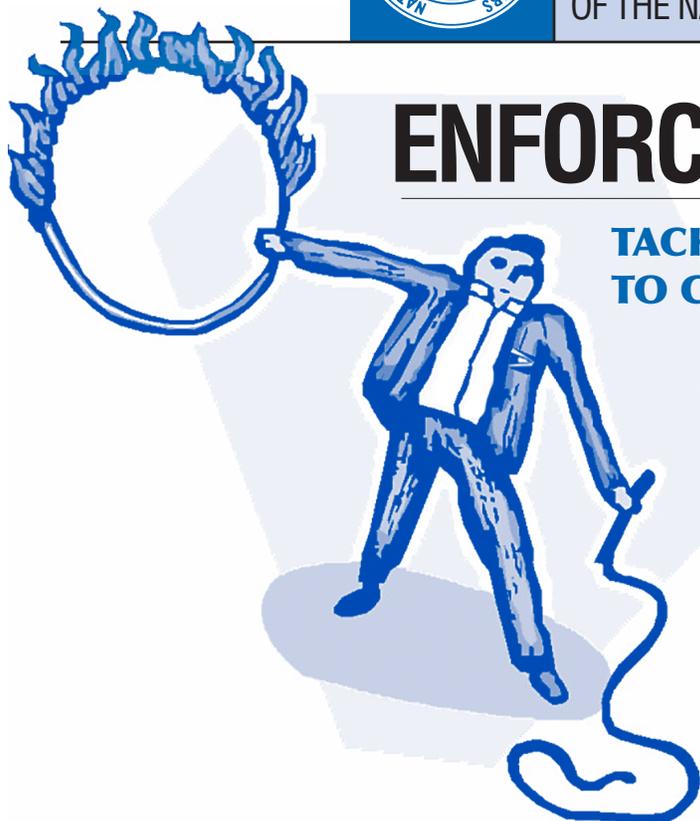




A NEWSLETTER FOR BRANCH LEADERS
OF THE NATIONAL ASSOCIATION OF LETTER CARRIERS



ENFORCING COMPLIANCE

TACKLING MANAGEMENT'S REFUSAL TO COMPLY WITH GRIEVANCE DECISIONS

Achieving a favorable grievance decision can be hard enough. Every steward knows how much time and energy it takes to investigate and process a grievance. But what does a steward or branch leader do when management **refuses to comply with the grievance decision** once it finally comes? How does the union enforce compliance in such cases?

This typically happens in situations where the grievance issue itself was hotly contested as it went through the steps of the grievance procedure. When emotions come into play, managers frequently take the grievance decision very personally when things don't pan out the way they had hoped. Instead of complying with the decision, managers will find reasons to ignore it.

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PERSISTENCE PAYS IN NON-COMPLIANCE CASE

ARBITRATOR AWARDS MILLIONS

“Management told me I was nuts to put this case on,” said Steve Lissan, Regional Administrative Assistant for Region 8, referring to a grievance for non-compliance that ultimately led to a multi-million dollar payout to New Orleans letter carriers. Five hundred ninety-one carriers will share a monetary remedy of \$2,186,700.

That's on top of the nearly \$3.2 million award from the original grievance

ance that Arbitrator Michael E. McGown issued in February 2005, which instructed management to “cease and desist employing casuals in lieu of full or part-time employees.” The \$2.1 million payout came as a result of management's refusal to comply with the first decision.

The original grievance was filed over the fact that New Orleans had been staffed

year-round with approximately 60 to 70 casuals since April of 1999. Meanwhile, PTF carriers within the city continually expressed their frustration at not being promoted to full-time. According to Wayne Wharton, President of New Orleans

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ENFORCING COMPLIANCE

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Managers who refuse to comply often express their reasons to branch leaders by saying, “That’s not what the arbitrator said!” or “That’s not how I interpret the decision!” It does not matter that the language in the Step B Decision or arbitration award is clear and unambiguous. The refusal to comply isn’t driven by logic. It is driven by emotion that interferes with logic.

UNION’S CHALLENGES

In cases of non-compliance, a steward or branch leader faces two challenges. One challenge is to find a way to enforce the grievance decision in spite of management’s reluctance or refusal to cooperate.

The other challenge is in finding a way to maintain a positive outlook despite management’s willful disregard for the grievance decision and the union. The steward, as well as the members that he or she represents, must avoid becoming dispirited and giving up. Any failure to enforce compliance is an invitation to management to ignore every decision from that point on. That is something a branch leader cannot allow.

