (4) serious disfigurement of the face, head, or neck is likely to occur.

The employee or someone acting on the employee's behalf must submit the form within 30 days to qualify for continuation of pay (COP). (Continuation of pay will be discussed in greater detail in a future issue of the *Activist*.) However, if the CA-1 is filed within three years from the date of the injury, OWCP will consider the claim timely filed but only for purposes of compensation. Once the form is submitted to the supervisor, the supervisor has 10 working days to forward it to OWCP.

CA-2 "Notice of Occupational Disease and Claim for Compensation"

An occupational disease is a disease resulting from a condition in the work environment that has existed for a period longer than one workday or shift. The disease could be a systemic infection, repeated stress or strain, or an illness resulting from exposure to toxins, poisons, fumes, or other continuing conditions of the work environment.

The purpose of the CA-2 is both to notify the supervisor of an occupational disease and to serve as a report to OWCP when: (1) the disease is likely to result in a medical charge against the compensation fund; *or* (2)

the employee loses time from work because of the disease, *or* (3) whether the time is charged to leave or leave without pay; disability from work may subsequently occur; *or* (4) permanent impairment appears likely; *or* (5) serious disfigurement to the face, head or neck is likely to occur.

In the area of occupational disease, COP is not applicable and therefore in general, the employee (or someone acting on his or her behalf) must file within three years of the last day of the injurious exposure. However, OWCP encourages employees to submit the CA-2 to their supervisors within 30 days of the last day of the exposure. Once the form is submitted to the supervisor, the supervisor has 10 working days to forward it to OWCP.

CA-2a "Notice of Employee's Recurrence of Disability and Claim for Pay/Compensation."

The purpose of the CA-2a is to notify OWCP that an employee, after returning to work, is again disabled due to a prior injury or occupational disease, or has suffered a recurrence of the accepted medical condition. It also serves as a claim for continuation of pay or for compensation based on the recurrence of a previously reported condition.

Definition of recurrence

A recurrence of a *disability* is defined as a spontaneous return or increase of the disability due to a previous injury or occupational disease without intervening cause, or a return or increase of disability arising as a consequence of prior compensable condition. A recurrence differs from a new injury in that with a recurrence, no event other than the previous injury accounts for the disability. A recurrence of *medical condition* is a documented need for further medical

treatment when there is no accompanying work stoppage after release from treatment for the accepted condition or injury. *Continuous* treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment" nor is an examination without treatment.

Choosing a physician

In most cases, ill or injured employees should wait to file a claim until they have spoken to their physician. What might appear as a traumatic injury may actually be diagnosed as a longer term problem that culminated in pain on a particular day. Without knowing what condition has been diagnosed, you are at a disadvantage in choosing the proper form for the ill or injured employee.

This brings us to the second pitfall that injured employees face—choosing their own physician to provide the proper medical evidence supporting their claim. OWCP regulations state that "The employer should advise the employee of the right to his or her initial choice of physician." (See 10 CFR 10.300 (d) on *NALC's Injury Compensation CD* described on page XX.) Each injured employee should make immediate arrangements to see their own physician after incurring a work-related injury. The Postal Service may only use their contract physician as a "fitness for duty" evaluation, unless the injured employee selects the postal physician to be his or her treating physician or sees that physician on more than two occasions. Once an injured employee sees a postal contract physician for more than two visits, OWCP considers the doctor to be the employee's physician of choice, and the employee can later change physicians only with OWCP's approval.

Basics of a claim

Once the proper form has been determined, it is necessary to provide the injured letter carrier with an outline of the basic requirements of a successful claim. For any claim to be approved by OWCP, it must contain three basic elements: (1) a clear diagnosis; (2) test results or objective findings supporting the diagnosis; and (3) a rationalized medical opinion explaining the relationship between the condition and factors of employment. These three elements will be discussed in greater detail in an upcoming issue of the *NALC Activist*.

