

### **Being a Good Steward (Part 3)**

In the first two parts of this series on the elements of being a good union steward, the roles stewards must assume was covered and some of the nuts and bolts were covered. In this part, more of the nuts and bolts are going to be covered.

#### The Peter/Paul Principle (Horse trading)

At some point in time, every steward is going to be faced with a manager or USPS advocate that will offer to horse trade one or more advantageous grievance resolution(s) for another or other grievance resolution(s) or withdrawals.

The answer should be very simple. Would you rob Peter to pay Paul? Would you throw Peter under the bus to rescue Paul? Are Paul's entitlements and/or rights better or more important than are the entitlements and rights of Peter?

Stewards must investigate, process and handle each grievance to the best of their abilities. To horse trade one settlement for doing less than what a grievant deserves on a second grievance, is lazy, unethical and wrong.

Grievance handling should be a little more professional than bartering at a flea market. He/she who does wrong to the least of our brothers/sisters, does wrong to us all. When a representative gives short shrift to a legitimate grievance, the wrong is compounded.

#### Getting beyond representing the guilty

Throughout my years as a union steward, I was often asked how I could represent so-and-so who is just a bad carrier or a bad person. I worried all my life about representing the truly reprehensible, the incorrigible and those who were just evil.

The truth is that rarely are things so black and white; good or evil; and that in almost every instance there are gradations of gray. When USPS makes a case, they are saying it is all black and it is not always necessary for the Union to have to say; No, it is all white. Especially when the truth is that it is somewhere in between.

For something to be truly unforgivable; it has to be deliberate and intentional where actions took place that were unilaterally premeditated and where the perpetrator acted in a knowingly reckless manner. Things are seldom so crystal clear and where no one else bears any responsibility. Often times the very managers who seek to impose discipline set a series of events in motion where the outcome was or should have been pre-determined and yet, they seek to escape responsibility by scapegoating a rural carrier craft employee.

Firstly, when you are initially hearing of a given situation or issue; it is important to suspend judgment until you have closely examined the fact circumstances. I remember one particular case in a small post office after I first became a state steward where a gentleman was fired for being violent and threatening. Of the six rural routes, they were lined up in two rows of three old wooden cases with the backs of the cases facing the front of the post office. The postmaster was fairly new and very young and seemed like he cared a great deal about his employees. His story was credible and seemed to be reasonable. I talked to each of the carriers in turn most of whom were also young and female. Two of

the carriers were male in their thirties. The story I got was for the most part a similar version of what I had heard from the postmaster. The grievant was a very stocky older man (a Dutchman, Pennsylvania Dutch, no-nonsense, gruff with a crew cut) who worked as a RCA.

I heard stories of how he would come out from behind his case beet red with his fists balled and scream at the other employees. His story was that he was a little rough around the edges but that the other employees made fun of him constantly.

As it turned out, the grievant being from a different heritage, a different generation and different experiences was fairly picked on. Yes, he would get angry and turn bright red, but there never were any instances that could even be construed as violent or threatening. He was a big man and he was a grumpy man. It turns out that most of the other employees decided they wanted to fire him and convinced the postmaster to go along simply because no one liked him or felt comfortable around him. He was a grumpy old man and the other employees simply wanted to get rid of him.

This was back in the time when a person was suspended or fired and they were out of work until the case was resolved. The resolution was to return the grievant back to work with something short of full back pay. The case actually worked out for all because the grievant's rock-ribbed sense of ethics prevented him from ever going back to that post office to work and oddly enough, he completely turned his nose up at the back pay. The employees as wrong as they were got what they wanted since he no longer worked in the office. To this day, I think about the man in York County, Pennsylvania who said nearly ten thousand dollars in back pay and said no about returning to his job. It took a lot of investigation to discover the truth and the case served me well in remembering that sometimes the other employees have an ulterior motive for what happens.

He looked for all intents and purposes to be guilty, but he was not.

Even if he had been guilty of being threatening and in that instance as a union representative responsibilities expand to include the safety and well-being of the other employees. It is still a union representative's job to ensure that the penalty or sanction is in proportion to the infraction charged. A Union representative is the lone protection from USPS arbitrarily choosing to make an example of someone by firing them for a simple infraction or for an unintentional or accidental situation, simply because USPS has decided to focus on specific issues or situations.

If for years and years, USPS handles specific categories of accidents in a reasonable way, then because of a statistical spike for a period of 12 months, even the most minor of infractions is dealt with harshly and with little or no advance notice of policy changes and then to have USPS then return to the old past practice of dealing with individual circumstances based on each individual situation; is it fair to the employees during the "reign of terror" to be caught up arbitrarily in a USPS campaign to stamp out accidents, infractions and in general to have a "zero tolerance" policy for minor situations. NO! While those craft employees may have been accident victims or guilty of an oversight or negligent or whatever, the penalty far exceeds the infraction.

