



July 1, 2010

DOUG A. TULINO
VICE-PRESIDENT, LABOR RELATIONS

SUBJECT: Audit Report – Grievance Settlements and Payments
(Report Number HR-AR-10-003)

This report presents the results of our audit of grievance settlements and payments (Project Number 10YG004HM000). Our objective was to determine whether internal controls over grievance settlements and payments were effective. Specifically, we evaluated whether the grievance settlement decisions and payments were sufficiently supported. We conducted this audit as a result of a referral received from our Office of Investigations (OI). The audit addresses financial and operational risks. See [Appendix A](#) for additional information about this audit.

Most Postal Service bargaining unit employees are represented by one of the four major unions.¹ The national agreements signed by senior-level management and the four union presidents include grievance-arbitration procedures that Postal Service management, bargaining unit employees (also referred to as craft employees), and union representatives must follow. These procedures provide guidance for resolving workplace disputes, differences, disagreements, and complaints. The Postal Service pays millions of dollars in grievance settlements; in fiscal year (FY) 2008 and FY 2009 they paid \$250 million and \$179 million respectively. As a result, it is important to ensure the Postal Service has appropriate internal controls in place.

Conclusion

Management controls over grievance settlements and disbursements need to be strengthened. We found that grievance payments were often not supported by adequate documentation and, as a result, we identified at least \$27.8 million in unsupported questioned costs. We also found that oversight of the grievance settlement process was not consistent among the districts and that union representatives received grievance payments to which they may not have been entitled. The weakness in the control environment makes it difficult to determine the propriety of settlement amounts, and payments to employees and union officials who represent bargaining unit employees.

¹ The four major unions are the American Postal Workers Union (APWU), the National Association of Letter Carriers (NALC), the National Postal Mail Handlers Union (NPMHU), and the National Rural Letter Carriers' Association (NRLCA).

Management Controls over Grievance Payments

Documentation to Support Grievance Settlements and Payments

We reviewed 600 randomly selected grievances² and found that 234 (or 39 percent) were not adequately supported by required documentation. The missing documentation included signed Grievance Arbitration Tracking System (GATS) decision letters that document the reason for the settlement; the Grievance Form, which explains the original grievance; and documentation that explains how management determined the amount of the payment. As a result, there is no assurance that at least \$27.8 million in grievance settlement payments were justified or warranted. See [Appendix C](#) for our calculation of unsupported questioned costs.

Human resources managers and labor relations officials at six of the 10 districts in our sample stated that supervisors are not required to copy and maintain supporting documentation used to settle informal grievances because they can settle them verbally. Management at the remaining four districts stated the documentation was missing due to poor recordkeeping by supervisors and individuals who prepared the grievance payments.

The Postal Service requires management to maintain documentation supporting grievance files and appeals for 7 years.³ In addition, the Government Accountability Office (GAO) developed standards for internal controls.⁴ These standards require agencies to assess the level of risk associated with specific activities and develop internal controls to mitigate these risks. One internal control activity includes documenting all transactions and other significant events and making the documentation readily available. See [Appendix B](#) for our detailed analysis of this topic.

Inconsistent Oversight of Grievance Settlements

We identified inconsistencies in the oversight of grievance settlements among the districts we reviewed. Specifically:

- Six of the 10 districts did not encourage or expect management representatives to seek higher-level consultation during the grievance process.
- Four of the 10 districts had not established dollar thresholds indicating when consultation or approval was required. Thresholds varied among the six districts that did have established thresholds.

² Management stated 300 of the grievances were informal adjustments.

³ *Employee and Labor Relations Manual 20*, Appendix-Records Control Schedules, November 2009.

⁴ GAO/AIMD-00-21.3.1, *Standards for Internal Control in the Federal Government*.

There was no requirement or nationwide methodology for monitoring grievances through GATS. District officials stated they each used one or more GATS reports, and seven of the 10 stated they used one or more alerts in GATS to monitor settlement amounts or prevalent issues.

We found that these inconsistencies existed, because supervisors are authorized to settle grievances at any amount; and although some Postal Service managers had implemented a consultation process, others believe oversight of grievances before settlement and documentation of any consultation would violate union contracts. Without consistent procedures and appropriate oversight, management has no assurance that grievance settlements and disbursements are appropriate. According to GAO, internal controls provide reasonable assurance that funds are safeguarded and laws and regulations are complied with and support effective and efficient operations. Without sufficient internal controls, the risk of fraud, waste, and abuse is high. See [Appendix B](#) for our detailed analysis of this topic.

[Payments to Union Representatives](#)

We also found that union representatives received excessive payments from grievance settlements. Union representatives in four districts (Colorado/Wyoming, Alabama, Mid-America, and Capital) were involved with the allocation of class-action grievance settlements for six grievances that resulted in union representatives receiving payments that were significantly more than other members of the class. Specifically, union representatives received \$33,447 (or 24 percent) of \$141,639 in settlements for these six grievances. One union representative in the Mid-America District received as much as 35 percent of a grievance settlement, while other payees received less than 1 percent.

