

PRESIDENTIAL RULINGS

RULINGS BY PRESIDENT WILLIAM H. YOUNG

Rodger Tibbs Niles, Michigan

(May 13, 2008): Your letter to the NALC, dated March 27, 2008, which was addressed to "who ever is going to read this," has been referred to my office for reply.

As best as I can tell, your letter indicates that you have a dispute with the President of Branch 775 over the propriety of a payment made by the Branch to a member in connection with a grievance that may have been mishandled. Your letter does not contain sufficient information for me to comment on the merits of this matter.

In any event, such disputes must be addressed in the first instance, at the Branch level. Actions of the Branch President may be appealed to the Branch under the provisions of Article 11, Section 1 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. The decisions of the Branch may be appealed to the National Committee on Appeals as provided by Article 11, Section 2 of the *CGSFB*.

Shawnee, Oklahoma Branch 883

(May 13, 2008): This is in reply to your letter, dated April 28, 2008, requesting dispensation allowing Branch 883 to register Sister Cindy Endres as a delegate to the 2008 National Convention. According to your letter, Sister Endres has been elected by the Branch, but after the December 31 deadline as provided by Article 5, Section 4 of the *NALC Constitution*.

In light of the facts set forth in your letter, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. Please note that this dispensation applies solely to the registration of Sister Endres for the 2008 Convention. In the future, the Branch must comply with applicable deadlines for nominating, electing, and registering delegates.

Fort Walton Beach, Florida Branch 4559

(May 13, 2008): This is in reply to your letter, dated April 27, 2008, requesting dispensation to register Sister Donna Holsclaw a delegate from Branch 4559 to the 2008 National Convention. It appears from your letter that Sister Holsclaw was previously elected as an alternate delegate; however you inadvertently omitted the names of the alternates from the delegate list previously submitted to Secretary-Treasurer Broendel. The Branch now needs Sister Holsclaw to fill a delegate vacancy.

In light of the facts set forth in your letter, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation.

Seattle, Washington Branch 79

(May 13, 2008): This is in reply to your letter, dated April 28, 2008, requesting dispensation per-

mitting Branch 79 to reschedule its October Branch meeting, notwithstanding the applicable provisions of the Branch By-laws. According to your letter, the date for the meeting prescribed by the By-laws will conflict with a regional assembly to be conducted by NBA Paul Price.

In light of the facts set forth in your letter, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation.

Roanoke, Virginia Branch 524

(May 13, 2008): This is in reply to your letter, dated April 9, 2008, concerning charges that were filed against you as President of Branch 524 which remain pending. According to your letter the investigating committee previously appointed by the Branch vice-president has failed to report its findings to the Branch in accordance with the deadlines specified in Article 10 of the *Constitution for the Government of Subordinate and Federal Branches*. You now ask whether the committee should still report its findings at a later meeting of the Branch.

At the outset, it would be wholly inappropriate for me to comment on the substance of charges which are still pending at the Branch level. I can advise you that, as a general rule, Article 10 of the *CGSFB* contemplates that the investigating committee will report its findings to the Branch. The Branch's decision may then be the basis for an appeal to the National Committee on Appeals. Any delays in processing the charges prior to the decision may be raised as an issue at that time.

Moreover, I would call your attention to Article 10, Section 1 of the *CGSFB* which expressly states that the Branch vote on charges "may be continued once, by motion, to the following regular Branch meeting." In addition, prior rulings have recognized that circumstances sometimes arise which prevent an investigating committee from completing its investigation within the time frame provided by Article 10, Section 1 (e.g., witness unavailability, extensive documentation). The rulings have instructed committees in these circumstances to complete their investigations as soon as possible.

In light of the foregoing, I would recommend that the committee report its findings to the Branch at the next Branch meeting.

Sun City, Arizona Branch 6156

(May 13, 2008): This is in reply to your recent letter, received by my office on April 28, 2008, concerning your appointment of a new steward in Branch 6156. According to your letter, a steward who had been elected by the members in one office successfully bid out of that office. As President of the Branch, you then appointed another member who had apparently been selected by the members in an unofficial straw poll. You now request that I rule on whether your actions were consistent with those sections of the Branch By-laws providing for the election of stewards by station.

While I appreciate your concerns, I must advise

that it would be inappropriate for me to issue a ruling interpreting the Branch 6156 By-laws. As a general rule, disputes over the interpretation or application of by-law language must be addressed, in the first instance, at the Branch level. Any decision of a Branch President interpreting a by-law may be appealed by any member to the Branch under Article 11, Section 1 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. The Branch's decision may be appealed to the National Committee on Appeals in accordance with the procedures set forth in Article 11, Section 2 of the *CGSFB*.

Of course, it may very well turn out that no one in the Branch disagrees with your actions. If that is the case, your appointment of the new steward will stand.

Finally, if you have lingering concerns that the Branch 6156 By-laws are unclear, I would suggest that the Branch enact an amendment to address future situations where an elected steward becomes ineligible or unavailable to serve.

Trussville, Alabama Branch 530

(May 14, 2008): This is in reply to your letter, dated April 21, 2008, inquiring whether a member of Branch 530 has been disqualified from serving as delegate to the National Convention under Article 5, Section 2 of the *NALC Constitution*. According to your letter, this member has received an offer to become an Ad-Hoc Small Business Specialist detailed within the Marketing Department of the Alabama District.

As previous rulings have repeatedly held, higher level assignments are not necessarily supervisory for purposes of Article 5, Section 2. Generally speaking, a position is considered supervisory, within the meaning of Article 5, Section 2, if the person holding that position would have the authority to discipline bargaining unit employees or otherwise supervise them in the performance of their duties. If the ad-hoc position at issue here does not carry such supervisory authority or responsibilities, the member would not be disqualified from continuing to serve as a delegate.

Your letter also inquires as to whether acceptance of this position would affect the member's bid assignment. It has been the position of the NALC that any ad-hoc position that is not a supervisory position does not fall within the provisions of Article 41, Section 1.A.2 of the National Agreement. A copy of a Step 4 decision supporting this position is enclosed. Therefore, the member should be able to work the ad-hoc position without losing her bid assignment.

Fort Wayne, Indiana Branch 116

(May 14, 2008): This is in reply to your letter, dated May 6, 2008, requesting rulings with respect to the processing of charges that have filed by one member of Branch 116 against another.

At the outset, it would be entirely inappropriate for me to comment on the substance of the charges. In particular, it would not be proper for me to rule on whether the charges, as described in your letter, are sufficient to state a violation of the *Constitution*. I can offer the following general advice with respect to procedural questions.

Article 10 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* provides the procedures that must be followed whenever a Branch member files charges. Article 10, Section 2 requires that all charges be read at the first regular Branch meeting after service. Section 3 of Article 10 requires the President (or the Vice President if the President be the person against whom charges are made) to appoint a committee of three disinterested members to investigate the charges and present a report to the Branch. The Branch

must then be allowed to vote on the charges.

As to the content of the charges, Article 10, Section 2 of the *CGSFB* states:

Charges must be made in writing, specifying the offense, failure, neglect, or misconduct so as to fully apprise the member or officer of the nature thereof, and shall be signed by a member of the Branch...

While specificity is required by the constitution, this does not mean that charges are invalid unless stated in exhaustive detail.

It is up to the committee and the Branch to apply the above-stated principles to the facts of this case. Your committee may very well conclude that the charges, as written, are insufficient to state a violation of the *Constitution*. However the investigating committee may not rely on any such conclusion to avoid completing its investigation and reporting to the Branch. The committee may communicate its opinion as to the sufficiency of the charges to the members. But the members must be given the opportunity to vote on the charges.

Robert Rhea Jr., Carson City, Nevada

(May 22, 2008): This is in reply to your letter, dated May 12, 2008, and the separate letter from your wife, dated May 14, 2008, requesting a waiver of your obligation to pay full union dues to the NALC. According to your letter, your family is enrolled in the NALC Health Benefit Plan (NALC HBP), even though you are employed in the maintenance craft and are a dues-paying member of the APWU.

While I fully sympathize with your family's financial situation, I must advise that I cannot grant your request to waive the requirement that you pay full dues to the NALC. By law, all enrollees in the NALC HBP must be members of our union. Under the *NALC Constitution*, all active employees of the Postal Service must pay full dues to be members of the NALC.

I have no first-hand knowledge of what you may have been told prior to your enrollment in the NALC HBP. However, I must point out that the NALC HBP plan description booklet (which you should have received and reviewed prior to your enrollment in the Plan) clearly states on the first page that: "To enroll, you must be or become a member of the National Association of Letter Carriers" and that "if you are a Postal Service employee, you must be a dues-paying member of an NALC local branch."

It is my understanding that a Form 1187 dues deduction authorization was mailed to you on April 30. You have 31 days from the date of that letter to complete and submit the form. If you do so, your dues deduction will be initiated by the Postal Service sometime thereafter. Please be advised that the National Union is not seeking retroactive payment of any dues. The local Branch to which you are assigned may or may not seek a retroactive payment of Branch dues. You can discuss your family circumstances with the Branch if a retroactive payment is requested.

If you do not submit the Form 1187 in a timely manner, eventually you will receive a letter from the NALC HBP informing you of the cancellation of your enrollment. However, this does not mean that you will lose your health insurance. It is my understanding that you will be given an opportunity to choose a new health insurance plan at that time.

I trust that the foregoing is responsive to your inquiry. I regret that I cannot provide a more favorable reply.

Las Vegas, Nevada Branch 2502

(May 22, 2008): This is in reply to your letter, dated May 8, 2008, concerning the By-law amendment recently adopted by Branch 2502 increasing the Branch dues.

I agree that your interpretation of the wording of

the amendment seems reasonably consistent with the language. However, I must advise that it would be inappropriate for me to provide a formal ruling interpreting that language. The interpretation of Branch By-laws is the responsibility of the Branch itself, in the first instance. Your interpretation of the By-law may be the subject of an appeal under Article 11 of the *Constitution for the Government of Subordinate and Federal Branches*.

In light of the foregoing, if I am contacted by a member of the Branch I will decline to provide an interpretation of the By-law.

Sylvia A. Dexter, Hurricane Mills, Tennessee

(June 2, 2008): This is in reply to your letter, dated May 16, 2008, requesting that you be allowed to rejoin the NALC as a retiree member.

I regret to advise that I must decline your request. Under Article 2, Section 1(a) of the *NALC Constitution*, retiree membership is available only to individuals who were regular members of the NALC at the time they retired. Further, the *Constitution* requires that a retiring member execute a Form 1189 at the time of retirement in order to maintain his/her status as a regular member of the NALC. It is clear from your letter that you do not satisfy either of these constitutional requirements.

It is unfortunate that you may have been given misleading information by postal management at the time you transferred to the clerk craft. However, under our *Constitution*, there is simply no basis for permitting you to rejoin the NALC at this time.

San Diego, California Branch 70

(June 2, 2008): This is in reply to the fax you sent to my office last week containing correspondence from Sister Mari Thomson and her attorney concerning the charges that have been submitted against her.

Past rulings have established that it is up to the investigating committee to determine whether a charged party may be allowed to have an attorney present at the committee hearing. If the committee decides to allow legal counsel participation, the expense would be borne by the party choosing such representation, unless the Branch votes to reimburse the party for expenses incurred.

In addition, the participation of an attorney should not be permitted to delay the proceedings. Under Article 10, Section 1 of the *Constitution for the Government of Subordinate and Federal Branches*, the vote on the charges is to take place at the next meeting. This vote may be continued once to the following regular Branch meeting. While past rulings have recognized that exigent circumstances may justify additional delays, the Branch should seek to resolve this matter within the time frame reflected in the *Constitution*.

Independence, Kansas Branch 1035

(June 6, 2008): This is in reply to your letter, dated June 2, 2008, requesting dispensation to register late as a delegate from Branch 1035 to the 2008 National Convention. Your letter indicates that the failure to meet the registration deadline resulted from the fact that the Branch secretary-treasurer has been ill.

In light of the facts set forth in your letter, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. Please note that this dispensation applies only to your registration as a delegate to the 2008 Convention. In the future, you must comply with applicable deadlines for registration.

Waco, Texas Branch 404

(June 12, 2008): This is in reply to your letter, which was faxed to my office on June 11, 2008,

requesting dispensation to register late the delegates from Branch 404 to the 2008 National Convention. According to your letter, you mailed the registration packet to Secretary-Treasurer Broendel in April, but the packet apparently was not received at NALC Headquarters.

In light of the facts set forth in your letter, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. Please note that this dispensation applies only to the registration of Branch 404 delegates to the 2008 Convention. In the future, the Branch must comply with applicable deadlines for registration.

Fresno, California Branch 231

(June 12, 2008): This is in reply to your letter, dated June 3, 2008, requesting dispensation to register late two delegates from Branch 231 to the 2008 National Convention. According to your letter, one of the delegates, who had not been elected to a paid delegate position, has now belatedly informed you that he is willing to pay his own expenses to attend the Convention. The other delegate had been erroneously dropped from the Branch membership rolls after he accepted an appointment as District Safety Officer. This error has now been corrected.

In light of the facts set forth in your letter, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. Please note that this dispensation applies only to the registration of these Branch 231 delegates to the 2008 Convention. In the future, the Branch must comply with applicable deadlines for registration.

Bradendon, Florida Branch 1753

(June 12, 2008): This is in reply to your letter, dated May 28, 2008, concerning the recent resignation of the Vice President of Branch 1753. Specifically, you ask whether it is necessary for the Branch to conduct a special election to fill this vacancy.

The answer to your question is no. Article 4, Section 2 of the *Constitution of the Government of Subordinate and Federal Branches* specifically provides that the Branch President may fill vacancies in officer positions by appointment, unless the Branch By-laws provide for an order of succession. Your letter does not indicate that the Branch 1753 By-laws establish a succession. If that is the case, as President of the Branch you are authorized to appoint a member to become the new Vice President for the balance of the present term.

Branch 1083 Wisconsin Rapids, Wisconsin

(June 18, 2008): This is in reply to your letter, dated June 13, 2008, requesting dispensation to register late as a delegate from Branch 1083 to the 2008 National Convention. According to your letter, the Branch Secretary/Treasurer inadvertently failed to submit your registration papers prior to the deadline.

In light of the facts set forth in your letter, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. Please note that this dispensation applies only to your registration as a Branch 1083 delegate to the 2008 Convention. In the future, the Branch must comply with applicable deadlines for registration.

Cherry Hill, New Jersey Branch 6311

(June 20, 2008): This is in reply to your letter, dated June 10, 2008, requesting dispensation permitting Branch 6311 President Robert Garaguso to replace Vice President John Decesari as a delegate to the 2008 National Convention. According to your letter, Brother Decesari cannot attend.

It is my understanding that the Branch By-laws provide that the President is a delegate to the National Convention by virtue of his office. Accordingly, pursuant to my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant dispensation to Brother Garaguso to register late as a delegate.

Please note that this dispensation applies only to the registration of Brother Garaguso as a delegate to the 2008 Convention. In the future, the Branch must comply with applicable deadlines for registration.

Sanford, Maine Branch 1448

(June 20, 2008): This is in reply to your recent letter, received by my office on June 16, 2008, requesting dispensation to register late a single delegate from Branch 1448 to the 2008 National Convention. Your letter indicates that the Branch did not previously receive any information about the Convention.

In light of the facts set forth in your letter, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. Please note that this dispensation applies only to the registration of this Branch 1448 delegate to the 2008 Convention. In the future, the Branch must comply with applicable deadlines for registration.

Hattiesburg, Mississippi Branch 938

(June 20, 2008): This is in reply to your letter, dated June 17, 2008, requesting dispensation to replace one of the elected delegates from Branch 938 to the 2008 National Convention. According to your letter, one of the delegates will be unable to attend due to a family emergency.

Unfortunately, I must deny your request. Article 5 of the *NALC Constitution*, consistent with federal law, requires that all delegates be elected. As your letter acknowledges, the retired member who has expressed a willingness to attend the Convention was not previously elected as an alternate delegate. Under the circumstances, I cannot permit him to register.

I regret that I cannot provide a more favorable reply.

Central California Coast Branch 52

(June 26, 2008): This is to follow up on our recent telephone conversation concerning Branch 52's chronic failure to have a quorum at its regular branch meetings. In particular, you asked whether, as Branch President, you are required to call a special make-up meeting for those months in which there was no quorum at the regular meeting.

The answer to your question is no. Article 3, Section 1 of the *Constitution for the Government of Subordinate and Federal Branches* requires the Branch to schedule regular meetings not less than once each month, with the option of having ten meetings per year, with the prior approval of the membership. As past presidential rulings have recognized, this constitutional provision does not require the branch to make up meetings which were not held due to unforeseen circumstances, such as the absence of a quorum.

Laurel, Maryland Branch 3755

(June 27, 2008): This is in reply to your letter, dated June 24, 2008, requesting dispensation to register late three delegates from Branch 3755 to the 2008 National Convention. The three delegates would include yourself, as President of the Branch, and two other members.

It is my understanding that the Branch 3755 By-laws provide that the President shall be a delegate to the National Convention by virtue of his/her office. Therefore, in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*,

I hereby grant dispensation for you to register yourself as a delegate. Please note that this dispensation applies only to your registration as a delegate to the 2008 Convention. In the future, the Branch must comply with applicable deadlines for registration.

Unfortunately, I must deny your request to register the other two members. Article 5 of the *NALC Constitution*, consistent with federal law, requires that all delegates be elected. As your letter acknowledges, the two members in question were not elected by the Branch; rather, they have been appointed by you. Under the circumstances, I cannot permit them to register.

I regret that I cannot provide a more favorable reply.

Oklahoma City, Oklahoma Branch 458

(July 1, 2008): This is in reply to your letter, dated May 28, 2008, objecting to the vote by Branch 973, El Reno, OK, in support of a proposed merger with Branch 1358, Tulsa, OK. According to your letter, your Branch 458 would be a better merger partner for Branch 973 because the two Branches are only 20 miles apart, as opposed to the 100 miles separating Branches 973 and 1358.

I must advise that there is no language in the *NALC Constitution* (see Article 2, Section 3), and no prior presidential rulings, which would justify my disapproving a proposed merger, which has been properly voted upon by both branches, based on the factors cited in your letter.

Seattle, Washington Branch 79

(July 1, 2008): This is in reply to your letter, dated June 23, 2008, requesting a ruling as to your authority, as President of Branch 79, to implement a new leave tracking procedure for Branch officers, and to approve your own leave.

Article 6, Section 1 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* provides that the Branch President has "general supervisory powers over the Branch" as well as the authority to "see that officers perform their duties [and] enforce the *Constitution*, By-Laws, Rules and Regulations of the Branch." The actions described in your letter appear consistent with these constitutional provisions.

I caution, however, that I cannot comment on any potential conflict with the Branch By-laws. It is the responsibility of the Branch, in the first instance, to interpret and apply its By-laws.

In addition, any action which you take as Branch President may be appealed to the Branch under Article 11, Section 1 of the *CGSFB*. This letter is not intended to address the merits of any such appeal, apart from the constitutional interpretation noted above.

Warren Gold, Attleboro, Massachusetts

(July 2, 2008): This is in reply to your recent letter, received by my office on June 26, 2008, concerning the procedure for appointing and replacing chief stewards in Branch 34.

While I appreciate your strongly held view that the current process is undemocratic, I must advise that the procedure you describe does not violate either the law or the *NALC Constitution*. Both federal law and the *Constitution* do require that Branches elect their officers, but this requirement does not apply to stewards. To the contrary, Article 4, Section 5 of the *Constitution* for the Branches provides that stewards may be "appointed or elected" as "may be determined" by the Branch.

Of course, as a member of Branch 34 you certainly have the right to seek to have the Branch By-laws amended to provide for the election of stew-

ards and/or chief stewards.

In addition, I am concerned about your specific allegations about the current chief steward in your office. Accordingly, I have assigned Regional Admin Government of Subordinate and Federal istrative Assistant Jerry Ugone to investigate this matter. Brother Ugone will contact you in the near future. Please cooperate fully with his investigation.

Hattiesburg, Mississippi Branch 938

(July 2, 2008): Thank you for your letter, dated June 26, 2008, which clarifies that Brother Wallace Johnston was elected as a delegate to the National Convention from Branch 938. According to your letter, the Branch decided not to register him solely because it was anticipated that he would be unable to attend the Convention due to his wife's illness. It now appears that she has sufficiently recovered that he can attend.

In light of these additional facts set forth in your letter, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation to register Brother Johnston as a delegate to the National Convention from Branch 938. Please note that this dispensation applies only to the registration of Brother Johnston as a Branch 938 delegate to the 2008 National Convention. In the future, the Branch must comply with applicable deadlines for registration.

Southeast Pennsylvania Merged Branch 725

(July 8, 2008): This is in reply to your letter, dated July 3, 2008, requesting dispensation to register late Brother Don Coughlin as a delegate from Branch 725 to the 2008 National Convention. According to your letter, Brother Coughlin's name was inadvertently omitted from the Branch delegate list.

In light of the facts set forth in your letter, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. Please note that this dispensation applies only to the registration of this Branch 725 delegate to the 2008 Convention. In the future, the Branch must comply with applicable deadlines for registration.

Jackson, Mississippi Branch 217

(July 11, 2008): By letter dated May 6, 2008, Secretary-Treasurer Jane Broendel referred to me a question of constitutional interpretation which was raised in your letter to her, dated April 12, 2008. I now write to address that question.

Specifically, your letter asserts that Branch 217 has created an appointed position of Building Manager and that the Branch has voted to transfer control of its Building Account from the elected Treasurer to the Building Manager. You question the propriety of this transfer of control over the Building Fund. According to your letter, the Building Manager is not elected, is not a member of the Executive Board, and there are no By-laws governing this decision.

At the outset, it would be inappropriate for the Branch to transfer duties assigned to the Branch Treasurer by the *Constitution* or the Branch By-laws to an unelected position. The constitutional duties of the Branch Treasurer are set forth in Article 6, Section 5 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. Additional duties of the Treasurer may be provided in the By-laws.

However, your letter does not describe the precise functions that the Building Manager is now performing. Accordingly, I cannot determine whether duties of the Treasurer have, in fact, been reassigned to the Building Manager.

Nor would it be appropriate for me to make this determination. The dispute described in your letter should be addressed, in the first instance, by the Branch. The Branch's decision may be appealed to the National Committee on Appeals in accordance with the procedures provided by Article 11 of the *CGSFB*.

Karon Carlson, Tigard, Oregon

(July 11, 2008): This is in reply to your letter, dated July 8, 2008, inquiring whether you have been disqualified from serving as a delegate to the National Convention under Article 5, Section 2 of the *NALC Constitution*. Article 5, Section 2 prohibits members who hold supervisory positions from being a delegate until two years after the termination of supervisory status. Your letter indicates that you have been detailed to certain higher level duties, and have been paid at Level 17.

It appears from your letter that you remain fully eligible to serve as a delegate.

As previous rulings have repeatedly held, higher level assignments are not necessarily supervisory for purposes of Article 5, Section 2 of the *CGSFB*. Generally speaking, a position is considered supervisory, within the meaning of Article 5, Section 2, if the person holding that position would have the authority to discipline bargaining unit employees or otherwise supervise them in the performance of their duties. The description of your duties set forth in your letter does not indicate that you were ever given supervisory authority. Assuming that your letter accurately reflects the responsibilities of the position, you would not be disqualified from serving as a delegate.

Mari Thomson, Pine Valley, California

(July 28, 2008): This is in reply to your letter, dated July 24, 2008, which you submitted at the National Convention in Boston. Your letter requests a dispensation extending the deadline for you to appeal the decision of Branch 70 to expel you as a member to August 8, 2008.

In light of the fact that both you and the officers of Branch 70 attended the Convention, and in accordance with my authority under Article 9, Section of the *NALC Constitution*, I hereby grant the requested extension. Accordingly, you may file your appeal on or before August 8.

Kingsport, Tennessee Branch 1999

(August 5, 2008): This is in reply to your letter, dated July 27, 2008.... Based on the limited information in your letter, I must advise that it would not be proper to utilize Branch funds [to make a loan] without approval of the membership. Article 12, Section 3 of the *Constitution for the Government of Subordinate and Federal Branches* requires that all Branch funds "shall be devoted to such uses as the Branch may determine; provided that no appropriation shall be made except when ordered by a majority vote of the members present and voting at a regular meeting." There is an exception which allows Branches to make provision in their by-laws allowing officers to spend certain sums between Branch meetings in cases of emergency, but this provision does not appear applicable to the situation described in your letter.

In addition, the lending of funds to a Branch officer without membership authorization could expose the officers of the Branch to charges that they have breached their fiduciary duties under federal law.

San Diego, California Branch 70

(August 5, 2008): This is in reply to your letter, dated July 11, 2008, inquiring as to the status of charges filed by Mari Thomson in light of the fact that she has now been expelled by the Branch.

During the term of the expulsion the Branch is not required to act on charges previously filed by Ms. Thomson. I caution, however, that if she appeals the expulsion to the National Committee on Appeals, and the Committee reverses the expulsion, she will have the right to resubmit her charges to the Branch.

This letter should not be read to express any view as to the merits of the expulsion or any appeal.

Lake Alfred, Florida Branch 5957

(August 5, 2008): This is in reply to your letter, dated July 11, 2008, requesting dispensation for Branch 5957, Lake Alfred, FL, to conduct a special election of officers. According to your letter the Branch consists of only three members, and has not had an election of officers.

In light of the facts set forth in your letter, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. Please conduct the election as expeditiously as possible.

Rockford, Illinois Branch 245

(August 13, 2008): This is in reply to your letter, dated August 6, 2008, requesting a ruling as to the eligibility of a member to be nominated for an elective office in Branch 245. According to your letter, this member applied for the Associate Supervisor Program in July, 2006, but this request was denied by the Postmaster in November, 2006.

At the outset, it would be inappropriate for me to make a ruling on the eligibility of this individual based on the limited information provided in your letter. In particular, it is the responsibility of the Branch to determine whether the member, in fact, submitted an application which, if granted, would have resulted in his appointment to a temporary or permanent supervisory position.

I can provide the following interpretive guidelines, which the Branch should apply to the facts presented. Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches* provides that any member who applies for a supervisory position in the Postal Service "shall be ineligible to run for any office or other position for a period of two (2) years after termination of such supervisory status." Prior rulings have consistently established that in cases involving applications for supervisory positions, the period of ineligibility begins to run two years following the date on which the application was withdrawn in writing. In this case, the denial of the application by the Postmaster may have been equivalent to the member's withdrawal of the application, if, following the denial, the application was no longer in effect.

The two year disqualification covers the member's eligibility to be a candidate. Accordingly, if the two year period of disqualification has not been completed on the date of the nominations meeting, the member would not be eligible to be nominated.

Finally, prior rulings have recognized that Branches may accept a nominee's self-certification that he is eligible to run under Article 5, Section 2. Branches also have discretion to take reasonable steps to verify a candidate's eligibility. Any factual disputes must be resolved, in the first instance, at the Branch level. The Branch's decision would be subject to appeal.

Stan Hurd, Seaside, Oregon

(August 20, 2008): Your recent letter to NALC Headquarters, received July 11, 2008, has been referred to me for reply, insofar as your letter raises an issue of constitutional interpretation. Specifically, your letter suggests that NALC members in Seaside, Oregon wish to form their own branch. According to your letter, some years ago, the Seaside letter carri-

ers voted to merge with the Astoria branch. Your letter suggests that the present carriers in Seaside are dissatisfied with the Branch leadership and wish to disaffiliate to form their own Branch.

While I appreciate your feelings, I must advise you that the disaffiliation that you request cannot be granted.

Presidential rulings dating back more than 25 years have consistently held that merger votes are final and binding. There is no provision in the *NALC Constitution* which permits branch mergers to be dissolved after they have been finalized. Once a merger has taken place, there is no way to undo that action even if the members who voted on it change their minds, or future members object. Consequently, the Seaside carriers cannot separate from Astoria and form their own branch.

John Prathaftakis Neosho, Missouri

(August 20, 2008): This is in reply to your letter, dated July 26, 2008, requesting clarification of two prior presidential rulings relating to the consequences of acceptance of and applying for supervisory positions.

Please be advised that the first ruling referenced in your letter, addressed to Branch 70, concerns the interpretation of Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. Article 5, Section 2 prohibits members who have either accepted or applied for supervisory positions from being candidates for branch office for a period of two years following termination of supervisory status. Article 5, Section 2 of the *CGSFB* only applies to the right to run for or hold branch office; it does not encompass any other membership rights.

The second ruling, addressed to Branch 791, involved Article 2, Section 1(c) of the *National Constitution*. That section prohibits members who are currently acting as supervisors from having any voice or vote in any of the affairs of the Branch, except for matters pertaining to the NALC life insurance or health benefit plan. Accordingly, members who are presently in supervisory status may not vote in branch elections. However, the language of Article 2, Section 1(c) does not cover members who have merely applied for supervisory positions. Thus, a member who has applied for a supervisory position, but has not been appointed to such a position, retains the right to vote in a branch election, even though he/she is not eligible to be a candidate for office.

Finally, both the *CGSFB* and the *Constitution of the Government of State Associations* are printed in full in the *NALC Constitution* booklet. You may obtain a copy of the *Constitution* booklet from the NALC Supply Department. The cost is \$2.00.

Eureka, California Branch 348

(August 20, 2008): This is in reply to your letter, dated July 30, 2008, requesting that I issue a presidential ruling interpreting Article 8, Section 3 of the Branch 348 By-laws.

Please be advised that it would be wholly inappropriate for me to issue such a ruling. As numerous presidential rulings have consistently recognized, disputes over the meaning and application of Branch By-laws must be resolved, in the first instance, at the Branch level. The Branch's decision then may be appealed to the National Committee on Appeals under Article 11 of the *Constitution for the Government of Subordinate and Federal Branches*.

Apart from the foregoing, if, as suggested in your letter, the By-law provision at issue has been rendered ambiguous through past practices or interpretations, then I would recommend that the Branch enact a clarifying amendment which reflects the wishes of the members.