Compensation CD

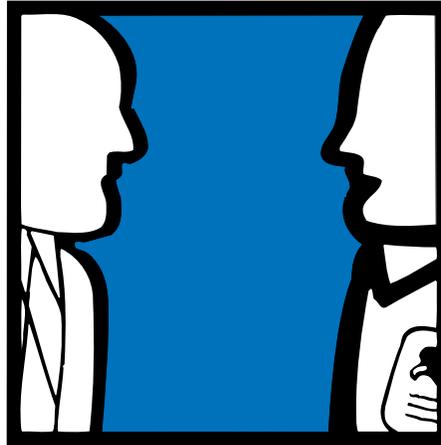
Stewards and other branch leaders should amass a library of reference material concerning OWCP and worker's compensation related issues. In order to assist you with the library, the NALC has produced an *Injury Compensation CD* that contains a written document explaining the OWCP process and also includes a very detailed and comprehensive appendix. The appendix contains the Federal Employees' Compensation Act, the Code of Federal Regulations dealing with OWCP, OWCP Forms, NALC Forms, OWCP Pamphlets including the CA-550 Questions and Answers and the CA-810 Injury Compensation for Federal Employees, USPS manuals including the ELM Section 540 and the EL-505 Injury Compensation Handbook. As an addition, we have also included relevant regional and national arbitration decisions and contractual policies. Each branch will receive a CD free of charge and can obtain additional copies either directly from the NALC website or from the NALC Supply Department, 100 Indiana Ave., N.W., Washington, D.C. 20015, for \$10 each. ■

Past practice: A key protection for letter carriers

Every NALC steward knows that **contract administration** is a basic part of the steward's job—perhaps the most important part. The provisions of the *National Agreement* have been specifically negotiated to provide protection for letter carriers, protection that is only as good as the watchful eye of the steward. Article 19 of the contract makes clear that all handbooks and manuals relevant to the carrier's job, such as the *M-39*, are also considered part of the contract. Stewards therefore need to know these documents and be prepared to file grievances if management steps outside of any of the provisions contained in these handbooks.

There is another, equally important part of contract administration that may not be as obvious. The steward must also be aware of **unwritten custom and past practice** that exists in the relationship between carriers and management. In many cases, these unwritten expectations have evolved over many years and are taken for granted by carriers. However, USPS management can and will make attempts to unilaterally change past practice—usually when a new manager comes into an office. Such attempts should be resisted and grieved with as much effort and dedication as any management violation of the written provisions of the *National Agreement*.

For many years arbitrators have held that custom and past practice can be held enforceable through arbitration because such



past practice is in essence a part of the parties' **whole agreement**. That is, the existence of an unwritten but long-established practice is just as binding on the parties as is the written language contained in all the documents, handbooks and manuals that apply to the carrier's job.

In the 2001 *Revisions to the USPS-NALC Joint Contract Administration Manual (JCAM)* the parties formally agreed on the binding nature of past practice and set down a general explanation of the definition and functions of past practice.

Basically, when arbitrators recognize and sustain the validity of a past practice, they are affirming the principle that no set of written documents can cover every aspect of the labor-management relationship. Practices evolve within that relationship that may be specific to a particular office or even a particular route. If the practice continues without change or objection from either manage-

ment or the carriers for a long enough period of time, then that practice is considered by arbitrators to be a part of the labor agreement, and it cannot be changed without negotiation between the parties.

Use of photocopier

For example, in 2001 Arbitrator Carlton Snow in Case C-23057 ruled that a valid past practice existed in a California postal facility that NALC representatives could use the copy machine owned by management to copy small numbers of documents at almost any time and also to make large numbers of copies after obtaining permission from management. Also, the copying performed by union representatives was free of charge by management. This was standard operating procedure in the facility for at least eight or nine years.

However, in 1998 new management took over and changed the access codes for the copy machines. Managers told union representatives that they would have to seek permission to make *any* copies and further, would be charged 15 cents a page for each copy made by the union. The union grieved this change as violating a long-standing past practice, and the grievance proceeded to arbitration.