This occurred because the Postal Service has not established procedures for reviewing the allocation of settlements to ensure that payees whom the union identifies are part of a class action. Once the Postal Service negotiates a settlement, they often have no involvement with its allocation. As a result, union representatives may be receiving payments to which they are not entitled. [REDACTED]

We recommend the vice president, Labor Relations:

1. Develop and implement an internal control plan for grievance settlements and payments to ensure consistency among districts and compliance with contractual agreements. Such a plan should include, at a minimum:
 - Requirements for maintaining adequate supporting documentation.
 - Training for management who have the authority to resolve disputes in the grievance procedures.

- Requirements for periodically monitoring GATS reports and alerts.
- Procedures to ensure negotiated settlement payments are valid, accurate, and properly allocated among the grievants.

Management's Comments

Management agreed with the recommendation, stating that they have already implemented an internal control process in response to Sarbanes-Oxley (SOX) requirements. Management stated that because GATS has already been designated as a SOX compliant system, a periodic testing plan of its internal controls has been established by the SOX program management office. The first test will occur in August 2010.

In addition, management stated they have already advised area Labor Relations managers of the SOX testing and will issue more specific notification of upcoming SOX testing by July 10, 2010, to the area human resources and Labor Relations managers. The notification will detail the following: a checklist of documentation that should be contained in a case file; instructions for using alerts in GATS to identify payout activity and high dollar amounts; and recommendations for periodic review in individual units to ensure that grievance settlements are valid, accurate, and properly allocated. In response to training for management personnel who have the authority to resolve disputes in grievance procedures, management stated they already have an extensive list of training courses.

Management disagreed with several aspects of the report, including the conclusion that grievance payments were often not supported by adequate documentation; and that variations among local practices and processes should be classified as inconsistent. Management also disagreed with the \$27.8 million in unsupported questioned costs identified in the report, stating that of the 600 cases sampled by the OIG, 300 or 50 percent were informal pay adjustments that do not require the same level of documentation as formal grievances. They stated that the OIG failed to describe how the calculations were extrapolated to determine the monetary benefits claimed.. In addition, management indicated that the local union president who received 30 percent of a settlement in the Colorado/Wyoming district was the primary employee performing the work. Management's comments also included several points they wanted the OIG to clarify. Management's comments, in their entirety, are included in [Appendix E](#).

Evaluation of Management's Comments

The OIG considers management's comments responsive to the recommendation and their corrective actions should resolve the issues identified in the report.

Regarding the 600 sampled cases we reviewed, we concluded that the Postal Service made grievance payments for the GATS cases we reviewed, and there should have been documentation to support all of those payments. For 234 of the payments we reviewed, supporting documentation was missing. We also believe that supporting all financial transactions, including informal grievance payments, with appropriate documentation is a necessary internal control.

Management disagreed that variations among local practices and processes should be classified as inconsistent. We based our conclusions on the fact that four of 10 districts encouraged or expected managers to seek higher-level consultation, while the other four districts did not. Because local officials stated supervisors are authorized to settle grievances at any amount, we believe it is important that they use consistent practices with regard to oversight and higher-level consultation for grievance settlements and payments.

Regarding the union president in the Colorado/Wyoming district who received 30 percent of a grievance settlement; this was one example we found where a union official received what seemed to be an excessive payment from a grievance settlement. Western Area officials stated that APWU employees filed an unfair labor practices complaint based on the amount the union president received in this case, and the case was settled prior to the hearing for the amount paid to the union president.

We agreed with management's statement that monitoring of GATS would not improve the quality of supporting documentation. However, they can use the system to identify unusual grievance settlements, and management can then take further action to ensure the settlement is appropriate and the required documentation is maintained.

Our estimate of the monetary impact is a statistical projection of \$27.8 million of unrecoverable unsupported questioned costs. We projected the cost at a 95 percent confidence level based on grievance payments that were not supported by adequate documentation. Because these payments were not supported, there is no assurance that they were justified.

We made minor changes throughout the report as appropriate, to address management's clarification requests.

The OIG considers the recommendation significant, and therefore requires OIG concurrence before closure. Consequently, the OIG requests written confirmation when corrective actions are completed. The recommendation should not be closed in the

follow-up tracking system until the OIG provides written confirmation that the recommendation can be closed.

We appreciate the cooperation and courtesies provided by your staff. If you have any questions or need additional information, please contact Andrea Deadwyler, director, Human Capital and Security, or me at 703-248-2100.

E-Signed by Mark Duda 
VERIFY authenticity with ApproveIt


Mark W. Duda
Deputy Assistant Inspector General
for Support Operations

Attachments

cc: Anthony J. Vegliante
Laurie A. Hayden
Sally K. Haring

APPENDIX A: ADDITIONAL INFORMATION

BACKGROUND

Most Postal Service bargaining unit employees are represented by one of the four major unions. The national agreements signed by senior-level management and the four union presidents include grievance-arbitration procedures that Postal Service management, bargaining unit employees (also referred to as craft employees), and union representatives must follow.⁵ These procedures provide guidance for resolving workplace disputes, differences, disagreements, and complaints.