Dallas, Texas Branch 132

(August 26, 2008): This is in reply to your letter, dated August 12, 2008, requesting advice concerning a letter you have received from Director of Life Insurance Myra Warren. Sister Warren's letter notes that you have sent a letter to the members of Branch 132 supporting an insurance program sponsored by the American Income Life Insurance Company (AIL). Her letter also asserts that such support violates Article 8 of the *Constitution and General Laws of the United States Letter Carriers Mutual Benefit Association (MBA)*.

Article 8 of the *Constitution and General Laws of the MBA* prohibits Branches, State Associations, officers and members from "tak[ing] any action or mak[ing] any statement whose purpose is to undermine the MBA [or] encourag[ing] a rival to it" Past rulings have established that endorsing a benefits program provided by a private insurance company which competes with a benefit program provided by the MBA would constitute a violation of Article 8. The policy described in your letter does appear to be directly competitive with insurance benefits which can be purchased from the MBA. Accordingly, it would appear that Sister Warren's conclusion that your letter violated Article 8 was correct.

I note that you included with your letter a copy of a letter from me, dated October 23, 2003, accepting an appointment to the Labor Advisory Board of the AIL. You should know, however, that I subsequently resigned from the AIL Advisory Board after it became clear that it marketed insurance products which directly compete with those provided by the MBA.

Mack Julion, Regional Administrative Assistant

(August 26, 2008): This is in reply to your e-mail, dated August 14, 2008, requesting advice as to a proposal that Branch 5933, Hartford, Illinois merge with Branch 309, Alton, Illinois. According to your letter, the only active letter carriers within the jurisdiction of Branch 5933 in Hartford are non-members.

I am advised that Branch 5933 does have three retiree members. These retiree members can vote to authorize a merger with Branch 309 in accordance with the procedures provided by Article 2, Section 3 of the *NALC Constitution*. The active carriers may not participate in such a vote unless they first join the NALC.

Wisconsin State Association of Letter Carriers

(August 28, 2008): This is in reply to your letter, dated August 10, 2008, expressing interest in fund raising for the new Legislative and Political Action Fund, which was established by our recent National Convention in Boston.

The new fund, which replaces the old Contingency Fund, is a union treasury account and will be used solely for purposes for which the NALC may legally expend its other treasury funds. The fund will be financed mainly from a portion of member dues. However, I would certainly welcome any initiatives to supplement the Fund with additional voluntary contributions from members.

Because the fund will be restricted to permissible treasury fund expenditures, in soliciting contributions to the Fund no representations should be made suggesting that the Fund will be used to support or oppose any specifically named candidates. However, a solicitation may state generally that the Fund will be used in part for member mobilization to elect worker-friendly candidates. In addition, any raffles or similar activities must be in compliance with any applicable state or local lottery laws.

Fort Walton Beach, Florida Branch 4559

(September 3, 2008): This is in reply to your letter, dated August 21, 2008, requesting a ruling with respect to the application of a provision of the Branch 4559 By-laws. The specific dispute described in your letter concerns the application of Article XII, Section 7 which states that "No member shall be eligible to receive Branch funds for a National/State Convention unless he/she has attended at least 9 of the preceding 12 meetings as shown by the roll call book." You now ask whether the Branch may entertain a motion to reimburse a delegate who, according to your letter, did not meet this minimum attendance requirement.

First, as a general principle, a Branch may not enact a resolution which conflicts with its By-laws. A motion to do so would be out of order.

However, it would be inappropriate for me to issue a ruling stating the proper interpretation of the By-law provision at issue. It is the responsibility of the Branch, in the first instance, to interpret and apply its own By-laws. The ultimate decision of the Branch would be subject to appeal to the National Committee on Appeals under Article 11 of the *Constitution for the Government of Subordinate and Federal Branches*.

Jackson, Mississippi Branch 217

(September 11, 2008): This is in reply to your letter, dated August 29, 2008, requesting that I issue a ruling on the current dispute between you and the President of Branch 217. According to your letter, you have refused to issue certain checks to the President, who is retired, as compensation for his representation of the Branch at Formal Step A meetings because you believe that such payments have not been authorized by the Branch. The President has, in turn, arranged for the checks to be signed by the Branch secretary and himself. You also claim that the President has stated that he will call a special meeting to remove you from office.

I have several comments.

First, it is apparent from your letter that the ultimate question whether the Branch President is entitled to the compensation at issue turns on the meaning of a previous resolution enacted by the Branch several years ago. It would be entirely inappropriate for me to issue a ruling stating the proper interpretation of this resolution. It is the responsibility of the Branch, in the first instance, to interpret and apply its own resolutions. The ultimate decision of the Branch would be subject to appeal to the National Committee on Appeals under Article 11 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*.

Second, Article 6, Section 1 of the *CGSFB* confers upon the Branch President "general supervisory powers over the Branch", including the power to "see that officers perform their duties." At the same time, Article 11, Section 1 of the *CGSFB* provides that any decision of the Branch President may be appealed to the Branch. Thus, as an alternative to your refusal to write the checks as directed by the President, you could have complied with his instruction and then submitted an appeal to the Branch.

Third, as the elected Treasurer of the Branch you may be removed from office only in accordance with the procedures governing the filing and disposition of charges set forth in Article 10 of the *CGSFB*.

Columbia, South Carolina Branch 233

(September 17, 2008): This is in reply to your letter, dated September 12, 2008, requesting a ruling as to the eligibility of members who are in 204b status to vote in Branch elections.

Please be advised that Article 2, Section 1(c) of

the *NALC Constitution* provides that members who "have been temporarily or permanently promoted to supervisory status...shall have no voice or vote in any of the affairs of [the] Branch," except for the right to participate and vote in any part of the meeting concerning NALC insurance programs and/or the NALC Health Benefit Plan, if he/she is a member thereof, or the raising of Branch dues. Previous rulings interpreting this provision have established that a 204b may not vote in branch elections while he or she is acting in a supervisory status. However, when the member returns to a bargaining unit assignment, he or she immediately regains the right to vote. Accordingly, a member who has served in a 204b position is eligible to vote on those days when he or she did not work in a supervisory capacity.

In addition, the language of Article 2, Section 1(c) does not cover members who have merely applied for supervisory positions. Thus, a member who has applied for a supervisory position, but has not been appointed to such a position, retains the right to vote in a branch election.

Greenville, South Carolina Branch 439

(September 17, 2008): This is in reply to your letter, dated September 11, 2008, requesting approval of a merger of Branch 1914, Lauren, SC with Branch 439, Greenville, SC.

Please be advised that the paperwork you have submitted is insufficient to permit us to process the application. At the outset, we have received no evidence that Branch 1914 has voted on, let alone approved, the proposed merger. In addition, your letter fails to comply with the requirements of the *NALC Constitution*. Specifically, Article 2, Section 3(f) of the *NALC Constitution* sets forth the following requirements for merger applications:

"an application to the President of the NALC [must be] signed by the President and Secretary of each Branch proposing to merge [and must contain] the following: a copy of the resolution adopted by each Branch; a certification by each Branch Secretary of the vote of his/her Branch, including the date and place of its meeting, the number of its eligible voters, and the number of affirmative votes cast; and a statement of the reasons for desiring the merger."

In addition, the merger application should identify the officers of the merged Branch.

I am enclosing a form which can be used to assist your Branch and Branch 1914 to submit a merger application. Please submit the required information expeditiously.

Anderson, Indiana Branch 489

(September 19, 2008): This is in reply to your letter, faxed to NALC Headquarters on September 16, 2008, requesting that I interpret a proposed amendment to the Branch 489 By-laws. This proposed amendment would change the language governing the payment of lost time to the Branch President.

Please be advised that it would be entirely inappropriate for me to issue a ruling stating the proper interpretation of this proposed amendment. It is the responsibility of the Branch, in the first instance, to interpret and apply its own By-laws. The ultimate decision of the Branch would be subject to appeal to the National Committee on Appeals under Article 11 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*.

West Springfield, Massachusetts Branch 1978

(September 19, 2008): This is in reply to your letter, dated September 15, 2008, requesting a ruling on the proper procedure which should be followed by Branch 1978 to appoint an investigating

committee under Article 10, Section 3 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. The charges have been filed by the Branch Secretary and Treasurer against you, as Branch President. Branch 1978 does not have any other elected officers.

As you recognize, Article 10, Section 3 prohibits a Branch President from appointing a committee to investigate charges against himself. Since the Secretary and Treasurer are the charging parties, they may not appoint the committee either.

Previous rulings addressing similar situations have recognized that the investigating committee may be appointed by action of the members of the Branch. Specifically, the Branch could nominate and elect members to the committee at a regular or special meeting. Alternatively, the members could vote to select an individual disinterested Branch member to appoint the members of the committee.

I trust that the foregoing is responsive to your inquiry. This letter should not be read to express any view as to the substance of the charges.

Ft. Myers, Florida Branch 2072

(September 22, 2008): This is in reply to your letter, dated September 12, 2008, in which you suggest that there is a conflict between Section 6.5 of the *NALC Regulations Governing Branch Election Procedures (RGBEP)*, prohibiting members from accepting nomination for more than one Branch office, and Article 4, Section 3 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*, which allows Branches to consolidate offices. You request interpretive guidance regarding these provisions.

Please be advised that there is no conflict. Article 4, Section 1 of the *CGSFB* lists the elective offices of the Branch. Article 4, Section 3 then authorizes Branches to consolidate any of the offices of the Branch (with the exception of the office of President unless the Branch has fewer than ten active members). However, if the Branch does not take action to consolidate any of the offices, then each office must be separately filled. While Article 4, Section 3 permits actual consolidation of offices by specific Branch action, multiple office holding is nowhere authorized. Accordingly, as stated in Section 6.5 of the *RGBEP*, a member may not run for or hold more than one Branch office at a time.

I trust that the foregoing is responsive to your inquiry. Incidentally, the *RGBEP* has recently been updated. The current edition may be obtained from the NALC Supply Department. None of the revisions relate to the issue raised in your letter.

Branch 283 Houston, Texas

(September 22, 2008): This is in reply to your letter, dated September 19, 2008, requesting dispensation on behalf of Branch 283 to extend the deadline for nominees for delegates to the Texas State Association of Letter Carriers to submit their written acceptance of nomination until October 3, 2008. This extension has been necessitated by the disruptions caused by Hurricane Ike.

In light of the circumstances presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation.

Branch 869 San Juan, Puerto Rico

(September 22, 2008): Your letter, dated September 15, 2008, to the NALC Committee of Laws has been referred to me for reply insofar as your letter requests an interpretation of the *NALC Constitution*. Specifically, you ask whether a member would be disqualified from running for the office of newsletter editor/trustee in Branch 869 if he were to accept a higher level business specialist position

in the Postal Service for which he has a pending application. According to your letter this position is non-supervisory.

Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches* prohibits a member who has accepted a supervisory position from being a candidate for branch office until two years after the termination of supervisory status. However, as previous rulings have repeatedly held, higher level assignments are not necessarily supervisory for purposes of Article 5, Section 2. Generally speaking, a position is considered supervisory, within the meaning of Article 5, Section 2, if the person holding that position would have the authority to discipline bargaining unit employees or otherwise supervise them in the performance of their duties. If, as you suggest, the business specialist position at issue here is non-supervisory, then the member would not be disqualified from running for branch office even if he were to be appointed to the position.

Jane Broendel, Secretary-Treasurer

(October 8, 2008): This is in reply to your recent correspondence concerning the situation in Wynnewood, OK. By copy of this letter, I am also replying to letters I have received from Brother Eric Taylor, the President of Branch 985, and from the office of NBA Wes Davis.

Based on the information provided in the various letters, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I am hereby directing that the Wynnewood Post Office be reassigned to the jurisdiction of Branch 458, Oklahoma City. Accordingly, the single member employed in that office, Leanda Prather, should be transferred immediately from Branch 985 to Branch 458.

Branch 458 will now be responsible for providing representation to Sister Prather and any other city letter carrier craft employee who may be employed in Wynnewood.

Champaign, Illinois Branch 671

(October 8, 2008): Thank you for your letter, dated September 4, 2008, responding to Brother Thompson's appeal of Branch 671's vote on June 19 approving a proposed merger with Branch 825.

It is apparent from your letter that Branch 671 acted in good faith in its attempt to inform its active and retired members of the substance of the merger proposal at meetings conducted prior to the vote. Nonetheless, the documents included with your letter demonstrate that the notice of the merger vote failed to comply with the relevant constitutional requirements.

A proposed merger agreement must be voted on in accordance with the provisions of Article 2, Section 3 of the *NALC Constitution*. Under the scheme set out in Article 2 Section 3, before a vote on a proposed merger may be taken, the details of the proposed merger must be developed and set forth in the notice to the members. Such details include:

(c) the identity and geographic area covered by the Branch which will emerge from, or the name and number of the Branch which will survive....;

(d) any agreement or agreements between the applying Branches concerning by-laws, dues structure, terms and identity of officers, disposition of assets, assumption of liabilities, if any, and proposed effective date of the merger or absorption shall be specified.

The documents forwarded with your letter clearly show that none of the details of the merger were included with the notices that were provided to the members. The notice that was posted on the bulletin boards and distributed to active members only provided a schedule of meetings at which the merger would be discussed and the date of the

vote. The notice that was mailed to the retiree members simply advised that a merger vote would take place at the June 19 meeting. These notices did not "set forth the details of the proposed merger," as required by Article 2, Section 3.

In light of the foregoing, I have concluded that Brother Thompson's appeal does raise a "substantial complaint," within the meaning of Article 2, Section 3(i), so that the merger vote cannot be approved at this time. In accordance with my authority under Article 2, Section 3(i), I am directing Branch 671 to send out a new notice containing all the required information about the merger to each of its members and to conduct a new vote on the proposed merger with Branch 825. The notice must be provided at least thirty days prior to the date of the new vote.

If the merger is once again approved by the members, and the constitutional requirements are met, I will approve the merger.

Lexington, Kentucky Branch 361

(October 20, 2008): This is in reply to your letter dated October 19, 2008 requesting dispensation relating to the 2008 Branch 361 election.

In light of the circumstances presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I grant your request as follows.

The Branch may use a distinguishing notation to ensure that William Craig is properly identified as a candidate for delegate, and is not confused with another member who has the same name. You may employ any reasonable method such as a middle initial, nickname, or a designation of the members as "active" or by noting the station where he is employed.

Panama City, Florida Branch 3367

(October 21, 2008): This is in reply to your letter, dated October 1, 2008, requesting dispensation allowing Branch 3367 to conduct a special election for the office of Branch President. According to your letter, the incumbent President has resigned and the current Vice President does not wish to assume the presidency for personal reasons.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. However, the current Vice President must temporarily assume the responsibilities of the President until a new President is installed following the special election.

Lexington, Kentucky Branch 361

(October 21, 2008): This is in reply to your letter, dated October 7, 2008, requesting dispensation to extend the date of Branch 361's mail ballot election to November 14, 2008, despite the fact that the Branch By-laws provide that ballots must be received no later than November 10. According to your letter, this dispensation is necessary to conform the date of the election to the notice of election that was published in the *Postal Record*, which erroneously stated that the deadline for receipt of ballots was November 14.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation.

Carmel, Indiana Branch 888

(October 21, 2008): This is in reply to your letter, dated October 12, 2008, requesting guidance as to the eligibility of certain categories of members to vote in the current Branch 888 election.

Article 2, Section 1(a) of the *NALC National Constitution* defines regular members as including non-supervisory employees of the Postal Career Service. It does not limit regular membership to

employees in the letter carrier craft. Thus, active employees in other postal crafts, such as clerks, custodians, and rural carriers, are entitled to vote so long as they remain members of the NALC in good standing. Letter carrier transitional employees who are members of the NALC are certainly entitled to vote in a Branch election.

However, Article 2, Section 1(c) of the *NALC Constitution* provides that members who "have been temporarily or permanently promoted to supervisory status . . . shall have no voice or vote in any of the affairs of [the] Branch," except for the right to participate and vote in any part of the meeting concerning NALC insurance programs and/or the NALC Health Benefit Plan, if he/she is a member thereof, or the raising of Branch dues. Thus, members who presently occupy supervisory positions, such as postmaster or supervisor, would not be eligible to vote in a Branch election.

Robert Wagner Marco, Florida

(October 21, 2008): This is in reply to your letter, dated September 27, 2008, requesting dispensation to rejoin the NALC as a retiree member.

I regret to advise that I must decline your request. The *NALC Constitution* requires that a retiring member execute a Form 1189 at the time of retirement in order to maintain his/her status as a regular member of the NALC. See Article 2, Section 1(e). Our records indicate that the NALC Membership Department did send you a Form 1189 after your retirement, but that you declined to complete and submit the form. Your letter offers no explanation for your failure to submit a Form 1189.

Accordingly, there is no basis for permitting you to rejoin the NALC at this time.

Susan Burroughs, Tuscaloosa, Alabama

(October 21, 2008): This is in reply to your letter, dated September 25, 2008, requesting a ruling as to the eligibility of a member to be appointed as a union representative, or to be nominated for an elective office in Branch 1096. According to your letter, this member has served as an Officer-in-Charge as recently as August, 2007, and continues to have an active Form 991 on file with the Postal Service.

At the outset, it would be inappropriate for me to make a ruling on the eligibility of this individual based solely on the limited information provided in your letter. In particular, it is the responsibility of the Branch to determine whether the member is eligible for appointment or to be a candidate for Branch office.

I can provide the following interpretive guidelines, which the Branch should apply to the facts presented. Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* provides that any member who applies for a supervisory position in the Postal Service "shall be ineligible to run for any office or other position for a period of two (2) years after termination of such supervisory status." Prior rulings have consistently established that in cases involving applications for supervisory positions the period of ineligibility continues so long as the application has not been withdrawn. The member regains eligibility two years following the date on which the application was withdrawn in writing.

The two year disqualification covers the member's eligibility to be a candidate. Accordingly, if the two year period of disqualification has not been completed on the date of the nominations meeting, the member would not be eligible to be nominated.

Finally, the decision of a Branch President to appoint a member to a position in violation of Article 5, Section 2 may be appealed to the Branch under the provisions of Article 11, Section 1 of the *CGSFB*. The decision of the Branch may be

appealed to the National Committee on Appeals, in accordance with the procedures set forth in Article 11, Section 2 of the *CGSFB*. The nomination or election of an ineligible candidate in a Branch election may be appealed in accordance with Section 21 of the *NALC Regulations Governing Branch Election Procedures*.

Siler City, North Carolina Branch 4141

(October 24, 2008): This is in reply to your letter, dated October 16, 2008, requesting dispensation permitting Branch 4141 to conduct nominations and a special election of officers. According to your letter, this request is necessitated by the recent resignation of the Branch President/steward.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation.

Rockford, Illinois Branch 245

(October 27, 2008): This is in reply to your letter, dated October 17, 2008, requesting a ruling as to the eligibility of Sister Maureen Johnson to serve as Secretary of Branch 245. According to your letter, Sister Johnson's application for the Associate Supervisor Program (ASP) was denied on November 20, 2006. Since then she was nominated for Secretary in September, 2008 and elected on October 14.

As I stated in my August 13 ruling in this matter, Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches* provides that any member who applies for a supervisory position in the Postal Service "shall be ineligible to run for any office or other position for a period of two (2) years after termination of such supervisory status." In this case, the denial of Sister Johnson's ASP application may have been equivalent to a withdrawal of the application, if, following the denial, the application was no longer in effect. However, even if that were the case, the two year period of disqualification would have to have been completed on the date of the nominations meeting, in order for Sister Johnson to have been eligible to be nominated.

If the facts stated in your letter are accurate, then it necessarily follows that Sister Johnson was not eligible for nomination at the September meeting since the two year period following the denial of her ASP application had not been completed. Therefore, the Branch may not install her as an officer.

As you suggest, the Branch will have to conduct a rerun election for Secretary. Since the sole cause of the rerun is Sister Johnson's ineligibility to be a candidate in the first election, it would not be appropriate for her to be a candidate in the rerun election, even if the two year period were to expire.

Finally, I must remind the Branch, as I stated in my August 13 letter, that it is the Branch's responsibility to apply the *Constitution* to the facts. My role as President is to provide interpretive guidance. It should not have been necessary for me to make any rulings as to the eligibility of an individual candidate, or the need for a rerun election.

John Buchanan, Hackettstown, New Jersey

(October 27, 2008): This is in reply to your letter, dated October 9, 2008, requesting dispensation to rejoin the NALC as a retiree member.

I regret to advise that I must decline your request. Under the *NALC Constitution*, Article 2, Section 1(a), retiree membership is available only to retirees from the Postal Service "who were regular members of the NALC when they retired." Our membership records show that you dropped your membership while you were still an active employee and retired

as a non-member. Accordingly, you are not now eligible to rejoin the NALC.

Baton Rouge, Louisiana Branch 129

(October 28, 2008): This is in reply to your e-mail letter, sent on October 23, 2008, inquiring whether it was appropriate for the incumbent President of Branch 129 to nominate and speak in favor of the election of a candidate to succeed him at the August and September Branch meetings.

Please be advised that it would be wholly inappropriate for me to issue a ruling, or express an opinion, with respect to this matter based solely on the limited information contained in your letter.

Objections to the conduct of a branch election may be raised in a post-election appeal in accordance with the procedures set forth in Section 21 of the *NALC Regulations Governing Branch Election Procedures*.

Houma, Louisiana Branch 2464

(October 28, 2008): This is in reply to your letter, dated October 21, 2008. According to your letter, during the recent nominations for Branch officers only two members were nominated for the three open trustee positions. You now ask how the third trustee position may be filled.

Please be advised that, as President of the Branch, you do have authority to appoint a third trustee when this position becomes vacant following the installation of officers. See Article 4, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches*. Alternatively, I would entertain a request from the Branch for dispensation allowing nominations to be reopened for the third trustee position.

Dallas, Texas Branch 132

(October 28, 2008): This is in reply to your letter, dated October 21, 2008, requesting my advice as to the propriety of a member's actions. According to your letter, this member was permitted to review Branch 132 financial records and has now created a web site and posted all the information.

As President of the NALC, I can speak to the potential applicability of the *NALC Constitution*. Article 6, Section 4 of the *Constitution for the Government of Subordinate and Federal Branches* requires that the accounts of "properties, investments, and funds of the Branch...at all times shall be open for inspection." The *Constitution* does not contain any provisions which specifically permit or prohibit the subsequent publication of Branch financial information by a member who has exercised his right of inspection. Accordingly, the Branch has discretion to enact reasonable restrictions prohibiting members from making an unauthorized public disclosure of confidential financial information obtained from an inspection of Branch records. This could include a prohibition against the posting of such information on the internet.

I caution that financial information contained in the Branch's LM-2 report is public information and is available on the Department of Labor's web site. Moreover, the LMRDA provides protections for union members' freedom of speech. The Branch may wish to consider retaining a local attorney to address potential legal issues.

Hemet, California Branch 2901

(October 30, 2008): This is in reply to your recent letter, received by my office on October 22, 2008, requesting a ruling as to the date for the installation of officers in Branch 2901. According to your letter, new officers were all elected by acclamation at the September 2008 Branch meeting. However, under the By-laws the installation will not take place until the Branch meeting scheduled for February 26, 2009.

Article 5, Section 6 of the *Constitution for the*

Government of Subordinate and Federal Branches expressly provides that the installation of Branch officers is to take place "at the first or second meeting of the Branch following their election." The Branch 2901 By-laws provide that the election of officers is to take place in January of the election year. Accordingly, the February installation is consistent with the *Constitution*.

While I appreciate that the February installation will result in a five month delay before the newly elected officers are allowed to take office, it is not clear from your letter why this is a problem. Normally, the incumbent officers should complete their full term of office.

Notwithstanding the foregoing, I would be prepared to entertain a request from the Branch for dispensation to conduct an early installation based on a showing of urgent need to expedite the installation of the new officers.

Mandeville, Louisiana Branch 6377

(October 30, 2008): This is in reply to your letter, dated October 21, 2008, inquiring whether George Dedual can continue to serve as a steward for Branch 6377. According to your letter, Brother Dedual has been served with a notice of removal which is presently under appeal.

Your letter raises two separate issues: the maintenance of Brother Dedual's membership in the NALC and his right to serve as a steward. As to the first issue, Brother Dedual has the right to continue his union membership so long as his grievance is pending and he remains on the rolls of the Postal Service. He must, however, avoid any forfeiture of membership under Article 7, Section 4 of the *Constitution for the Government of Subordinate and Federal Branches*, for non-payment of dues. If he is placed in non-pay status by the Postal Service, so that his dues are no longer paid through the check-off procedure, he should pay his dues directly to the Branch.

So long as he maintains his membership, Brother Dedual may continue to serve as a steward. However, if he is placed in non-pay status, the Postal Service may not pay him lost time compensation.

Finally, if the grievance is ultimately denied, and he is separated from the rolls, Brother Dedual will no longer be eligible to be either a member or a steward.

Odessa, Texas Branch 3964

(November 6, 2008): This is in reply to your recent letter, received by my office on October 27, 2008, requesting dispensation to postpone Branch 3964's nominations and election of officers by one month to the November and December meetings. According to your letter, a quorum was not present at the October meeting, when nominations were originally scheduled.

In light of the circumstances, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation.

The Branch must provide written notice of these changes to each member. The nominations may be held at the regular November meeting only if the Branch is able to provide such notice in a reasonable amount of time before the meeting. If it is too late to provide such notice before the regular November meeting, then the Branch may choose between two options. First, it may schedule a special meeting at a later date in November for the purpose of conducting nominations. Alternatively, federal law allows nominations and the election to take place at the same meeting, provided members have received appropriate notice at least 15 days in advance. I am granting dispensation for the Branch to follow this procedure if it is the only practical means of providing timely notice.

In any event, the election of officers may take place at the regular December meeting.

Everett, Washington Branch 791

(November 6, 2008): This is in reply to your letter, which was faxed to my office on November 3, 2008, requesting a ruling as to whether certain ballots should be counted in the Branch 791 election of officers. Please be advised that I was out of the office on November 3-5. Accordingly, I was unable to reply before the Branch election meeting on the evening of November 4.

According to your letter, the Branch received twenty mail ballots with no signature on the outer envelope. In the past, such ballots have not been counted. This year, the Election Committee resent the ballots to the members with instructions to sign and return them. The ballots were marked so that they can be segregated from the other ballots which were properly signed.

It would be inappropriate for me to rule specifically on whether any particular ballots should be counted. I can advise you that the Department of Labor has taken the position that in mail ballot elections a ballot contained in an unsigned envelope should be counted if there is sufficient information identifying the person as eligible to vote. Consistent with this position, the NALC Executive Council recently approved amendments to the *NALC Regulations Governing Branch Election Procedures (RGBEP)* which allow Branches to use alternative identifiers on the outer envelope rather than signatures. (See *RGBEP* Section 14.3.)

If there is any dispute as to how the above principle should be applied, I recommend that the Branch proceed as follows. The originally unsigned ballots that were resubmitted should be segregated. Each candidate for office should be given an opportunity to object to the counting of these ballots. If there are any such objections, then the Election Committee should proceed in accordance with the procedures for resolving ballot challenges set forth in Section 15 of the *RGBEP*.

If the number of challenged ballots is sufficient to affect the outcome of any election, then the Election Committee will be required to make the initial ruling as to whether the ballots should be counted. This ruling may be appealed in accordance with the procedures provided by Section 21 of the *RGBEP*.

Brian Fetters, Dayton, Ohio

(November 12, 2008): This is in reply to your faxed letter, dated November 6, 2006, in which you allege that the Branch 182 newsletter has been misused to support and oppose candidates for branch office in the ongoing election campaign.

While I appreciate your concerns, I must advise that it would be premature for the National Union to intervene in this matter at the present time. Allegations of misuse of the branch newsletter may be brought in the form of a post-election appeal in accordance with the procedures set forth in Section 21 of the *NALC Regulations Governing Branch Election Procedures (RGBEP)*.

I urge you to consult the *RGBEP*. In particular, Section 9.4 specifically addresses the rules governing use of the branch newsletter. A copy of the *RGBEP* may be ordered from the NALC Supply Department at National Headquarters.

Sparks, Nevada Branch 2778

(November 12, 2008): This is in reply to your letter, dated November 5, 2008, requesting dispensation on behalf of Branch 2778 to conduct its nominations and election of delegates to the 2009 Nevada State Association convention in December, 2008 and January, 2009. According to your letter, the By-laws provide for the nominations and election to take place in November and December.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. I caution that this dispensation applies only to the current nomination and election of delegates to the 2009 state convention. In the future, the Branch must comply with the time frame for delegate elections provided in the Branch By-laws.

Jackson, Mississippi Branch 217

(November 18, 2008): This is in reply to your letter, dated November 7, 2008, requesting a ruling that would overturn the election of officers in Branch 217 that was held on October 9, 2008. According to your letter, the President of the Branch appointed a member to oversee the election who has worked intermittently as a 204-B.

Please be advised that it would be inappropriate for the National Union to intervene in this matter at the present time. Challenges to the conduct of a branch election may be brought in the form of a post-election appeal in accordance with the procedures set forth in Section 21 of the *NALC Regulations Governing Branch Election Procedures (RGBEP)*. Your letter does not indicate whether such an appeal was filed. If there is such an appeal now pending, and that appeal is denied by the Branch, the matter may be submitted to the National Committee on Appeals in accordance with the procedures set forth in Section 21 of the *RGBEP*.

Kalamazoo, Michigan Branch 246

(November 18, 2008): This is in reply to your letter, dated November 6, 2008, requesting dispensation to postpone the election of delegates from Branch 246 to the Michigan State Association Convention because the Branch inadvertently failed to send a timely notification of nominations and election.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant Branch 246 dispensation to conduct its election of state delegates in January, 2009. This dispensation applies only to the election of delegates to the 2009 Convention. In the future the Branch must adhere to the deadlines provided by the *Constitution* and the Branch By-laws.