Neither side disputed the facts of the grievance. The union argued that by changing the prac-

tice of allowing the union free use of copiers, management had taken a unilateral action in violation of the understanding that changes in past practice would be negotiated. Management for its part argued that allowing the union to use the copier was a unilateral management decision in the first place, and that therefore it could unilaterally be changed.

Arbitrator Snow, in upholding the union's grievance, relied on an earlier arbitration decision by Arbitrator Richard Mittenthal, who also described the elements required to establish a valid past practice in a paper given to the National Academy of Arbitrators and in an article in the *Michigan Law Review*. Mittenthal's points are also contained in the JCAM section on past practice. The fundamental elements of a valid past practice or custom, as Mittenthal has stated and the JCAM has paraphrased, are four, as follows:

1. The practice has an established longevity and repetition.
2. The practice has clarity and consistency.
3. The practice has been accepted by both parties; and
4. The practice has a clear purpose and scope.

In the case of the union's use of management's copier, Arbitrator Snow found that the union's undisputed use of the machine for the past eight or nine years proved that the practice had an established longevity and repetition. For that amount of time, the conditions applying to union use of the copier were clear and consistent, were accepted by both parties, and had a clear purpose and scope. By mutual agreement, the parties in the office had determined that allowing the union to

use the copiers was the most convenient way to provide copies of important documents that the union needed to process grievances. As Arbitrator Snow wrote, that purpose was clear—in his words, “an effort to maintain stable, more peaceful relations with the Employer.”

As Arbitrator Snow saw it, when a new manager took over the office and put an effective end to union use of the copiers, management was acting in an arbitrary way that violated the spirit and

“
**There are four
 fundamental
 elements of
 a valid past
 practice.**
 ”

existence of the long-standing past practice. In his award, Arbitrator Snow charged management with restoring the union's access to the copiers and, in response to part of management's claims that union use of the copiers was costly, allowed management to charge the union the “actual, documentable costs for making copies,” which would be considerably less than 15 cents a page.

Need not be a benefit

In general, unions tend to grieve management violation of past practice when the discontinu-

ation of the practice takes away a clear benefit for workers or the union, such as the above case. Generally, stewards are alert to such management actions because the workers who are affected by the change complain about the loss of the benefit—for example, in some workplaces, if a manager decides to begin charging for parking or allowing persons other than employees to use the spaces for a fee when the allocation of parking spaces to employees had been established by past practice.

However, there are many past practices or customs that on their face seem to provide no real benefit to letter carriers. Yet NALC stewards should be alert to any unilateral changes in these practices as well, and be prepared to grieve the changes so that the past practice can be preserved.

For example, in a case heard in Connecticut last January by Arbitrator Garry Wooters, the basis for the grievance was the fact that management had made a change in the daily schedule of letter carriers so that they no longer “dragged the mail” for their routes from the clerk cases in the morning office hours while casing their routes. (The term, “dragging the mail,” in this case most likely did not mean literally dragging bags of mail from one location to another, but simply picking up cased mail from the clerks). Instead, clerks were to “drag the mail” to the carriers. The amount of time involved in this operation was usually five minutes or less—and on its face, the unilateral change in the practice would seem relatively insignificant.

However, the NALC argued that the practice of carriers drag-

ging the mail had stood unchallenged for 22 years and was therefore a valid past practice that could not be unilaterally changed by management. Why would the union pursue such an issue to arbitration? Very simply, the NALC had an eye to the future and the importance of preserving carrier office time in the next round of route inspections.

Arbitrator Wooters agreed that the practice of having carriers drag the mail was indeed a valid past practice. As Wooters wrote, "It was well known to the parties, acted upon over an extended period of time and was mutually assented to." Therefore, the arbitrator ruled that management must reinstate the practice and return the work of dragging the mail to the carriers.

Who is affected?