The grievance process generally consists of four steps.⁶ The first step requires bargaining unit employee(s) and unions who feel aggrieved to discuss issues with their immediate supervisor. The supervisor has authority to settle grievances at any time. However, if a supervisor does not reach a resolution, the employee can file a formal grievance through the union or the union can do so on its own initiative. The next three steps involve formal discussions between Postal Service officials at the appropriate level (local, regional, or national) and union representatives. The process also allows the appeal of unresolved grievances to arbitration, during which a Postal Service and union-selected arbitrator resolve the grievance through a binding decision. GATS tracks the steps in the grievance-arbitration process.

The purpose of GATS is to track grievances. In addition, management uses GATS to authorize and process grievance payments. It is a web-based system, accessed through the Postal Service's intranet. Most lump sum and hours-related grievance adjustment payments for individual and class-action settlements are authorized through GATS. In addition, GATS provides authorized users with reports and e-mail alerts that can monitor payment activity.

The Postal Service pays millions of dollars in grievance settlements; in FY 2008 and FY 2009, they paid \$250 million and \$179 million respectively. Approximately 77 percent of the payments were the result of arbitration decisions, \$198 million in FY 2008 and \$132 million in FY 2009. The remaining grievance settlements totaled more than \$52 million in FY 2008 and more than \$47 million in FY 2009.⁷

⁵ Unions and the bargaining unit (craft) employees they represent: the APWU represents clerks, motor vehicle operators, building and equipment maintenance personnel, and vehicle maintenance personnel; the NALC represents city delivery carriers; the NPHMU represents mail handlers; and the NRLCA represents rural delivery carriers.

⁶ A grievance is defined as a dispute, difference, disagreement, or complaint between the parties related to wages, hours, or conditions of employment.

⁷ There were 94,485 grievance settlements during this period (45,596 in FY 2008 and 48,889 in FY 2009), not including grievances settled in arbitration. We obtained grievance data from GATS.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to determine whether internal controls over grievance settlements and payments were effective. Specifically, we evaluated whether the grievance settlement decisions and disbursements made were supported.

To accomplish our objective, we selected a random sample of 600 grievance payments for FYs 2008 and 2009. The total dollar value of the grievance payments we reviewed was \$375,608.26.⁸ These payments resulted from 140 different grievance types, including 245 (approximately 41 percent) valued at \$85,865.71 related to overtime issues. Other grievance types resulting in a significant number of settlements and payments included bargaining unit work (54 grievance payments totaling \$10,432), cross-craft violations (45 grievance payments totaling \$20,019), and holiday pay (23 grievance payments totaling \$9,598). The other 233 grievance payments we reviewed resulted from numerous issues such as employment and work assignments, higher-level pay, and light/limited duty. We also statistically projected the most common grievance issues to all grievances settled in FYs 2008 and 2009 (see [Appendix D](#)).

To verify whether the grievance settlement decisions and payments were supported with written documentation, we randomly selected 10 of the 80 Postal Service districts⁹ for review. This sample included 60 grievance payments from the 10 selected Postal Service districts. In addition, we reviewed contracts between the Postal Service and the four major unions and the ELM for any relevant information on the Postal Service's responsibilities related to grievance payments. We sent e-mails to each of the 10 districts requesting documentation to support grievance payments. We received responses for all 600 grievance payments and reviewed supporting documentation for each.

We contacted the districts and requested additional information pertaining to missing documents or reasons they were unable to provide additional information. We also requested the human resources manager at each of the selected districts to complete a questionnaire so we could gain an understanding of the district's grievance process. We reviewed GATS payments to union representatives that exceeded \$10,000 in FYs 2008 and 2009. We also reviewed a Pittsburgh arbitration award in which the Postal Service was ordered to pay \$69 million, which was split between nearly 1,500 postal workers. Lastly, we made four referrals to OIG's OI during the audit.

We conducted this performance audit from October 2009 through July 2010 in accordance with generally accepted government auditing standards and included such tests of internal controls as we considered necessary under the circumstances. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our

⁸ Based on our statistical sample, we projected our results regarding the 600 grievance payments we reviewed across the universe. See Appendix C for additional information.

⁹ On October 1, 2009 the Postal Service reduced the number of districts from 80 to 74.

audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. We discussed our observations and conclusions with management on April 13, 2010, and included their comments where appropriate. Although we cannot attest to the accuracy of all data in the GATS, we did not identify any errors in conducting our work and concluded that the GATS data was reliable to support the audit findings.

PRIOR AUDIT COVERAGE

Report Title	Report Number	Final Report Date	Monetary Impact Report	Results
Grievance Overpayments in the Baltimore District	HR-AR-10-001	3/8/2010	\$1.67 million	The Baltimore District made grievance overpayments of approximately \$1.7 million. The Postal Service agreed with our recommendations and has initiated action to recover these overpayments; however, we found that internal controls over disbursements of grievance payments were insufficient.