No additional dispensation is required to reduce the timeliness requirement for the notice of nominations. Contrary to the suggestion in your letter, there is no requirement that the notice of nominations be mailed 45 days before nominations are held. Article 5, Section 4 of the *NALC Constitution for the Government of Subordinate and Federal Branches* and Section 5.1 of the *NALC Regulations Governing Branch Election Procedures (RGBEP)* require that a notice of nominations and election be sent by mail to each member of the Branch 45 days before the election, not 45 days before nominations. Section 6.1 of the *RGBEP* provides that the notice of nominations must be sent out 10 days before the date nominations are held. The information contained in your letter indicates that the Branch will be able to meet this deadline.

Rita Wilder, Grand Prairie, Texas

(November 18, 2008): This is in reply to your letter, faxed to my office on November 13, 2008, requesting a ruling as to the propriety of a motion approved at the November meeting of Branch 132 allowing the President discretion to work the Recording Secretary as many days as necessary. According to your letter, this motion is inconsistent and in conflict with certain provisions of the Branch By-laws.

As a general principle, a Branch may not enact a resolution which conflicts with its By-laws.

However, it would be inappropriate for me to issue a ruling stating the proper interpretation of the By-law provision at issue. It is the responsibility of the Branch, in the first instance, to interpret and apply its own By-laws.

In this case, it appears that the Branch has rejected your interpretation of the By-laws. You have the right to appeal the decision of the Branch to the National Committee on Appeals under Article 11 of the *Constitution for the Government of Subordinate and Federal Branches*.

Ralph J. Thomas, Hawthorne, California

(December 1, 2008): This is in reply to your letter, dated November 15, 2008, requesting dispensation to rejoin the NALC as a retiree member.

I regret to advise that I must decline your request. Under the *NALC Constitution*, Article 2, Section 1(a), retiree membership is available only to retirees from the Postal Service "who were regular members of the NALC when they retired." As you acknowledge in your letter, you dropped your membership when you retired. Accordingly, you are not now eligible to rejoin the NALC.

Richmond, Indiana Branch 271

(December 1, 2008): This is in reply to your letter, faxed to my office on November 24, requesting dispensation permitting Branch 1565 to conduct its nominations for Branch office at its November, 2008 meeting. According to your letter, the By-laws require that nominations be closed at the October meeting.

According to your letter the Branch did successfully conduct nominations at the August meeting and all the incumbent officers were reelected by acclamation. The problem stems from the resignation of the President which he announced at the October meeting. In light of these facts, it does not appear necessary to conduct nominations and an election for all officers of the Branch. Moreover, as Vice President you would normally succeed to the Presidency and would have the authority to appoint a new Vice President. However, your letter indicates that the preference of the Branch at this time would be to conduct an election for Branch President.

Accordingly, in light of the facts set forth in your letter, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant Branch 1565 dispensation to conduct a special election for Branch President. The candidates will be those nominated at the November meeting.

In the interim, you are obliged as Vice President of the Branch to carry out the duties of the President pending completion of the election process and the installation of the new President.

Flint, Michigan Branch 256

(December 1, 2008): This is in reply to your letter, dated November 14, 2008, requesting a ruling as to the eligibility of Brother Mike Ariss to serve as a steward or alternate steward in Branch 256. According to your letter, and the statement from Brother Ariss that you provided, he has performed higher level functions in the Postal Service during the past two years.

Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches* prohibits a member who has applied for or accepted a supervisory position from serving as an officer or steward in the Branch until two years after the termination of supervisory status. In this case it appears that Brother Ariss did not apply for or accept a supervisory position. Rather, the higher level duties that he performed were assigned to him by management as limited duty. If that is the case, then the prohibitions in Article 5, Section 2

would not be applicable. Brother Ariss would remain eligible to be a steward.

Moreover, as previous rulings have repeatedly held, higher level assignments are not necessarily supervisory for purposes of Article 5, Section 2. Generally speaking, a position is considered supervisory, within the meaning of Article 5, Section 2, if the person holding that position would have the authority to discipline bargaining unit employees or otherwise supervise them in the performance of their duties. If, as suggested by Brother Ariss' statement, the duties to which he was assigned were non-supervisory, then he would not be disqualified from running for a steward position for this reason as well.

Margaret Sidaris, Montgomery, Alabama

(December 4, 2008): This is in reply to your letters, faxed to my office yesterday, in which you ask several questions pertaining to your investigation of charges against your Branch President.

First, the investigating committee is a special committee, not a standing committee, for purposes of Article 15 of the *Constitution for the Government of Subordinate and Federal Branches* (Order of Business).

Second, a motion can certainly be entertained by the Branch to hear the report of the investigating committee early so as not to interfere with the election of officers.

Third, the committee should proceed whether or not the charges were put under the "seal" of the Branch when they were served on the charged party.

Baton Rouge, Louisiana Branch 129

(December 8, 2008): This is in reply to your recent letter, received by my office on November 24, 2008, requesting rulings on several matters pertaining to the election appeal filed by Sister Monica Walker, an unsuccessful candidate for President of Branch 129.

As to your first question, the replacement of the chairman of the election committee should not disrupt the appeal process. The committee, with the new chairman, should review and rule upon the appeal as expeditiously as possible.

Second, insofar as I do not have a copy of Sister Walker's appeal, and do not have any other information regarding the substance of the issues raised by that appeal, I cannot comment on the remedy that would be appropriate if that appeal is sustained. In any event, that is a question that should be addressed in the first instance by the Election Committee. The Election Committee's decision may then be appealed in accordance with the procedures set forth in Section 21 of the *NALC Regulations Governing Branch Election Procedures*.

Third, as a general rule the pendency of an election appeal should not delay the scheduled installation of officers. Rather, the result of the election is presumed valid until such time as that result is overturned on appeal.

Gretna, Louisiana Branch 2730

(December 15, 2008): By letter dated December 1, 2008, I instructed National Business Agent Lew Drass to designate a representative from his office to investigate Sister St. Pierre Robert's allegation that Kevin Hawkins, the President of Branch 2730, Gretna, LA, had forfeited his NALC membership for non-payment of dues and is, therefore, no longer eligible to serve as President of the Branch.

Having now reviewed the report submitted by Regional Administrative Assistant Pete Moss, I conclude that the above allegation is without merit. To be sure, the evidence demonstrates that for a period of several months no dues deductions were made from Brother Hawkins' pay because he was

in non-pay status. However, Article VI, Section 1 of the Branch 2730 By-laws specifically states that the President and other officers of the Branch "will have their dues paid" as compensation for their service. Accordingly, Brother Hawkins did not owe any dues during the time period at issue.

Brother Hawkins remains eligible to serve as Branch President. This ruling is without prejudice to any issues that may have been raised in Sister St. Pierre Robert's election appeal other than the question of forfeiture of membership for non-payment of dues.

Christopher Todd, Phenix City, Alabama

(December 22, 2008): This is in reply to your letter, dated November 30, 2008, which was received by my office on December 17. Your letter protests the action of Branch 546 in reducing your compensation for serving as a delegate to the 2008 National Convention.

While I appreciate your concerns, I must advise that it would be inappropriate for me to intervene in this matter at this time. The appropriate procedure for challenging the Branch's action would be to initiate an appeal to the National Committee on Appeals under Article 11 of the *Constitution for the Government of Subordinate and Federal Branches*.

This letter should not be read as expressing any view as to the merits of an appeal.

Washington, District of Columbia Branch 142

(December 22, 2008): Your recent letter to Secretary-Treasurer Jane Broendel, which was faxed to Vice President Gary Mullins on December 16, has been referred to me for reply. Your letter seeks advice as to how to respond to the request by Sister Valerie McCambry that the Branch 142 Election Committee conduct a recount of the ballots for the office of Branch Vice President in the recently concluded election of Branch officers.

Section 21 of the *NALC Regulations Governing Branch Election Appeals* sets forth the procedure for submitting objections to the conduct of a branch election. A recount of the ballots could be a possible remedy for an objection which is upheld by the Election Committee (e.g. an objection to the procedures followed in counting the ballots). However, as you correctly observe, Sister McCambry's letter does not set forth any objections to the conduct of the election generally, or to the specific procedures that were used in counting the ballots. Her request is based solely on the closeness of the outcome.

There is nothing in the *Regulations* which would require the Election Committee to conduct a recount solely because the votes totals were close. At the same time, there is nothing which would prohibit the Committee from conducting a recount if there were any reason to doubt the accuracy of the original count. Accordingly, the Committee has discretion to recount the ballots or to decline to do so.

Kimball, Michigan Branch 529

(December 22, 2008): This is in reply to your letter, dated December 6, 2008, inquiring whether a former member is entitled to reinstatement as a member of the NALC. According to your letter, this individual was expelled by Branch 529 after he was found guilty of charges under Article 10 of the *Constitution for the Government of Subordinate and Federal Branches*.

Please be advised that, so long as the expulsion remains in effect, the individual in question would not be eligible to be reinstated as an active member. However, if he retires, he would be eligible to become a health plan member under Article 22 of the *NALC Constitution*.

Tulsa, Oklahoma Branch 1358

(December 23, 2008): Thank you for your letter of December 12 suggesting that I merge Branch 1713 Nowata, OK with Branch 1358, Tulsa, OK.

Our records indicate that Branch 1713 currently has three active and two retired members. Insofar as the Branch does have current members, I am reluctant to consider your suggestion that I impose a forced merger at this time. However, I have instructed National Business Agent Wes Davis to arrange a meeting of Branch 1713 members for the purpose of considering a voluntary merger.

A copy of my letter to Brother Davis is enclosed. Please advise him if you or another representative of Branch 1358 would like to attend that meeting.

Hixson, Tennessee Branch 62

(December 29, 2008): This is in reply to your letter, dated November 28, 2008, concerning the eligibility of a member to serve as the Branch 62 Health Benefits Representative (HBR). According to your letter, this individual is not a member of the NALC Health Benefit Plan.

As you note in your letter, Article 4, Section 3 of the *Constitution of the NALC Health Benefit Plan* requires that individuals must be participating members of the Plan in order to hold office in the Plan at the branch level. At the same time, prior rulings have recognized a distinction between eligibility to hold the office of Health Benefits Representative and eligibility to be a candidate for that position. Article 4, Section 3 requires that an individual be a participating member in order to hold office in the Plan. It does not require that the individual be a member of the Plan to run for office. Thus, if a candidate who is not presently a participating member takes the necessary steps to join the Plan, he/she will be eligible to serve as the Branch's HBR if elected.

However, if the member refuses to join the Plan then he would not be eligible to serve as the HBR. In that circumstance, the Branch President would have the authority to fill that position by appointment. The appointee must be a member of the Plan.

I would be extremely disappointed if, as suggested in your letter, the Branch is unable to find a single member of the Plan who is willing to serve as HBR. In such circumstance, I would entertain a request by the Branch for dispensation to assign the duties of the HBR to another officer who is a member of the Plan.

Albuquerque, New Mexico Branch 504

(December 29, 2008): This is in reply to your recent letter, received by my office on December 15, 2008, requesting a ruling as to the eligibility of the Branch 504 Secretary-elect to serve as a Branch officer. According to your letter, after the election this member was detailed to a position on the USPS Business Development Team.

Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* prohibits a member who has accepted a supervisory position from being a candidate for branch office until two years after the termination of supervisory status. However, as previous rulings have repeatedly held, higher level assignments are not necessarily supervisory for purposes of Article 5, Section 2. Generally speaking, a position is considered supervisory, within the meaning of Article 5, Section 2, if the person holding that position would have the authority to discipline bargaining unit employees or otherwise supervise them in the performance of their duties. If the Business Development Team position at issue here is non-supervisory, then the member would not be constitutionally disqualified from serving as a branch officer.

Your letter does not provide sufficient information for me to comment on the possibility that the

Branch Secretary's membership on the Business Development Team would somehow compromise internal Branch confidences. Obviously, if the Secretary were to disclose confidential union information to the Postal Service, he would be subject to charges under Article 10 of the *CGSFB*.

Frank James Rusconi, Sharon, Massachusetts

(December 29, 2008): This is in reply to your letter, dated December 12, 2008, requesting dispensation to rejoin the NALC as a retiree member.

I regret to advise that I must decline your request. The *NALC Constitution* requires that a retiring member execute a Form 1189 at the time of retirement in order to maintain his/her status as a regular member of the NALC. See Article 2, Section 1(e). Your letter acknowledges that you declined to execute the Form 1189 at the time you retired.

Your explanation that you preferred to pay your retiree dues directly to your Branch is insufficient in light of the clear requirement of the *Constitution*. Indeed, we have been advised that Branch 18 returned your check, without cashing it, and explicitly informed you that you were required to execute the Form 1189.

Accordingly, there is no basis for permitting you to rejoin the NALC as a retired regular member at this time. However, you are eligible to enroll in the NALC Health Benefit Plan as a health plan member under Article 22 of the *Constitution*.

San Juan, Puerto Rico Branch 869

(December 29, 2008): Your letter to the NALC Committee of Laws, dated December 15, 2008, has been referred to me for reply. Your letter seeks guidance as to whether the Branch Election Committee has jurisdiction to consider allegations that one slate in the recent Branch 869 election improperly obtained the Branch mailing list and mailing labels without paying for them in advance as required by previously established election rules.

At the outset, the Election Committee certainly has jurisdiction of any claim that the alleged violation requires that the election be re-run. The Committee should consider whether a violation occurred and, if so, whether that violation may have affected the outcome of the election. The Committee's decision would be subject to appeal in accordance with the procedures set forth in Article 10 of the *NALC Regulations Governing Branch Election Procedures*.

Apart from the foregoing, if any member believes that the individuals responsible for the misconduct described in your letter should be subject to internal union discipline, that member is free to file charges against the offending individuals under Article 10 of the *Constitution for the Government of Subordinate and Federal Branches*.

I trust that the foregoing is responsive to your inquiry. This letter should not be read to express any view as to the merits of any of the issues raised.

Laurel, Maryland Branch 3755

(December 29, 2008): This is in reply to your letter, dated December 21, 2008, requesting dispensation permitting Branch 3755 to postpone its regular election of officers. According to your letter, due to the recent resignation of the incumbent Branch President the Branch was insufficiently organized to conduct the election on the scheduled date.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. The election should be conducted as expeditiously as possible.

East St. Louis, Illinois Branch 319

(January 7, 2009): This is in reply to your letter, dated December 23, 2008, concerning the validity

of a Branch 319 By-law authorizing the use of Branch funds to make a cash donation or to pay for flowers on behalf of deceased members or members of their families.

Article 8 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* expressly states that Branches may "make provision in their by-laws for the payment of sick relief or funeral benefits." However, Article 8 also expressly prohibits mandatory assessment of dues to fund such benefits. Prior rulings interpreting Article 8 have established that a Branch may not fund a death benefit program from the normal Branch dues structure. The Branch can arrange to have a separate contribution collected from each member who voluntarily agrees to fund a death benefit program.

In addition, a Branch may vote on a case-by-case basis to provide a gift (such as flowers or a cash donation as suggested in your letter) to the survivor of a deceased member or to a member who has lost a family member. Each such expenditure of Branch funds would have to be approved by "a majority vote of the members present and voting at a regular meeting," as provided by Article 12, Section 3 of the *CGSFB*. A decision to provide a gift on one occasion would not require the Branch to make a gift in any other situation. In this scenario the gift would not represent a mandatory benefit or obligation of Branch membership and, therefore, would be outside of the scope of the prohibition set forth in Article 8.

Palatine, Illinois Branch 4268

(January 7, 2009): This is in reply to your letter, dated December 3, 2008, which was received by my office on December 19. Your letter concerns the request of a losing candidate in the recent Branch 4268 election to review the election "file". According to your letter this member has not filed an election appeal and has not sought a recount.

Please be advised that there are no provisions in the *NALC Constitution*, or the *NALC Regulations Governing Branch Election Procedures* which address this situation. Accordingly, the matter is left to the discretion of the Branch.

El Paso, Texas Branch 505

(January 7, 2009): This is in reply to your letter, dated December 17, 2008, requesting a presidential dispensation that would allow Branch 505 to reopen nominations for a delegate position. The purpose of this request would be to permit the nomination (and presumed election by acclamation) of Sister Sandra Binman whose name was inadvertently omitted from the list of nominees during the original election. According to your letter, Sister Binman has agreed to accept an unpaid delegate position.

In light of the facts stated in your letter, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation.

Columbia, South Carolina Branch 233

(January 13, 2009): This is in reply to your letter, dated January 9, 2009, requesting guidance as to how Branch 233 should handle a pending election appeal. Specifically, you ask what procedures the Branch must follow at the branch meeting at which the members are to consider the appellants' appeal from the decision of the Executive Board.

As you correctly note, Section 21 of the *NALC Regulations Governing Branch Election Procedures*, which governs appeals, does not set forth any specific procedural requirements regarding the Branch meeting at which the appeal is heard. Accordingly, the matter is left largely to the discre-

tion of the Branch. The overriding criterion that should guide the Branch is fairness. All interested parties must be given a reasonable opportunity to present their arguments to the members, so that the members may make an informed decision.

Baton Rouge, Louisiana Branch 129

(January 15, 2009): This is in reply to your recent letter, received by my office on January 6, 2009, requesting dispensation permitting Branch 129 to postpone the installation of newly elected officers, which is scheduled for January 28, until after the rerun election that will be take place in late February or early March.

Your request is denied. As I clearly stated in my letter of December 8, 2008, the pendency

of an appeal does not delay the scheduled installation. The result of the election is presumed valid until it is overturned. There is no basis in the *Constitution or the NALC Regulations Governing Branch Election Procedures* for cancelling an installation and effectively extending the terms of the former officers whose terms of office have expired. There is always a possibility that a second installation will be required in any case in which an election appeal results in a rerun election. Your letter does not set forth any circumstances which would justify such an extraordinary departure from the established procedure.

The expense of an installation is controlled by the Branch. Officers may be installed at a regular Branch meeting without additional expense to the Branch.

Centennial, Colorado Branch 5996

(January 26, 2009): This is in reply to your letter, dated January 11, 2009, requesting a presidential ruling to resolve a dispute in Branch 5996 over the interpretation of a By-law provision concerning retirement contributions on behalf of the Branch President.

While I appreciate the Branch's concerns, I must advise that it would be entirely inappropriate for me to issue a ruling stating the proper interpretation of the disputed By-law provision. As National President, it is my responsibility to interpret the *Constitution*. It is the responsibility of the Branch, in the first instance, to interpret and apply its own By-laws. The ultimate decision of the Branch would be subject to appeal to the National Committee on Appeals under Article 11 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*.

San Diego, California Branch 70

(January 26, 2009): This is in reply to your letter, dated December 23, 2008, requesting presidential dispensation to allow three former members to rejoin the NALC as retiree members.

I regret to advise that I must decline your request. The *NALC Constitution* requires that a retiring member execute a Form 1189 at the time of retirement in order to maintain his/her status as a regular member of the NALC. See Article 2, Section 1(e). As you acknowledge in your letter, each of the three individuals failed to do so. Moreover, it is NALC's practice to mail blank Forms 1189 at least twice to retiring members before formally terminating their membership. Your letter does not provide sufficient facts to excuse their failure to submit a Form 1189 in a timely manner.

In sum, there is simply no basis for permitting these former members to rejoin the NALC at this time.

New Haven, Connecticut Branch 19

(January 26, 2009): This is in reply to your letter, dated January 2, 2009, requesting a presidential ruling as to whether a member of Branch 19 has violated the *Constitution* by accepting a man-

agement appointment to be a representative of the Postal Service on your local Combined Federal Campaign (CFC).

Strictly speaking, it is not a "violation" of the *NALC Constitution* for a member to accept a supervisory position in the Postal Service. Acceptance of a supervisory position does affect the member's eligibility to serve as an officer or steward. Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches* prohibits a member who has accepted a supervisory position from being a candidate for branch office until two years after the termination of supervisory status.

However, as previous rulings have repeatedly held, management level assignments are not necessarily supervisory for purposes of Article 5, Section 2. Generally speaking, a position is considered supervisory, within the meaning of Article 5, Section 2, if the person holding that position would have the authority to discipline bargaining unit employees or otherwise supervise them in the performance of their duties. There is no indication in your letter that the CFC position at issue carries such supervisory authority. Accordingly, it does not appear that Brother Mahon's membership status has been affected by his acceptance of the CFC position.

I trust that the foregoing is responsive to your inquiry.

Aramid Miclette, Auburn, New Hampshire

(January 26, 2009): This is in reply to your letter, dated January 9, 2009, requesting a ruling as to your eligibility to serve as the Health Benefits Representative (HBR) in your Branch. You advise that you dropped your membership in the NALC Health Benefit Plan (HBP) in 2003 and have not since rejoined.

Please be advised that you may be a candidate for the position of HBR, but only if you are willing to join the NALC HBP if you are elected. Article 4, Section 3 of the *Constitution* of the NALC Health Benefit Plan requires that individuals must be participating members of the Plan in order to hold office in the Plan at the branch level. At the same time, prior rulings have recognized a distinction between eligibility to hold the office of Health Benefits Representative and eligibility to be a candidate for that position. Article 4, Section 3 requires that an individual be a participating member in order to hold office in the Plan. It does not require that the individual be a member of the Plan to run for office. Thus, if a candidate who is not presently a participating member takes the necessary steps to join the Plan, he/she will be eligible to serve as the Branch's Health Benefits Representative if elected. At the same time, a member should not be a candidate for the position of HBR if he/she is unwilling or unable to join the Plan if elected.

Skokie, Illinois Branch 3071

(January 27, 2009): I have received a letter from Branch 3071 member Ron Chedeck identifying a number of serious irregularities in the governance of the Branch. According to Brother Chedeck, the Branch conducted nominations for Branch officers at the November Branch meeting. However, you then cancelled the mail ballot election that was supposed to take place according to the By-laws ostensibly because the Branch was attempting to merge with another Branch. This information has been verified by National Business Agent Neal Tisdale.

I must advise that your actions are unconstitutional. The pendency of a merger vote is simply no justification for cancelling an election of Branch officers. Accordingly, I am directing the Branch to conduct that election as expeditiously as possible.

In addition, the cancellation of the election can-

not extend your term of office as Branch President. That term finishes on the date specified in the Branch By-laws for the installation of officers following the regular election. Since that election did not take place, there is not now a new President. However, it appears that a new Vice President was elected by acclamation at the November meeting. In accordance with the provisions of Article 6, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches*, the Vice President should now be presiding over the Branch until the election and installation of the new President. Accordingly, I am directing you to cease acting as Branch President.

Please feel free to contact my office if you have any other questions concerning the implementation of the above instructions.

Las Vegas, Nevada Branch 2502

(January 27, 2009): This is in reply to your letter, dated January 26, 2009, which raises two separate issues which you ask me to address.

The first issue concerns the need to reduce the number of stewards in at least two stations from three to two because the number of carriers in those stations has decreased below 100. You ask whether you can select the steward who would lose this position, or whether the Branch must hold a special election.

Please be advised that there are no provisions in the *Constitution* which specifically address this question. Article 4, Section 5 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* states that "Branches having members in two or more stations may make provisions in their by-laws for . . . shop stewards to be appointed or elected, within the respective stations as the Branch may . . . determine." (Emphasis supplied.) Accordingly, the answer to your question is controlled solely by the Branch By-laws.

The interpretation and application of the By-laws is the responsibility of the Branch in the first instance. Your interpretation of the By-laws is subject to appeal to the Branch under Article 11, Section 1 of the *CGSFB*. The Branch's decision is, in turn, subject to appeal to the National Committee on Appeals in accordance with the procedures set forth in Article 11, Section 2.

Your second question pertains to the timeliness requirements for appeals under Article 11 of the *CGSFB*. Article 11, Section 1 states that an appeal may be taken to the Branch from a decision of the President "which appeal must be taken at the meeting at which the subject appealed from is under consideration." The twenty day deadline referenced in your letter applies to appeals from the decision of the Branch to the National Committee on Appeals. Article 11, Section 2 provides that a member dissatisfied with an action of the Branch must submit his appeal to the recording secretary of the Branch "within twenty days from the date of the Branch meeting at which the decision to be appealed from was made."

Finally, the Branch President may not refuse to hear or process an appeal because of alleged untimeliness. The Branch may deny the appeal as untimely, but it must consider the matter at the meeting and make a decision. Similarly, an appeal to the Committee on Appeals must be processed even if the Branch considers the appeal to have been submitted outside the twenty day period. The Branch can raise the timeliness issue in its response to the appeal to be filed with the Committee. However, it is the Committee's responsibility to rule on the issue.

Pueblo, Colorado Branch 229

(January 29, 2009): I am enclosing a copy of a letter I have received from Branch 229 member

Jose Marquez. According to this letter, Brother Marquez has submitted an appeal to the Branch Election Committee concerning the recent election of officers. He further asserts that the Committee has failed to act on his appeal.

Section 21 of the *NALC Regulations Governing Branch Election Procedures* requires the Committee to rule on this appeal. As Branch President, it is your responsibility to ensure that the Committee fulfills this obligation. Please take the necessary steps to ensure that the Committee acts expeditiously.

Jose Marquez, Pueblo, Colorado

(January 29, 2009): This is in reply to your letter, dated January 16, 2009 concerning your attempt to submit an appeal of the recent election of officers in Branch 229. According to your letter, the chairman of the Election Committee has failed to accept delivery of the appeal which you sent by certified mail.

At the outset, it would be entirely inappropriate for me to address the substantive issues raised in your appeal. However, I agree that the apparent failure of the Election Committee to process your appeal is unacceptable. I have today sent a letter to Branch President Frank Chavez advising him that it is his responsibility to ensure that the Committee fulfills its obligation to rule on the appeal.

A copy of my letter to Brother Chavez is enclosed. Please contact me if the Branch continues to fail to act on your appeal.

Forest City, North Carolina Branch 3813

(January 29, 2009): This is in reply to your recent letter, received by my office on January 12, 2009, requesting dispensation permitting Branch 3813, Forest City, NC, to conduct a special election of officers. According to your letter, the Branch President, the only current officer, has been injured and will retire. You also assert that he does not plan to return to work.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. The Branch should conduct the special election as expeditiously as possible.

Skokie, Illinois Branch 3071

(February 6, 2009): I am writing to alert you to certain problems that have arisen in connection with the proposed merger of Branch 3071 with Branch 4739. On January 8, 2009, I received a letter from Branch 3071 member Ron Chedeck protesting the proposed merger. Based on additional information that has since been provided to me, I have concluded that the steps taken by Branch 3071 thus far to effectuate the proposed merger have not been in compliance with the *NALC Constitution*.

A proposed merger agreement must be voted on in accordance with the provisions of Article 2, Section 3 of the *NALC Constitution*. Under the scheme set out in Article 2 section 3, before a vote on a proposed merger may be taken, the details of the proposed merger must be developed and set forth in the notice to the members. Such details include:

(c) the identity and geographic area covered by the Branch which will emerge from, or the name and number of the Branch which will survive,....;

(d) any agreement or agreements between the applying Branches concerning by-laws, dues structure, terms and identity of officers, disposition of assets, assumption of liabilities, if any, and proposed effective date of the merger or absorption shall be specified.

The information provided to me indicates that none of the details of the merger were provided to the members. In addition, I have been advised that

the Branch did not send a notice of the merger vote to retiree members. Retiree members are constitutionally entitled to vote on the proposed merger.

In accordance with my authority under Article 2, Section 3(i) of the *NALC Constitution*, I am directing Branch 3071 to send out a new notice containing all the required information about the merger to each of its members, including retiree members, and to conduct a new vote on the proposed merger with Branch 4739. The notice must be provided at least thirty days prior to the date of the new vote. The proposed merger resolution should be included with the notice.

Spokane, Washington Branch 442

(February 11, 2009): This is in reply to your letter, dated January 27, 2009, requesting a ruling as to the eligibility of a steward to continue to serve in that position. According to your letter, the steward has accepted a detail to the position of rural count assistant.

The answer to your question turns on whether counting rural routes is supervisory work for purposes of Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches*, prohibiting members from serving as branch officers or stewards if they have held or occupied a supervisory position in the Postal Service for a period of two years following termination of supervisory status.

Generally speaking, a position is considered supervisory for purposes of Article 5, Section 2, if the person holding that position has the authority to discipline bargaining unit employees or otherwise supervise them in the performance of their work. The Form 1723 submitted with your letter does not indicate that the member in question would be given supervisory authority by management. If that is the case, the member would retain her eligibility to serve as a steward. However, it is the Branch's responsibility, in the first instance, to apply Article 5, Section 2 to the particular fact circumstances.

Robert Cepatitis, Marilyn Cepatitis, Highland Park, Illinois

(February 11, 2009): This is in reply to your letter, dated February 1, 2009, requesting advice on two matters involving compensation practices in Branch 825.

The first issue concerns the Branch's vote at its meeting on January 29 in favor of a motion to pay a former part-time officer lost time for some work performed for the Branch on a voluntary basis. Please be advised that nothing in your letter indicates that this payment is unconstitutional. Under our *Constitution*, the only requirement is that the expenditure be approved by a majority vote of the members present and voting at a Branch meeting, as provided by Article 12, Section 3 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. Of course, the Branch may not entertain a motion which would be in conflict with its By-laws. However, your letter does not cite any relevant By-law restrictions.

While I appreciate your criticisms of the lost-time payment, the decision to make that payment was within the authority of the Branch. I can only suggest that you continue to address your concerns to the members if the issue ever arises again.

The second question raises an issue as to whether the Branch's compensation to the President is consistent with the wording and intent of the relevant By-law provision. Please be advised that it would be inappropriate for me to interpret the Branch By-laws. It is the responsibility of the Branch, in the first instance, to interpret and apply its own By-laws. The issue you raise may be submitted to the Branch as an appeal under Article 11

of the *CGSFB*. The Branch's decision may be appealed to the National Committee of Appeals in accordance with the procedures set forth in Article 11, Section 2 of the *CGSFB*.

Waianae, Hawaii Branch 5579

(February 11, 2009): This is in reply to your letter, dated January 26, 2009, concerning the apparent loss of the minutes for certain past meetings. According to your letter, the former Secretary of the Branch, who resigned in October 2008, asserts that he does not have the original notes from the meetings.

