

# LITIGATION REPORT

## I. DUTY OF FAIR REPRESENTATION CASES

**1. Goodson v. NALC, et al.**—This action was filed in the U.S. District Court for the District of Colorado in April 2003 by a letter carrier who claimed that NALC, his Branch and certain branch representatives failed to represent him properly and violated his civil rights. In March 2007, the court granted defendants' motion for summary judgment. Plaintiff's appeal to the U.S. Court of Appeals for the Tenth Circuit was denied in March 2008. His petition to the U.S. Supreme Court for a writ of certiorari was denied in October 2008.

**2. Noble v. USPS, NALC and Branch 142**—This action was filed by a letter carrier in the U.S. District Court for the District of Columbia in May 2005. He claimed that USPS breached the collective bargaining agreement by requiring him to work certain overtime hours and that NALC and Branch 142 breached the duty of fair representation by failing to process grievances concerning the alleged contractual violations. In March 2008, the District Court granted defendants' motions for summary judgment and dismissed the case. Plaintiff subsequently filed a motion to alter or amend the judgment. That motion was denied on December 12, 2008. Plaintiff did not appeal.

**3. Truhlar v. USPS, Branch 825**—In April 2006, a former letter carrier filed this action in the U.S. District Court for the Northern District of Illinois against USPS and Branch 825. Plaintiff claimed that Branch 825 breached its duty of fair representation in connection with his termination from the Postal Service. On February 10, 2009, the District Court granted Defendants' motions for summary judgment. Plaintiff appealed this decision to the U.S. Court of Appeals for the Seventh Circuit. On April 12, 2010, the Court of Appeals affirmed the District Court's decision. On May 25, 2010, the Court of Appeals denied plaintiff's petition for rehearing and rehearing en banc.

**4. Caris v. USPS, et al.**—This action was filed by a former letter carrier in the U.S. District Court for the Northern District of Ohio in November 2006. Plaintiff claimed that USPS improperly removed him and that NALC and Branch 143 failed to represent him. In September 2007, at the close of discovery, plaintiff withdrew his entire complaint with prejudice.

**5. Smith v. Potter, Branch 283**—This case was filed in November 2006 by a former letter carrier in the U.S. District Court for the Southern District of Texas. Plaintiff claimed that NALC breached its duty of fair representation by failing to file a grievance to contest the termination of her employment. In January 2007, the Court granted NALC's motion to dismiss. Plaintiff appealed the District Court's decision to the U.S. Court of Appeals for the Fifth Circuit. On

December 8, 2008, the Court of Appeals affirmed the District Court's dismissal of the case.

**6. Thomason v. NALC, et al.**—This action was filed by a letter carrier in July 2007 in the U.S. District Court for the District of New Jersey. Plaintiff claimed that NALC denied him due process by, among other things, not allowing him to be represented by his own attorney in disciplinary proceedings. In June 2008, the District Court granted NALC's motion to dismiss the complaint. Plaintiff did not appeal.

**7. Burgess v. USPS, Branch 25**—This action by a former letter carrier was filed in July 2007 in the U.S. District Court for the District of Massachusetts. Plaintiff claimed that the Branch breached its duty of fair representation in connection with his removal. On June 4, 2009, the District Court granted the defendants' motions for summary judgment. The plaintiff did not appeal.

**8. Burky v. Potter, et al.**—This action was brought in federal district court in Ohio in June 2008 by a postal employee who worked as a letter carrier until 1993, but who had since worked in the APWU craft. In his suit, he asserted discrimination and other claims against the Postal Service and duty of fair representation claims against both NALC Branch 385 and an APWU local. After Branch 385 filed a motion to dismiss, on the grounds that his claim against the Branch was time-barred. In September 2008, plaintiff voluntarily dismissed his claims against the Branch.

**9. Lee v. Potter, NALC, Branch 45**—This action by a former letter carrier was filed in August 2008 in the U.S. District Court for the Southern District of Ohio. Plaintiff claimed that NALC and the Branch breached their duty of fair representation in connection with his removal. In September 2008, NALC and the Branch moved to dismiss. In July, 2009, the District Court granted the motion and dismissed the case. There was no appeal.