APPENDIX B: DETAILED ANALYSIS

Management Controls Over Grievance Payments

Documentation to Support Grievance Settlements and Payments

Management controls over grievance settlements and disbursements need to be strengthened. Specifically, grievance payments were often not supported with adequate documentation.

In our review of 600 randomly selected grievances, we found 234 (or 39 percent) were not adequately supported by required documentation. Items missing included signed GATS decision letters (explanation of the reasoning for the grievance settlement), the grievance forms (an explanation of the original grievance), and explanations of how the amount of the payments were determined. Postal Service officials gave the following reasons for missing documentation: poor recordkeeping, local installations not forwarding information, and management verbally settling informal grievances, which does not require maintaining documentation. See the following table for an overview of our results by district.

Grievance File Review – Results by District

District	Sample	No Supporting Documentation		Supporting Documentation Missing		Supporting Documentation Included	
	Dollar Value	Number	Dollar Value	Number	Dollar Value	Number	Dollar Value
Bay Valley	\$45,259	5	\$1,715	13	\$17,802	42	\$25,741
Big Sky	22,958	1	120	11	2,486	48	20,352
Capital 41,581		8	1,991	28	4,397	24	35,193
Colorado/Wyoming	19,258 5		322	8	1,714	47	17,222
Connecticut 25,799		19	5,082	14	10,778	27	9,939
Mid-America 65,918		0	0	13	41,665	47	24,253
Northern Virginia	102,467 1		111	23	83,372	36	18,985
Northland 22,418		0	0	29 14,039		31	8,379
Sierra Coastal	12,077 1		85	29	7,620	30	4,372
South Florida	17,873 2		57	24	6,443	34	11,374
Totals	\$375,608	42	\$9,483	192	\$190,316	366	\$175,810

Some examples of grievance settlements with incomplete documentation included:

- A step 3 level grievance was settled by a headquarters labor relations specialist for \$33,750 in the Mid-America District. District personnel could not locate the original grievance form or a signed decision letter. They attributed this to poor recordkeeping.
- A step 2 level grievance was settled by a district labor relations specialist for \$41,490 in the Northern Virginia District. Local management was unable to provide the original grievance form and support for the hours used to calculate the payment.

Documentation was incomplete because managers were not consistently applying policies and procedures regarding documentation to support grievance settlements and payments. Human resources managers in six districts believed supervisors were not required to copy and maintain supporting documentation used to settle informal grievances, because they can be settled verbally. However, managers in the other four districts believed the lack of documentation was due to poor recordkeeping by supervisors and the persons who prepared the grievance payments. The Postal Service requires documentation supporting grievance settlements to be maintained for 7 years.¹⁰ This documentation includes notices of disciplinary action, standard grievance forms, statements of fact, statements of witnesses and supervisors, copies of supporting records from other Postal Service files, and summaries and decisions. Because these documents were missing from 39 percent of the grievance files we reviewed, we concluded there is no assurance that at least \$27.8 million in grievance payments were justified or warranted.

Inconsistent Oversight of Grievance Settlements

Oversight of the grievance settlement process was inconsistent among the districts we selected for review. Based on the district office responses, we noted that supervisors had the authority to settle grievances at any dollar amounts. However, four of the 10 districts encouraged or expected management representatives to seek higher-level consultation, while six had no expectation for supervisors to consult with someone internally before settling a grievance. In addition, six of the 10 districts had various dollar thresholds for which consultation was required. For example;

- The Northern Virginia District requires individuals to consult with the labor relations manager for settlements in excess of \$1,000; consult the human resources manager for settlements in excess of \$5,000; and consult the district or plant manager for settlements in excess of \$10,000.

¹⁰ *Employee and Labor Relations Manual 20*, Appendix-Records Control Schedules, November 2009.

- The Bay Valley and Sierra Coastal districts have guidance from the Pacific Area office that limits to \$500 the maximum grievance payment that may be authorized for executive and administrative schedule managers and supervisors without consultation; \$500 and \$1,000 for postmasters; \$10,000 for the human resources manager; and \$50,000 for postal career executive service employees.
- The Big Sky District requires consultation on any amount over \$500 for informal grievances and any amount over \$1,000 for step 2 formal grievances. Four districts had no limit on the payments that could be made at any level.

We also noted that all of the districts used one or more GATS reports for monitoring settlement amounts or prevalent issues and seven of them responded that they used one or more GATS alerts to monitor grievance settlements. However, this information is input into the GATS system after the grievance has been settled, and there is no requirement for periodic reviews of GATS to monitor grievance settlement and payment information.

Some Postal Service officials responded that approval or oversight of grievance settlements and documentation of any consultation would violate union contracts. However, our review of the contracts found that they require both the Postal Service and union representative hearing a grievance to have the authority to make a settlement, but the contracts do not prohibit supervisors from seeking consultation. Without sufficient internal controls, the risk of fraud, waste, and abuse is high.