Please be advised that there are no constitutional provisions addressing this issue. The Branch can seek to recreate the minutes in any reasonable way. One suggestion would be for you to appoint a member, or a committee of members, to attempt to recreate the minutes based on interviews with as many members as possible who attended the meetings in question. Their findings can be submitted in the form of a report. The members can vote to accept the report as a substitute for the missing minutes.

If there is a lack of certainty or consensus as to whether any important resolutions were passed at prior meetings, I would further suggest that the members reconsider those motions and vote on them again.

Eddie Dawson, Jackson, Mississippi

(February 12, 2009): This is in reply to your recent letter, received by my office on February 10, 2009, concerning the 2008 election of officers of Branch 217.

It appears that you remain interested in pursuing your appeal. Therefore, I will not comment on the merits of the issues raised in your letter...

Accordingly, by copy of this letter I am formally advising Branch President Hairston that it is his responsibility under Article 6, Section 1 of the *NALC Constitution for the Government of Subordinate and Federal Branches* to ensure that the Branch Election Committee fulfills its responsibilities. The Election Committee must process all election appeals in accordance with Section 21 of the *NALC Regulations Governing Branch Election Procedures*. I am directing President Hairston to reconstitute the Election Committee and to require the Committee to issue a decision. Given the nature of your allegations, the Chairman of the Election Committee may recuse himself. After the Committee issues its decision you may pursue your appeal as provided by Section 21.

Janesville, Wisconsin Branch 572

(February 19, 2009): This is in reply to your letter, dated January 27, 2009, requesting that I issue a presidential dispensation permitting former member Steve Thompson to rejoin the NALC as a retiree member. The information provided with your letter indicates that this individual was not aware that his membership had lapsed, and that no Form 1189 had been submitted, due to a failure of communication.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. Mr. Thompson must execute a Form 1189 and must pay all dues that accrued during the period when his membership lapsed. By copy of this letter I am instructing Secretary-Treasurer Jane Broendel and the NALC Membership Department to calculate the back dues and to make all necessary arrangements for payment.

Randolph Williams, Lafayette, Louisiana

(February 19, 2009): This is in reply to your let-

ter, dated February 10, 2009, requesting an interpretation of a provision of the Branch 1760 By-laws. Article IX, Section 1 of the By-laws empowers the recording secretary of the Branch to order flowers or issue a check to members who have lost a member of their immediate family. According to your letter, the Branch Secretary has failed to implement this By-law upon the passing of your father-in-law.

At the outset, please accept my condolences for your loss.

With respect to the issue raised in your letter, it would be inappropriate for me to issue a ruling interpreting or enforcing the By-law provision in question. Generally speaking, the interpretation or application of the Branch By-laws is the responsibility of the Branch, in the first instance. You are entitled to appeal any non-compliance with the By-laws to the Branch in accordance with Article 11, Section 1 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. The Branch's decision may be appealed to the National Committee on Appeals in accordance with Article 11, Section 2 of the *CGSFB*.

Apart from the foregoing, the By-law provision at issue may be in conflict with the *Constitution* if it requires the mandatory use of Branch dues. Article 8 of the *CGSFB* prohibits mandatory assessment of dues to fund a death benefit program. Prior rulings have established that a Branch may not fund such a program from the normal Branch dues structure. The Branch can arrange to have a separate contribution collected from each member who voluntarily agrees to fund a death benefit program.

However, a Branch may vote on a case-by-case basis to provide a gift (such as flowers or a sum of money) to the survivor of a deceased member, or a member who has suffered a loss. Each such expenditure of Branch funds would have to be approved by "a majority vote of the members present and voting at a regular meeting," as provided by Article 12, Section 3 of the *CGSFB*. A decision to provide a gift on one occasion would not require the Branch to make a gift in any other situation. In this scenario the gift would not represent a mandatory benefit or obligation of Branch membership and, therefore, would be outside of the scope of the prohibition set forth in Article 8.

I am providing a copy of this letter to Branch President Soileau to ensure that he is aware of this constitutional issue.

Finally, you also ask whether you can request the minutes of previous Branch meetings. Previous presidential rulings have held that the minutes of Branch meetings should be reasonably accessible for review by all members on an equal basis. However, there are no constitutional provisions or prior rulings which require that the Branch must generally provide copies of minutes to members upon request. Any denial of a request to review the minutes may be the subject of an appeal.

Pueblo, Colorado Branch 229

(February 19, 2009): This will acknowledge receipt of your letter, dated February 11, 2009, concerning the election appeal filed by Branch 229 member Jose Marquez.

Brother Marquez certainly has the right to withdraw his appeal. If he agrees to do so, then the Branch will not be required to take any further action.

However, if Brother Marquez does not agree to withdraw his appeal, then the Branch must process it in accordance with the procedures set forth in Section 21 of the *NALC Regulations Governing Branch Election Procedures*. As I indicated in my letter of January 29, it is your responsibility as Branch President to ensure that the Branch complies with the regulations.

Dan Versluis, Tucson, Arizona

(March 6, 2009): Thank you for your letter, dated February 9, 2009, concerning the situation in Branch 2417, Nogales, Arizona.

The information that you provided indicates that a special election would now be appropriate. Since the Branch remains non-functional, I am authorizing you to organize the election. In particular, you will have the authority to appoint an election committee. Once this is done, you should provide advice to the committee to ensure that its members know how to conduct the election in accordance with the requirements of the *Constitution and the NALC Regulations Governing Branch Election Procedures*.

Pending the election of new officers you should retain sole authority to administer the Branch's financial account. When new officers are installed, you may transfer this authority as appropriate.

Finally, I would request that you remain available to assist the new officers in filing any required LM Report with the Department of Labor.

I am providing a copy of this letter to each of the members of the Branch. I encourage each member to cooperate with you.

Western Massachusetts Branch 46 and Agawam, Massachusetts Branch 1978

(March 6, 2009): I have received Sister Elmer's letter, dated February 25, 2009, advising that the bid duty assignments of all but one of the letter carriers who are members of Branch 1978 have been transferred to a new installation, the Agawam Post Office, which is within the jurisdiction of Branch 46. The letter requests that I issue a presidential ruling on the membership status of these letter carriers.

It is now apparent that Branch 1978 cannot perform any representational functions. For the indefinite future all letter carriers who are nominally members of Branch 1978 will, in fact, be represented by Branch 46. In light of this fact I have concluded that the time has come to formally transfer the membership of each member of Branch 1978 to Branch 46. Such action would necessitate the dissolution of Branch 1978.

I will delay issuing a final ruling in this matter for thirty days to allow Branch 1978 to submit any objections to this proposal and to suggest an alternative course of action. If, as I would prefer, there are no such objections, then I would request that the officers of the two Branches meet during the next thirty days to discuss the development of a voluntary plan for merging the two Branches. As provided by Article 2, Section 3(d) of the *NALC Constitution*, the proposed agreement should address by-laws, dues structure, terms and identity of officers, disposition of assets, and assumption of liabilities, if any.

Please feel free to contact my office if you have any questions regarding the above. I look forward to a successful resolution of this matter.

Texas State Association of Letter Carriers

(March 11, 2009): This is in reply to your letter, dated March 6, 2009, requesting that I issue a ruling to resolve a dispute over the composition of a committee investigating the possible realignment of district boundaries in the Texas State Association of Letter Carriers. Specifically, you assert that Texas State Association President Micky Morris has refused to comply with a motion passed by the Executive Board to appoint current district board members to this committee.

Please be advised that it would be entirely inappropriate for me to intervene in this matter at this time. The procedures for resolving internal State

Association disputes, such as the dispute described in your letter, are set forth in Article 13 of the *Constitution of the Government of State Associations (CGSA)*. Article 13, Section 1 specifically provides that appeals from decisions of a State Association President are to be taken "to the State Association in convention assembled." Article 13, Section 1 further provides that such appeal "must be taken at the Convention at which the subject appealed from is under consideration and before any other business is taken up for action." The decision of the Convention may be appealed to the National Committee on Appeals in accordance with procedures set forth in Article 13, Section 2 of the *CGSA*.

Fort Myers, Florida Branch 2072

(March 11, 2009): This is in reply to your letter, dated February 26, 2009, requesting interpretive rulings on two separate matters.

The first issue concerns the proper interpretation of a provision of the Branch 2072 By-laws pertaining to the monthly compensation of the Branch President. Please be advised that it would be entirely inappropriate for me to issue a ruling resolving this question. As National President, it is my responsibility to interpret the *NALC Constitution*. Disputes over the interpretation or application of Branch By-laws must be resolved, in the first instance, at the Branch level. Relevant factors include the language of the By-law, any pertinent past practices, and any evidence of the intent of the Branch when it originally enacted the By-law provision at issue.

The decision of the Branch President interpreting a By-law may be formally appealed, initially to the Branch itself, in accordance with the procedure set forth in Article 11, Section 1 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. The decision of the Branch may be appealed to the National Committee on Appeals in accordance with Article 11, Section 2 of the *CGSFB*.

Finally, to avoid similar disputes in the future, I would recommend that the Branch amend the disputed By-law to clarify the intent of the Branch.

The second issue raised in your letter concerns a ruling by the NALC Committee of Laws finding that a provision of the Branch 2072 By-laws was in conflict with the *Constitution*. Please be advised that it is the responsibility of the Branch to amend its By-laws in accordance with specific direction from the Committee of Laws. If the Branch votes against such a correcting amendment, the Branch's decision may be appealed to the Committee on Appeals. The Committee on Appeals has broad authority to remedy violations of the *Constitution*.

El Paso, Texas Branch 505

(March 18, 2009): This is in reply to your letter, dated March 11, 2009, requesting a ruling as to whether two members have been disqualified to continue to serve as stewards in Branch 505 under Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches*. According to your letter, these members have made arrangements to take the Associate Supervisor Program exam on line, although neither has completed a Form 991.

As a general principle, the prohibition set forth in Article 5, Section 2 covers any application for a supervisory position. It is not necessary that the member file a Form 991 or otherwise submit an application in writing. Taking an examination may or may not constitute an application for a supervisory position, depending on the circumstances. Local practices may be relevant.

Your letter does not provide sufficient information as to the nature of the application process to

permit me to make a definitive ruling with respect to the two members in question. For example, your letter does not indicate whether the Postal Service treats individuals who pass the test as applicants for a supervisory position, or whether additional steps are required to complete the application.

If the Postal Service does consider anyone who takes the exam as an applicant for a supervisory position, then it would not matter if the member ultimately fails the test. He would be ineligible to serve as a steward under Article 5, Section 2 because he did apply for a supervisory position. By contrast, if management does not treat those who take the test as applicants, then it would not matter if the member passes the test. If additional steps are necessary to complete the application, then the member would not be disqualified until he had completed these steps.

In any event, it is for the Branch to determine, in the first instance, whether or not a member has in fact applied for a supervisory position. The Branch should investigate this matter and, if necessary, discuss the situation with management to clarify whether the individuals are now considered applicants. If the Branch concludes that in the present case taking the exam was not tantamount to an application for a supervisory position, then the members will remain eligible to serve as stewards until they have completed the application process.

Agawam, Massachusetts Branch 1978

(March 19, 2009): This is in reply to your letter, dated March 10, 2009, which addresses my tentative decision to transfer the members of Branch 1978 to Branch 46.

In deference to your concerns, I will postpone making a final decision for another thirty days. At this time, I find no justification for postponing the decision until June, as suggested in your letter.

Please understand that past presidential rulings have consistently held that where carriers in one installation are transferred to another installation which is already within the jurisdiction of an existing branch, the transferred carriers must become members of the receiving branch. Normally, the reassignment of the Branch 1978 carriers to the Agawam Post Office would have resulted in the automatic transfer of those carriers to Branch 46 by the NALC Membership Department. I have delayed such transfer simply because of the unique history of the West Springfield situation. However, the continuing division of letter carriers in Springfield and Agawam between Branches 46 and 1978 is an anomaly in the NALC.

I will keep an open mind pending a further response from you. If you would like to come to NALC Headquarters to discuss this matter with me personally, please call my assistant.

Macon, Georgia Branch 270

(March 23, 2009): This is in reply to your letter, dated March 15, 2009, requesting that I issue a presidential dispensation permitting former Branch 270 member Joseph Batiste to rejoin the NALC as a retiree member. According to your letter, Brother Batiste's wife died shortly before he retired and he was not then always living at home. He does not recall ever having received a Form 1189.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. Brother Batiste must execute a Form 1189 and must pay all dues that accrued during the period when his membership lapsed. By copy of this letter I am instructing Secretary-Treasurer Jane Broendel and the NALC Membership Department to calculate the back dues and to make all necessary arrangements for payment.

New Haven, Connecticut Branch 19

(March 24, 2009): This is in reply to your letter, dated March 9, 2009, in which you raise questions concerning the constitutionality of proposed amendments to the By-laws of the Connecticut State Association of Letter Carriers (CSALC). According to your letter, these proposals are to be considered by the CSALC Convention in May.

At the outset, it would be inappropriate for me to interpret the By-law proposals which you submitted with your letter. I can provide the following interpretive guidance as to the relevant provisions of the *Constitution*.

Your first question concerns the elimination of State Association offices. Article 6, Section 1 of the *Constitution of the Government of State Associations (CGSA)* explicitly requires each State Association to elect a President, Vice President, Secretary, Treasurer, Director of Education, and an Executive Board consisting of five or more members. As previous presidential rulings have recognized, a State Association may not eliminate any of these positions. The only exceptions are those expressly set forth in Article 6, Section 1. As provided therein, a State Association may enact a By-law which combines the offices of Secretary and Treasurer into one position. Similarly, Article 6, Section 1 allows a State Association to enact a By-law combining the office of Director of Education "with any other elective office."

You also inquire as to whether the office of Director of Retirees may be eliminated. Again, the answer is no. Article 8, Section 8 of the *CGSA* requires each State Association to elect a retired member to the office of Director of Retirees.

Finally, you ask whether the State Association may eliminate or combine committees. Article 9, Sections 1, 4, and 5 of the *CGSA* provide for three committees—the Committee on Credentials, the Committee on Audit, and the Committee on Mileage and Per Diem—whose members are to be appointed by the State Association President, as provided by Article 8, Section 1. In addition, Article 9, Section 6 provides that the State Association Executive Board shall constitute a Committee on Supplies.

Insofar as the above-referenced committees are required by the *Constitution*, a State Association may not enact a By-law which eliminates any of them. Moreover, since there is no provision for combining these committees, it would be inappropriate to enact a By-law which requires that any of the committees be combined.

I caution that these comments refer only to those committees which are specifically required by the *Constitution*. Any other committees which may have been established by State Association By-laws may be eliminated by amending the By-laws.

Palatine, Illinois Branch 4268

(March 25, 2009): This is in reply to your letter, received by my office on March 23, 2009, requesting a ruling as to whether retiree members are eligible to vote in Branch elections.

The answer to your question is yes. Countless presidential rulings going back decades have repeatedly affirmed that retiree members have the constitutional right to vote in Branch elections. Indeed, Article 2, Section 1(a) of the *NALC National Constitution* establishes that retired members are "regular members" and, as such, they are entitled to exercise all rights and privileges of regular members. The sole limitation on the rights of retirees is that they may have no voice or vote in the Branch in any matter pertaining to the ratification of a national working agreement, local memorandum of understanding, or proposed work stoppage.

As to your second question, I do not see any need for Branch 4268 to amend its By-laws to

address this issue. The By-law excerpts that you provided with your letter indicate that all "members" vote in Branch 4268 elections. There is no language which excludes retirees. The Branch, in any event, would be required to recognize the right of retirees to vote under the *Constitution*.

Rita Wilder, Grand Prairie, Texas

(March 30, 2009): Your letter, dated March 26, 2009 to Assistant Secretary-Treasurer George Mignosi has been referred to me for reply. Your letter complains that the Editor of the Branch 132 newsletter has refused to publish an article which you submitted.

Please be advised that there is no basis for any intervention by the National Union at this time. Decisions about the content of Branch newsletter are normally the prerogative of the Editor, subject to the overall supervisory authority of the Branch President.

You do have the right to submit an appeal under the provisions of Article 11 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*.

As provided by Article 11, Section 1, the decision of the Editor may be appealed to the Branch President. Any decision of the Branch President is subject to appeal to the Branch. The Branch's decision may be appealed to the National Committee on Appeals in accordance with the procedures set forth in Article 11, Section 2 of the *CGSFB*.

I trust that the foregoing is responsive to your inquiry. This letter should not be read to express any view as to the merits of any appeal that you may initiate.

Stanley McKay, Perry, New York

(April 2, 2009): This is in reply to your email, dated April 1, 2009, requesting that NALC assign a Headquarters representative to monitor the Branch 3 elections on April 8. This request is based on allegations of suspected violations of NALC election rules...

While I appreciate your concerns, I must advise that it would not be appropriate for the National Union to intervene in this matter at this time. It is the responsibility of candidates to document violations of election rules. Such violations may then be the basis for a post-election appeal in accordance with the procedures set forth in Section 21 of the *NALC Regulations Governing Branch Election Procedures (RGBEP)*.

Ultimately, the conduct of a Branch election may be appealed to the National Committee on Appeals as provided in Section 21.4 of the *RGBEP*. The Committee is empowered to order re-run elections if it finds that violations occurred which may have affected the outcome of the election. The Committee has not hesitated to exercise this remedial authority in appropriate cases.

Pueblo, Colorado Branch 229

(April 6, 2009): This is in reply to your letter, dated March 23, 2009, requesting a ruling as to the status of the appeal from the recent Branch 229 election submitted by Brother Jose Marquez. According to your letter the two losing candidates have both indicated that they are no longer interested in running for office and were satisfied with the results of the first election. This would suggest that the appeal is now moot.

The problem presented is that the right to appeal an election is not limited to the candidates. Section 21.1 of the *NALC Regulations Governing Branch Election Procedures (RGBEP)* affords any "aggrieved member" the right to submit objections to the conduct of the election. Brother Marquez does have a right to have his issues heard and decided even if the remedy sought is now futile.

In light of the foregoing, I suggest that you proceed as follows. First, arrange to obtain written statements from Brother Labenberg and Brother Barella confirming that they no longer wish to run for office. Second, provide copies of the statements to Brother Marquez and discuss with him whether it would now make sense for him to withdraw his appeal. If he does so, there will be no need for further action.

If, however, Brother Marquez insists on pursuing his appeal, then the Branch will be obliged to process it. This would mean that the Election Committee must reconvene and issue a decision. (The Branch President cannot decide the appeal.) If the appeal is denied by the Election Committee, Brother Marquez will have the right to appeal first to the Branch Executive Board, and then to the Branch itself. See *RGBEP*, Sections 21.2-21.3.

If the Committee or the Executive Board or the Branch decide that the appeal has merit—i.e. that violations of the *Constitution* or the election regulations occurred during the election which may have affected the outcome—then you may request a ruling from me as to whether a rerun or some other remedy is warranted. Obviously, if the appeal is denied such a ruling from me will not be necessary.

Escondido, California Branch 2525

(April 8, 2009): This is in reply to your letter, dated April 2, 2009, advising that charges have been filed against both the President and Executive Vice President of Branch 2525. You ask who should appoint the investigating committee pursuant to Article 10, Section 3 of the *Constitution for the Government of Subordinate and Federal Branches*.

Prior rulings have established that where the President and Executive Vice President are both charged, the highest ranking officer who has not been charged should appoint the investigating committee.

However, the rulings also recognize that there may be circumstances where an officer may not appoint the committee even if he/she has not been charged. For example, if the next ranking officer has brought the charges, or is likely to be involved in the investigation as a witness, then it would be inappropriate for that officer to appoint the committee.

If no other officer is eligible to appoint the committee, then the investigating committee may be appointed by action of the members of the Branch. Specifically, the Branch could nominate and elect members to the committee at a regular or special meeting. Alternatively, the members could vote to select an individual disinterested Branch member to appoint the members of the committee.

Hartsville, Tennessee

(April 8, 2009): On April 7, 2009, my office received an email message from Regional Administrative Assistant Pete Moss concerning the situation in Hartsville TN. According to this email, this installation had been assigned to NALC Branch 3202. However, that Branch has become inactive. The only letter carrier employed in Hartsville was a non-member who has now retired. It appears that city delivery is now performed by employees in other crafts.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I am hereby directing Secretary-Treasurer Broendel and the NALC Membership Department to transfer the Hartsville, TN Post Office to the jurisdiction of Branch 4, Nashville, TN.

Each of you should inform the appropriate representatives of the Postal Service at your level of this change. Branch 4, with the assistance of the NBA's office, should take whatever steps may be

necessary, including initiating a grievance, to protect NALC's jurisdiction over the performance of city delivery work.

Chris Barnette, Brandon, Mississippi

(April 14, 2009): This is in reply to your letter, dated April 7, 2009, which was received by my office on April 13. Your letter requests advice as to the allocation of delegate votes at State Association conventions when block voting, also known as the "unit rule," is not in effect.

At the outset, I cannot comment on any specific procedures that may be adopted by the delegates at the Missouri State Association Convention. I can provide you with general advice as to the relevant constitutional principles which should be applied.

First, a single objecting delegate can prevent the Branch from casting a block vote under the unit rule. Previous presidential rulings have consistently held that even where a State Association decides to allow delegates the option of voting by the unit rule, the delegates of any given Branch cannot vote the unit rule unless its delegates vote unanimously to do so. Thus, a single delegate can block the Branch's use of the unit rule. However, the rulings have also recognized that, if no State Association delegate objects, to facilitate the election process the Branch delegates who wish to cast their votes as a group may do so, even if the Branch has not adopted the unit rule.

Second, the prior rulings have consistently held that State Associations may not adopt any kind of voting structure that would prevent Branches from voting their full proportional voting strength based on the number of Branch members who paid per capita tax to the State Association. (See, Article 5, Section 4 of the *Constitution of the Government of State Associations*.) Thus, the total votes of the Branch are to be divided *pro rata* among the delegates from that Branch who are in attendance at the Convention.

The *pro rata* allocation of votes may result in a number of "odd votes" when the number of delegates in attendance cannot be divided evenly into the number of votes to which the Branch is entitled. In the example cited in your letter, if the Branch is entitled to 65 votes and there are 20 delegates from that Branch in attendance at the Convention, then each delegate would be allocated 3 votes, with a remainder of 5 odd votes. The rulings recognize two permissible methods for casting such odd votes: (1) fractional votes to be allocated among the Branch's delegates or (2) a branch caucus decision appointing one delegate to vote all the odd votes, certified by the branch secretary. The Convention may decide which of these two methods to adopt.

Austin, Texas Branch 181

(April 16, 2009): This is in reply to your letter, dated April 7, 2009, requesting that I resolve a dispute over whether the Editor of the Branch 181 Newsletter properly accepted certain articles for publication as paid political advertisements. Specifically, you question whether these previously rejected articles could qualify as legitimate advertisements, and whether the Editor was authorized to publish these articles, upon receipt of payment, without the approval of the Branch Editorial Committee.

Please be advised that it would be entirely inappropriate for me to rule on these matters at this time. The question whether the rejected articles may be accepted as paid advertisements would seem to involve the meaning and intent of the resolution adopted by the members allowing political ads to be published in the newsletter, along with any relevant past practices. The dispute over authority of the Branch Editor, presumably, requires interpretation of the Branch By-laws. Such

issues must be resolved, in the first instance, at the Branch level.

Previous rulings have recognized that the Branch President does have supervisory authority over the Editor of a Branch newsletter. Accordingly, if you believe that the Editor's actions were in conflict with the intent of the resolution or exceeded his authority under the By-laws, you would have the authority, as President of Branch 181, to take appropriate corrective action. Any such action, however, would be subject to appeal under the provisions of Article 11 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. As provided by Article 11, Section 1, any decision of the Branch President may be appealed to the Branch. The Branch's decision may be appealed to the National Committee on Appeals in accordance with the procedures set forth in Article 11, Section 2 of the *CGSFB*.

I trust the foregoing is responsive to your inquiry. This letter should not be read to express any views as to the merits of any appeal.

San Juan, Puerto Rico Branch 869

(April 21, 2009): Your letter, dated April 10, 2009, to Secretary-Treasurer Jane Broendel has been referred to me for reply insofar as your letter seeks an interpretive ruling under the *NALC Constitution*. Please be advised that the President is the only national officer empowered to issue such a ruling.

Specifically, you ask whether charges may be brought against the President of Branch 869, based on allegations of misuse of the Branch credit card, in light of the fact that a majority of officers in the Branch have voted to exonerate the President of these allegations.

At the outset, it would be entirely inappropriate for me to express any view as to the substance of the allegations contained in your letter. Accordingly, this letter should not be read to suggest that the President of your Branch is guilty of misconduct.

I can advise you that a vote of the officers cannot preclude the filing and processing of charges under Article 10 of the *Constitution of the Government of Subordinate and Federal Branches*. As expressly provided by Article 10, Section 2, any individual member of the Branch (including you) has the right to submit charges "in writing, specifying the offense, failure or neglect, or misconduct so as to fully apprise the [charged] member or officer of the nature thereof." The charges must then be processed and voted on in accordance with the procedures set forth in Article 10, Section 3. The previous vote of the officers will not be binding on the members.

Cynthia Harris, Troy, Michigan

(April 27, 2009): This is in reply to your letter, which was faxed to my office on April 17, 2009, requesting that I issue a presidential ruling to resolve an ongoing dispute you are having with the President of Branch 3126. According to your letter, President Roznowski has relieved you of a number of your shop steward duties relating to the processing of grievances.

At the outset, it would be inappropriate for me to address the specific actions taken by Brother Roznowski based solely on your letter. The dispute you describe must be resolved, in the first instance, at the Branch level. You may challenge Brother Roznowski's decision by means of an appeal to the Branch, as provided by Article 11, Section 1 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. The Branch's decision may be appealed to the National Committee on Appeals in accordance with the procedures provided by Article 11, Section 2 of the *CGSFB*.

While I am not resolving the present dispute, I can advise you as to the applicable constitutional

principles. Article 6, Section 1 of the *CGSFB* provides that the President of the Branch shall "have general supervisory powers over the Branch" and "shall, by virtue of his/her office be the chief steward for the Branch." Presidential rulings interpreting these provisions have long held that a Branch President may relieve a steward from his representational responsibilities for good cause. The exercise of this authority by a Branch President was recently upheld by the federal courts. The delegates to the 2008 National Convention in Boston affirmed this authority by amending Article 6, Section 1 to provide specifically that "The President shall at all times have the authority to relieve any steward, whether appointed or elected, of any representational duties or functions, and to assign such duties or functions to another member appointed by the President, whenever the President concludes that such action is necessary to ensure that the Branch meets its representational responsibilities or to ensure Branch compliance with NALC policy."

The actions taken by Brother Roznowski, as described in your letter, appear to be based on his authority as Branch President under the foregoing constitutional provisions. If you believe that Brother Roznowski has abused his authority, you may appeal as indicated above. This letter should not be read to express any view as to whether you have any valid basis for such an appeal.

Carolyn Abbate, Fremont, California

(April 30, 2009): This is in reply to your letter, dated April 25, 2009. According to your letter, Branch 1111 President Jerry DePoe has refused to act on a request by yourself and other carriers to remove your shop steward. You now seek a ruling to clarify the constitutional principles which would apply to your request. Please be advised of the following.

First, Article 6, Section 1 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* was amended at the 2008 National Convention in Boston to provide that "[t]he President [of the Branch] shall at all times have the authority to relieve any steward, whether appointed or elected, of any representational duties or functions, and to assign such duties or functions to another member appointed by the President, whenever the President concludes that such action is necessary to ensure that the Branch meets its representational responsibilities or to ensure Branch compliance with NALC policy." It is up to the Branch President to determine whether to invoke the authority reflected in this provision. There is absolutely no requirement that the President relieve a steward of any duties or functions upon the request of members represented by the steward.

Second, in the absence of presidential action, members may seek the removal of a steward for misconduct by filing charges under Article 10 of the *CGSFB*. I caution that Article 10 Section 2 requires that any such charges "must be made in writing, specifying the offense, failure, neglect, or misconduct so as to fully apprise the member or officer of the nature thereof."

The foregoing should not be read to suggest that I agree that there is good cause for removing the steward in question. The dispute described in your letter must be addressed, in the first instance, at the Branch level.

Western Massachusetts Branch 46 and Agawam, Massachusetts Branch 1978

(May 5, 2009): This will confirm my final ruling on the status of West Springfield, MA letter carriers, following our meeting in my office today.

The membership of all members of Branch 1978 shall be transferred to Branch 46. By copy of this letter, I am instructing Secretary-Treasurer Jane Broendel and the NALC Membership Department to effectuate this transfer as expeditiously as possible. Following completion of the transfer, Branch 1978 will no longer be recognized as a local branch of the NALC.

The recent election of shop stewards in the Agwam Post Office is declared null and void. There shall be a rerun election in which members of former Branch 1978 will be eligible to be candidates for all steward positions.

I thank you for your cooperation and professionalism. Please feel free to contact me if you require any further assistance in implementing this decision.

Portsmouth, Ohio Branch 184

(May 5, 2009): This is in reply to your recent letter, received by my office on May 4, 2009, requesting dispensation permitting Branch 184, Portsmouth OH, to conduct a special election for Branch President. According to your letter, the incumbent President has resigned, and there is no Vice President. You are the Secretary-Treasurer and also intend to resign.

In light of the facts set forth in your letter, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. Please conduct the special election as expeditiously as possible.

Fresno, California Branch 231

(May 5, 2009): This is in reply to your letter, dated April 29, 2009, concerning the replacement of a steward in Branch 231. According to your letter, the steward has resigned, and the current assistant steward is asserting that he is entitled to be placed in that position.

Please be advised that two provisions of the *Constitution* are potentially relevant to this situation. Article 4, Section 5 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* provides that Branches "may make provision in their by-laws for station delegates, representatives or shop stewards, to be appointed or elected" as the Branch may determine. In the absence of such a by-law, Article 6, Section 1 of the *CGSFB* would govern. Article 6, Section 1 states that the Branch President "shall, by virtue of his/her office, be the chief steward for the Branch, and he/she may delegate such authority to other members." This provision empowers the Branch President to appoint stewards in the absence of controlling by-law provisions.