Another general principle in grieving past-practice violations is that usually a number of workers are affected by the unilateral rejection of the past practice, as in the above case of dragging the mail. However, the question of how many people are affected by the change should not always be a factor in deciding whether to grieve management's abolition of an established past practice, even if that order affects only one carrier.

In Case C-23114, heard by Arbitrator Claude Ames last February, a new manager learned that a carrier was in the practice of taking his lunch break at his own home when carrying a certain route. The route was set up with authorized lunch locations which did not include this carrier's home. However, a former

supervisor had agreed that the carrier could take his lunch break at home whenever he carried that route as a swing and the carrier had been following that practice ever since, which was an unspeci-

**NALC stewards
may need
to do historical
research.**

fied amount of time. However, during that time both the carrier and management had agreed on the practice.

The new manager, however, noticed the carrier's deviation from "authorized lunch locations" when carrying that route and ordered that the carrier stop going home for lunch and instead go to one of the authorized locations. The NALC grieved this order, which unilaterally changed a mutually agreed upon past practice. The arbitrator upheld the union's grievance. In this case, however, stewards should note that the carrier had a clear and mutually agreed upon practice with a supervisor, which formed the basis of the arbitrator's decision. A past practice existing in the absence of such a clear and mutual agreement might well have not been upheld in arbitration.

Other recent cases that uphold the validity of unwritten but long-standing past practice include

Case C-23069, in which an agreement existed between the postmaster and carriers in an office that the carriers could forego their lunch break and work an 8-hour tour instead of the standard 8 hours. When a new postmaster came in, the postmaster attempted unilaterally to change that practice, which had been in effect since 1989. As the arbitrator in this case, Jonathan Monat, wrote, "The evidence submitted by the union met the threshold burden to establish that a past practice exists at the ___ Post Office with respect to the 'no lunch' policy. Management provided insufficient evidence to overcome the preponderance of the evidence of the past practice."

Nature of the evidence

In preparing a grievance based on management's violation of a past practice, NALC stewards must be prepared to undertake a kind of historical research project. The steward must seek out witnesses (who may no longer be working at the facility) who can testify to the establishment of the practice. In many cases, some of this history could even come from management. In all cases, NALC stewards should strive to meet the four elements as stated by Arbitrator Mittenthal: that a past practice has longevity and repetition; clarity and consistency; acceptability and mutuality; and a clear purpose and scope.

As demonstrated by the cases described above, each past-practice grievance has its own special set of circumstances. In the end, the union's success in winning such grievances depends on how well the steward can collect all necessary specific facts. ■

Lively branch newsletters can wake up members

You don't have to fully agree with the late Speaker of the House Tip O'Neill's famous aphorism that "All politics is local" to realize that the best way to grab the attention of most letter carriers is shine a light on the local scene—what's happening at their workplace and what's going on with the branch. This is why branch newsletters are such a vital part of NALC's overall communications program, and the union's continuous "unionizing" efforts.

But an unread branch newsletter is like a missile that falls short of its target: it just doesn't do the trick. Part of the problem is that, like the daily newspaper, a branch newsletter can begin to look stale—a steady diet of sameness that says, "Leave me on the table. Don't pick me up."

In newspapers, editors fight that problem by demanding "Hey Mabel!" stories, as in "Hey Mabel, you gotta read this!" It's rare when that happens with a branch newsletter, but the editors of three popular monthly NALC publications have a number of tips for content that can wake up your membership.

The foremost consideration is how to get the member—whether longtime activist or new hire—to *begin* reading, and one sure answer to that question is humor.

"You can't be serious all the time," says Jim Borowske, editor of *Twigs*, St. Paul, Minnesota Branch 28. "I'm sure the most popular thing we do is the 'Top 10 Whatever-Stupid-Thing-It-Is of Management.'"

"Tell 'em what you did as humorously as you can," advises Niles Hagedorn, president and editor of *The*

Voice of Branch 4430, Lancaster, California.

"Cartoons," Chris Larsen, editor of *The Seventy Niner*, Seattle, Washington Branch 79, concisely suggests.