**10. McKoy v. NALC, et al.**—A former letter carrier commenced this action in the U.S. District Court for the Southern District of New York on November 3, 2008. His lawsuit alleged race discrimination by the USPS, NALC and the EEOC related to the termination of his employment with the USPS in February 2000, as well as more than 30 other causes of action. This was the fourth lawsuit filed by this plaintiff related to the termination of his employment with the USPS. The previous suits were all dismissed. In April, 2009, the District Court granted the defendants' motions to dismiss the case. The Court also granted NALC's motion to enjoin the plaintiff from filing additional actions concerning his termination against NALC without prior court approval. The plaintiff appealed this decision to the U.S. Court of Appeals for the Second Circuit. The Court of Appeals dismissed the appeal on March 9, 2010.

**11. William Franklin v. USPS, et al.**—In January 2009, a former letter carrier filed this action in the U.S. District Court for the Southern District of Ohio against USPS, Branch 43 and others. Plaintiff claimed that Branch 43 breached its duty of fair representation by failing to protect him from supposed mistreatment by the Postal Service two decades earlier in the late 1980's. On March 3, 2010, the District Court granted defendants' motions to dismiss. The plaintiff has appealed this decision to the U.S. Court of Appeals for the Sixth Circuit.

**12. Ziomber v. NALC, Patrick C. Carroll**—In October 2009, a former letter carrier filed this action in Michigan state court. The plaintiff claims that defendants breached their duties of fair representation in processing grievances challenging plaintiff's termi-

nation. In January 2010, the defendants removed this action to the U.S. District Court for the Eastern District of Michigan. In March, 2010, defendants moved for summary judgment.

**13. Bozkurt v. USPS, NALC**—This action by a former transitional employee was filed in the U.S. District Court for the Southern District of New York in November, 2009. The complaint alleges that USPS improperly removed the plaintiff and that NALC failed to properly represent him in connection with the removal. The case is in discovery.

## II. OTHER COURT LITIGATION

**14. Noble v. Sombrotto, et al.**—This action was filed in the U.S. District Court for the District of Columbia in February 1994 by letter carrier David Noble against twelve current or retired NALC officers. In September 1995, plaintiff filed an amended complaint adding NALC as a party. The complaint alleged that NALC failed to provide plaintiff with documents he requested and used improper procedures when hearing his internal union charges, and that the individual defendants breached their fiduciary duties under the Labor Management Reporting and Disclosure Act by accepting in-town expenses, convention per diem payments, and FICA reimbursements. In September 2005, after a trial, the court rendered judgment in favor of the defendants. Plaintiff then appealed the district court's decision to the U.S. Court of Appeals for the D.C. Circuit. In May 2008, the Court of Appeals affirmed the District Court's dismissal of the plaintiff's claims with respect to convention per diem payments and FICA reimbursements. However, the ruling reversed the District Court's dismissal of the claims with respect to in-town expenses and the alleged failure to provide plaintiff documents he had requested. The Court of Appeals remanded the case to the District Court for additional findings of fact on the latter issues. Following the remand, the District Court granted plaintiff's counsel's motion to be relieved, and he is proceeding *pro se*. The case remains pending before the District Court.

**15. Royall v. NALC**—This action was filed against NALC in the U.S. District Court for the District of Columbia in August 2005 by a former staff employee of NALC's finance department. The plaintiff alleged that he was unlawfully terminated on the basis of his race. In August 2007, the District Court granted NALC's motion for summary judgment, dismissing the case. Plaintiff appealed to the U.S. Court of Appeals for the D.C. Circuit. On November 21, the Court of Appeals issued its decision affirming the ruling of the District Court.

**16. Kessinger v. Branch 283**—This action was filed against Branch 283 and its president in May 2006 in the U.S. District Court for the Southern District of Texas by a letter carrier who alleged that the Branch removed him as steward in violation of his constitutional and statutory rights. In May 2006, the District Court denied plaintiff's motion for a preliminary injunction and dismissed the suit against the Branch president in her individual capacity. The District Court held a trial in April 2008, during which the Court granted Branch 283's motion for a directed verdict. Plaintiff appealed the District Court's decision to the U.S. Court of Appeals for the Fifth Circuit. On December 31, 2008, the Court of Appeals affirmed the District Court's decision in favor of the Branch and held that the plaintiff was not denied any procedural or due process rights under the federal Labor Management Reporting and Disclosure Act

(LMRDA). The plaintiff filed a motion with the Court of Appeals for reconsideration, but it was denied as being untimely filed.