Accordingly, your position is correct. If, as you assert, the Branch 231 By-laws are silent, then you would have the authority, as Branch President, to appoint a replacement steward of your choice. You would not be obliged to appoint the assistant steward.

Austin, Texas Branch 181

(May 26, 2009): This is in reply to your letter, dated May 4, 2009, requesting a ruling from me to resolve a dispute over a mailing to the members of Branch 181, which used Branch mailing labels. The mailing in question provides information to the members about a local medical practice which provides benefits to union members. The controversy concerns a cover letter which can be read as an endorsement of this medical practice by the Branch.

While I certainly appreciate your concerns, I must advise that it would be entirely inappropriate for me to rule on this matter. The *NALC Constitution* does not contain any provisions which are relevant to the dispute. Accordingly, the members of the Branch were free either to authorize the inclu-

sion of the cover letter in the mailing or to require its exclusion. This dispute can only be resolved by a majority vote of the members at a Branch meeting. If the members decide that the cover letter should not have been included, then they can vote to authorize a second mailing that would make clear that the Branch is not officially endorsing the medical practice.

Richard I. Bowe, Southwick, Massachusetts

(May 28, 2009): This is in reply to your letter, dated May 16, 2009, requesting guidance on certain issues pertaining to the expenditure of funds of Branch 1978 in light of my ruling of May 5.

Your first question concerns a vote of the members at a meeting on May 11 authorizing payments for the entire year to the officers and stewards of the Branch. According to your letter, the members first voted to suspend a Branch By-law requiring that any expenditure over \$100 must be posted for 30 days. You now ask whether the suspension of the By-law was permissible.

Past presidential rulings have consistently recognized that the members of a Branch are bound by its By-laws and do not have the authority to suspend the By-laws by a simple vote at a Branch meeting. However, I recognize the exigent circumstances presented. As President of the NALC, I have the "power to grant dispensations when, in [my] judgement, the good of the Union may require it." (*NALC Constitution*, Article 9, Section 1.) I have concluded that such dispensation is warranted here. Accordingly, I am granting Branch 1978 retroactive dispensation to suspend its By-laws to allow the members to approve expenditures over \$100 without posting them for 30 days. Accordingly, any expenditures approved at the May 11 meeting would be permissible so long as such expenditures were "ordered by a majority vote of the members present and voting" at the meeting, as required by Article 12, Section 3 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*.

Your second question concerns the decision to close the Branch bank account and transfer the funds to a new account under a different name. Please be advised that the only applicable provision of the *Constitution* is Article 12, Section 3 of the *CGSFB*—i.e., the disposition of the funds must be approved by a majority of the members present and voting at a meeting. Your letter indicates that this requirement was satisfied.

However, please understand that I cannot provide you with legal advice apart from the requirements of the *Constitution*. You may wish to consult with a local attorney with respect to any constraints on the disposition of the Branch treasury which may arise under Massachusetts law. In addition, the Branch's ultimate decision may have tax consequences. Accordingly, I would recommend consulting a tax professional.

Escondido, California Branch 2525

(June 2, 2009): This is in reply to your letter, dated May 29, 2009, requesting rulings relating to the presentation of an appeal to the members of Branch 2525 in accordance with the applicable provisions of Article 11, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*.

Your first question is whether all the documents and exhibits submitted with the appeal must be read at the Branch meeting. Prior rulings have held that it is not necessary to read aloud all the material submitted by the appellant when that material is so voluminous that reading it in its entirety would consume so much time as to interfere with Branch business. Rather, it would be sufficient to read per-

inent excerpts and to provide a reasonable summary of the material so as to inform the Branch of the substance of the appeal. The Branch should have a copy of the entire package of appeal material available during reasonable hours for those who might wish to read it.

With respect to your second question, Article 11 of the *CGSFB* does not specify who is to prepare the reply of the Branch to an appeal to the Committee on Appeals. Therefore, as previous rulings have recognized, any officer other than the charging or charged parties may prepare the Branch's reply.

Your third question is whether the reprimand decided upon by the Branch as the appropriate penalty for the charges that were upheld may be published in the Branch newsletter before the charged parties' appeal is decided by the National Committee on Appeals. The answer to this question is yes. Prior rulings have recognized that penalties imposed under Article 10 of the *CGSFB* may be implemented at the time determined by the Branch, even if an appeal is filed.

Escondido, California Branch 2525

(June 2, 2009): This is in reply to your letter, faxed to me today, asking several questions pertaining to the charges against the President and Executive Vice President of Branch 2525 that were previously upheld by the Branch. Each of your questions is based on the notion that the President and Executive Vice President may have been suspended from office as the result of the Branch's actions.

As I understand the situation, the members voted to uphold the charges and then decided that the appropriate penalty was a reprimand. These decisions are entirely consistent with the *Constitution*. Article 10, Section 4 of the *Constitution for the Government of Subordinate and Federal Branches* authorizes the Branch to vote for different penalties, including removal from office, suspension and reprimand. In this case, the members voted only for a reprimand.

The *Constitution* does not require that officers who have been reprimanded be suspended from office while an appeal to the National Committee on Appeals is pending. Like you, I am not aware of any provision of Robert's Rules which would require that the officers be suspended because there is an unresolved appeal. In any event, Robert's Rules, even if they are incorporated in the Branch By-laws, cannot supercede the *Constitution*.

Accordingly, assuming the facts are as stated above, the answers to your specific questions are as follows: (1) the President and Executive Vice President have not been suspended from office; (2) the President and Executive Vice President may continue to be paid in accordance with the Branch By-laws; and (3) the President is still authorized to sign Branch checks.

Escondido, California Branch 2525

(June 2, 2009): This is in reply to your letter, dated June 1, 2009, requesting a ruling with respect to your decisions to attend the meeting of the Committee of Presidents and a state training session held in May. According to your letter, one member is now requesting that you reimburse Branch 2525 for making an unauthorized expenditure of Branch funds.

Please be advised that Article 12, Section 3 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* requires that all Branch funds "shall be devoted to such uses as the Branch may determine; provided that no appropriation shall be made except when ordered by a majority vote of the members present and voting at a regular meeting." There is an exception which allows Branches to make provision in their by-laws allowing officers to spend certain sums between

Branch meetings in cases of emergency, but this provision does not appear applicable to the situation described in your letter.

A Branch may authorize payments in advance through its By-laws or by enacting a budget or a specific resolution authorizing the expenditures. You did not provide me with either the relevant By-law provisions, or the budget. However, it would be inappropriate for me, as National President, to resolve the issue whether the Branch By-laws or the budget confer the authority to make these expenditures on the Branch President. Disputes over the meaning of the By-laws and resolutions must be resolved by the Branch, in the first instance. The Branch's determination may be appealed to the National Committee of Appeals under Article 11 of the *CGSFB*.

Finally, even if the Branch determines that the expenditures were not properly authorized when made, the members may nonetheless vote to approve those expenditures retroactively. If necessary, a motion to approve the expenditures may be made at the June 4 meeting. However, if the members ultimately determine that the expenditures were unauthorized when made, and refuse to approve them retroactively, you may be required to reimburse the Branch. Since this issue could be the subject of an appeal, I express no final view of the matter.

Fort Myers, Florida Branch 2072

(June 3, 2009): This is in reply to your letter, dated May 31, 2009, requesting dispensation permitting Branch 2072 to vote at a special meeting to be held on June 9 on compensation for the delegates to the Florida State Association Convention. According to your letter, some members of the Branch believe that such a vote would violate a Branch By-law requiring that the vote on compensation take place in January. Your letter further indicates that the Branch inadvertently failed to consider the question of delegate compensation at the January meeting.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation.

Santa Clara, California Branch 1427

(June 3, 2009): This is in reply to your two recent letters, both dated May 28, 2009, concerning the November, 2009 election of officers of Branch 1427.

One of the two letters requests dispensation permitting you to appoint an election committee prior to the nomination of candidates in October. Please be advised that the requested dispensation is not necessary. In March, 2008 the NALC Executive Council approved a series of revisions and clarifications to the *NALC Regulations Governing Branch Election Procedures*. The revisions included an amendment to Section 7.1 of the regulations which eliminated the requirement that the election committee be appointed after nominations. Accordingly, you may appoint the Committee before October. The revised Election Regulations may be obtained from the NALC Supply Department at Headquarters free of charge.

The other letter requests advice pertaining to the use of the NALC logo by candidates on campaign material. Please be advised that there have been instances in which the Department of Labor has taken the position that the NALC logo and letterhead are union property which should not be used to support or oppose candidates in union elections. We consistently recommend that the logo not be used in campaign material.

It would be inappropriate for me to comment on the apparent use of the logo by candidates in the 2009 Branch 1427 election, insofar as this issue

could be raised in a post-election appeal. However, you may share this letter with other candidates to put them on notice that the NALC logo should not be used.

San Juan, Puerto Rico Branch 869

(June 3, 2009): This is in reply to your letter, received by fax today, concerning the situation in Branch 869, San Juan P.R. According to your letter, the incumbent President of the Branch has been out of communication with the branch office and branch members, is not returning telephone calls, and has not informed anyone of his whereabouts. Your letter also indicates that this individual is under investigation for misuse of Branch funds and other charges.

Article 6, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches* provides that "in case of...refusal or neglect of the President to discharge the duties of his/her office, the Vice President shall then perform all duties incumbent upon the President for the remainder of the term of office." The facts set forth in your letter establish that these conditions have been met so that you have succeeded to the presidency of the Branch.

Therefore, in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby rule that you are now the President of Branch 869.

Clinton, Mississippi Branch 217

(June 10, 2009): This is in reply to your letter, dated June 4, 2009, requesting rulings with respect to the special meeting of Branch 217 scheduled for June 25, 2009, at which the Branch will vote on proposed By-law amendments. Specifically you ask whether the Branch may vote on proposed by-law amendments at a special meeting. According to your letter, two members have argued that Article 13, Section 1 of the current Branch 217 By-laws requires that votes on proposed by-law amendments must take place at a regular meeting.

At the outset, it is permissible under the *NALC Constitution* to vote on proposed By-law amendments at a special meeting. As previous rulings have recognized, the first sentence of Article 15 of the *NALC Constitution* expressly grants to Branches discretion to determine when they will consider amendments to their by-laws as they deem most expedient. It reads, in pertinent part:

"Each Branch or State Association may make, alter, or rescind such by-laws...from time to time as may be deemed most expedient, provided they do not in any way conflict with this *Constitution*." (Emphasis supplied.)

Although the second sentence of Article 15 does state that "By-laws of branches may be amended at any regular meeting of the branch," previous rulings have recognized that this sentence is permissive. It allows branches to amend their by-laws at any regular meeting but does not require that this be done. Accordingly, so far as the *Constitution* is concerned, the vote may take place at a special meeting that has been properly called in accordance with the requirements of Article 3, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches*.

Notwithstanding the foregoing, the Branch is also bound by any procedural requirements for amendments set forth in its By-laws. However, it would be inappropriate for me to rule on whether Article 13 of the Branch 217 By-laws was intended to prohibit by-law votes from taking place at special meetings. Disputes over the meaning of Branch by-laws must be resolved, in the first instance, by the Branch itself. The Branch's decision would be subject to appeal to the National Committee on Appeals.

Your letter also asks whether the Branch may allow a 204b member to attend a regular Branch

meeting. Please be advised that Article 2, Section 1(c) of the *NALC Constitution* provides that members who "have been temporarily or permanently promoted to supervisory status...shall have no voice or vote in any of the affairs of [the] Branch," except for the right to participate and vote in any part of the meeting concerning NALC insurance programs and/or the NALC Health Benefit Plan, if he/she is a member thereof, or the raising of Branch dues. Previous rulings interpreting this provision have established that, apart from these specified issues, a 204b may not participate in branch meetings while he or she is acting in a supervisory status. However, when the member returns to a bargaining unit assignment, he or she immediately regains the right to participate in a meeting. Accordingly, a member who has served in a 204b position is eligible to attend the meeting on those days when he or she did not work in a supervisory capacity.

In addition, the Branch may permit a 204b member to attend a meeting as a guest.

Ron Chedeck, Highland Park, Illinois

(June 18, 2009): This is in reply to your letter, dated May 29, 2002 requesting rulings with respect to two issues involving the recent merger of Branches 3071 and 4739.

The first issue pertains to the finances of former Branch 3071. According to your letter certain checks received by the Branch may not have been deposited. You also allege that the funds of the Branch were not properly distributed.

I am in no position to rule on this matter based solely on the allegations in your letter. Accordingly, by copy of this letter, I am directing National Business Agent Neal Tisdale to designate a representative from his office to investigate this matter and to report his/her findings to the National President.

Your second question is whether you have retained your status as a delegate to the Illinois State Convention by virtue of your position as Health Benefits Representative (HBR) from Branch 3071. The answer to this question would depend on the terms of the merger agreement. If the agreement voted on by the two Branches clearly stated that delegates from Branch 3071 would be delegates from Branch 4739, then you would be considered a delegate (assuming, as you assert, that you were a delegate by virtue of your position as HBR). If the merger resolution was silent as to the delegate status of delegates from Branch 3071, then you could not be a delegate from either Branch 4739, which did not elect you, or Branch 3071 which no longer officially exists.

Bloomington, Indiana Branch 828

(June 18, 2009): This is in reply to your letter to Secretary-Treasurer Broendel, dated June 3, 2009, which was referred to me for a presidential ruling. Specifically, you ask whether Branch 828 may vote on a request from the two active members of Branch 3608 to merge with Branch 828. The written requests from the two members were apparently submitted in November, 2008.

Any vote on a proposed merger must be conducted in accordance with the requirements for merger votes set forth in Article 2, Section 3 of the *NALC Constitution*. Article 2, Section 3(a) provides that "each Branch proposing to merge shall, within a period of ninety (90) days, have a regular or special meeting" upon "thirty (30) days notice of said meeting to each member" for the purpose of voting on the proposed merger. The notice must set forth the details of the proposed merger such as the identity and geographic area covered by the merged Branch, the name and number of the Branch that will survive, and any agreement between the Branches concerning by-laws, dues

structure, terms and identity of officers, disposition of assets, assumption of liabilities, if any, and proposed effective date of the merger. (See Article 2, Section 3, paragraphs c and d.)

Your letter does not indicate that any such merger resolution has been prepared. I suggest that you contact the members of Branch 3608 and work out the language for such a resolution. Both Branches should then vote on the proposal as provided by Article 2, Section 3.

As to your second question, retiree members do have the right to vote on a proposed merger. By copy of this letter, I am directing Secretary-Treasurer Broendel to send to you a list of the retiree members of Branch 3608. You should use that list to assist Branch 3608 in arranging a meeting at which its members can vote on the proposed merger after appropriate notice.

San Juan, Puerto Rico Branch 869

(June 18, 2009): On June 3, 2009, I issued a ruling confirming that Brother Rivera, as Vice President of Branch 869, was authorized to act as President of the Branch under the provisions of Article 6, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. That ruling was based on information provided by Brother Rivera indicating that Brother Quinones had been out of communication with the branch office and branch members, was not returning telephone calls, and had not informed anyone of his whereabouts.

Brother Quinones has now contacted my office by telephone and has disputed the information provided to me by Brother Rivera. Specifically, he has informed us that he has been at home due to a medical problem and that he will soon be entering a hospital for knee surgery. Brother Quinones also states that his medical condition, and the fact that he was home, were known by officers and members of the Branch.

Article 6, Section 2 of the *CGSFB* states that "[t]he Vice President shall preside in the absence of the President." Accordingly, it is appropriate that Brother Rivera continue to act as Branch President during Brother Quinones' absence. However, Brother Quinones' representations to my office raise a factual dispute as to whether Brother Rivera is authorized to replace Brother Quinones permanently as Branch President.

In light of the foregoing, I am hereby directing National Business Agent Larry Cirelli to designate a representative from his office to investigate this matter. Upon completion of the investigation, this representative shall report to the NALC President. A final ruling will be made at that time.

All parties are admonished to cooperate fully in the investigation.

Finally, the correspondence and telephone communications we have received raise a number of other issues relating to the governance and finances of Branch 869. Those issues must be addressed, in the first instance, by the Branch itself. The Branch's decision may be appealed to the National Committee on Appeals in accordance with Article 11 of the *CGSFB*.

Dean E. Jones, Winnemucca, Nevada

(June 23, 2009): This is in reply to your letter, dated May 22, 2009, requesting information as to how you could be designated as the "representative" of Branch 6390, Winnemucca NV. According to your letter, there are seven active carriers in the Branch, but no elected officers and no by-laws. You have provided a petition signed by NALC members requesting that you be designated as the branch representative.

Please be advised that there is no basis for your

request under the *NALC Constitution*. All Branches should have, at the very least, an elected President. The Branch should also enact By-laws.

By copy of this letter, I am directing National Business Agent Manny Peralta to designate a representative from his office to assist you in organizing an election as soon as possible, and to draft a set of by-laws for the Branch.

Palatine, Illinois Branch 4268

(June 23, 2009): This is in reply to your letter, dated June 5, 2009, requesting a ruling as to whether, as President of Branch 4268, you have the authority to decide how the "miscellaneous salary" section of the Branch's previously approved budget is to be spent.

The answer to your question depends on the intent of the Branch in enacting the budget. As you correctly point out the Branch President does have "general supervisory powers over the Branch" under Article 6, Section 1 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. However, expenditures of Branch funds must be approved by the members. Article 12, Section 3 of the *CGSFB* expressly states that all Branch funds "shall be devoted to such uses as the Branch may determine; provided that no appropriation shall be made except when ordered by a majority vote of the members present and voting at a regular meeting."

A Branch may authorize payments in advance through its By-laws or by enacting a budget or a specific resolution authorizing the expenditures. It appears that Branch 4268 has attempted to authorize payments of anticipated future expenses in the budget that you sent with your letter. However, it would be inappropriate for me, as National President, to resolve the issue whether this budget confers the authority to authorize particular expenditures on the Branch President.

Disputes over the meaning of Branch budget resolutions must be resolved by the Branch, in the first instance. As President, you would certainly have the authority to interpret the resolution. Your interpretation would be subject to an appeal to the members under Article 11, Section 1 of the *CGSFB*. The Branch's determination would be subject to appeal to the National Committee of Appeals under Article 11, Section 2.

Finally, you also ask whether a by-law change restricting the Branch President's power to appoint committee members would be a violation of the *Constitution*. Once again, it is not possible to answer your question definitively. Article 10, Section 3 of the *CGSFB* provides that the Branch President shall appoint committees to investigate internal union charges. A by-law restricting the President's authority to appoint an investigating committee would certainly be unconstitutional. As to committees which are not referenced in the *Constitution*, Article 6, Section 1 of the *CGSFB* provides that the Branch President shall "appoint all committees not otherwise provided for." However, past rulings have recognized that Branches may establish committees through their By-laws. The rulings have held that the phrase "appoint all committees not otherwise provided for" only authorizes the President to appoint committees where the Branch By-laws do not specify a different method of appointment. Accordingly, any determination as to whether a By-law unconstitutionally infringes on the authority of the Branch President would require an examination of the specific language of the By-law in question. I cannot provide a general answer.

Mt. Prospect, Illinois Branch 4099

(June 23, 2009): This is in reply to your letter, dated June 10, 2009, requesting a ruling as to whether proxy voting is permissible at Branch meet-

ings. I regret that it was not possible to respond to your inquiry before your June 16 meeting.

In any event, the answer to your question is no. Past rulings have established that the *NALC Constitution* does not permit the use of proxies at Branch meetings. These rulings remain in effect and are binding on all Branches.

Gary Lange, Parlin, New Jersey

(July 1, 2009): This is in reply to your letter, dated June 8, 2009, requesting rulings with respect to your ongoing dispute with Branch 444 President Bianoski over his decision to decertify you as a steward. The following advice addresses the procedural questions raised by your letter. It would be inappropriate for me to express any views at this time as to the substance of the allegations that Brother Bianoski and you have made against each other.

First, the excerpt from the Branch 444 By-laws enclosed with your letter specifically authorizes the Branch President to "decertify any Steward, if there is just cause." As previous presidential rulings have recognized, such authorization is consistent with the *NALC Constitution*, so long as the steward is not a regular Branch officer who is elected by the entire Branch membership. Assuming that is the case, Brother Bianoski was not required to file charges under Article 10 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*, as suggested in your letter, before decertifying you as steward.

Second, Brother Bianoski's action in decertifying you was subject to appeal to the Branch under the provisions of Article 11, Section 1 of the *CGSFB*. It appears that you attempted to initiate such an appeal by letter, dated April 25, 2009, to the Branch Secretary-Treasurer. You also indicate that Brother Bianoski refused to allow your appeal to be read at the May Branch meeting. Any such denial of your right to appeal would constitute a violation of the *Constitution*. By copy of this letter, I am advising Brother Bianoski that he must allow your appeal to be presented at the next Branch meeting. The members of the Branch must then vote on the appeal. Their decision may be appealed to the National Committee of Appeals in accordance with the procedures provided by Article 11, Section 2 of the *CGSFB*.

I trust that the foregoing is responsive to your inquiries. Once again, this letter should not be read as expressing any view as to the substance of any possible appeals.

Marion, Indiana Branch 378

(July 1, 2009): This is in reply to your letter, dated June 22, 2009, requesting a ruling on whether you will continue to be eligible to serve as President of Branch 378 if you are reassigned to a postal facility within the jurisdiction of another Branch.

Unfortunately, the answer to your question is no. If you are permanently reassigned to a postal facility within the jurisdiction of another Branch, your membership will be transferred to that Branch. If that were to occur, you would not be a member of Branch 378 and, accordingly, would no longer be eligible to serve as an officer of that Branch.

Your ineligibility to serve would begin on the effective date of the transfer.

Western Massachusetts Branch 46

(July 1, 2009): This is in reply to your email to me, as well as your more recent conversation with Secretary-Treasurer Jane Broendel. According to your email, questions have been raised concerning the disposition of the funds of Branch 1978.

Please be advised that Brother Bowe did seek advice from me concerning the questions you raise. I am enclosing a copy of my letter, dated May 28, 2009 which addressed the applicable constitu-

tional provision, but also suggested that he seek professional advice. Brother Bowe and the other officers of Branch 1978 continue to have fiduciary responsibility for the funds of the Branch. Those funds can, and should, be used to pay any outstanding debts of Branch 1978. The expenditure of such funds remains subject to the requirements of Article 12 of the *Constitution* for the Government and Subordinate Branches, as well as Branch 1978's By-laws. Please note that a copy of this letter is being sent to Brother Bowe.

In light of the foregoing, it would be appropriate for Branch 46 to pay any dues it collected for Branch 1978 members before the transfer into the fund established by the Brother Bowe and Brother Hult. It is my understanding that the members of former Branch 1978 were transferred to Branch 46 effective May 13, 2009, and that effective pay period 9 the dues paid by those members belong to Branch 46. Branch 46 can pay into the Branch 1978 fund any remaining Branch 1978 dues that it received prior to pay period 9.

As you know, this is my last week in office. Any further questions or requests for assistance concerning this matter should be addressed to Brother Fred Rolando. Thank you once again for your cooperation.

RULINGS BY PRESIDENT FREDRIC V. ROLANDO

Colorado Springs, Colorado Branch 204

(July 15, 2009): This is in reply to your letter, dated July 6, 2009, in which you raise questions pertaining to a member's wish to wear a campaign button in preparation for the Branch 204 election of officers which is to take place later this year.

At the outset, the settlement agreement included with your letter, M-01467, does on its face apply to union elections. However, there are no national settlements or arbitration awards which define the time period covered by a union election. Obviously, it is local management's responsibility to enforce the relevant provisions of the *ELM* and to grant exceptions in accordance with the settlement. Management's actions may be challenged through the grievance procedure. I would caution, however, that any policy agreed to at the local level must be applied evenly to all candidates and members.

As to your second question, wearing a button would not violate any provision of the *NALC Regulations Governing Branch Election Procedures*. Of course, no branch funds or resources should be used to prepare the buttons. In addition, the *NALC* logo should not be used on the buttons.

Vista, California Branch 2525

(July 17, 2009): This is in reply to your letter, dated July 7, 2009. At the outset, I thank you for your kind wishes of support as I begin my service as President of the *NALC*.

The bulk of your letter concerns your contention that under the By-laws of Branch 2525, which incorporate Robert's Rules of Order, a member who has been charged with misconduct must be suspended pending disposition of his/her case. This contention is erroneous for several reasons.

First, although it is normally not the responsibility of the National President to interpret a Branch's By-laws, in this case the By-law provision quoted in your letter is completely unambiguous. It makes clear that Robert's Rules only apply to Branch deliberations concerning "things not covered by the National *Constitution* or these By-Laws." The procedures governing suspension of members are specifically covered by Article 10 of the *Constitu-*

tion for the Government of Subordinate and Federal Branches (CGSFB). Accordingly Robert's Rules are inapplicable.

Second, irrespective of the meaning of the By-law provision, the suspension procedure suggested in your letter would conflict with the *Constitution*, which obviously takes precedence over Robert's Rules. Article 10, Sections 3 and 4 of the *Constitution for the Government of Subordinate and Federal Branches* provide that a suspension can only occur following a vote on the guilt or innocence of the charged party, and then a separate vote on the penalty. Under your suggested approach the member would be suspended before these votes are taken.

Third, suspending a member's rights before the disposition of the charges would violate federal law. The Landrum-Griffin Act specifically provides that union members may not be "fined, suspended, expelled, or otherwise disciplined except for non-payment of dues . . . unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; and (C) afforded a full and fair hearing."

Your approach would result in the suspension of the member before these due process requirements have been satisfied.

Your letter also raises questions as to the governance of the Branch and the handling of Branch funds. Obviously, I do not have sufficient information to comment on your allegations. However, by copy of this letter I am directing National Business Agent Manny Peralta to designate a representative from his office to contact you to discuss your concerns. I am also providing a copy of this letter to the President of the Branch so that he is aware of this inquiry.

Lancaster, California Branch 4430

(July 20, 2009): This is in reply to your letter, dated July 9, 2009, requesting a ruling as to the eligibility of a member to be nominated for office in Branch 4430. The information provided with your letter indicates that this individual accepted a detail to count rural routes earlier this year.

The answer to your question turns on whether counting rural routes is supervisory work for purposes of Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches*, prohibiting members from serving as branch officers or stewards if they have held or occupied a supervisory position in the Postal Service for a period of two years following termination of supervisory status.

As numerous presidential rulings have recognized, higher level assignments are not necessarily supervisory for purposes of Article 5, Section 2. Generally speaking, a position is considered supervisory for purposes of Article 5, Section 2 if the person holding that position has the authority to discipline bargaining unit employees or otherwise supervise them in the performance of their work. The Form 1723 submitted with your letter does not indicate that the member in question was given supervisory authority by management. If that is the case, the member would retain her eligibility to be a candidate for branch office. However, it is the Branch's responsibility, in the first instance, to apply Article 5, Section 2 to the particular fact circumstances.

Fresh Meadows, New York Branch 294

(July 20, 2009): This is in reply to your letter, dated July 9, 2009. At the outset, I thank you for your kind wishes of support as I begin my service as President of the *NALC*.

Your letter asks whether the Branch can share certain disciplinary letters that were issued by a 204B to letter carriers represented by Branch 294.

According to your letter, the actions of this 204B are now the subject of an investigation by a committee that you appointed.

Please be advised that there are no constitutional provisions relevant to the question you have posed. Accordingly, I cannot issue a presidential ruling which resolves this matter. Certainly, the grievance files belong to the Union, and the Union may share the contents of the file with other members for legitimate purposes. I would recommend that the Branch avoid widespread distribution of this material if there are privacy concerns. It would also be prudent (if not constitutionally necessary) to discuss this matter with the affected letter carriers to determine whether they have any objections to the review of the letters by the committee.

Cleburne, Texas Branch 752

(July 24, 2009): This is in reply to your letter to Secretary-Treasurer Broendel, dated July 6, 2009, inquiring as to the eligibility of three members to vote in Branch 752's election of officers. Each of these members has recently retired.

Please be advised that NALC has received Brother James Chance's Form 1189. He is certainly eligible to vote.

The Membership Department has advised me that it has not received a Form 1189 from either Roger Matlock or Ronnie Reece. On July 7, the Membership Department mailed a second letter and Form 1189 to both of them. The letter advised each individual that he had three weeks to respond. If these members do not return an executed Form 1189 within this time frame they will be dropped from the membership rolls. Accordingly, they would not be eligible to vote in the Branch election, and their votes, if submitted, should not be counted on August 6.

Prior to the August 6 meeting, you may contact NALC Director of Membership Wayne Nicely to verify whether or not these members have submitted executed Forms 1189.

Colorado, Centennial Branch 5996

(July 27, 2009): This will acknowledge receipt of charges against Colorado State Association Vice President Doug Jaynes that you have filed with the Executive Council of the NALC pursuant to Article 10 of the *NALC Constitution*.

The procedure provided by Article 10 directs the President to serve the charge on the charged party and to appoint a member of the NALC to investigate the charge and report to the Executive Council. In accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I have decided not to take the above steps and to dismiss your charges based on the following considerations.

Article 10 provides for filing of charges with the Executive Council against national or state association officers for "neglect of duty or violation of this constitution." Your charges, on their face, do not set forth any facts which implicate Brother Jaynes' duties as Vice President of the State Association. Likewise the facts alleged in the charge, even if proved, are insufficient to state a violation of the *Constitution*. Accordingly, the charges as written failed to meet the threshold standard for charges under Article 10.

I appreciate that there appear to be genuine personal differences between you and Brother Jaynes. By copy of this letter I am directing National Business Agent Roger Bledsoe to contact you to discuss your concerns and to suggest alternative ways to address these issues.