In many cases, USPS will charge a craft employee for offenses or infractions based on conjecture, on unsupported facts, on circumstantial evidence or simply on a gut instinct. In those case, a steward has a responsibility to make USPS make their case before they can impose discipline, penalties or sanctions. It is not enough that someone is the regular carrier on a rural route that received complaint cards for misdelivery during the month of August last year. For one thing, USPS must establish that they are in fact misdeliveries and not simply pieces addressed "or to current resident", or where they are marked

unknown and are tried to see if delivery is possible. It is also incumbent on USPS to establish when the items were misdelivered and by whom. Were they left in the box by a person or persons unknown, by non postal employees, by postal employees redelivering for auxiliary assistance or late received mail, were they delivered by another postal employee, was another postal employee assigned to the route and dozens of other possibilities. Is there a record of misdeliveries and are the number of misdeliveries more or less than other employees?

Were there extenuating circumstances? When the rural carriers had the accident in bad weather, was he directed to deliver anyway? Was there time pressure (warranted or unwarranted placed on the employee, was the mail volume excessively heavy or were there multiple bundles that affected employee alertness? Are the mail box approaches in good condition? Are the roads properly maintained? What was the vehicle condition and are there unaddressed vehicle maintenance issues that management failed and/or refused to handle? Is the scene of the accident unsafe and is there any evidence that safety audits have identified the scene as a potential safety problem? What was the health of the carrier (has he been ill and denied sick leave, working with a fever or other condition). These and dozens of other situations are extenuating circumstances which can attribute or apportion blame and negligence to the manager especially if it was reasonable to conclude that the extenuating circumstances contributed to or directly caused an accident.

All of the preceding circumstances are actually from cases that I was involved with and developed through the investigation. In each of these situations, the case was not clearly black or white, but in between and the role of union representative is clear.

In discipline cases, USPS charges an employee with one of more infractions of the rules. In order to administer discipline there are a set of rules that must be followed to ensure that the employee receives "due process" (that is that their rights are protected, they get a fair hearing, they have an opportunity to a fair hearing and a fair process). USPS must follow a strict procedure of independently investigating a situation, then the investigating official must decide whether or not corrective discipline is appropriate, to actually propose the discipline and then to submit in cases of suspensions or removals the fact circumstances along with recommended proposed discipline to a higher level authority for independent review and concurrence. When USPS short circuits the correct and proper procedures, they and their agents commit infractions of the rules, procedures, policies and the collective bargaining agreement; when they compound those infractions by hiding circumventions of the process thereby denying the employee "due process" they commit greater and more serious infractions. In balancing out an employee's infraction(s) with the infractions and violations USPS commits; is it fair that USPS is held harmless for potentially more serious infractions while an employee is held accountable and liable? This is the obverse that is sometimes referred to as getting off on a technicality in simplistic terms. Is it a technicality when USPS stacks the deck to deny an employee a fair hearing or due process simply to railroad the employee. The whole reason the discipline procedure contains the investigation and deciding phase and the independent review and concurrence phase is to set in stone the idea that discipline should not be a rush to judgment, driven by one individual and simply rubber stamped either by the proposing official or the concurring official. When USPS subverts the discipline procedure intentionally, the infraction(s) are far worse than what the original infraction likely was, could have been or probably was. That is why USPS cannot profit from the fruit of a poisonous tree. You cannot set out with pre-meditation to poison the system with the intent to subvert the foundations of the system and then expect to profit from that subversion.

One of the biggest criticisms leveled at unions is that they protect the guilty. Even union members are often severely uncomfortable with the idea that dues are used to represent "guilty" carriers.

There are literally four reasons why it is absolutely necessary that unions represent all craft members even those charged with infractions that offend many people, and they are as follows:

- When an employee is charged, they have not been judged to be guilty of anything. In most cases through the processing of an employee appeal, sufficient grounds are often determined that provide an effective defense for the employee and protect the employee's rights. Until an investigation takes place and a case is processed, a final determination is not made as to whether or not an employee is guilty. When critics say that unions protect guilty employees or bad employees, they are actually saying, we don't need facts to presuppose that someone is a bad or guilty employee. Well, the collective bargaining procedure and the entire American system of justice is based on a presumption of innocence, that is why there is a burden of proof placed on postal officials or prosecutors to establish that an employee or a citizen acted as charged (proving the case) and that it is a violation.
- What happens in each case does not happen in a vacuum. If USPS can simply overlook all of the proper procedure in a "compelling" case; what is to prevent them from doing so in less compelling cases, in circumstantial cases, in toss-up cases or simply in bogus cases. Protecting the rights of all employees is like a dyke or a levee; in order for the protection to be meaningful and effective it must be uniform and sacrosanct even in the worst cases. Protecting the worst of offenders also protects the most innocent of offenders who are charged with infractions. Sometimes it is necessary to draw a line to protect rights for everyone and once that line is drawn it applies to everyone without exception.
- Who most needs to have their rights protected but those who need those rights the most. Is it fair to just give up because an employee made a mistake and let whatever happens, happen. Even in the worst of circumstances, some rights of an employee need to be preserved and protected. In fact, the guiltiest, need the most protection simply to avoid "piling on" or imposing discipline that is "cruel and unusual" or arbitrary and draconian.
- The Law requires it as a condition of being the exclusive bargaining agent for the craft. Should unions chose not to provide representation, the union is exposed to financial liability which is likely to be far more money than would have been spent on effective representation of an employee in trouble. If a union were to start picking and choosing what to represent and what not to represent, who gets to decide what is enforced and what isn't? Are those people who decide those issues likely to be people you agree with and trust?