Managerial follies seem plentiful and the NALC is blessed with dozens of accomplished cartoonist-members, some well-known and others emerging in branches around the nation. Almost all of them allow branch publications to use their materials with proper credit. (See listing for the names of some recent entrants in the biennial *Branch Publications Competition*.)

But an eye-catching cartoon only goes so far, and a light touch or ripping ridicule may provoke a smile but not necessarily create a loyal or attentive reader.

Larsen says many Seattle members are drawn to "the human interest stories from outside the post office. They look at those things first."

An example: a small box on the front page of the *Seventy Niner* by a member seeking help with an annual Thanksgiving meal for the homeless and listing donations he needed, from the number and poundage of turkeys to a half-dozen cans of "cool whip."

"If you catch their eye and they start reading, you can draw them in," Larsen claims. "Then you have to give them variety and substance."

The 2,200-member Seattle branch for the most part offers a "meat and potatoes" diet—station news, grievance activity, solidarity events with other unions, and standing features like officers columns salted with lists of new members, recent retirees and the phone numbers and addresses of local members of Congress.

In St. Paul, Borowske has a similar mix and a few other notable regulars. He credits former branch President Michele Downs with the idea for one occasional *Twigs* feature, "NALC voices from around the nation," excerpts from branch newsletters on hot-button topics like DPS or "minor adjustments."

"Every steward or officer hears the complaints about 'Why us?' or 'What are you going to do about it?'"

"Although there aren't always solutions, seeing what's happening in California or Florida gives the carriers some perspective," Borowske says. "They can see the plight they're in is national, not just local. Or that some carriers have it worse!"

Another item *Twigs* runs regularly is the "Rule of the Month," usually connected to an officer's column or some current issue of interest in the 1,250-member local. For instance, last September, the newsletter printed the Joint Statement on Violence and

NALC Cartoonists

Here are just a few of the NALC members cartoonists whose work is available for branch publications. Fred Acedo, Bakersfield, CA Br. 782 Glenn Anderson, Mass. North Shore Br. 33

Archie Asberry, Seattle, WA Br. 79 Laird Atkins, Orlando, FL Br. 1091 Kenneth Bonin, Mass. N.E. Mgd. Br. 25 Dominic Lampasi, St. Louis, MO Br. 343

Mark Logue, Boston, MA Br. 34 John Morell, Youngstown, OH Br. 385 Timothy Schmidt, St. Paul, MN Br. 28

Behavior in the Workplace and its follow-up, decade-old documents frequently spoken of, but rarely seen in print. (Both are available on the Safety and Health page of NALC website.)

A matter of rights

All the editors said members—even the “newbies”—tell them they appreciate nuts-and-bolts contract stories that “inform them about ways to advance their rights,” says Hagedorn, whose 195-member branch is located in the desert north of Los Angeles.

“Even the newest carriers are interested once you get them to tune in. One reason is because they don’t have the union background. So when they read something, they’ll come up to me and say, ‘I didn’t know you could do that!’”

Since contract administration is where the rubber meets the road for members, the newsletter must be a tool they can use when they need help. In Seattle and St. Paul, the names of station stewards are listed each month, and *Twigs* carries the home phone numbers of nearly all of them as well. Even small Lancaster lists the names and numbers of its four stewards and other branch officers on page 2 each month.

“If a member needs help, the union needs to be there. That’s how you create loyal members who will pitch in when the union needs help,” Borowske advises.

Remember the obvious

Editors shouldn’t overlook the obvious when it comes to motivating members, like the branch-wide appeal of steward updates from individual stations or retiree reports that create a sense of NALC’s heritage and pride in our historic craft, these three editors agreed.

Another point from Seattle’s Larsen: “I always put in the COLCPE



contributions, taken right out of *The Postal Record*. It serves two purposes. It publicly thanks those who give and it keeps it in front of everyone else. It’s like saying ‘why aren’t you here?’”