Ron Chedeck, Highland Park, Illinois

(July 31, 2009): Your letter to President Young dated May 29, 2009, raised several issues pertaining to the merger of Branch 3071 with Branch

4739. In his response, President Young directed National Business Agent Neal Tisdale to designate a representative from his office to investigate this matter and to report his findings to the National President.

In accordance with President Young's direction, Brother Tisdale designated Regional Administrative Assistant Ken Miller to conduct the investigation. By letter dated July 24, 2009, Brother Miller submitted his report to me. I am hereby providing you with a copy of that report.

The report satisfactorily resolves the questions raised by your original letter to President Young. Accordingly, I now consider this matter to be closed.

We appreciate your diligence in reporting your concerns to President Young.

Eddie Dawson, Jackson, Mississippi

(August 4, 2009): This is in reply to your letter, dated July 14, 2009, in which you question the procedures by which Branch 217 approved certain changes to its By-laws at a special meeting held on June 25.

At the outset, I must advise you that President Young did issue a ruling, dated June 10, 2009, which stated that it is permissible under the *NALC Constitution* to vote on proposed By-law changes at a special meeting. For your convenience, I am enclosing a copy of that ruling.

I recognize that President Young's ruling does not address all the issues raised in your letter. However, it would be inappropriate for me to rule on these matters. The appropriate procedure for challenging the Branch's actions would be to initiate an appeal to the National Committee on Appeals in accordance with the provisions of Article 11 of the *Constitution for the Government of Subordinate and Federal Branches*.

Crown Point, Indiana Branch 1624

(August 7, 2009): This is in reply to your letter, dated July 30, 2009, concerning the recent resignation of the Vice President of Branch 1624, which occurred shortly after the election of officers. Specifically, you ask whether it is necessary for the Branch to conduct a special election to fill this vacancy, as some members have apparently argued.

The answer to your question is no. Article 4, Section 2 of the *Constitution of the Government of Subordinate and Federal Branches* specifically provides that the Branch President may fill vacancies in officer positions by appointment, unless the Branch By-laws provide for an order of succession. The copy of the Branch 1624 By-laws which you included with your letter does not provide for an order of succession. If that is the case, as President of the Branch you are authorized to appoint a member to become the new Vice President for the balance of the present term. The timing of the resignation of the elected Vice President is of no significance for this purpose.

Baton Rouge, Louisiana Branch 129

(August 7, 2009): This is in reply to your letter, dated August 5, 2009, in which you ask several questions pertaining to your installation as the Recording Secretary of Branch 129.

Your first question is whether you were properly determined to have been elected by acclamation. According to your letter, you were one of two candidates for Recording Secretary in the original election, and were defeated. The successful candidate was installed in January, but resigned in early February. In addition, at some point a challenge to the original election was upheld, and the Branch decided to conduct a re-run election in March. However, your name was not included on the re-run ballot. Instead you were installed as Recording Secretary on February 25.

While your letter is not entirely clear, I gather that you were the only nominee for Recording Secretary willing to run when the Branch decided to conduct the re-run election. Accordingly, you were deemed at that time to have been elected by acclamation. Your letter does not contain any information that would cause me to question this result. In particular, the Branch's determination that you were elected by acclamation could have been challenged by any member by initiating an appeal. It does not appear that any member of the Branch has done so.

Your second question is whether you may be deemed a convention delegate by virtue of your office. Please be advised that this question turns on the application of the Branch By-laws. As President it is my responsibility to interpret the *Constitution*. Questions involving the meaning of a By-law must be resolved, in the first instance, at the Branch level.

Similarly, your third question—whether the elected Secretary is entitled to any compensation for the less than 15 days he or she served in office—also depends entirely on the meaning of the relevant By-law provision. That question must also be resolved by the Branch.

Terry Bock Vista, California

(August 10, 2009): This is in reply to your letter, dated August 2, 2009.

At the outset, let me assure you that I fully recognize the thought and effort that went into your letter. I certainly appreciate your strong commitment to the NALC and your deep concern with the governance of Branch 2525.

Quite obviously, we disagree as to the meaning and application of the Branch By-laws, Robert's Rules, and the Landrum-Griffin Act. However, all these disagreements are ultimately beside the point. As President of the NALC, it is my responsibility to interpret the *Constitution* which is paramount. I stand by the interpretation previously expressed in my letter to Brother Smith. No member of the NALC may be suspended, based on charges filed under Article 10 of the *Constitution of the Government of Subordinate and Federal Branches*, until the procedure set forth in that Article has been completed, and the Branch has voted on the guilt of the charged party, and voted to suspend him/her. This interpretation of the *Constitution* is binding on all Branches, including Branch 2525.

My letter to Brother Smith directed National Business Agent Manny Peralta to designate a representative from his office to contact Brother Smith to discuss his concerns as to the governance of the Branch and the handling of Branch funds. By copy of this letter, I am directing Brother Peralta to include you in those discussions.

Judith Willoughby, National Business Agent

(August 28, 2009): This is in reply to your fax, dated August 10, 2009, which forwarded to my office a copy of a letter to you from Brother Dennis Menendez, a member of Branch 3970. Brother Menendez and several other members have filed charges against the President and Vice President of the Branch. His letter suggests that the Branch will not be able to form a committee to investigate the charges, as required by Article 10, Section 3 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*.

Prior rulings have established that where the President and Vice President are both charged, the highest ranking officer who has not been charged should appoint the investigating committee. If there are no other officers, then the investigating committee may be appointed by action of the members of the Branch. Specifically, the Branch could nominate and elect members to the commit-

tee at a regular or special meeting. Alternatively, the members could vote to select an individual disinterested Branch member to appoint the members of the committee.

Please designate one of your Regional Administrative Assistants to investigate this matter. The RAA should determine whether the Branch has appointed a committee in accordance with the above guidelines. If a committee has not been appointed, then the RAA shall be authorized to do so. Please note that prior rulings have recognized that in situations when a Branch cannot form an investigating committee from its own members, the committee may be composed of members from other Branches and/or the NBA's office.

Finally, your RAA should assess the overall situation in Branch 3970 and advise whether additional intervention by the National Union is warranted.

Escondido, California Branch 2525

(August 28, 2009): This is in reply to your letter, dated August 24, 2009, requesting a ruling as to whether a member who has preferred charges against you may voluntarily withdraw those charges.

As prior presidential rulings have recognized, the *Constitution* does not prohibit a member who has preferred charges under Article 10 of the *Constitution for the Government of Subordinate and Federal Branches* from withdrawing those charges. However, Article 10 does not prescribe a specific procedure for withdrawing charges. I would recommend that the withdrawal be submitted in writing. The withdrawal should be reported at the next membership meeting and noted in the minutes of the meeting.

Escondido, California Branch 2525

(August 28, 2009): This is in reply to your letter, dated August 24, 2009, concerning charges that have been filed against Branch 2525 President Randy Cruise and you. Specifically, you ask whether it was proper for one of the charging parties to distribute copies of the charges to members of the Branch at the meeting at which the charges were read.

Article 10, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches* specifically provides that charges are to be read by the recording secretary of the Branch at the first regular meeting after service of the charges. There is no similar provision directing that copies of the charges be distributed to the members. At the same time, there is no provision in the *Constitution* which prohibits anyone from distributing copies of the charges to interested members.

Accordingly, the very limited information set forth in your letter does not demonstrate that there has been a violation of the *Constitution*. At the same time, any member who is the subject of charges is entitled to a fair hearing. If you believe that the actions of the charging party have compromised the procedural protections provided by Article 10, you should present that argument to the investigating committee and to the Branch. If necessary, your argument could be raised as an issue in any appeal to the National Committee on Appeals following the Branch's decision.

Baton Rouge, Louisiana Branch 129

(August 28, 2009): This is in reply to your letter, dated August 7, 2009, requesting a ruling as to whether former Branch 129 President George Cooper is entitled to be a convention delegate by virtue of his having been elected by acclamation to the position of President Emeritus. According to your letter, the Branch By-laws provide that all elected officers are automatic delegates to state and national conventions.

The answer to your question is no for several

reasons.

At the outset, your letter does not indicate that the Branch By-laws provide for the position of President Emeritus. If, as I suspect, the position of President Emeritus is not mentioned in the By-laws, there would be no basis for interpreting the delegate provision as applicable to the President Emeritus.

In any event, consistent with federal law, Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches* states that "all regular members shall be eligible to hold any office...in the Branch," subject only to the two year disqualification of those who hold or have applied for supervisory positions. See also, Section 4 of the *NALC Regulations Governing Branch Election Procedures (RGBEP)*. Presumably, only former Presidents of Branch 129 are eligible to be President Emeritus. Therefore, the President Emeritus cannot be considered a Branch officer under the *Constitution*.

Prior rulings have recognized that Branches may provide in their By-laws that elected officers shall be delegates to National and State Conventions, provided that officers in question have been nominated and elected in accordance with the procedures set forth in the *RGBEP*, and that all qualified members have an equal opportunity to run for the office in question. Since Brother Cooper's election as President Emeritus did not satisfy these conditions, he would have to be separately nominated and elected as a delegate.

San Juan, Puerto Rico Branch 869

(August 28, 2009): This letter is the final ruling on the status of the Presidency of Branch 869, San Juan P.R.

On June 3, 2009, President William H. Young issued a ruling confirming that Brother Rivera, as Vice President of Branch 869, was authorized to act as President of the Branch under the provisions of Article 6, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. That ruling was based on information provided by Brother Rivera indicating that Brother Quinones had been out of communication with the branch office and branch members, was not returning telephone calls, and had not informed anyone of his whereabouts.

Brother Quinones subsequently contacted President Young's office by telephone and disputed the information provided by Brother Rivera. President Young concluded that Brother Quinones' representations raised a factual dispute as to whether Brother Rivera is authorized to replace Brother Quinones permanently as Branch President. Accordingly, President Young issued a second ruling, dated June 18, directing National Business Agent Larry Cirelli to designate a representative from his office to investigate this matter. Upon completion of the investigation, this representative was directed to submit a report to the NALC President who would then issue a final ruling.

Brother Cirelli personally conducted an investigation of this matter and has submitted his report to me. The evidence compiled in the report overwhelmingly demonstrates that the information relied upon by President Young when he issued his original June 3 ruling was accurate. In particular, the report affirms that Brother Quinones failed to discharge the duties of his office for an extended period of time, so that he effectively abandoned the Presidency of the Branch.

Accordingly, it is my decision that President Young's ruling of June 3 shall stand. Pursuant to Article 6, Section 2 of the *CGSFB*, Brother Rivera has succeeded to the office of President of Branch 869 for the remainder of the present term.

Consistent with President Young's June 18 ruling, the present decision does not address the allegations of financial misconduct against Brother Quinones. Those allegations were apparently the subject of charges against Brother Quinones which were investigated by a Branch committee. The committee's report was distributed to the Branch at its meeting on June 16. Similarly, the present ruling expresses no view on any actions taken by the Branch at the June 16 meeting which, as President Young noted in his June 18 ruling, would have been subject to appeal to the National Committee on Appeals in accordance with Article 11 of the *CGSFB*.

Phoenix, Arizona Branch 576

(September 1, 2009): This is in reply to your letter, dated August 21, 2009, requesting a ruling as to whether a member of Branch 576 has been disqualified from being a candidate for branch office under Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches*, as a result of having applied for a supervisory position. According to your letter, this individual made a "verbal request" to the Postmaster to "stand up as a 204b."

As a general principle, the prohibition set forth in Article 5, Section 2 covers any application for a supervisory position. It is not necessary that the member file a Form 991 or otherwise submit an application in writing. An oral statement indicating a member's interest in a 204b position may or may not constitute an application for a supervisory position, depending on the member's intent, the specific wording of the statement, local practices, and other relevant circumstances.

Your letter does not provide sufficient information as to the nature of the communication with the postmaster to permit me to make a definitive ruling. For example, I do not know whether the postmaster considered the oral request sufficient to constitute an application for a 204b position; nor am I familiar with the local practices for filling 204b vacancies in Kingman, AZ.

In any event, as numerous presidential rulings have previously recognized, it is for the Branch to determine, in the first instance, whether or not a member has in fact applied for a supervisory position. If the Branch concludes that in the present case the verbal communication was not tantamount to an application for a supervisory position, then the member in question would remain eligible to serve as a branch officer.

San Juan, Puerto Rico Branch 869

(September 1, 2009): This is in reply to your letter, dated August 24, 2009, requesting a ruling as to whether retiree members are eligible to vote at Branch meetings.

The answer to your question is yes. As countless presidential rulings going back decades have repeatedly affirmed, retired members are "regular members" and, as such, they are entitled to exercise all rights and privileges of regular members. See, Article 2, Section 1(a) of the *NALC National Constitution*. The sole limitation on the rights of retirees is that they may have no voice or vote in the Branch in any matter pertaining to the ratification of a national working agreement, local memorandum of understanding, or proposed work stoppage.

I express no view as to whether the By-laws of Branch 869 are inconsistent with the foregoing principle. Disputes over the interpretation or application of Branch by-laws must be resolved, in the first instance, at the branch level. Similarly, this ruling does not address whether the voting procedure used by Branch 869 with respect to charges against officers, as described in your letter, was proper. Any challenge to those votes could have been raised in an appeal to the National Committee

on Appeals in accordance with Article 11 of the *Constitution for the Government of Subordinate and Federal Branches*.

Escondido, California Branch 2525

(September 1, 2009): This is in reply to your letter, dated August 26, 2009, advising that you are a member of the committee investigating charges against officers of Branch 2525, as provided by Article 10 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. Your letter requests that I resolve a dispute over the interpretation of Article XII, Section 4 of the Branch 2525 By-laws. Apparently, the interpretation of this provision may be relevant to the charges.

Please be advised that it would be entirely inappropriate for me to issue a ruling resolving this question. As National President, it is my responsibility to interpret the *NALC Constitution*. Disputes over the interpretation or application of Branch By-laws must be resolved, in the first instance, at the Branch level. Relevant factors include the language of the By-law, any pertinent past practices, and any evidence of the intent of the Branch when it originally enacted the By-law provision at issue.

If the committee has an opinion as to the correct interpretation, it may include that opinion in its report to the Branch. However, it is not necessary to do so. The committee may instead describe the interpretive issue to the members and provide any evidence that may be relevant to it. Ultimately, the issue must be decided by the members of the Branch. The Branch's decision may be appealed to the National Committee on Appeals in accordance with the provisions of Article 11 of the *CGSFB*.

Escondido, California Branch 2525

(September 1, 2009): This is in reply to your letter, dated August 24, 2009, advising that you have been appointed to the committee investigating charges against officers of Branch 2525. According to your letter, the charging party has made a request to interview the members of the committee.

You now seek a ruling as to whether this request is appropriate.

Please be advised that the procedures for investigating charges are set forth in Article 10 of the *Constitution for the Government of Subordinate and Federal Branches*. Article 10 does not contain any provisions requiring the investigating committee to submit to a formal interview by either the charging or charged parties. Certainly, the committee should provide information to all parties necessary to ensure a fair hearing. Further, there is no language in Article 10 which would prohibit members of the committee from answering questions posed by any of the parties. Committee members, therefore, may answer such questions at their discretion. But there is no requirement that the committee submit to a formal interview.

Sun City, Arizona Branch 6156

(September 9, 2009): This is in reply to your letter, dated September 2, 2009, requesting a ruling as to whether a member can run for both a full time branch office and for a steward position. According to your letter, one member of Branch 6156 has suggested that this practice is in conflict with the *NALC Regulations Governing Branch Election Procedures (RGBEP)*.

Section 6.5 of the *RGBEP* does specifically state that "No person shall accept nomination for more than one office." However, a shop steward position is not necessarily a branch office.

As previous presidential rulings have recognized, if a steward position is not treated as a branch office under the By-Laws (e.g., if stewards are elected by station, rather than by the entire

membership, and do not sit on the Branch Executive Board), then a member would have the right to be nominated for both a branch office and a steward position.

It appears from your letter and the By-Law excerpts that you enclosed that stewards in Branch 6156 are elected only by the members in the unit in which they are to serve. Under such circumstances, the stewards may not be considered branch officers.

Accordingly, assuming the facts are as described, a member of Branch 6156 could run for both a Branch office and a steward position.

Decatur, Illinois Branch 317

(September 9, 2009): This is in reply to your letter, dated August 31, 2009, requesting dispensation permitting Branch 317 to conduct both its nominations and election of Branch officers and delegates at its November meeting. According to your letter, the mailing of the Branch newsletter, which contains the notice of nominations and elections, has been delayed. As a result, the Branch cannot provide 45 days notice of the nominations.

It is not clear that special dispensation is required. Under Section 6.1 of the *NALC Regulations Governing Branch Election Procedures (RGBEP)*, the notice of nominations and elections must be sent out *ten days* before nominations are held. The 45-day rule applies to the date of the election, not the date of nominations. According to your letter, nominations are scheduled to take place on October 13, and the election is scheduled to take place on November 10. Therefore, there is still ample time to send a timely notice which meets the requirements of the *NALC Constitution* and the *RGBEP*.

Mattoon, Illinois Branch 384

(September 10, 2009): Your letter to Secretary-Treasurer Jane Broendel, dated August 13, 2009, has been referred to me for reply. Your letter requests dispensation to allow a former NALC member, Donald Donley, to rejoin the NALC as a retiree member.

I regret to advise that I must decline your request. I appreciate that Mr. Donley's wife was ill when he retired seventeen years ago. However, the *NALC Constitution* requires that a retiring member execute a Form 1189 at the time of retirement in order to maintain his/her status as a regular member of the NALC. See Article 2, Section 1(e). As you acknowledge in your letter, Mr. Donley failed to do so. Moreover, it has long been NALC's practice to mail blank Forms 1189 at least twice to retiring members before formally terminating their membership. Your letter does not provide sufficient facts to excuse Mr. Donley's failure to submit a Form 1189 in a timely manner.

In sum, there is simply no basis for permitting Mr. Donley to rejoin the NALC at this time.

Milwaukee, Wisconsin Branch 2

(September 10, 2009): This is in reply to your letter, dated August 31, 2009 concerning the anticipated transfer of ten letter carriers from the Butler and Elm Grove, WI Post Offices to the Brookfield, WI Post Office. These carriers are presently members of Branch 2. Brookfield falls within the jurisdiction of Branch 4811. You now ask whether these facts require that Branches 2 and 4811 be merged.

The facts described in your letter cannot be characterized as a "merger" within the meaning of Article 2, Sections 2 or 3 of the *NALC Constitution*. Quite obviously, Branch 2, in its entirety, has not been combined into a single installation with Branch 4811. The ten active carriers in question constitute a small percentage of the total Branch 2 membership. Past presidential rulings have estab-

lished that in similar circumstances, where carriers in one branch are transferred to an existing postal installation within the jurisdiction of another branch, the transferred carriers must become members of the receiving branch. Accordingly, upon reassignment, the ten letter carriers will become members of Branch 4811.

Please understand that it is not my intent to discourage the two Branches from entertaining a voluntary merger. Given the geographic proximity of Branch 4811 and Branch 2, it may very well be in the best interests of all concerned to negotiate a merger. However, I must advise that the facts set forth in your letter do not show that such a merger is presently required by the *Constitution*.

Ron Chedeck, Highland Park, Illinois

(September 14, 2009): This is in reply to your letter, dated August 19, 2009, requesting that I reopen the investigation conducted by Regional Administrative Assistant Miller with respect to the merger of 3071 with Branch 4739. While I appreciate your concerns, I am declining your request based on the following considerations.

President Young initially authorized Brother Miller's investigation based on allegations you made in your letter of May 29 which seemed to suggest that financial improprieties had occurred. Brother Miller's report satisfactorily resolved those serious questions.

The only issue raised in your present letter arises out of the distribution of the remaining funds of Branch 3071 to active members in good standing pursuant to the resolution adopted by the members at the Branch meeting held on April 13, 2009. You contend that the wording of the resolution authorized retirees to share in the distribution. The record shows that former Branch 3071 President Kick, and numerous members who voted in favor of the resolution, disagree with your interpretation...

This single issue does not justify any intervention by the National Union at this time. Disputes over the meaning and intent of Branch resolutions must be resolved, in the first instance, at the Branch level. Your claim that the Branch officers who distributed the funds did not comply with the resolution would normally be raised in the form of an appeal to the Branch in accordance with the provisions of Article 11 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. Article 11, Section 1 provides that "An appeal may be taken to the president from the decision of any other officers of the Branch and to the Branch from any decisions of the president, which appeal must be taken at the meeting at which the subject appealed from is under consideration."

I recognize that Branch 3071 no longer exists, and that any appeal might now be considered untimely. However, insofar as this matter was held in abeyance pending Brother Miller's investigation, I am hereby granting you dispensation to initiate an appeal at the next regular meeting of Branch 4739.

I am providing a copy of this letter to the President and Secretary of Branch 4739 to alert them that this appeal, if made, should be entertained and decided by the Branch. I am also providing a copy of this letter to Brother Kick who will have the right to speak in defense of his actions should you initiate an appeal.

The decision of the Branch will be subject to appeal to the National Committee on Appeals under the provisions of Article 11, Section 2 of the *CGSFB*. This letter should not be read to express any view as to the merits of any such appeal.

Eagle, Idaho Branch 4745

(September 18, 2009): This is in reply to your letter, dated August 30, 2009, concerning an apparent attempt to arrange a merger of your

Branch 4745 with Branch 331. Your letter indicates that the President of Branch 331 presided over a meeting with members of your Branch to discuss and vote on such a merger, and that no prior notice of this meeting was given to either the President of your Branch or to you, as Steward.

While I appreciate your concerns, I am reluctant to comment specifically on your allegations. I can provide the following general guidance.

The *NALC Constitution* does not specify any particular procedures for initiating the merger process. Ultimately, two Branches seeking to merge must enter into a proposed merger agreement which must be voted on in accordance with the provisions of Article 2, Section 3 of the *NALC Constitution*. Under the scheme set out in Article 2, Section 3, before a vote on a proposed merger may be taken, the details of the proposed merger must be developed and included in the notice to the members. Such details include:

(c) the identity and geographic area covered by the Branch which will emerge from, or the name and number of the Branch which will survive,....;

(d) any agreement or agreements between the applying Branches concerning by-laws, dues structure, terms and identity of officers, disposition of assets, assumption of liabilities, if any, and proposed effective date of the merger or absorption shall be specified.

In the scenario set out in your letter there is no indication that a detailed merger resolution has been developed through prior discussions with Branch 331. Similarly, your letter suggests that the required notice was never provided to the members of your Branch, and there was no official Branch meeting. Accordingly, any vote taken at the informal meeting described in your letter would not have satisfied the requirements of Article 2, Section 3, and would not be binding on the Branch.

At the same time, there are no constitutional provisions restricting the right of any members of the NALC from discussing proposed mergers.

Palatine, Illinois Branch 4268

(September 21, 2009): This is in reply to your letter, dated August 11, 2009, requesting a ruling as to whether a proposed amendment to the Branch 4268 By-laws would be consistent with the *NALC Constitution*. The proposed By-law amendment would provide that "The three elected Board of Trustee members will also serve as the Branch Committee of Bills."

As you correctly note, Article 9, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches* specifically provides for the appointment by the Branch President of a committee of three members to whom all bills and claims are to be referred. I assume that this is the committee referenced by the proposed By-law amendment. If that is the case, the amendment would be in conflict with the *Constitution* because it eliminates the President's authority to appoint the members of the committee. To be sure, a Branch President may, at his/her discretion, appoint elected trustees to serve on the committee on bills and claims. But this choice cannot be mandated by the By-laws.

Hinesville, Georgia Branch 4944

(September 21, 2009): This is in reply to your letter, dated August 19, 2009, advising that Branch 4944 does not have an elected President or steward. You now ask for dispensation permitting the Branch to hold a special election.

In light of the facts set forth in your letter, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant Branch 4944 dispensation to conduct a special election for Branch President, and any other vacant

elective positions. The election should be held as expeditiously as possible.

I am declining your request to appoint an unelected member to serve as "Interim President." Since you are presently an incumbent officer, I authorize you to appoint an election committee to supervise all aspects of the election.

Pending the election of a new President, you should contact National Business Agent Judy Willoughby's office if the Branch requires any further assistance.

Lake Charles, Louisiana Branch 914

(September 22, 2009): This is in reply to your letter, dated September 21, 2009, requesting a ruling as to whether an active member may be a candidate for the position of Director of Retirees in Branch 914.

Please be advised that there are no provisions of the *NALC Constitution* which would prohibit an active member from being a candidate for this position. Article 6, Section 1 of the *NALC Constitution* does provide that the National Director of Retirees must be a retired member. However, this provision does not apply to Director of Retirees positions established by Branches.

I do not know whether the Branch By-laws contain any restrictions on eligibility for this position. You did not provide a copy of the By-laws with your letter. In any event, questions involving the interpretation or application of Branch By-laws must be resolved, in the first instance, at the Branch level.

Lake Charles, Louisiana Branch 914

(September 29, 2009): This is in reply to your recent letter, received by my office on September 21, 2009, requesting rulings on two issues pertaining to the ongoing election of officers of Branch 914.

Your first question is whether an active member may be a candidate for the position of Director of Retirees in Branch 914. As I explained in my letter to Branch President Monceaux, there are no provisions of the *NALC Constitution* which would prohibit an active member from being a candidate for this position. Although Article 6, Section 1 of the *NALC Constitution* does provide that the National Director of Retirees must be a retired member, this provision is applicable only to the National Union. The pertinent provision of the *Constitution for the Government of Subordinate and Federal Branches*, Article 5, Section 2, states that "All regular members shall be eligible to hold any office or position in the Branch," except for those who have held or applied for supervisory positions within the past two years.

Similarly, the Branch By-laws, which you forwarded with your letter, do not appear to contain any provisions restricting eligibility for the Director of Retirees position to retired members. Accordingly, all the information provided to me shows that the member in question is eligible to be a candidate for Director of Retirees of Branch 914.

Please note that this ruling does not address the question whether a By-law provision that did restrict eligibility for the position of Director of Retirees of a Branch to retired members would be constitutional. Any such ruling would depend on the specific language of the By-law and the particular fact circumstances presented.

You also ask whether two members who are candidates for Trustee positions were properly appointed to the Election Committee. Section 7.11 of the *NALC Regulations Governing Branch Election Procedures* expressly states that "No candidate for any office can be appointed to the election committee." Accordingly, any members of the committee who are candidates in a contested election should be replaced. By copy of this letter I am so notifying Branch President Monceaux.

William Bach, Santee, California

(October 1, 2009): This is in reply to your letter, dated September 22, 2009, concerning the anticipated move of the letter carriers employed at the La Mesa, CA main office to a building in Spring Valley, CA, which is within the jurisdiction of Branch 70. You ask whether the membership of these carriers will be transferred to Branch 70.

Past presidential rulings have established that where carriers in one branch are transferred to an existing postal installation within the jurisdiction of another branch, the transferred carriers must become members of the receiving branch. However, your letter suggests that the main office carriers may not be included within the Spring Valley installation, but may instead remain under the jurisdiction of the La Mesa postmaster. Since the facts are not now clear, it would be inappropriate for me to issue a ruling at the present time. We will examine the facts if and when the transfer is implemented.

Robert Milostan, Bloomington, Illinois

(October 2, 2009): This is in reply to your letter, dated September 22, 2009, requesting a ruling as to whether Branch 4268 President Oefelein properly ruled a motion made at the last Branch meeting out of order.

Please be advised that it would be entirely inappropriate for me to intervene in this matter at the present time. The proper procedure for challenging President Oefelein's ruling would have been to invoke the appeal procedure set forth in Article 11 of the *Constitution for the Government of Subordinate and Federal Branches*. The Branch's decision could subsequently be appealed to the National Committee on Appeals.

Santa Clara, California Branch 1427

(October 2, 2009): This is in reply to your letter, dated September 3, 2009, in which you ask several questions pertaining to the status of the Branch 1427 Auxiliary, which apparently has become defunct, and the procedures for establishing an Auxiliary local.

At the outset, I am referring your letter to Linda Kirby, National President of the Auxiliary. By copy of this letter I am requesting that Sister Kirby provide you with the specific information you require regarding the establishment or reactivation, as the case may be, of an Auxiliary local for Branch 1427.

Your letter also raises questions as to the relationship between an Auxiliary local and the NALC Branch with which it is associated. Please be advised that the NALC and the Auxiliary are separate organizations. Membership in the Auxiliary does not confer on an individual any membership rights in the NALC or the Branch. Accordingly, Auxiliary members do not have any right under the *NALC Constitution* to attend Branch meetings or to speak. However, Branches, at their discretion, may permit Auxiliary members to attend membership meetings as guests and may permit Auxiliary members to speak. Since the fundamental purpose of the Auxiliary is to support the NALC and its Branches, we expect that Branches will establish cooperative relationships with their Auxiliary locals. Again, I invite Sister Kirby to offer her comments on the role of an Auxiliary local and to suggest activities for the local.

Illinois State Association of Letter Carriers

(October 2, 2009): This is in reply to your letter, dated September 28, 2009, requesting a ruling as to whether a member has a right to participate in a leadership training program established by the Illinois State Association of Letter Carriers with Branches 1870 and 219. According to your letter,

you have restricted participation to members who have signed up for the Gimme-5, e-Activist and Carrier Corp programs. However, one member who does not satisfy these criteria, apparently claims that he has a right to attend the program.

As National President I can address the application of the *NALC Constitution* to this situation. It is readily apparent that the training classes are not regular or special meetings of the Branches. Accordingly, the Branches and the State Association may establish reasonable criteria for attendees. A member who does not meet these criteria may be excluded from participation.

The requirements of participation in Gimme-5, e-Activist, and Carrier Corp are certainly reasonable. Enforcement of these requirements would not violate the *Constitution*.

Shaw, Mississippi Branch 2896

(October 5, 2009): This is in reply to your recent letter, received by my office on September 21, 2009, regarding the situation in Branch 2896.

At the outset, please be assured that I fully appreciate all your efforts on behalf of the Branch and your obvious interest in improving its operations. However, insofar as I only have your side of the story before me, it really would not be appropriate for me to address the detailed allegations set forth in your letter.