Enforcing the grievance decision is the first priority. Even though management is disappointed with the outcome of an arbitration hearing, complying with the award is not discretionary. Article 15.4.A.6 of the *JCAM* clearly states:

“The decisions of arbitrators are final and binding. Arbitration is the last step of the grievance-arbitration procedure and there are no further contractual avenues for management or the union to

challenge or appeal an arbitration award.”

There is no avenue of appeal for managers who are seeking to avoid their obligations as outlined in an arbitration award. The arbitrator has the final say. The *JCAM* has language to address compliance issues. Stewards should refer to *JCAM* page 15-15, which is an explanation of Article 15.4.A.6. The explanation states:

authority to settle or withdraw grievances in whole or in part.”
(*JCAM* page 15-5)

Similarly, the *JCAM* language in Article 15.2 gives Step B representatives the authority to resolve grievances. Not only do they have the authority to settle, but their Step B decisions actually establish precedent in the installation where the grievance was filed.

“Enforcing the grievance decision is the first priority. Even though management is disappointed with the outcome of an arbitration hearing, complying with the award is not discretionary.”

“The parties have agreed that filing a grievance for the enforcement of an arbitration award is permitted under Article 15 of the National Agreement.”

At every level of the grievance process, the parties have the authority to settle a dispute. Article 15.2 addresses the following steps of the grievance process:

Informal A–*“During the Informal Step A discussion the supervisor and the steward. . . have the authority to resolve the grievance.”* (*JCAM* page 15-3)

Formal A–*“The parties’ representatives at Formal Step A shall have the*

These *JCAM* provisions refute any potential argument by management that the parties who settled the grievance lacked authority to do so.

That leaves management with few other alternatives. A common management excuse is to claim that the award or decision says something other than what it really says. Taking that approach gives managers the “deniability” they seek. That is, they can deny that they’ve failed or refused to comply because they complied with the decision as they interpreted it.

Of course, that argument would not survive even a cursory examination.

That's because the language in the Step B decisions and arbitration awards are not generally open to multiple interpretations. Few would debate the meaning of "cease and desist."

But just because such a management argument is weak does not mean that the branch leader or steward should not take it seriously. The steward should process a new grievance for *failure to comply* under Article 15 with the same degree of thoroughness that he or she put into the original grievance.

CLARIFYING THE ISSUE

The first step is to look at the original grievance decision to determine what was actually awarded. It is not uncommon for there to be multiple remedies in a single grievance. For instance, in a grievance concerning a supervisor delivering mail on the street, a Step B decision could instruct management to 1) cease and desist, and 2) compensate the available OTDL carrier for the hours worked by the supervisor.

The steward must ensure that he or she has clarified the issue in the grievance for non-compliance. That is, if management complied with some of the remedies in a prior grievance, but not all of them, the grievance should state so clearly under Undisputed Facts. So, using this example, the Undisputed Facts might say, "Management agreed to cease and desist. However, management is refusing to pay the OTDL carrier for the work performed by the supervisor."

EVIDENCE

Evidence is just as necessary to a compliance grievance as it is for any other type of grievance. The union has the burden of proving that management failed to comply.

The logical place to start is with the grievance decision itself. The grievance should include a copy of the Step B decision or arbitration award to prove what the remedy actually said.

The next step is gathering evidence to prove the failure to comply. The type of evidence that should be included in the grievance will necessarily vary because there can be so many different kinds of remedies. Examples of evidence could include:

- **Monetary remedies**—Include carrier pay stubs to show that payment has not been made.

- **Remedies to remove casuals**—Copy the TACS reports, which show that the casuals are still working and being assigned to routes.
- **Remedy requiring a route to be put up for bid**—Include the postings for the installation showing that this has not been done.
- **A "cease and desist" regarding working carriers more than 60 hours in a week**—Provide copies of the Overtime Alert Report showing that the practice continues.

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REGIONAL TRAINING SEMINARS

Contact your National Business Agent for more information about these scheduled regional training seminars.

Region 2

(Alaska, Idaho, Montana, Oregon, Utah, Washington)
NBA Paul Price, 360-892-6545.
May 8–11, Montana/Idaho States Shop
Steward College, Double Arrow
Resort, Seeley Lake, MT.
October 4–8, Region 2 Regional
Assembly, Grouse Mountain Lodge,
Whitefish, MT.
November 14–17, Teaching Techniques,
Huston Center, Gold Bar, WA.