Payments to Union Representatives

We noted during our audit that union representatives received excessive payments resulting from grievance settlements. Union representatives at four districts [REDACTED] were involved with allocating class-action grievance settlements for six grievances that resulted in union representatives receiving a significant percentage of the settlement amounts, while the grievants received very small percentages of the settlement amounts. A union representative in the [REDACTED] received as much as 35 percent of one grievance settlement, while other payees received less than 1 percent. For the grievances we reviewed, union representatives received \$33,447 (or 24 percent) of \$141,639 in settlements for these six grievances. The following items describe the individual examples of union representatives receiving more than most of the grievants.

- In the [REDACTED], a class-action grievance paid the local American Postal Workers Union president \$16,934 (or 30 percent) of the total settlement of \$56,448, which was more than the amount most other grievants received. The grievance was settled through arbitration. To abide by the settlement, two local unions and the postmaster negotiated a total settlement

¹¹ The Alabama location was part of our survey phase.

amount. Once the amount was determined, the union president decided who to include in the settlement and how much each grievant would be paid. The local union president allocated 30 percent of the total settlement (\$16,934) to himself. In addition to the president, there were eight other grievants. Four grievants received \$1,128.96 each (or 2 percent); two grievants received \$5,644.80 each (or 10 percent), and one received \$22,579.20 (or 40 percent). One grievant filed an unfair labor practice complaint based on allocation of the payment. The union settled the case out of court for the amount paid to the local union president, according to Western area officials.

- In the [REDACTED] in FY 2009, we found the local union president received \$9,000 from two class-action payment settlements. He received \$4,000 of a \$25,000 settlement and \$5,000 of \$30,000 settlement for union expenses. The Postal Service's Labor Relations team settled this grievance at a significant discount for the Postal Service, but the union also allocated the payments, including the payment of union expenses to the local president.
- In the [REDACTED] a local union president received \$5,850 (or 35 percent) of a \$16,928.73 settlement. . The person most affected by the contract violation received \$2,000.73 and 67 other individuals received between \$110 and \$1,000 each.
- In the [REDACTED] we noted a union steward named in two class-action grievances received the highest payments — \$805.46 (or 18 percent) of a total settlement of \$4,457.32 for 25 grievants and \$857.56 (or 10 percent) of a total settlement of \$8,805.28 for 34 grievants. For one of the grievances, he received almost twice the amount of the next highest payee. We determined that, although the Postal Service calculated the settlement, it was the union steward who identified the individuals eligible to receive payment based on his knowledge of who was available for overtime and the documentation provide to the dispute resolution team (DRT). The DRT settled the grievance but did not receive any additional information from local management to dispute the union's information, so there is no way to know whether the allocation was distributed accurately.

The Postal Service has no procedures in place to review the allocation of settlements and ensure the payees identified by the union are part of the class action. Once the Postal Service negotiates a settlement they often have no involvement with its allocation. Union representatives may be receiving unwarranted payments by filing grievances and potentially violating fair labor practices with regard to Postal Service employees.

APPENDIX C: MONETARY IMPACT

We sampled grievance settlements paid in FYs 2008 and 2009 and excluded grievance settlements listed as arbitration settlements in the GATS. The total dollar value of our universe was \$99,890,427: \$52,874,599 in FY 2008 and \$47,015,828 in FY 2009 for the 80 Postal Service districts. Based on the results of our two-staged sampling methodologies, we are 95 percent confident that the monetary impact resulting from unsupported grievance payments is at least \$27,782,853.

Finding Impact	Category	Amount
Internal Controls Over Grievance Payments Need To Be Improved	Unrecoverable Unsupported Questioned Costs ¹²	\$27,782,853
TOTAL		\$27,782,853

¹² Questioned costs are costs that are unnecessary, unreasonable, unsupported, or an alleged violation of law, regulation, etc. Unsupported costs are costs that are questioned, because they are not supported by adequate documentation. We statistically projected at least \$27.8 million of unrecoverable unsupported questioned costs due to missing documentation that supports grievance payments.

APPENDIX D: PROJECT GRIEVANCE ISSUES¹³

Using the sample discussed in Appendix C, we did an attribute appraisal of the issues that resulted in grievance settlements to identify frequently occurring causes. We developed a point estimate with a 95 percent confidence level for each issue that occurred 10 times or more in our sample. We combined the remaining issues in the other issues category. The table below is our projection of the makeup of all grievances settled in FYs 2008 and 2009.¹⁴

Category	Proportion ¹⁵
Overtime Assignment	11.91%
Overtime Work	13.20%
Performance of Bargaining Unit Work ¹⁶	7.55%
Cross Craft Assignment	6.20%
Employees Not on Overtime List	6.29%
Hours of Work	4%
Article 8 Overtime	6.64%
No Issue Available	3.13%
Equitable Distribution of Overtime	2.47%
Grievance-Arbitration Procedure	2.23%
Prohibition of Unilateral Action ¹⁷	1.37%
Other Issues ¹⁸	35.02%

¹³ This information was requested by a senior Postal Service official.