Nonetheless, I agree that some action is warranted. The Branch must enact a set of By-laws, which must be approved by the National Committee of Laws. Your letter also suggests that there are some genuine issues of Branch governance that should be resolved.

Accordingly, I am referring your letter to National Business Agent Lew Drass. By copy of this letter, I am requesting that he designate a representative from his office to visit your Branch and discuss the various issues raised by your letter with the interested persons and recommend possible solutions. Brother Drass is also authorized to follow-up with any action he deems appropriate.

Green Bay, Wisconsin Branch 619

(October 6, 2009): This is in reply to your letter, dated September 28, 2009, concerning the reassignment of three letter carriers from the Combined Locks, WI Post Office to the Kaukauna, WI Post Office. According to your letter, the Combined Locks Post Office is within the jurisdiction of Branch 822; Kaukauna is within the jurisdiction of your Branch 619. You now ask whether the merger provisions of Article 2, Sections 2 and 3(e) are applicable to this situation.

Past presidential rulings have established that where carriers in one branch are transferred to an existing postal installation within the jurisdiction of another branch, the transferred carriers must become members of the receiving branch. The facts set forth in your letter do not provide any basis for deviating from this practice. In particular, your letter indicates that the three carriers in question have been transferred to Kaukauna, where they will fall under the jurisdiction of the Kaukauna Postmaster, while the Combined Locks Post Office continues to exist under the jurisdiction of its own Postmaster. There is no indication in your letter that the Postal Service has "combine[d] one or more offices into one with a single Postmaster," as provided by Article 2, Section 2. Accordingly, assuming that the facts are as stated, Article 2, Sections 2 and 3(e) are not applicable to this situation.

Rich Anderson, Janesville, Wisconsin

(October 6, 2009): This is in reply to your letter, dated September 21, 2009, requesting dispensation suspending a provision of the Branch 572 By-

laws that requires that convention delegates attend a minimum number of Branch meetings in order to receive Branch funds. According to your letter, you intend to seek election as a Branch 572 delegate, but you were unable to attend the requisite number of Branch meetings solely as a result of your conflicting responsibilities while serving as a Regional Administrative Assistant, and, subsequently, engaging in arbitration work for the NALC.

At the outset, let me assure you that we fully appreciate your service to the NALC. I recognize that it does seem unfair that you would be penalized because of your union responsibilities.

However, please understand that the ruling you seek would require the Branch to make a payment which, strictly speaking, it has not authorized. Insofar as you would be the recipient of this payment, it would be inappropriate for me to issue such a ruling at your request.

However, I would favorably consider a request from the Branch for dispensation allowing the Branch to set aside its meeting attendance requirement so that the Branch may vote to authorize the requested payments.

I trust that the foregoing addresses your concerns. Please note that I am sending a copy of this letter to Branch 572 President Jeffrey Wagner.

Montgomery, Alabama Branch 106

(October 8, 2009): This is in reply to your letter, dated October 1, 2009, requesting special dispensation on behalf of Branch 106, to reschedule the nominations and election of delegates to the National Convention, and one trustee position. According to your letter, the Branch failed to provide timely notice to the members that nominations were to take place in October and November. Under the revised schedule that you now request, the Branch would conduct nominations for the positions in question at its meetings in November and December, 2009. The election would be conducted at the Branch's first scheduled meeting in January, 2010.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. The Branch must ensure that timely notice of the new dates for nominations and the election is provided by mail to each member of the Branch. In addition, please note that this dispensation extends only to the upcoming nomination and election of convention delegates and trustee. In the future, the Branch must adhere to the schedule for nominations and election of all officers and delegates as provided by its By-laws.

Belleville, Illinois Branch 155

(October 9, 2009): This is in reply to your letter, dated October 8, 2009, concerning the election of officers in Branch 155. According to your letter, the Branch will be unable to conduct a mail ballot election with a full 20 day balloting period because the Branch changed the date of its November meeting from November 11 to November 4 to avoid a conflict with Veterans Day.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the dispensation requested in your proposed second option. The Branch may extend the date of the election to its meeting on December 9. The Branch must provide timely notice of this change to each member by mail, either by means of the newsletter or by a separate notice.

Fort Myers, Florida Branch 2072

(October 9, 2009): This is in reply to your letter, dated October 6, 2009, requesting special dispensation on behalf of Branch 2072, to reschedule the

nominations and election of delegates to the National Convention. According to your letter, the Branch inadvertently failed to provide timely notice to the members that nominations were to take place in September and October, as provided in its By-laws. Under the revised schedule that you now request, the Branch would conduct nominations for delegates at its meetings in October and November, 2009. The election would be conducted at the November meeting.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. The Branch must ensure that timely notice of the dates for nominations and the election is provided by mail to each member of the Branch, by means of either the newsletter or a separately mailed notice. In addition, please note that this dispensation extends only to the upcoming nomination and election of convention delegates. In the future, the Branch must adhere to the schedule for nominations and election of all officers and delegates as provided by its By-laws.

Washington, District of Columbia Branch 142

(October 16, 2009): This is in reply to your letter, dated October 8, 2009, requesting dispensation permitting Branch 142 to conduct both its nominations and election of National and State delegates at its November meeting. According to your letter, the notice of nominations and elections was not published in the *Postal Record* in sufficient time to satisfy the requirement, set forth in Article 5, Section 4 of the *NALC Constitution*, that the notice be mailed at least 45 days before the election.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. However, the notice to be published in the *Postal Record* must be mailed at least 15 days prior to the election which is the minimum requirement provided by federal law. In addition, please understand that this dispensation extends only to the 2009 election of delegates in Branch 142. In the future, the Branch must adhere to all deadlines provided by the *NALC Constitution* and the *Regulations Governing Branch Election Procedures*.

Mark Daoud, Pacific Grove, California

(October 16, 2009): This is in reply to your recent letter, which was faxed to my office on October 13, 2009, concerning the termination of your tenure as President of Branch 1184.

While I appreciate your feelings, I must advise that the actions taken in your case were clearly necessary and correct. The *NALC Constitution* requires that a retiring member execute a Form 1189 at the time of retirement in order to maintain his/her status as a regular member of the NALC. See Article 2, Section 1(e). It is undisputed that you did not do so. Accordingly, your membership in the NALC lapsed following your retirement. A non-member cannot legally serve as a Branch officer, and cannot sign Branch checks.

The *Constitution* does not permit former members to rejoin the NALC after retirement. On rare occasions, NALC presidents have granted dispensation permitting such former members to rejoin based on special circumstances indicating that the individual was not at fault for failing to execute the Form 1189. I would be willing to entertain a written request from you for dispensation to rejoin the NALC. Such a request should include all factors which support your position. While I cannot commit to deciding the matter in your favor, I can assure you that I will give a request for dispensation full and fair consideration.

Richard Bartelow, Pacific Grove, California

(October 16, 2009): This is in reply to your letter, dated October 9, 2009, concerning the recent disqualification of Mark Daoud to continue to serve as President of Branch 1184 following the discovery that he did not maintain his membership in the NALC following his retirement from the Postal Service. Specifically, your letter requests that I authorize a member of the Branch to co-sign Branch checks in the absence of a Branch President.

Please be advised that I am denying your request. As reflected in the enclosed letter to Region 1 Regional Administrative Assistant Bryant Almario, I am instead appointing Brother Almario as temporary administrator of the Branch pending the election of a new President. Brother Almario shall be authorized to co-sign Branch checks.

Bryant Almario, Regional Administrative Assistant

(October 16, 2009): This will confirm that in accordance with my authority under Article 9 of the *NALC Constitution*, I am appointing you to serve as temporary administrator of Branch 1184 pending the election of a new President of the Branch.

Your responsibilities will encompass working with the Branch treasurer to administer the affairs of the Branch. You shall have the authority to co-sign checks. In addition, I am specifically designating you to conduct a special election for a new Branch President as expeditiously as possible. You may take any other actions that you deem appropriate to ensure that the Branch is in compliance with the *NALC Constitution* and applicable legal requirements.

The above described appointment shall terminate upon the installation of a new Branch President.

Sandra E. Snyder, Weatherly, Pennsylvania and William J. Lucini, National Business Agent

(October 16, 2009): This is in reply to your recent letters inquiring whether Sister Snyder may be considered the current NALC steward for Branch 2248, Weatherly, PA, for purposes of the application of the superseniority provisions of the National Agreement (Article 17, Section 3) in the event of excessing. After carefully reviewing the relevant documentation, I have concluded that the answer to this question is no.

This ruling is not based on Sister Snyder's apparent failure to certify to the Postal Service her status as steward as required by Article 17, Section 2 of the Agreement. Rather, I have focused on whether she was elected or appointed to the steward position in a manner which is consistent with the *NALC Constitution*.

Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*, prohibits members from serving as branch officers or stewards if they have held or occupied a supervisory position in the Postal Service for a period of two years following termination of supervisory status. It is undisputed that Sister Snyder accepted the position of Officer in Charge (OIC) of the Freeland, PA Post Office. The Form 1723 covering this assignment indicates that her appointment commenced on February 24, 2006 and ended June 30, 2006. Accordingly, Sister Snyder was ineligible to serve as a Branch officer or steward from February 24, 2006 until two years after termination of the OIC assignment, i.e., June 30, 2008.

There is no evidence that anything occurred after June 30, 2008 which would have authorized Sister Snyder to act as a steward. The Branch did not conduct an election of President or steward.

Since there is no elected Branch President, there is no one who could have appointed her to act as steward. Even if Sister Snyder had properly been elected or appointed as steward before the commencement of her OIC assignment (an issue upon which I make no final decision), such election or appointment would have no continuing effect after she became ineligible to act as a steward as a result of the OIC assignment.

In light of the foregoing, I am directing Brother Lucini to arrange for an election of a new President in Branch 2248. As provided by Article 6, Section 1 of the *CGSFB*, the new President shall be the Chief Steward of the Branch. That individual should certify to the Postal Service that he/she (or his/her appointee) is the Branch steward for purposes of Article 17 of the Agreement. In addition, the new President should notify the NALC Membership Department of his/her election.

In closing, please be assured that I fully appreciate Sister Snyder's service to the Union over the past ten years. However, as President of the NALC, I must enforce the requirements of our *Constitution*.

Gary Farmer, Deatsville, Alabama

(October 20, 2009): This is in reply to your letter, dated October 9, 2009, inquiring whether you have been disqualified from being a candidate for office in Branch 106 because you have been detailed to a Driver Safety Instructor position.

The answer to your question turns on whether your duties as a Driver Safety Instructor constitute supervisory work for purposes of Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. Article 5, Section 2 prohibits members from serving as branch officers or stewards if they have held or occupied a supervisory position in the Postal Service for a period of two years following termination of supervisory status.

Generally speaking, a position is considered supervisory, within the meaning of Article 5, Section 2, if the person holding that position would have the authority to discipline bargaining unit employees or otherwise supervise them in the performance of their duties. The information provided in your letter does not indicate that your Driver Safety Instructor position carries such authority. Assuming that the information in your letter accurately reflects the responsibilities of the position, you would not be disqualified from being a candidate for Branch office.

Albuquerque, New Mexico Branch 504

(October 20, 2009): This is in reply to your letter, dated October 13, 2009, inquiring whether Brother William Roth has been disqualified from serving as a Branch 504 delegate to the National Convention by virtue of his having served in a supervisory position. According to the information provided with your letter, Brother Roth accepted a one week detail as Acting Supervisor Customer Service.

While I appreciate your positive comments about Brother Roth, it does appear that he is no longer eligible to serve as a delegate. As you correctly observe, Article 5, Section 2 of the *NALC Constitution* prohibits members from serving as convention delegates if they have held or occupied a supervisory position in the Postal Service for a period of two years following termination of supervisory status. There are no exemptions from this rule.

I do note that, according to your letter, Brother Roth was detailed to an office that has no city letter carriers. Prior rulings have recognized that Article 5, Section 2 may not be applicable in situations where a member is detailed to a position with a supervisory title if the member has no supervisory

authority over any bargaining unit employees. However, it would not be sufficient that there were no city letter carriers. If the member had supervisory authority over any rural carriers, or clerks, or any other craft employee, the prohibition set forth in Article 5, Section 2 would still apply.

Michael Caref, Chicago, Illinois

(October 20, 2009): This is in reply to your letter, dated October 14, 2009, requesting a ruling as to the decision of the Branch 11 Election Committee to list the candidates on the ballot in the upcoming election of officers by slate, with the slates ordered in accordance with numbers drawn from a hat. According to your letter, this decision is inconsistent with a Branch By-law requiring that candidates be listed alphabetically.

While I appreciate your position, I must advise that it would be entirely inappropriate for me to intervene in this matter for two reasons. First, disputes over the interpretation or application of Branch By-laws must be resolved, in the first instance, at the Branch level. Accordingly, I express no opinion as to whether your reading of the By-law is correct. Second, objections to the conduct of a Branch election are to be raised in the form of a post-election appeal in accordance with the procedure set forth in Section 21 of the *NALC Regulations Governing Branch Election Procedures*. Your argument may be advanced in the form of such an appeal. Again, I express no view as to the merit of any such appeal.

Kim Hizer, Kernersville, North Carolina

(October 26, 2009): This is in reply to your letter, dated October 22, 2009, asking for dispensation concerning the cancellation of your membership by Branch 630 for non-payment of dues. Specifically, you request permission to maintain your membership in the NALC, notwithstanding your current dues delinquency, based on a variety of personal issues that you are presently facing.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. You shall have sixty (60) days from the date of this letter to pay back the outstanding balance of \$277.01 or to work out a payment plan with NALC Branch 630. During this time period you will remain on the rolls as a member of the NALC, and your membership in the NALC Health Benefit Plan will remain in effect. NALC Secretary-Treasurer Jane Broendel and Director of Health Benefits Timothy O'Malley are taking the necessary steps to rescind the October 19, 2009 letters to the USPS HR Shared Services Center and to the Plan that would have terminated your membership and dues deductions. You will also be responsible to repay the Branch any dues missed prior to Shared Services Center reactivating dues withholding.

By copy of this letter, I am directing the officers of Branch 630 to cooperate in working out with you a fair and equitable repayment plan which will allow you to maintain your membership in the NALC.

Two Rivers, Wisconsin Branch 1345 and Manitowoc, Wisconsin Branch 490

(October 26, 2009): This is in reply to your recent letters concerning the transfer of letter carriers from the Two Rivers, WI Post Office, who are presently members of Branch 1345, to the Manitowoc, WI Post Office, which is within the jurisdiction of Branch 490. According to your letters, the majority of the letter carriers in both branches do not wish to merge.

Please be advised that I cannot provide a final ruling at this time. The NALC Contract Administra-

tion Unit is presently reviewing how Articles 12 and 30 of the National Agreement are to be applied to this situation, along with similar consolidations taking place around the country. Pending the completion of that review, Branches 490 and 1345 shall remain independent Branches.

We will advise you of the final determination in this matter as soon as possible.

Wichita, Kansas Branch 201

(October 26, 2009): This is in reply to your recent letter, received by my office on October 22, 2009. At the suggestion of Executive Vice President Gary Mullins, you request a presidential ruling to determine whether a new member who executed a Form 1187 after nominations is eligible to vote in the subsequent Branch 201 election of officers.

The answer to your question is yes. As prior rulings have repeatedly recognized, Article 2, Section 1 of the *NALC Constitution* makes membership in the NALC available to all non-supervisory employees in the Postal Career Service upon execution of a Form 1187. Therefore, when an applicant has executed a Form 1187, he/she has done all that is required by the *Constitution* to attain membership status.

Consistent with the foregoing, prior rulings have also established that if a qualified applicant has signed a Form 1187 before the date of an election, the Branch may permit such a member to vote. Unlike the NALC National *Constitution* (see Article 6, Section 8), the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* does not provide for a cut-off date to determine eligibility to vote. Article 5, Section 3 of the *CGSFB* simply provides that “[a]ll regular members shall be entitled to one vote for each office or position to be filled.”

Accordingly, a new member is eligible to vote in a Branch election immediately upon execution of the Form 1187.

Warwick, Rhode Island Branch 3166

(October 27, 2009): This is in reply to your letter, dated October 19, 2009, inquiring whether Transitional Employee members are entitled to vote in Branch elections and to hold any office in the Branch.

The answer to your question is yes. Transitional employees who join the NALC are regular members. They have the right to vote in Branch elections and may be elected or appointed to any office or position in the Branch.

Mark Daoud, Pacific Grove, California

(October 27, 2009): This is in reply to your letter, faxed to my office on October 20, requesting that I issue a presidential dispensation reinstating you as President of Branch 1184. Your request follows my October 16 ruling confirming that your membership in the NALC, and eligibility to be an officer of Branch 1184, had lapsed because you failed to submit a Form 1189 to continue your dues deductions following your retirement from the Postal Service. In support of your present application, you note that you never received a Form 1189 from the NALC because the NALC did not have your correct mailing address. You also point out that you had asked that all deductions continue from your annuity check and that you never noticed that you were not being assessed union dues because your annuity is deposited directly to your bank account.

At the outset, I cannot reinstate you as Branch President. As I clearly stated in my letter of October 16, because your membership had lapsed, you were not legally entitled to hold any office in the Union. However, I am persuaded by your current letter that you should be given an opportunity to

restore your membership in the NALC.

Accordingly, in light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant dispensation allowing you to rejoin the NALC as a member. An 1189 has already been sent to you. You will be required to pay all dues that accrued during the period when your membership lapsed. By copy of this letter, I am instructing Secretary-Treasurer Jane Broendel and the NALC Membership Department to calculate the back dues and to make all necessary arrangements for payment. Once this process has been completed you will be eligible to be a candidate for Branch President and to assume that office if you are elected.

Massachusetts North Shore Branch 33

(October 28, 2009): This is in reply to your letter, dated October 27, 2009, concerning a problem that has arisen in connection with the Branch 33 election of officers. According to your letter, the Branch By-laws provide that mailing labels will be given to any nominee who request them in is/her letter of acceptance. Apparently, neither of the two candidates for Vice President made such a request in their acceptance letters. However, one candidate was subsequently given a set of mailing labels for campaign material. You now ask two questions: (1) whether the Branch violated its By-laws; and (2) whether the Branch may vote to set aside the By-laws for the purpose of providing mailing labels to the other candidate.

Please be advised that it would be inappropriate for me to rule on the first question. As previous presidential rulings have consistently recognized, disputes over the interpretation or application of Branch by-laws must be resolved, in the first instance, at the Branch level.

As to your second question, past rulings have consistently held that the members of a Branch are bound by its By-laws and do not have the authority to suspend the By-laws by a simple vote at a Branch meeting. However, I recognize the exigent circumstances presented. As President of the NALC, I have the “power to grant dispensations when, in [my] judgement, the good of the Union may require it.” (*NALC Constitution*, Article 9, Section 1.) I have concluded that such dispensation is warranted here. Accordingly, I am granting Branch 33 retroactive dispensation to suspend its By-laws so that the Branch can provide the two candidates for Vice President equal access to Branch mailing labels.

Dennis Menendez, Herbert King, Darrell DeVane, Clinton, North Carolina

(October 27, 2009): This is in reply to your letter, dated October 8, 2009, regarding the apparent resignation of Branch 3970 President Eddie Monk. According to your letter, Brother Monk now wishes to rescind his resignation. You request a ruling as to whether he may do so.

Past presidential rulings have recognized that once a branch officer's resignation from office has become effective, he/she may not reclaim that office. However, in some cases there is a factual dispute as to whether the officer did submit an effective resignation, or whether he/she properly withdrew the resignation before it became effective. The rulings have consistently held that such disputes must be resolved, in the first instance, at the Branch level. The issue may be voted on by the members. The Branch's decision would then be subject to appeal to the National Committee of Appeals in accordance with the procedures set forth in Article 11 of the *Constitution for the Government of Subordinate and Federal Branches*.

In light of the foregoing, I am declining your request to issue a final ruling declaring whether or not Brother Monk resigned the presidency of the Branch. Moreover, since I only have your side of the story before me, it would be inappropriate for me to comment on the allegations in your letter that Brother Monk has failed to fulfill the duties of Branch President. You are, of course, free to pursue the charges against him that were referenced in your letter.

Finally, you ask that I consider merging your Branch with another. Please be advised that the procedure governing Branch mergers, set forth in Article 2, Section 3 of the *NALC Constitution*, provides for voluntary mergers which are approved by vote of the membership of both Branches. You may contact National Business Agent Judy Willoughby for advice as to whether there are any Branches in your area that might be interested in entertaining merger discussions with Branch 3970.

Cincinnati, Ohio Branch 43

(October 28, 2009): This is in reply to your letter, dated October 17, 2009, in which you complain about an editorial published in the Branch 43 newsletter. The editorial opposed a proposed By-law amendment which you support. Your letter argues that the editorial may have unfairly biased the vote on the amendment which is to take place at the November Branch meeting.

While I appreciate your concerns, I must advise that there is no basis for any intervention by the National Union at this time. Disputes over the editorial content of branch newsletters should normally be resolved, in the first instance, at the Branch level.

Of course, if you are dissatisfied with the vote at the November meeting, you may initiate an appeal in accordance with the procedures set forth in Article 11 of the *Constitution for the Government of Subordinate and Federal Branches*. I express no view as to the merits of any such appeal.

Western Massachusetts Branch 46

(October 28, 2009): This is in reply to your letter, dated October 23, 2009, requesting a ruling as to whether Sister Donna Ginga properly submitted her acceptance of nomination for the office of Upper Valley Vice President in Branch 46 after the close of the nominations meeting.

According to your letter, Sister Ginga was unable to attend the meeting due to a family emergency. She was nominated at the meeting, and submitted her acceptance the following morning by email and regular mail. However, you assert that her acceptance is contrary to a provision of the Branch 46 By-laws which requires that a written acceptance be submitted prior to the nominations meeting.

At the outset, I express no view as to the interpretation of the Branch 46 By-laws. Disputes over the interpretation and application of Branch By-laws must be resolved, in the first instance, at the Branch level. I can provide guidance as to the application of the *NALC Regulations Governing Branch Election Procedures (RGBEP)* and federal law which would supercede the By-laws in the event of a conflict.

As you correctly note, Section 6.31(d) of the *RGBEP* provides: “If a nominee is not present at the [nominating] meeting, written acceptance is permissible.” This regulation reflects the requirements of federal law. The Department of Labor's (DOL) regulations covering union elections state the following:

A requirement that members must be present at the nomination meeting in order to be nominated for office might be considered unreasonable in certain circumstances; for example, in the absence of a provision for an alternative method under which

a member who is unavoidably absent from the nomination meeting may be nominated, such a restriction might be regarded as inconsistent with the requirement in section 401(e) [of the Labor-Management Reporting and Disclosure Act] that there be a reasonable opportunity to nominate and to be a candidate. 29 C.F.R. Section 452.59.

Neither the DOL regulations nor the *RGBEP* set a time frame for acceptance of nominations after the nominations meeting is closed. However, previous presidential rulings have held that branches may accept a nomination submitted after the meeting based on a claim by the member that he/she was absent for unanticipated reasons.

It is the responsibility of the Branch to apply the foregoing principles to the facts presented.

The decision to accept or reject the nomination in question ultimately may be appealed in accordance with the procedures set forth in Section 21 of the *RGBEP*.

Long Island Merged, New York Branch 6000

(October 28, 2009): This is in reply to your letter, dated October 21, 2009, requesting a ruling as to whether a 204b member has the right to vote in an election for shop steward. In particular, you raise the question whether a member who works a split shift—first as a 204b and the balance of the day as a letter carrier—may be allowed to vote.

As you correctly observe, the membership rights of 204b members are addressed by Article 2, Section 1(c) of the *NALC Constitution*, providing as follows:

“[P]resent members who have left the Postal Service, or have been temporarily or permanently promoted to supervisory status, may retain their membership but shall be members only for the purpose of membership in the NALC Life Insurance Plan and/or the NALC Health Benefit Plan. These members shall have no voice or vote in any of the affairs of such Branch, except they shall have a voice and vote at the Branch level upon matters appertaining to the NALC Life Insurance Plan, and/or the NALC Health Benefit Plan, if they are a member thereof, and on any proposition to raise dues. These members are not eligible to be candidates for any State Association, Branch, or National office, or delegates to any conventions. They may attend only that part of the meeting which concerns them, such as change of dues structure and information concerning Health or Life Insurance[.]”

Previous rulings interpreting this provision have established that a 204b may not exercise membership rights or otherwise participate in official Branch activities while he or she is acting in a supervisory status (except for the right to participate and vote in any part of a Branch meeting concerning NALC insurance programs and/or the NALC Health Benefit Plan, if he/she is a member thereof, or the raising of Branch dues). However, the rulings have also consistently recognized that when the member returns to a bargaining unit assignment, he or she immediately regains full membership rights, except for the right to be a candidate for Branch office.

In the situation you describe, if the member were to complete his/her work as a 204b, and clock back onto a bargaining unit assignment, the member would at that point have the right to vote in the steward election.

Mack Julion Sr., Regional Administrative Assistant

(October 28, 2009): This is in reply to your letter, dated October 7, 2009, requesting that the NALC assume supervisory oversight of the Branch 11 election of officers, based on allegations of misconduct against the incumbent President.

While I appreciate your concerns, I must advise that there is no basis for your request. Section 21 of the *NALC Regulations Governing Branch Election Procedures* clearly provides that objections to the conduct of a branch election are to be raised in the form of a post-election appeal.

Nor is there any basis for oversight by the Department of Labor. Under the applicable federal law, the Department investigates post-election complaints and may supervise a re-run election if it finds that violations occurred which may have affected the outcome of the election.

Please understand that this letter addresses only the procedural issues that you raised. I express no view at this time as to the substance of your allegations of misconduct.

Bowie, Maryland Branch 4819

(October 30, 2009): This is in reply to your email, received by my office on October 28, 2009 inquiring whether a member may accept nomination for both President and Vice President of Branch 4819.

The answer to your question is no. Section 6.5 of the *NALC Regulations Governing Branch Election Procedures (RGBEP)* specifically states: “No person shall accept nomination for more than one office.”

I would strongly recommend that you obtain a copy of the *RGBEP* booklet, if you do not already have one, to use as a guide for the conduct of the election. The booklet may be obtained from the NALC Supply Department.

Janesville, Wisconsin Branch 572

(November 5, 2009): This is in reply to your letter, dated October 29, 2009, which follows up on my recent letter to Brother Rich Anderson.

As suggested in my letter, Branch 572 is requesting dispensation to suspend a provision of its By-laws that requires that convention delegates attend a minimum number of Branch meetings in order to receive Branch funds. The purpose of this request is to allow Brother Anderson to be a paid delegate from Branch 572. He was unable to attend the requisite number of Branch meetings solely as a result of conflicting responsibilities while serving as a Regional Administrative Assistant, and, subsequently, engaging in arbitration work for the NALC. According to your letter, the Branch voted unanimously to support this request for dispensation.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation.

Lawrence, Massachusetts Branch 212

(November 10, 2009): This is in reply to your letter, which was faxed to my office on November 4, 2009, concerning a proposal that Branch 212 contribute \$8,500 to the cost of running a golf tournament which is intended to raise funds for the MDA. According to your letter, the Branch is scheduled to vote on this proposal at its meeting on November 12.

At the outset, let me assure you that I fully appreciate your legitimate concern that the amount of money is excessive in light of how few Branch members actually participate in the tournament. However, I must advise that there is no basis for the National Union to intervene in this dispute at the present time. Article 12, Section 3 of the *Constitution for the Government of Subordinate and Federal Branches* specifically states that “All funds shall be devoted to such uses as the Branch may determine...when ordered by a majority vote of the members present and voting at a regular meeting.” Accordingly, the vote on the proposal does appear to be consistent with the *Constitution*. Moreover,

your letter does not suggest that the proposed contribution would conflict with any provision of the current Branch By-laws.

You should, of course, feel free to encourage as many members as possible to attend the meeting. The Branch may also consider enacting a By-law amendment which would set appropriate limits on such expenditures of Branch funds in the future.

Center Line, Michigan Branch 4374

(November 10, 2009): This is in reply to your letter, dated November 4, 2009, requesting dispensation to reschedule the nomination of delegates to the 2010 National Convention from Branch 4374. According to your letter, this request is necessitated by the Branch’s inadvertent failure to submit a timely notice of nominations to the *Postal Record*. The Branch has since voted to reschedule the nominations for its January meeting, and a notice to that effect has been published in the November issue of the *Postal Record*.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. Since the Branch has already advised the members that nominations will be in January, I am relieving the Branch of the need to comply with the December deadline for selection of delegates provided by Article 5, Section 4 of the *NALC Constitution*.

Please understand that this dispensation applies only to the election of delegates to the 2010 National Convention. In the future, the Branch must comply with the schedule for nomination and election of delegates provided in its By-laws.

Reno, Nevada Branch 709

(November 12, 2009): This is in reply to your letter, dated November 6, 2009, requesting a ruling as to the eligibility of members who may not be in good standing to be candidates for office or to vote in a Branch election. According to your letter, some members of Branch 709 have had no dues deductions, and the Branch has not collected dues directly from them.

Numerous presidential rulings have established guidelines on the issues raised in your letter. These guidelines may be summarized as follows.

Whether or not an individual remains eligible to run for office or vote turns on whether the individual has forfeited his/her membership under the provisions of Article 7, Section 4 of the *Constitution for the Government of Subordinate and Federal Branches (CFGSFB)*. Under Article 7, Section 4, any member who fails to pay monthly dues for 30 days must forfeit his/her membership. Article 7, Section 4 permits Branches to extend the 30 day grace period for not more than an additional 60 days “for good and sufficient reasons, under reasonable rules uniformly applied.” I do not have any information as to whether Branch 709 has ever acted to extend the 30 day grace period. In any event, at the end of the grace period, if the member is still delinquent, he/she must forfeit his or her membership.