Region 3

(Illinois)
NBA Neal Tisdale, 309-762-0273
October 1–3, Fall Statewide Training
Seminar, Holiday Inn Crown Plaza,
Springfield IL.

Region 5

(Missouri, Iowa, Nebraska, Kansas)
NBA Art Buck, 314-872-0227
June 9–11, Missouri Convention and
Training, Clarion Hotel, Kansas City,
MO.
October 22–24, Iowa Fall Training,
Holiday Inn, Coralville, IA.
October 28–29, Nebraska Fall Training,
Mid-Town Holiday Inn, Grand Is-
land, NE.

Region 9

(Florida, Georgia, North Carolina, South
Carolina)
NBA Judy Willoughby, 954-964-2116
May 5–7, Florida Training Seminar, Jax
Riverside Hilton/Crown Plaza,
Jacksonville, FL.
June 9-10, Georgia State Convention,
Marietta, GA.
June 16–17, North Carolina Training
Seminar, Greensboro, NC.
October 10–13, Florida Training
Seminar, Hilton Cocoa Beach
Oceanfront, Cocoa Beach, FL.
October 27–28, North Carolina
Training Seminar, Lenoir/Boone,
NC.
November 4–5, South Carolina
Training Seminar, SC.

Region 10

(New Mexico, Texas)
NBA Gene Goodwin, 281-540-5627
October 8–9, Fall School and Rap
Session, Doubletree Houston
International Airport, Houston, TX.

Region 14

(Connecticut, Maine, Vermont, Massachu-
setts, New Hampshire, Vermont)
NBA John Casciano, 617-363-9299
May 5–7, Mass State Convention
Retirement Preparation, Sheraton
Four Points, Hyannis, MA.
May 6–7, Vermont State Convention
Route Inspection Training, Stowe-
flake Inn, Stowe, VT.

ENFORCING COMPLIANCE

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- **A remedy restoring an employee to the carrier craft**—Copy the employee's Form 50 to show that management has not converted the carrier back from the clerk craft. Pay stubs are also good for showing that the employee is still designated as a clerk.
- **A "cease and desist" remedy for denied union time**—Include copies of written denials for requests for time that were made after the "cease and desist" was granted.

These are just a few examples of the evidence that may be required to meet the burden of proof. However, the grievance can be further strengthened by interviewing the supervisors and managers who are party to the non-compliance. The steward should also include an interview with a postmaster or supervisor that reveals his or her absolute refusal to comply. Evidence of willful defiance of a Step B or arbitrator's decision packs a powerful punch in support of a non-compliance grievance.

POSITIVE ATTITUDE

Some compliance issues are taken care of rather quickly. The union can often solve the problem without even filing a second grievance by making well placed phone calls to higher levels of authority.

Chicago's Branch 11 President Jimmie Canada recalls just such a case. The original issue involved the elimination of some routes within the city. The Step B decision in the case ordered management to post the routes for bid. However, management ignored the Step B decision.

"They said they weren't going to post the routes because the routes were already eliminated," explained Canada. In this case, management ultimately had to comply and post the routes after President Canada contacted the area and headquarters levels.

However, in cases of non-compliance that are not solved quite so easily or quickly, maintaining a positive attitude among the members and branch leaders is vital.

President Larry Ramsey of Toledo Branch 100 fought compliance on a "pivot" issue over the span of three years. The first grievance went to arbitration, resulting in an award that provided both a monetary remedy for each carrier and also a "cease and desist."

After receiving the arbitrator's award, management paid the affected carriers but refused to follow the cease and desist order. According to Ramsey, the branch filed approximately 150 grievances on violations that occurred after the "cease and desist" order.

Ramsey stated, "Management used every excuse. Right after receiving the award, they said the decision was made by a 'rogue arbitrator' and that the management advocate who put the case on hadn't been trained properly. These were their reasons for ignoring the cease and desist."

Despite waiting so many years for resolution to the situation, Branch 100 members kept a positive outlook and "remained faithful," according to Ramsey. He explained, "The carriers had confidence in getting a win on the compliance issue because they won the first time."

The members' patience was rewarded when the NALC presented the compliance issue in a second arbitration hearing. Ramsey described management's determination during the second hearing to fight the first arbitrator's cease and desist order.