¹⁴ There were 94,485 grievance settlements during this period (45,596 in FY 2008 and 48,889 in FY 2009), not including grievances settled in arbitration.

¹⁵ Relative precision ranges from 1.12 percent to 7.04 percent. We could not estimate corresponding estimated dollar proportions with reasonable precision.

¹⁶ Supervisors and non-union employees are prohibited from performing certain bargaining unit work (work that belongs to the union employees).

¹⁷ Under Article 5 of the collective bargaining agreement, management is prohibited from taking any unilateral actions inconsistent with the terms of the existing agreement or its obligation under the law.

¹⁸ There were a total of 140 different grievance issues in the 600 grievances reviewed. Other issues include issues such as back pay; disciplinary actions; holiday scheduling and pay; and union rights.

APPENDIX E: MANAGEMENT'S COMMENTS

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VICE PRESIDENT, LABOR RELATIONS



June 15, 2010

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SUBJECT: Draft Audit Report – Grievance Settlements and Payments
(Audit Report Number HR-AR-10-DRAFT)

This is to provide comments on the subject draft audit report. The OIG report stated that its objective was “to determine whether internal controls over grievance settlements and payments were effective. Specifically, we evaluated whether the grievance settlement decisions and payments were sufficiently supported.”

Management's Comments concerning OIG Conclusions, Findings, and Observations

1. The OIG “found that grievance payments were often not supported by adequate documentation” and identified “at least \$27.8 million in unsupported questioned costs.”

Management cannot agree with these conclusions.

The OIG stated that 39 percent of the 600 randomly selected grievance payments were not adequately supported by required documentation. They cited missing signed Grievance and Arbitration Tracking System (GATS) decision letters, grievance forms, and documentation to explain how management determined the amount of payment.

As Labor Relations (LR) stated in its March 30, 2010, response to the discussion draft, of the 600 cases sampled by the OIG, 50% were informal pay adjustments that do not require the same level of documentation as formal grievances. LR determined 300 of the sampled grievance payments were informal adjustments because they are identified as such in the GATS records.

An informal pay adjustment does not require a file to be created or a grievance form to be completed. When making an informal pay adjustment

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request in GATS, the supervisor inputs supporting information into a series of screens that sets up the adjustment. As an example, for an hours-related adjustment, the days involved in the adjustment, as well as the hours code identification (straight time, overtime, etc.), and a written rationale for adjustment must all be completed before the record can be submitted for payment. The result produces a *Memorandum of Record for Informal Pay Adjustment* with the grievance number, date, grievant, installation, reason for the adjustment and the management official. This memorandum is the output of an electronic record produced by the system based on the management representative's data entry.

Further, according to article 15 in the collective bargaining agreements with all our unions, disputes at the first step of the grievance process are informal, relying on face-to-face discussions between the employee and his/her immediate supervisor who has the authority and accountability to resolve the dispute. Grievance forms are not required at the initial level, and if the supervisor agrees to a pay adjustment remedy, he or she initiates that remedy as a GATS informal pay adjustment transaction.

The OIG report did not identify which payments from the sample were placed in the "No Supporting Documentation" or "Supporting Documentation Missing" columns in Appendix B. Since the numbers in the Appendix B table, *Grievance File Review – Results by District*, did not change from the discussion draft, LR has no indication the OIG results were reassessed after our clarifying information was provided. The report did not confirm that the OIG acknowledged the different documentation requirements between informal adjustments and formal grievance settlement payments, as these totals did not change.

Even if documentation was not located during the OIG audit, the conclusion that payment was "unnecessary, unreasonable, unsupported, or an alleged violation of law, regulation, etc." is not an accurate assessment based on the OIG review. The fact circumstance of each grievance needs review to make such a determination. Determining if a settlement is unnecessary, unreasonable, unsupported, or an alleged violation of law, regulation, etc., requires investigatory review for each occurrence to determine the specific facts of the case.

Appendix C failed to describe how the calculations were extrapolated to achieve \$27,782,853. The OIG did not explain its two-staged sampling methodologies, despite our questions during discussion. The OIG did not provide specific details to identify which of the 42 cases had no supporting documentation (at a cost of \$9,483) or the 192 cases that had some documentation missing (at a cost of \$190,316). Without identifying specifically which payments the OIG felt were missing or lacked sufficient

documentation, it is impossible to determine whether or not these findings are accurate.

2. The OIG concluded "oversight of the grievance settlement process was not consistent among the districts." They cited two specific inconsistencies: 1) six districts did not encourage or expect management representatives to seek high-level consultation during the grievance process, and 2) four of the 10 districts had no established dollar thresholds indicating when consultation or approval was required. They found that thresholds varied among the six districts that did have established thresholds.

How local managers handle disputes and adhere to the collective bargaining agreements depend on their levels of expertise and understanding of the contracts, as well as their relationships with their counterparts in the local unions and with district LR and operational leadership. As a result, business processes have been developed locally that support the grievance settlement process based on local management's specific needs.