**17. NALC, APWU v. USPS, USPS Office of Inspector General**—NALC and APWU filed this action in U.S. District Court for the Southern District of New York in January 2008. The plaintiff unions asserted that USPS and USPS OIG act outside the scope of their authority and in violation of the U.S. *Constitution* when OIG agents seek employees' confidential medical information from their medical providers during the course of disciplinary investigations without the employees' knowledge or consent. In May 2010, the parties settled the case, establishing a procedure that OIG agents and postal inspectors must follow when speaking to employees' health care providers about employees' medical information, including a requirement that the health care provider be informed that there is no obligation to speak with the agent or inspector.

**18. Alabama Credit Union v. Owens**—This action in Alabama state court arose out of a \$14,476 debt owed by a NALC secretarial employee to the plaintiff Alabama Credit Union. The credit union obtained an order requiring NALC to garnish the employee's wages. After NALC failed to implement the garnishment, the credit union in October 2007 obtained a judgment against NALC for the amount of the employee's debt. In April 2008, NALC moved to vacate the judgment on the ground that it never received proper service of the garnishment order. In October 2008, the court denied NALC's motion. NALC's appeal to the state court of appeals was denied, requiring NALC to pay the amount of the judgment.

**19. Quinones v. Branch 869, Rivera**—This suit was filed in October 2009 in local court in Puerto Rico. The plaintiff is the former president of the Branch. His complaint alleges that he was improperly removed from office and seeks his reinstatement. The case was removed to the federal district court in Puerto Rico and is currently in discovery.

**20. Shanks v. Rolando, Potter**—This action was filed in the U.S. District Court for the Southern District of Georgia. Plaintiff was terminated for attendance infractions and alleges that President Rolando (and the NALC) breached their duties of fair representation in grieving plaintiff's termination. On May 6, 2010, defendant Rolando moved to dismiss and on May 14, 2010, the Magistrate Judge issued a report and recommendation recommending dismissal of the duty of fair representation claim. Plaintiff objected to the Magistrate Judge's report and recommendation on May 27, 2010 and defendant Rolando has responded to this objection.

### III. CASES BEFORE THE NATIONAL LABOR RELATIONS BOARD

**21. NALC Branch 421 (McCarthy)**—On April 30, 2008, Region 16 of the NLRB issued a complaint on a charge filed by a letter carrier in Boerne, Texas. The complaint alleged that Branch 421 excluded five carriers from a grievance settlement because the carriers engaged in dissident intra-union activities. The case was settled in June 2008 with the Branch agreeing to a notice posting and a payment of \$237.50 to each of the five excluded letter carriers.

**22. NALC (Noble)**—On June 30, 2008, NLRB Region 5 issued a complaint on a charge filed by a letter carrier, alleging NALC's failure to provide him

with timely information concerning his grievances. The parties subsequently reached a non-Board settlement, pursuant to which NALC provided a letter updating the status of certain grievances and enclosing certain grievance documents. The Board approved withdrawal of the charge on September 23, 2008.

**23. NALC Branch 704 (Alford)**—On June 30, 2008, NLRB Region 28 issued a complaint on a charge filed by a letter carrier in Casa Grande, Arizona. The complaint alleged that Branch 704 and the USPS conspired to issue an overly broad directive to the charging party limiting his access to certain union officials. The complaint was withdrawn on October 22, 2008.

**24. NALC (Perry)**—NLRB Region 18 issued a complaint on August 6, 2009, alleging that NALC improperly failed to honor a letter carrier's request to have his dues checkoff authorization terminated. After a hearing, an Administrative Judge issued a decision on November 25, 2009, dismissing the Complaint. There was no appeal.

**25. NALC (Noble)**—NLRB Region 5 issued a complaint on November 30, 2009, on a charge filed by a letter carrier alleging that NALC failed to process a route evaluation grievance and failed to enforce prior cease and desist settlements prohibiting the Postal Service from working the carrier more than 10 hours per day. On February 18, 2010, NALC agreed to a proposed settlement, which contained an express non-admission provision. The settlement provides that NALC will respond appropriately to questions about the status of grievances and to take action to enforce the carrier's prior cease and desist grievance settlements if NALC is timely notified and determines that the Postal Service violated the terms of those settlements.