"This time they brought in a management advocate from the area to put the case on, expert witnesses on time analysis, and they even tried to get in a court reporter," he said. "Trying that fancy stuff didn't help them. The facts are what mattered. The facts were that we had a cease and desist and they ignored it."

The second arbitrator ordered a similar "cease and desist" and an even greater monetary remedy for the affected carriers. Management finally agreed to stop the violation after losing the second arbitration.

In St. Louis Branch 343, Vice President Bill Lister fought for compliance in a case involving an employee's suspension from work without pay. The arbitrator's award ordered management to return the grievant to work with back pay. Describing the management advocate's reaction to the award, Lister said, "She was extremely upset. She said they were not going to honor the decision."

The branch filed a non-compliance grievance while management attempted to fight the arbitration award in the federal court system. Management eventually lost both cases and finally returned the carrier to work—with even more back pay this time.

PERSISTENCE

Stewards and branch leaders have every right to expect that a Step B decision or arbitration award will be the final word on a labor/management dispute. Unfortunately, the battle is not always over once a decision is rendered. In cases of non-compliance, it's just beginning. However, the steward will find that he or she enters that battle fully armed by citing Article 15, gathering documentary evidence to prove the case, maintaining a positive attitude, and remaining persistent.

PERSISTENCE PAYS IN NON-COMPLIANCE CASE

Continued from page 1

Branch 124, a frequent question from the PTFs was, “When am I going to make regular?”

Despite the McGown award’s explicit language barring the Postal Service from employing casuals in lieu of career employees, local managers refused to comply. Branch 124 Vice President Clifford Jefferson reported that the Service hired four new casuals in his office alone right after the McGown award ordered an end to the practice. Fifteen were hired city-wide in a two-week period after the award was issued.

“They just flaunted it right in front of our face,” according to Jefferson. He immediately filed a grievance challenging management’s failure to comply with the McGown decision.

Both Wharton and Jefferson took care to include all of the necessary documents to meet the union’s burden of proof. (See “Enforcing Compliance” on page 1.) Naturally, that included the McGown award itself, to show the actual wording of the decision. The branch officers also provided proof of non-compliance by including On Rolls Completion reports, correspondence from the Postal Service, Weekly Flash Reports, Employee Everything Reports, wage schedule charts, and written statements from letter carriers.



Jefferson never once considered giving up despite the fact that management was refusing to comply with a grievance that had already taken five years (1999 to 2004) to win in the first place. “I knew things would work out. Management was just acting like a hard-headed kid because they didn’t want to stop using casuals,” said Jefferson. “But the carriers in this branch had faith in the system and we all knew that a second grievance would take care of it.”

Lassan, who presented the case in arbitration, described management’s attitude prior to the non-compliance arbitration. He said, “They were as arrogant as they could be about the case. They said they didn’t agree with the first arbitration award and that they were justified in ignoring it.”

Key evidence in any non-compliance case can be statements from the managers who have candidly provided their reasoning or excuses for ignoring a grievance decision. In this particular case, Region 8 National Business Agent Lew Drass was able to provide evidence that the District Manager openly expressed his disagreement with the McGown award by saying it was “wrongly decided.”

In addition to that, the union representatives included other evidence of management’s cavalier attitude toward compliance. Drass had documented his attempts to meet with the Manager of Labor Relations to work on arrangements for enforcing the award. Drass provided four specific dates he attempted to meet with management. He was careful to include details of how management failed to return his phone calls or comments management had made during discussions.

So flagrant was the local managers’ failure to comply that they actually increased to 66 the number of casuals on the rolls—up from 62 at

the time of the McGown hearing. The local union officials had pointed to that total number in their remedy argument to establish the monetary gain that management was enjoying by refusing to implement the McGown award. The high number of casuals working in New Orleans, after the original award was issued, provided management with savings of more than \$1,000 in wages and benefits *for each work hour* of the day.

The branch included evidence of management’s profit-making to support a monetary remedy in the non-compliance case. This was a vital thing to do. After all, the original grievance had resulted in a payout of over \$3 million. Without careful case preparation, an arbitrator might have thought that was sufficient and simply issued a second “cease and desist,” but no monetary remedy.

To prevent that, the union argued that management had “thumbed their noses” at the original grievance award. They also argued that, without a financial remedy, there would never be any incentive for management to comply with future decisions. The arbitrator clearly agreed, by first noting in his decision that “management continues to ignore the arbitral authorities,” and then issuing a multi-million dollar award.