The same goes for the minutes of branch meetings. “Members want to know what’s happening, especially where you’re spending the money,” Larsen says. “The minutes can be informative and still leave them curious. What did they miss? Come to the next meeting and find out.”

“I always included something from the Retirees Club and from the auxiliary,” Borowske said, “even if it’s short, to maintain their visibility.”

And Hagedorn offers this important reminder: *Repeat yourself*.

“You have to write the same article again and again because you always have new carriers, or carriers in new situations,” he advises. “Like explaining a 3996 or leave policies. Say a guy was a PTF the last time you wrote about the intricacies of leave. He skipped it then because it didn’t apply, but now he’s a regular.”

“The trick is knowing when to do it. Maybe someone will come up and ask you a question and you’ll realize it’s time to trot out that story from three years ago.”

“There are others you do every year,” Hagedorn adds. “I have one on heat safety.” But whatever the feature, it has double value because it both informs and reinforces the positive image of the union as a source of important, reliable information.

Relief from ‘bad news’

The new competitive world means legislative and political education is more important, and newsletters can take a leading role there, too, with easy to understand explanations of critical issues. These may be adapted from NALC Legislative Department materials or NBA reports, but whatever you do, keep it digestible. Hagedorn cautions, “Don’t stretch their attention span.”

But that doesn’t mean talk down—it means be brief. To earn loyalty, you must treat people with respect. So information has to come in straightforward, just-the-facts-ma’am form.

One more point. Hagedorn understands that his veteran members relish articles that “ridicule management.” They come from a tradition that “if we were not tangling with management, we’re not doing our job.”

But a good editor recognizes that

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even those irascible members need relief from the pounding headache of “bad news”—accounts of inept management, stories about repeated contract violations, rants about abusive behavior. Providing some “Alka-Seltzer” for the eyes can be as simple as a squib welcoming an injured carrier back to duty from a broken leg or noting a station where four members have birthdays in the same week.

This can create a sense of community. Call it corny, call it solidarity. But if the goal is loyalty, the union first need members who will look at the union with open minds. So branches must give them something of value—information about the contract, their work life, the economic and political realities threatening their jobs.

If your newsletter can entice them, engage them, with humor, with everyday humanity, with any appeal to curiosity, to sample the union message, it’s doing a good job. It’s doing a great job when a member can pick up and say, “Hey, did you see *this*?”

Regional Training Seminars

Listed below are regional training and educational seminars scheduled to begin before May 1, 2003.

For more information, contact your national business agent.

Atlanta Region (Florida, Georgia, North Carolina and South Carolina)

January 31-February 2, Georgia State Training Seminar, Desoto Hilton, Savannah, GA.

March 1-2, South Carolina State Training Seminar, location TBA.

March 28-29, North Carolina State Training Seminar, Raleigh, NC.

National Business Agent Matthew Rose, (954) 964-2116.

Minneapolis Region (Minnesota, North Dakota, South Dakota and Wisconsin)

April 11-12, South Dakota State Convention, Brookings, SD.

April 26-27, North Dakota State Convention, Grand Forks, ND.

April 28-May 2, Regional Training Seminar, Holiday Inn Metrodome, Minneapolis, MN.

National Business Agent Barry Weiner, (612) 378-3035.

Philadelphia Region (Pennsylvania and southern New Jersey)

March 2-4, Annual Regional Rap Session, Tropicana Casino and Resort, Atlantic City, NJ.

National Business Agent Timothy O’Malley, (215) 824-4826.

St. Louis Region (Iowa, Kansas, Missouri and Nebraska)

February 22-23, Regional Rap Session, Sheraton Westport Hotel, St. Louis, MO.

April 11-13, Nebraska State Convention, Ramada Inn, Kearney, NE.

April 25-26, Kansas State Convention, Holiday Inn, Great Bend, KS.

National Business Agent Arthur Buck, (314) 872-0227.

ACTIVIST

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A NEWSLETTER FOR BRANCH LEADERS OF THE
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