### IV. LITIGATION AGAINST THE NALC HEALTH BENEFIT PLAN

**26. Valley Hospital v. St. Paul Travelers Insurance, et al.**—This action was filed by a hospital in March 2006 in New Jersey state court against 14 different health plans and payors, including the HBP. The complaint alleges that each of the defendants was a party to a PPO contract with First Health, and that the defendants failed to pay certain hospital claims within the time frame required by the applicable First Health agreement. As a result, the hospital claims that the plans and payors forfeited their rights to the discounted rates provided under the PPO contract. The hospital seeks judgment against the defendants for the difference between the discounted rate that the defendants paid for the services and the actual billed charges for these services. The hospital claims that the HBP owes \$4,083 for three claims that the hospital alleges the HBP did not pay within the contractually required time frame.

**27. Christ Hospital v. Local 1682 Carpenters/Joiners Health & Welfare Fund, et al.**—This action was filed by a hospital in August 2007 in New Jersey state court against 25 different health plans and payors, including the HBP. The complaint, filed by the same law firm handling the *Valley Hospital* case described above, alleges that each of the defendants failed to pay certain hospital claims within the time frame required by the applicable MultiPlan agreement and that, as a result, the plans and payors forfeited their rights to the discounted PPO rates. The hospital seeks payment of the difference between the discounted rates paid for the services

and the actual billed charges. The hospital claims that the HBP owes \$10,421.57 for one claim that the hospital alleges was not timely paid.

**28. Muhlenberg Regional Medical Center v. HBP, et al.**—This action was filed by a hospital in October 2008 in New Jersey state court against the HBP. The complaint, filed by the same law firm handling the *Valley Hospital* and *Christ Hospital* cases described above, alleged that the HBP paid less than the First Health negotiated rate on a claim for services rendered in 2002, and that the HBP owed an additional \$2,961.45 to the hospital. After discussions, the hospital agreed to accept \$1,100 in full settlement of its claims.

**29. St. Luke's East v. Ball v. HBP**—This action was filed by a hospital in Missouri state court against an HBP participant for \$5,958.16 claimed to be owed to the hospital. The participant filed a third-party petition against the HBP, claiming the HBP was liable for any amounts owed to the hospital. HBP moved to dismiss the third-party petition in October 2008, including on the ground that HBP had already paid the full amount of benefits payable on the claim. After reviewing HBP's motion, the enrollee voluntarily dismissed her claims against the HBP.

**30. Burke v. HBP and OPM**—This action was filed by an HBP enrollee in federal district court in Rhode Island in February 2010 challenging the HBP's determination (and OPM's concurring determination) that a provider was not a covered provider under the terms of the HBP brochure. HBP has requested that the enrollee voluntarily dismiss the action against HBP since, under federal regulations, a lawsuit challenging a denial of benefits must be brought against OPM only, not HBP.

### V. CASE AGAINST THE NALC ANNUITY TRUST FUND

**31. Overby v. NALC Annuity Trust Fund, et al.**—A married couple who are participants in the NALC Annuity Trust Fund filed this suit in August 2006 in the U.S. District Court for the District of Columbia against NALC, the NALC Annuity Trust Fund, President Young as Administrator of the Annuity Trust Fund and the Board of Trustees of the Annuity Trust Fund. They claimed that the defendants violated ERISA and the terms of the plan by adopting a plan amendment that made surviving spouses no longer eligible for a survivor benefit if the spouse married the participant after the participant had commenced his annuity. Plaintiffs sought a declaration that the amendment is invalid and that the prior rule be put into effect, unspecified additional equitable relief to give effect to survivor benefits under the prior rule, and attorneys fees and costs. The Court conducted a bench trial on June 11, 12 and 16, 2008. On February 27, 2009, the Court ruled in favor of the plaintiffs. The Court found that the disputed plan amendment was invalid because it had not been submitted to the ATF actuaries for cost analysis prior to adoption as required by the Plan. The defendants appealed this decision to the U.S. Court of Appeals for the D.C. Circuit which affirmed the District Court decision on February 26, 2010.

Members can find the presidential rulings normally printed in this issue of *The Postal Record* in the *Officers' Report Book* distributed at the NALC convention in Anaheim or on *The Postal Record* section of [nalc.org](http://nalc.org).