We disagree that variations among these local practices and processes should be classified as inconsistent. Contract compliance and implementation are local management's responsibility. Further, we disagree with the OIG's conclusion that inconsistencies among those processes are because "supervisors are authorized to settle grievances at any amount." The OIG, in this report, demonstrate this is not true. "Four of the 10 districts encouraged or expected management representatives to seek higher-level consultation," with specific examples for the Northern Virginia, Bay Valley, Sierra Coastal, and Big Sky districts.

3. The OIG concluded that "union representatives received grievance payments to which they may not have been entitled." The report further stated "the weakness in the control environment makes it difficult to determine the propriety of both settlement amounts and payments to union members and officials."

It is management's responsibility to question any excessive payments and ensure that remedy is reasonably applied. LR agrees that management review of grievance settlements must occur; however, union officials and union members, like any other employee in an affected unit, may receive payments higher than others under certain circumstances when the facts support the payment.

As an example, in the Colorado/Wyoming District cited by the OIG, the local union president was paid 30% of the settlement as the result of a negotiated remedy based on an arbitration award; however, the local union president, who was the Express Mail clerk messenger, was the primary employee performing the work. When management transferred this work to a highway

contract route (HCR), the local president lost that work. Ignoring the reality that a union official or member is harmed in a dispute could be perceived as retaliation for participating in union activity protected by the National Labor Relations Act (NLRA).

LR agrees that settlement allocations must be reviewed to ensure that the terms have been met and those identified in the settlement remedy are members of the class and have been harmed by the violation.

4. The OIG found "there was no requirement or nationwide methodology for monitoring grievances through GATS."

GATS is a tool to identify potential areas of concern, but it is not a repository for grievance files, and it does not contain supporting documentation. That is not its purpose. GATS automates the informal adjustment pay and formal grievance payout processes so that issues can be captured and linked to costs. However, the information needed to determine whether grievance settlement decisions and payments are sufficiently supported is not contained in GATS.

The OIG's statement is correct, but adding a requirement to monitor grievances through GATS will not impact the quality of the supporting documentation.

Clarifications requested, inaccuracies or corrections identified in the report:

First page of draft audit report, under Conclusion, last sentence. Please clarify the statement that ends "payments to union members and officials." Grievance settlement and informal adjustment payments are made to bargaining unit employees who may or may not be union members or union representatives. Is this statement trying to differentiate payments to bargaining unit employees who are union members as opposed to those who are not?

Page 3, third paragraph, reference to the requirement to maintain documentation, supporting grievance **settlements** for 7 years. The Employee and Labor Relations Manual (ELM) reference contains the system of records for retention of grievance files and appeals, not settlements. Please correct this statement. In addition, we recommended adding the following in the discussion draft: "Field-level disciplinary and contract application cases are retained 5 years from the date of final decision with respect to labor arbitration records."¹ The AS-353 is the source system for arbitration records.

¹ AS-353, *guide to Privacy, the Freedom of Information Act, and Records Management*, , revisions through September 24, 2009

Page 3, foot note # 4. In our response to the discussion draft, we advised that 300 of the sampled payments were informal adjustments, not "some" as noted in the footnote.

Page 7. Please clarify the reference in the third paragraph concerning the review of "the Employee and Labor Relations Manual (ELM) to determine the Postal Service's responsibilities related to grievance payments." We requested this clarification in the discussion draft but did not receive it. We have no knowledge of an ELM's reference for responsibilities for grievance payments.

Page 7, footnote #7. The word "craft" should be in parentheses.

Page 7, footnote 11 in Appendix A. This footnote is incorrect. Exceptions for the performance of bargaining unit work are noted in the collective bargaining agreements. Further, the word "non-union" should be changed to "non-bargaining" and the phrase "union employees" should be changed to "bargaining unit employees."

Page 12, first paragraph under Payments to Union Representatives. In our response to the discussion draft, we recommended that the citation for the Alabama district include the words "which was found prior to this audit" because the example discussed for Alabama did not occur during this audit and was not included in the sample.

Page 12, bottom of page, first bullet. As LR stated in our response to the discussion draft on March 30, two unions were involved in this particular class-action settlement. Therefore, the third sentence should read "To abide by the settlement, **two** local unions and the postmaster negotiated a settlement amount." It will also be necessary to identify which local union president was allocated the 30 percent.

Page 13, top of page, last sentence in the first paragraph. Please change "Pacific" to Western. Colorado/Wyoming District is in the Western Area.

Page 15, Appendix D. Project Grievance Issues. LR questions the value of this table and does not understand how this appendix supports the OIG objective to determine whether the grievance settlement decisions and payments were sufficiently supported. Since it was not shared with management during the discussion draft, we have no understanding of which issue code(s) in each grievance sampled were used to develop the table. Grievances routinely contain multiple issue codes.

Page 15, footnote #18. This footnote should cite the exact language from Article 5 of the collective bargaining agreements and be credited to Article 5, not the National Labor Relations Act, which is incorporated into Article 5.