The union representatives did everything necessary to achieve their goal of compliance with the award. Even better, the membership did not have to wait five years for relief in the second case due to the speedier nature of the Dispute Resolution Process. In the second case, the award was issued just a few short months after management initially refused to comply with McGown’s instruction. For the membership, the payoff was not just financial. The payoff was also the incentive given to management follow arbitration awards and Step B decisions in the future.

MDA ACTIVISM

BUILD A STRONGER UNION THROUGH MDA EVENTS



Union activism comes in many forms—it's not just limited to filing grievances. That's good news for members who, while perhaps lacking contract knowledge, still want to become more involved in their local branch.

One way for members to become active within the branch is fundraising for the Muscular Dystrophy Association (MDA)—NALC's official charity for more than 50 years.

Branch presidents often reach out to the membership, seeking someone to take on the role of MDA coordinator. That's what happened to Bob Bracy, member of Branch 14 in Louisville, Kentucky. "My president appointed me to MDA fundraising nine years ago," said Bracy. "I didn't know much about it, but I looked upon it as a challenge."

It was a wise appointment, as it turns out. Branch 14 was one of the NALC/MDA Campaign Contest winners because it raised \$43,384 in just one year. The nationwide contest, which began in 1986, gives recognition each year to 10 NALC branches for their fund-raising efforts. (See the list of the most recent contest winners at the end of this article.)

The secret to Branch 14's success has been in providing a variety of events to attract people with different interests. "It keeps it fresh," said Bracy. "Each year we hold a bowl-a-thon, a golf scramble, canister roadblocks, and most recently we added a pool tournament."

That strategy is also employed by another contest winner—Branch 7 of Lynn, Massachusetts. Some branches just do one or two events a year, but Branch 7 tries to keep the fund-raising going all the time. Ac-

casino nights, and MDA nights at local minor league games. This variety of events helped Branch 7 raise \$23,467 in just one year.

"We try to put the 'fun' in fundraiser," said Byrne. "You have to keep trying new ideas in order to build momentum." He admitted that some of the branch's ideas weren't immediately successful. However, he pointed out that the success of any event should not be judged by how much money it raises at first. "An event can still be a success because it builds interest and momentum," Byrne explained. "Then it turns into something that people look forward to and it's eventually successful."

Holding a casino night might sound daunting at first because it is the type of event that could require paperwork and permits. However, Branch 7 handles that by leaving those details to the professionals at the local MDA office. "We just go to them with one of our fund-raising ideas and they facilitate it for us by

handling all of the paperwork. We just make sure the people show up," said Byrne.

Branches can also increase their fund-raising success by taking advantage of opportunities that are available locally. Branch 7 happens to have a source for donated Boston Red Sox tickets, a pair of which are raffled off at each branch meeting.

This alone nets the branch \$1,500 per year for MDA.

Branch 924 of Freehold, New Jersey, came in first place for a branch of its size by raising \$3,618. Like Branch 7, this branch also takes advantage of unique local opportunities. Vice

“One way for members to become active within the branch is fundraising for the Muscular Dystrophy Association (MDA)—NALC's official charity for more than 50 years.”

cording to President Pat Byrne, "A lot of our ideas are not big-ticket items, but something is always going on in the branch that is generating funds for MDA."

For instance, Branch 7 holds candy sales, Texas Hold'em tournaments,

USPS

BY THE NUMBERS

USPS Operations February 2006	Number	Chg. from SPLY*	Employment/Wages February 2006	Number	Chg. from SPLY*
Total mail volume year-to-date (millions of pieces)	90.3	0.1%	City carrier employment	225,697	-1.3%
			Percent union members	92.4%	0.0%
			Percent career employees	100%	--
Mail volume by class (YTD in millions)			City carrier casual/TE employment		
First-Class	41.9	-1.5%	Casuals	4,043	-13.2%
Priority Mail	0.4	6.9%	Percent of bargaining unit	1.9%	--
Express	0.0	4.8%	Transitionals	0	-100%
Periodicals	3.7	-1.2%	Percent of bargaining unit	0.0%	--
Standard Mail	42.9	1.4%	City carrier per deliver supervisor	18.2	-0.4%
Packages	0.5	3.8%	Career USPS employment	697,217	-0.6%
International	0.4	-2.4%	City carrier avg. straight-time wage	\$22.10/hour	3.4%
Revenue per piece in February (in cents)			City carrier overtime ratio (OT hrs/total work hours)	13.2%	--
Total	33.04	4.4%	Ratio SPLY	13.6%	--
First-Class	38.62	4.7%	Net Income in Feb. (\$ mil.)**	\$95.3	681.1%
Standard Mail	19.80	4.7%	Total Revenue	\$5,639.3	5.5%
Daily delivery points	145.1 mil.	1.4%	Total Expense	\$5,544.0	3.9%
Percent city	69.2%	--			
Percent rural	30.8%	--			
City carrier routes	164,285	-0.2%			
Rural carrier routes	73,296	2.8%			

