NALC Grievance # \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Line 17

Union Contentions:

The resolution requested by the NALC for this grievance consists, in part, of a cease and desist remedy.

The evidence in this case file demonstrates a clear contractual violation. The NALC argues that a cease and desist remedy is the most basic remedy for a grievance. The word “cease”, is defined in the Cambridge dictionary **(exhibit xxx)** as,

**To stop something.**

The word “desist”, is defined in the Cambridge dictionary **(exhibit xxx)** as,

**To stop doing something.**

The goal of any grievance, first and foremost, is to enforce contractual compliance. If there is not contractual compliance, then the remedy must be to stop the activity or behavior that violates the contract. In this respect, all disciplinary action issued by the Postal Service consists of a cease and desist. Every Step B Team and Arbitrator has seen the boiler-plate language,

**“Future deficiencies may result in further discipline, up to and including your removal from the Postal Service”**

This language requires the employee to “cease and desist” from further infractions. It is disingenuous for the Postal Service to include this language in all discipline to compel an employee to abide by the National Agreement, but to refuse this language in grievance settlements when it applies to Postal Management.

Respected members of the arbitration community have weighed in on the propriety of cease and desist remedies. The Union includes one such decision in this case file for a Step B Team or an Arbitrator’s review and consideration. In 4G 16N 4G C 21072406, (December 23, 2021) **(exhibit xxx)**, Arbitrator Jacquelin F. Drucker concluded,

**In more than 30 years of arbitrating thousands of disputes under a vast variety of collective bargaining agreements, this Arbitrator has never before been presented with the suggestion that cease and desist orders are not appropriate remedies for contractual breaches. The Postal Service offers no relevant authority for this theory, which, to the extent it can be discerned from the arguments presented at hearing and in the closing brief, is wholly out of step with concepts of remedy in arbitral law, arbitral tradition, and basic contract law. Indeed, innumerable court decisions from all levels of the judiciary have confirmed arbitration awards that have included cease and desist orders. See, for example, United Mine Workers of American v. Monongalia County Coal Co., 240 F. Supp. 3d 466 (N.D. W.V. 2017); Honeywell Int'l, Inc. v. Industrial and Allied Workers Local Union No. 101, 2009 U.S. Dist. LEXIS 70132, 2009 WL 2477550 (E.D. Va., 2009); and Unite HERE Local 1 v. Hyatt Corp., 862 F.3d 588 (7th Cir., 2017).**

The Union has also provided the 3 court rulings cited in this decision for review **(exhibits xxx, xxx, xxx)**.

The NALC would also like to address the belief that cease and desist language is only applicable for a certain degree or frequency of contractual violations. Aside from the definition of the words “cease” and “desist” as cited above, The JCAM also lists cease and desist remedies as a basic remedy for minor violations that take place for the first time. JCAM page 17-6 **(exhibit xxx)** States in relevant part,

**The appropriate remedy in a case where management has unreasonably denied a steward time on the clock is an order or agreement to cease and desist, plus payment to the steward for the time spent processing the grievance off-the-clock which should have been paid time.**

JCAM page 41-16 **(exhibit xxx)** States in relevant part,

**In those circumstances in which a PTF or CCA worked forty hours per week during the opting period (or forty-eight hours in the case of a six day opt), an instructional cease and desist resolution would be appropriate. This would also be an appropriate remedy in those circumstances in which a reserve letter carrier or an unassigned letter carrier was denied an opt in violation of Article 41.2.B.3.**

In both of these JCAM examples the violation is not described as egregious, unfettered, or ongoing. The JCAM is a jointly agreed upon interpretation and application of our National Agreement. Both parties at the National Level agree that a cease and desist remedy is appropriate as an instructional remedy to encourage contractual compliance.

With this in mind, the Union asks that the cease and desist remedy requested as part of the NALC’s requested settlement in this grievance be sustained by a Step B Team or an Arbitrator.