OIG Recommendation 1:

Develop and implement an internal control plan for grievance settlements and payments to ensure consistency among districts and compliance with contractual agreements. Such a plan should include, at a minimum:

- Requirements for maintaining adequate supporting documentation.
- Training for management who have the authority to resolve disputes in the grievance procedures.
- Requirements for periodically monitoring GATS reports and alerts.
- Procedures to ensure negotiated settlement payments are valid, accurate, and properly allocated among the grievants.

Management's Response

LR is already implementing an internal control process in response to Sarbanes-Oxley (SOX) requirements. Because GATS has been designated as a SOX-compliant system under Payroll, a periodic testing plan of its internal controls has already been established by the SOX program management office. The testing will evaluate the effectiveness of the internal controls over financial reporting and identify exceptions where the controls are not operating as they have been designated. A semi-annual testing frequency has been established and is based on the number and dollar values of the financial transactions in GATS.

The first test will occur in August. LR has advised area LR managers of the SOX testing and will issue more specific notification of upcoming SOX testing by July 10 to the area human resources and LR managers. This notification will cover the following:

- A checklist of documentation that should be contained in the case file. This is the first bullet of the OIG recommendation.
- Instructions for using alerts in GATS to identify payout activity and high dollar amounts. This will help managers look for transactions that may need review and attention. This is the third bullet of the OIG's recommendation.
- Recommendations for periodic review in their units to ensure that grievance settlements are valid, accurate, and properly allocated. This is the last bullet of the OIG recommendation.

In addition, we have already implemented the following processes:

- Periodic review of GATS users. National administrators review the list of users on a quarterly basis to ensure that users are in correct roles. If roles cannot be verified, the national administrator revokes access.

- Planned enhancements for next fiscal year: GATS payment screens. We have already requested development funding in next year's program budget to better define the payment request screens so that users' responsibilities will be more defined when requesting payment. If funding is approved, development and implementation will occur in FY 2011.

The OIG's second bullet recommends that Management implement "training for management who have the authority to resolve disputes in the grievance procedure."

LR already has an extensive list of training consisting of more than 26 separate courses in place for LR specialists and managers, as well as modules specifically designed by LR for HR and operations supervisors and managers. These courses are developed and reviewed periodically by the HQ Field LR function, working with counterparts in Employee Development and Diversity. Most of the training classes are found on the Human Resources Learning Portal in Learning Management System (LMS) and are either classroom or web-based training modules. The Field LR team delivers these training venues multiple times each year across the country. In addition, the Field LR Website provides a number of aids on http://blue.usps.gov/humanresources/professionalportal/laborrelations/lr/lmoreinfo_fieldlr.shtml?

Dispute resolution training for Step B teams is routinely conducted by the HQ LR Programs and Policy function three or four times each year for both management and NALC members. At the end of this training, all students must pass an exam to be certified at the step B level. These teams are then designated as trainers for step A process.

In addition, web-training modules and job aides for GATS users are contained on the LR Systems' website at <http://blue.usps.gov/humanresources/professionalportal/laborrelations/lr/lrsr.shtml?> Area and district GATS coordinators use these training modules to train local supervisors before approving access for any user for informal adjustment or decision writer access in GATS.

We will be adding more job aides to our websites as references but believe our existing courses sufficiently address this recommendation.

Freedom of Information Act Exempt from Disclosure

- See Page 6, last paragraph containing dollar values and percentages described breaking out settlements based on arbitration decisions versus grievance settlements. The dollar values and percentages for settlements based on arbitration decisions and the dollar values and

percentages for grievance settlements should be withheld from disclosure.

- See Pages 11 and 12, under Inconsistent Oversight of Grievance Settlements, all specific dollar values mentioned in the three bullets describing the dollar value levels for approval and/or consultation with a higher level. All dollar values establishing the levels required for consultation with a higher level manager should be withheld from disclosure.

These references above must be withheld from disclosure according to Exemption 3, (5 USC 552(b)(3)) — Federal Law. Exemption 3 applies to information that is exempt from disclosure under another federal statute, specifically, 39 U.S.C. 410(c)(3): "Information prepared for use in the negotiation of collective bargaining agreements under 39 U.S.C. Chapter 12 and minutes or notes kept during the negotiating sessions."

Additionally, the Supreme Court has determined that the grievance arbitration process is an extension of negotiation of a collective bargaining agreement. The Supreme Court in Steel Workers v. Warrior & Gulf, 363 US 579,581 (1960) determined that "Many of the specific practices which underlie the agreement may be unknown, except in hazy form, even to the negotiators. Courts and arbitration in the context of most commercial contracts are resorted to because there has been a breakdown in the working relationship of the parties; such resort is the unwanted exception. But the grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government. Arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the variant needs and desires of the parties. The processing of disputes through the grievance machinery is actually a vehicle by which meaning and content are given to the collective bargaining agreement."

Releasing this specific information will diminish local management's ability to negotiate future settlements if unions are aware of these factors.



Doug A. Tulino

cc: Sally Haring