*SPLY=Same Period Last Year

**Net income shown before escrow requirement

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

President Jeff Harness said, "In 2003, we decided to try something new, a 'Day at the Races,' because we just happen to have a thoroughbred racetrack nearby."

Harness described how the fund-raising works at the track. "We send letters to businesses asking them to donate gift cards and merchandise," he said. "We raffle these off at the racetrack." In addition, the racetrack admission fee also goes toward MDA. "It's been a great success," said Harness. "The first year we had about 120 people show up. The following year, almost 150 people attended."

In addition to the Day at the Races, Branch 924 decided to try something new in 2005. They targeted a mailing to approximately one half of the residents in their delivery area. "We target mail to certain routes that have

good relationships with their letter carriers," said Harness. The mailing requests that postal patrons sponsor their letter carrier in an upcoming walk-a-thon.

One branch that has special mailings down to a science is Branch 38—New Jersey Merged. This branch has been the first place winner in its category (2,500 members and above) for the past 16 years. Branch 38's efforts most recently netted an amazing \$175,000 in one year.

"We started with about \$35,000 to \$40,000 per year," said Branch 38 President Bob Borgognoni. "I remember when we broke the \$100,000 mark. It was quite a milestone."

Branch 38 mails letters to patrons at approximately 60 of the 175 stations its members serve. Borgognoni warns branches that are considering

this idea to start slowly. "There's a risk that a branch takes when they invest up front in a mailing," he cautioned.

The branch learned by trial and error how to target the mailing to certain areas to ensure a good return in donations. "It really works," Borgognoni said. "You have to start slow and build up your base. Ours just blossomed on its own."

Members who are anxious to become more active in the union should consider MDA fund-raising for their branch. The contest winners have shown how successful they can be by planning events of all sizes—big and small—and by keeping the events varied. Other keys are taking advantage of local opportunities and incentives, and leaving details to MDA professionals.

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MDA ACTIVISM

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NALC President William H. Young, who also serves as vice president of MDA, urges all branches to join in the 2006 MDA Campaign and reinforce the letter carriers' tradition of being at the forefront in this annual effort. "If you've had a successful drive, keep it up," President Young said. "If your drive has fallen off in recent years, take a new look, and make 2006 the year to turn it around. If letter carriers have never had a drive in their community, this is the time to start."

By becoming more involved in MDA, members will be raising money for research into treatments and cures for neuromuscular diseases. In addition to that worthy achievement, holding MDA events also builds unity and pride in the union and helps it to grow as an organization.

MDA CONTEST WINNERS

Category 1—1 to 99 members

First Place	Branch 924, Freehold, NJ	\$3,618
Second Place	Branch 1043, Columbus, NE	\$3,069

Category 2—100 to 499 members

First Place	Branch 7, Lynn, MA	\$23,467
Second Place	Branch 619, Green Bay, WI	\$13,828

Category 3—500 to 999 members

First Place	Branch 869, San Juan, PR	\$65,000
Second Place	Branch 358, Schenectady, NY	\$17,075

Category 4—1,000 to 2,499 members

First Place	Branch 14, Louisville, KY	\$43,384
Second Place	Branch 2, Milwaukee, WI	\$23,177

Category 5—2,500 and above

First Place	Branch 38, New Jersey Merged	\$175,000
Second Place	Branch 343, St. Louis, MO	\$45,369

Special Category

Auxiliary 2003	Brooklyn, NY	\$7,210
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Vol. 19, No. 2
Spring 2006

Published quarterly by the
National Association of Letter Carriers
100 Indiana Ave., NW
Washington, DC 20001-2144



Non-Profit
U.S. Postage
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PERMIT NO. 2255