An additional exception to the forfeiture rule is provided by Article 7, Section 3(b) of the CFGSFB. It states that a Branch may exempt any member from dues payments under reasonable rules uniformly applied for a stated period of time. Thus, for example, a Branch could adopt a policy providing that members will be exempt from dues payments while on workers compensation or leave without pay. Your letter does not clearly indicate whether or not Branch 709 has ever implemented such an exemption.

Prior to the time of forfeiture, the member retains full membership rights, including the right to vote or run for office, notwithstanding the dues delinquency. But when the point of forfeiture is reached, the member loses all rights of Branch,

State Association and National membership. This would include the right to be a candidate or to vote in a Branch election of officers.

Where Article 7, Section 4 applies—i.e., cases in which a member fails to pay a fine or an assessment or monthly dues within 30 days or an extended grace period—the forfeiture of membership is automatic. It would not be necessary for the Branch to initiate charges or provide formal notice to the individual. While the Branch is expected to notify NALC Headquarters in writing of any forfeiture and the reasons for it, the mere fact that the Branch has failed to notify NALC Headquarters of the changed status of a member does not, in and of itself, confer membership rights on an individual who has forfeited membership rights by failing to pay dues.

Finally, it is the responsibility of the Branch to apply the above guidelines to individual situations based on the particular fact circumstances.

Montgomery, Alabama Branch 106

(November 13, 2009): This is in reply to your letter, dated November 6, 2009, requesting dispensation to reschedule the nomination of delegates to the Alabama State Convention from Branch 106. According to your letter, this request is necessitated by the Branch's inadvertent failure to submit a timely notice of nominations and election. You now request permission to reschedule the nominations for the regularly scheduled meetings in December and January, and to reschedule the election for the February meeting.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation.

Please understand that this dispensation applies only to the current election of state delegates. In the future, the Branch must comply with the schedule for nomination and election of delegates provided in its By-laws.

Ft. Lauderdale, Florida Branch 2550

(November 13, 2009): This is in reply to your letter, dated November 6, 2009, concerning an issue that has arisen in connection with the ongoing election of delegates to the 2010 National Convention from Branch 2550. According to your letter, some members have objected to the requirement that they sign the reply envelope for their ballots on the grounds that this may create a risk of identity theft.

The requirement to sign the reply envelope is a traditional safeguard which is intended to protect the integrity of the election. This requirement has been embodied in the *NALC Regulations Governing Branch Election Procedures (RGBEP)* since at least 1982. I am not aware of a single instance of identity theft arising from the signature requirement since that time.

In any event, previous rulings have recognized that a ballot contained in an unsigned envelope may be counted if there is sufficient information identifying the person as eligible to vote. Thus, the Branch does have some flexibility to develop an alternative procedure by which the concerned members may submit their ballots, so long as the authenticity of the ballot can be verified.

In addition, in March, 2008 the NALC Executive Council approved amendments to the *RGBEP* which allow Branches to use alternative identifiers on the outer envelope rather than signatures. This change is reflected in *RGBEP* Section 14.3. The current booklet, which contains this amendment, may be ordered from the NALC Supply Department. The Branch may consider employing technological means to place on the reply envelope a unique identifier to verify eligibility of the voter in future elections.

Tony Porciello, Peabody, Massachusetts

(November 17, 2009): Your email, dated November 10, 2009, has been referred to me for reply.

The limited facts described in your email do not indicate that a violation of election law or regulations has occurred.

I caution, however, that this letter should not be read as a formal ruling. Any member has the right to initiate a post-election appeal in accordance with the procedures set forth in Section 21 of the *NALC Regulations Governing Branch Election Procedures*.

Sharon Meador, Cleburne, Texas

(November 17, 2009): This is in reply to your letter, dated November 9, 2009, requesting dispensation permitting Branch 752 to conduct a special election of officers. According to your letter, the President of the Branch has resigned and the Vice President has agreed to run the Branch only until a new election can be conducted. In addition, you advise that the Branch has no By-laws and a new slate of officers will be responsible for drafting By-laws.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. By copy of this letter, I am directing National Business Agent Kathy Baldwin to provide whatever advice or assistance the Branch may need in conducting the election and drafting new By-laws.

Idaho State Association of Letter Carriers

(November 17, 2009): Your letter to NALC Assistant Secretary-Treasurer Nicole Rhine, dated October 7, 2009, has been referred to me for reply insofar as your letter requests an interpretation of the *NALC Constitution*. Specifically, you ask whether the procedural requirements for amendment of Branch By-laws apply to amendments of State Association By-laws.

The answer to your question is controlled by Article 15 of the *NALC Constitution*. The first sentence of Article 15 states that "Each Branch or State Association may make, alter, or rescind such by-laws, rules, and regulations from time to time as may be deemed most expedient, provided they do not in any way conflict with this *Constitution*." The second sentence of Article 15 then sets forth certain procedural requirements—including advance notice to the members—for amendments to "By-laws of branches" (emphasis supplied). This second sentence does not reference amendments of State Association By-laws.

Accordingly, in direct response to your question, the procedural steps for providing advance notice to Branch members for amending Branch By-laws do not apply to amendments of State Association By-laws.

Similarly, it is not necessary for State Associations to use the form on the NALC web site when submitting By-law amendments to the NALC Committee of Laws. The State Association may simply submit the amendments with a cover letter stating when and where the amendment was passed.

Lincoln Park, Michigan Branch 758

(November 19, 2009): This is in reply to your recent letter, received by my office on November 12, 2009, requesting interpretive rulings pertaining to a claim by some members of Branch 758 that Branch President Bzura has a fiduciary obligation to reimburse the Branch for the cost of air fare to the 2008 National Convention in Boston. Your letter indicates that Brother Bzura canceled his appointment as a delegate to the Convention after

this expense had been incurred by the Branch.

Your first question is whether Brother Bzura has a fiduciary obligation to reimburse the Branch. As a general proposition, federal law imposes on union officers fiduciary obligations with respect to the union's funds. However, it would be entirely inappropriate for me to resolve the issue whether Brother Bzura is obliged to reimburse the Branch the cost of the airfare, based on the limited information contained in your letter. This question must be addressed, in the first instance, at the Branch level.

Your second question is whether a motion that the President reimburse the Branch, that was passed at the June, 2009 membership meeting is "legal and valid." While there is nothing in the *Constitution* which would prohibit the Branch from entertaining such a motion, it is not clear that the motion, by itself, is enforceable where, as here, the member in question is disputing the debt. Past rulings have concluded that the procedure for filing and adjudicating charges set forth in Article 10 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* is a legitimate method for enforcing a debt claim where the existence and/or the amount of the debt is in dispute.

This brings me to your third inquiry concerning the applicability of Article 7, Section 4 of the *CGSFB* to the present situation. Article 7, Section 4 provides for forfeiture of membership by "[a]ny member failing to pay any fine, assessment or monthly dues within thirty (30) days...." The facts set forth in your letter do not indicate that Brother Bzura is delinquent in paying dues or has failed to pay a fine or assessment. Prior rulings have established that the term "assessment" refers only to general assessments imposed on all the members of the Branch, not to claims or charges against individual members. The rulings further establish that when the Branch claims that a member owes an individual debt, the member may be removed from membership for failing to pay such debt only after charges have been processed pursuant to Article 10 of the *CGSFB*. Absent Article 10 procedures, a simple motion at a Branch meeting is insufficient for this purpose.

This letter is not intended to express any view as to the merits of any charges that may be filed against Brother Bzura. If such charges are filed, an impartial investigating committee must be appointed. The committee will be obligated to hear both sides of the dispute. After hearing the committee's report, the Branch can vote to determine whether the charged party owes the disputed sum and can vote to impose a requirement of reimbursement. Prior rulings have established that an order to reimburse the Branch the amount of a debt is not a "fine" within the meaning of Article 10, Section 4 of the *CGSFB* and, therefore, does not require a two thirds majority. Finally, the Branch's decisions may be appealed to the National Committee on Appeals.

Escondido, California Branch 2525

(November 19, 2009): This is in reply to your recent letter, which was faxed to my office on November 12, 2009, concerning a letter to the Branch 2525 Executive Board from three members of the Branch. Specifically, the letter in question contains a demand that you reimburse the Branch for the stewards pay that the Branch apparently found to have been erroneously paid to you by its vote on the charges against you at the October 1, 2009 meeting. You now ask whether you are required to act on this demand.

While I fully appreciate your concerns, I must advise that it would be inappropriate for me to rule on this matter at this time. The material that you forwarded to me includes a letter from you to Sister Terry Brock Krokosz indicating that the Branch

Executive Board has taken the position that the vote at the October 1 meeting has rendered the reimbursement issue moot. However, this decision by the Executive Board may be appealed to the Branch under the provisions of Article 11 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. The Branch's determination may, in turn, be appealed to the National Committee on Appeals. Accordingly, it would be premature for me to address the merits of the issue now.

I can provide you with the following general information which may help you assess the issue of reimbursement.

Past rulings have concluded that the procedure for filing and adjudicating charges set forth in Article 10 of the *(CGSFB)* is a legitimate method for enforcing a debt claim where the existence and/or the amount of the debt is in dispute. After hearing the investigating committee's report, the Branch can vote to determine whether the charged party owes the disputed sum and can vote to impose a requirement of reimbursement. Prior rulings have established that an order to reimburse the Branch the amount of a debt is not a "fine" within the meaning of Article 10, Section 4 and, therefore, does not require a two thirds majority.

In your case, it can be argued that the Branch knowingly waived any claim for reimbursement at the October 1 meeting since it voted in favor of a reprimand, but did not vote to require reimbursement. On the other hand it can be argued that the vote at the October 1 meeting established the existence of a debt (through the receipt of unauthorized stewards pay), but that the Branch did not then consider the issue of reimbursement. Again, I express no view on these issues. However, I can advise you that past rulings have not precluded Branches from voting on demands for reimbursement at a subsequent meeting where the existence of the underlying debt has been previously established through the Article 10 process. Of course, any such vote would be subject to appeal to the National Committee on Appeals.

Finally, as I am sure you are aware, federal law imposes on union officers fiduciary obligations with respect to the union's funds. Union officers can be sued for breach of such duties. I am not an attorney, and it would be entirely inappropriate for me to advise you as to whether the failure to reimburse the Branch the stewards pay in question is a violation of fiduciary duty. You may wish to consider obtaining advice from a local attorney.

San Antonio, Texas Branch 421

(November 20, 2009): This is in reply to your letter, dated November 16, 2009, requesting a ruling as to the eligibility of a member who may not be in good standing to be a candidate for office in a Branch 421 election. According to your letter, this member was injured and had been on workers compensation. He has had no dues deductions since June 19, 2009 and the Branch has not collected dues directly from him. You also indicate that the established practice of the Branch has been not to collect dues from members who are on workers compensation.

Your letter cites a provision of the Branch 421 By-laws which appears to be applicable to the situation. However, it would be inappropriate for me to rule on the meaning or intent of the By-law. Disputes over the interpretation or application of Branch By-laws must be resolved, in the first instance, at the Branch level. The Branch's decision can be appealed to the National Committee on Appeals.

Numerous presidential rulings have addressed the application of the *Constitution* to the issues raised in your letter. These interpretations may be summarized as follows.

Whether or not an individual from whom dues have not been collected is eligible to run for office turns on whether the individual has forfeited his/her membership under the provisions of Article 7, Section 4 of the *Constitution for the Government of Subordinate and Federal Branches (CFGFSB)*. Under Article 7, Section 4, any member who fails to pay monthly dues for 30 days must forfeit his/her membership. Article 7, Section 4 permits Branches to extend the 30 day grace period for not more than an additional 60 days "for good and sufficient reasons, under reasonable rules uniformly applied." Your letter does not indicate whether Branch 421 has ever acted to extend the 30 day grace period. In any event, at the end of the grace period, if the member is still delinquent, he/she must forfeit his or her membership.

An additional exception to the forfeiture rule is provided by Article 7, Section 3(b) of the CFGFSB. It states that a Branch may exempt any member from dues payments under reasonable rules uniformly applied for a stated period of time. Thus, for example, a Branch could adopt a policy providing that members will be exempt from dues payments while on workers compensation or leave without pay. Your letter does indicate that Branch 421 has implemented such an exemption. However, the question whether the Branch has done so must be resolved at the Branch level.

Prior to the time of forfeiture, the member retains full membership rights, including the right to run for office, notwithstanding the dues delinquency. But when the point of forfeiture is reached, the member loses all rights of Branch, State Association and National membership. This would include the right to be a candidate in a Branch election of officers.

Where Article 7, Section 4 applies—i.e., cases in which a member fails to pay a fine or an assessment or monthly dues within 30 days or an extended grace period—the forfeiture of membership is automatic. It would not be necessary for the Branch to initiate charges or provide formal notice to the individual. While the Branch is expected to notify NALC Headquarters in writing of any forfeiture and the reasons for it, the mere fact that the Branch has failed to notify NALC Headquarters of the changed status of a member does not, in and of itself, confer membership rights on an individual who has forfeited membership rights by failing to pay dues.

As indicated above, it is the responsibility of the Branch to apply the above guidelines to individual situations based on the particular fact circumstances. According to your letter, the Branch Election Committee has ruled that the member in question is eligible to be a candidate, so that his name, presumably, will appear on the ballot. The decision of the Election Committee may be the subject of a post-election appeal under the provisions of Section 21 of the *NALC Regulations Governing Branch Election Procedures*.

Kenneth T. Walker Sr., Chicago, Illinois

(November 24, 2009): This is in reply to your letter, dated November 18, 2009, concerning the 2009 election of officers in Branch 11. According to your letter, you have requested, and have been denied, a copy of the Branch 11 mailing list to use in connection with your candidacy for Branch President. You also assert that other candidates have obtained and are using a Branch mailing list.

While I appreciate your concerns, I must advise that there is no basis for any intervention by the National Union at this time. The issue raised in your letter may be incorporated in a post-election appeal in accordance with the procedures set forth in Section 21 of the *NALC Regulations Governing Branch*

Election Procedures (RGBEP).

In addition, please note that Section 9.2 of the *RGBEP* states that "A branch must honor all reasonable requests to distribute campaign literature at a candidate's expense." Your letter does not indicate whether you have made a request to the Branch to mail campaign literature on your behalf.

Phoenix, Arizona Branch 576

(December 4, 2009): This is in reply to your letter, dated November 23, 2009, requesting dispensation permitting Branch 576 to extend the deadline for a run-off election resulting from a tie vote in its original election of Branch officers held November 7, 2009. You assert that the Branch will have difficulty meeting the 30 day time frame specified by Section 11.31 of the *NALC Regulations Governing Branch Election Procedures* due to the upcoming holiday season. Instead, the Branch proposes to set the date of the election as January 8, 2010, with ballots mailed to the membership by December 15, 2009.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation.

Brownsville, Texas Branch 1456

(December 4, 2009): This is in reply to your letter, dated November 23, 2009, requesting that I issue a ruling to resolve a dispute over the conduct of the recent election of officers in Branch 1456, Brownsville, TX.

While I appreciate your concerns, I must advise that it would be entirely inappropriate for me to attempt to resolve the issues you describe based solely on the content of your letter. Objections to the conduct of an election must be raised in the form of a post-election appeal to the Election Committee in accordance with the process set out in Section 21 of the *NALC Regulations Governing Branch Election Procedures*. Under Section 21, the Election Committee's decision may be appealed to the Branch Executive Board. The Board's decision may be appealed to the Branch. The Branch's decision may be appealed to the NALC Committee on Appeals.

Your letter asserts that the Branch's By-laws (which apparently cannot be located) requires trustees to resign in order to be candidates for other officer positions. Without having the By-law language before me, I cannot address your statement. However, I can advise that the *NALC Constitution* does not provide any such requirement of resignation. As previous presidential rulings have recognized, incumbent trustees may be candidates for other Branch officer positions, including other longer-term trustee positions. Of course, if the trustee is elected, then he/she would have to vacate the previously held trustee position. The resulting vacancy can then be filled by appointment of the Branch President, as provided by Article 4, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches*.

Tahir Blue, Mableton, Georgia

(December 4, 2009): This is in reply to your letter, dated November 17, 2009, concerning the refusal of Branch 73 to accept your written self-nomination for the office of Assistant Vice President because it was not submitted within the deadline of thirty days before the election, as provided by Section 6.32 of the *NALC Regulations Governing Branch Election Procedures (RGBEP)*.

While I appreciate your concerns, I must advise that there is no basis for intervention by the National Union at this time. Objections to the conduct of a branch election are to be submitted in the form of a post-election appeal under the provisions of Section 21 of the *RGBEP*. Such an appeal may encom-

pass an objection to the conduct of the nominations.

Harrisburg, Pennsylvania Branch 500

(December 7, 2009): This is in reply to your letter, dated November 5, 2009, in which you raise two issues pertaining to the 2009 election of officers in Branch 500.

The first issue concerns the eligibility of the Branch President to serve another term. According to your letter, this member owes the Branch a debt, which he is repaying, which arose from an apparent failure of the Branch to make the proper health benefits deductions from his pay check. Please be advised that the facts set forth in your letter do not indicate that the Branch President is disqualified from continuing to serve. Past presidential rulings have recognized that, as a general principal, a member's indebtedness to the Branch, by itself, does not disqualify the member from being nominated or serving as a Branch officer.

Your second question concerns the fact that another candidate had filed for bankruptcy within the past seven years. Contrary to the suggestion in your letter, I am not aware that such a filing would affect the eligibility of this individual to be bonded. Similarly, I am not aware that a past bankruptcy filing would increase the cost of the bond.

You also ask whether information about "excessive" cost of a bond can be revealed to the membership. As a general principle the Branch is not prohibited from providing accurate information to members. However, the use of Branch resources to disseminate information which is damaging to a member's candidacy could be viewed as an improper use of union resources to support or oppose a candidate, which would violate both federal law and the NALC *Regulations Governing Branch Election Procedures (RGBEP)*. See Section 9.4 of the *RGBEP* and the accompanying comments. Such a determination could only be made in the context of a post-election appeal under Section 21 of the *RGBEP*.

San Diego, California Branch 70 and LaMesa, California Branch 3347

(December 8, 2009): In accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby issue the following decision with respect to the consolidation of the Spring Valley, CA and La Mesa, CA postal installations.

Insofar as Branch 70 and Branch 3347 have not agreed to merge in accordance with the provisions of Article 2, Sections 2 and 3 of the *NALC Constitution*, I will permit the members of the two Branches in the consolidated installation to remain in their existing Branches. In particular, letter carriers assigned to zone 91977 shall remain members of, and continue to pay Branch dues to, Branch 70. Letter carriers in zones 91941 and 91942 shall remain members of, and continue to pay dues to, Branch 3347. By copy of this letter, I am directing Secretary-Treasurer Jane Broendel and the NALC Membership Department to communicate this decision to the Postal Service and to take whatever steps may be necessary to ensure that Branch dues deductions are implemented in accordance with this ruling.

Only one Branch can be responsible for representing the letter carriers in the consolidated installation. Accordingly, I am directing the parties to organize an election of all active letter carriers who are NALC members to decide which of the two Branches shall act as the representative Branch for purposes of the grievance procedure and negotiation of a new local memorandum of understanding. By copy of this letter, I am authorizing National Business Agent Manny Peralta to provide whatever assistance may be necessary in conducting this

election. Brother Peralta shall communicate the result of the election to the appropriate management representatives of the Postal Service.

I am also recommending that representatives from both Branches be involved in the negotiation of a new LMOU. In addition, stewards should be appointed or elected within each zone who are members of the Branch associated with that zone.

All members should understand that the arrangements described above are not necessarily permanent. As President of the NALC, I reserve the right to review this situation and to change these arrangements as circumstances may warrant.

Finally, I would urge the members of the two Branches to continue to discuss the implementation of a voluntary merger.

Cincinnati, Ohio Branch 43

(December 9, 2009): This is in reply to your letter, dated December 2, 2009, requesting a ruling as to whether certain ballots should be counted in the Branch 43 election of officers.

According to your letter, the Branch attaches a label on the outer return envelope for the mail ballots which identifies the voter by name and address. You now ask whether ballots should be counted if the member removes this identifying label.

It would be inappropriate for me to rule specifically on whether any particular ballots should be counted. I can advise you that the Department of Labor has taken the position that in mail ballot elections a ballot contained in an unsigned envelope should be counted if there is sufficient information identifying the person as eligible to vote. Consistent with this position, the NALC Executive Council recently approved amendments to the *NALC Regulations Governing Branch Election Procedures (RGBEP)* which allow Branches to use alternative identifiers on the outer envelope rather than signatures. (See *RGBEP* Section 14.3.)

In the situation described in your letter, it would appear that the Branch would not be able to identify the individual who mailed the ballot and, therefore, the Branch could not confirm his/her eligibility to vote. If that is the case, it would be appropriate not to count the ballot.

I emphasize that the foregoing should not be read as a final ruling, but rather interpretive advice based on the information in your letter. Candidates retain the right to challenge any decision by the Election Committee to count or not to count a ballot in accordance with the procedures set forth in Sections 15 and 21 of the *RGBEP*.

Stanley J. Price, Palatine, Illinois

(December 8, 2009): This will acknowledge receipt of a copy of your protest of the recent election of officers of NALC Branch 4268, dated November 22, 2009.

Please be advised that it would be entirely inappropriate for me to comment on any of the allegations set forth in your protest. All objections to the conduct of a branch election must be processed in accordance with the procedures set forth in Section 21 of the *NALC Regulations Governing Branch Election Procedures*.

Brenda K. Parton, Columbia, Missouri

(December 9, 2009): This is in reply to your letter, dated November 24, 2009, requesting a ruling as to whether Branch 763 properly rejected the nomination of Brother Matthew Kauth for Branch President because he was not present at the nominations meeting and had not submitted a letter of acceptance. According to your letter, Brother Kauth was out of town at the time of the meeting. You also assert that the Branch rejected a proposal to have Brother Kauth submit his written acceptance

upon his return to work.

At the outset, it would be inappropriate for me to issue a ruling which resolves this issue. The dispute described in your letter must be resolved, in the first instance, at the Branch level. I can provide you with the following summary of the rules which should be applied.

Section 6.31(d) of the *NALC Regulations Governing Branch Election Procedures (RGBEP)* provides: "If a nominee is not present at the [nominating] meeting, written acceptance is permissible." This regulation reflects the requirements of federal law. The Department of Labor's (DOL) regulations covering union elections state the following:

A requirement that members must be present at the nomination meeting in order to be nominated for office might be considered unreasonable in certain circumstances; for example, in the absence of a provision for an alternative method under which a member who is unavoidably absent from the nomination meeting may be nominated, such a restriction might be regarded as inconsistent with the requirement in section 401(e) [of the Labor-Management Reporting and Disclosure Act] that there be a reasonable opportunity to nominate and to be a candidate. 29 C.F.R. Section 452.59.

Neither the DOL regulations nor the *RGBEP* set a time frame for acceptance of nominations after the nominations meeting is closed. However, previous presidential rulings have held that branches may accept a nomination submitted after the meeting based on a claim by the member that he/she was absent for unanticipated reasons.

It is the responsibility of the Branch to apply the foregoing principles to the facts presented. The decision to accept or reject the nomination in question ultimately may be appealed in accordance with the procedures set forth in Section 21 of the *RGBEP*.

Columbus, Georgia Branch 546

(December 8, 2009): This is in reply to your recent letter, received by my office on November 30, 2009, requesting a ruling as to whether a 204b member has the right to vote in Branch elections.

Please be advised that the membership rights of 204b members are addressed by Article 2, Section 1(c) of the *NALC Constitution*, providing as follows:

"[P]resent members who have left the Postal Service, or have been temporarily or permanently promoted to supervisory status, may retain their membership but shall be members only for the purpose of membership in the NALC Life Insurance Plan and/or the NALC Health Benefit Plan. These members shall have no voice or vote in any of the affairs of such Branch, except they shall have a voice and vote at the Branch level upon matters appertaining to the NALC Life Insurance Plan, and/or the NALC Health Benefit Plan, if they are a member thereof, and on any proposition to raise dues. These members are not eligible to be candidates for any State Association, Branch, or National office, or delegates to any conventions. They may attend only that part of the meeting which concerns them, such as change of dues structure and information concerning Health or Life Insurance[.]"

Previous rulings interpreting this provision have established that a 204b may not exercise membership rights, including the right to vote in Branch elections, while he or she is acting in a supervisory status (except for the right to participate and vote in any part of a Branch meeting concerning NALC insurance programs and/or the NALC Health Benefit Plan, if he/she is a member thereof, or the raising of Branch dues). However, the rulings have also consistently recognized that when the member returns to a bargaining unit assignment, he or she immediately regains full membership rights,

except for the right to be a candidate for Branch office. This would include the right to vote. Accordingly, if a 204b member were to complete his/her work as a 204b, and clock back on to a bargaining unit assignment, the member would at that point have the right to vote in the Branch election.

Timothy Dowdy, National Business Agent, NALC

(December 9, 2009): This is in reply to your letter, dated November 25, 2009, inquiring whether a member of Branch 2091, Franklin, VA, may be considered the current NALC Branch steward for purposes of the application of the superseniority provisions of the National Agreement (Article 17, Section 3) in the event of excessing.

Addressing a situation very similar to that described in your letter, I recently ruled that a member who has not been elected or appointed as a steward in a manner that is consistent with the *NALC Constitution* is not entitled to superseniority. A copy of my ruling, dated October 16, 2009, is enclosed.

According to your letter, Branch 2091 did not conduct a formal election of its President. Since there is no elected Branch President, there is no one who is authorized to act as, or to appoint, a steward.

In light of the foregoing, I am directing you to arrange for an election of a new President in Branch 2091. As provided by Article 6, Section 1 of the *Constitution for the Government of Subordinate and Federal Branches*, the new President shall be the Chief Steward of the Branch. That individual should certify to the Postal Service that he/she (or his/her appointee) is the Branch steward for purposes of Article 17 of the Agreement. In addition, the new President should notify the NALC Membership Department of his/her election.

I understand that the member in question may be disappointed by this decision. However, as I stated in my previous ruling, as President of the NALC, I must enforce the requirements of our *Constitution*.

Please feel free to distribute copies of this decision to the members of Branch 2091.

Frank Romaguera, Kailua Kona, Hawaii and Vicki Harrell, Kailua Kona, Hawaii

(December 8, 2009): This is in reply to your recent letter, received by my office on November 6, 2009, in which you express dissatisfaction with the policies and practices of the current leadership of Branch 5516, Kailua Kona, HI. Your letter requests permission to pay Branch dues to any other Branch in Hawaii.

While I appreciate the sincerity of your views, I must advise that it is not possible to grant your request. Consistent with the provisions of Article 2, Section 2 of the *NALC Constitution*, active members of the NALC must be members of the subordinate branch having jurisdiction over the installation in which they work.

Please feel free to contact the office of National Business Agent Manny Peralta to discuss the contractual issues raised in your letter. In addition, you should be aware that decisions of the President of the Branch may be subject to appeal under the provisions of Article 11 of the *Constitution for the Government of Subordinate and Federal Branches*.

Lake Charles, Louisiana Branch 914

(December 11, 2009): This is in reply to your letter, faxed to my office on December 10, 2009, requesting dispensation authorizing Branch 914 to conduct its installation of officers at its meeting to take place on December 14, 2009, notwithstanding the fact that the Branch By-laws provide for the installation to take place at the January meeting. According to your letter, this change in the installation date is necessary for the Branch to be in com-

pliance with Article 5, Section 6 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*, which provides that installation of Branch officers shall take place at the first or second meeting of the Branch following the election. The date of the election was November 7, and there was a Branch meeting on November 9. The December 14 meeting, therefore, will be the second meeting following the election. You also assert that when the Branch amended its By-laws in 2004 to move the dates of its nominations and election one month earlier it inadvertently neglected to change the date of the installation.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. By copy of this letter, I am admonishing current Branch President Dan Monceaux to cooperate in the installation and transition. The Branch should amend its By-laws to ensure that future installations comply with the time frame provided by Article 5, Section 6 of the *CGSFB*.

It would be inappropriate for me to address the allegations of improper conduct against Brother Monceaux set forth in your letter. I suggest that you contact your National Business Agent Lew Drass if you need further advice or assistance with respect to contractual or financial matters.

Cedar Rapids, Iowa Branch 373

(December 11, 2009): This is in reply to your letter, dated December 9, 2009, requesting dispensation permitting Branch 373 to reschedule its election of officers from the December to the January Branch meeting. According to your letter, the December meeting has been cancelled due to severe weather.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. Please make sure that timely written notice of this change is provided by mail to each member of the Branch.

Santa Clara, California Branch 1427

(December 14, 2009): This is in reply to your letter, dated November 30, 2009, seeking guidance as to how to fill the position of Branch 1427 Secretary. According to your letter, the Branch has discovered that the winning candidate in the November, 2009, election is ineligible to hold office because she has recently been convicted of a drug related criminal offense.

Normally, vacancies in Branch office are filled in accordance with Article 4, Section 2 of the *Constitution of the Government of Subordinate and Federal Branches* which provides that the Branch President may fill vacancies in officer positions by appointment, unless, the Branch By-laws provide for an order of succession.

In this instance, however it would appear that a special election is warranted since the winning candidate was not eligible to be nominated in the first instance. Therefore, in accordance with my authority under Article 9, Section 1 of the *NALC Constitution* I am granting Branch 1427 dispensation to hold a special election for the position of Branch Secretary. The Branch should conduct new nominations and a new election as expeditiously as possible. Appropriate notice should be mailed to each member of the Branch.

Pending completion of the election process and the installation of a new secretary, you may exercise your authority as Branch President to appoint a member to discharge the duties of the Branch Secretary on an interim basis.

Garden State Merged Branch 444

(December 14, 2009): This is in reply to your

letter, dated December 9, 2009, requesting guidance as to how Branch 444 may appoint a committee to investigate charges under Article 10 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. According to your letter, the charges are against yourself, as President of the Branch, and the Vice President. You also assert that each of the remaining officers of the Branch is likely to be involved in the investigation as a witness.

Prior rulings have established that where the President and Vice President are both charged, the highest ranking officer who has not been charged should appoint the investigating committee. The rulings have also recognized that an officer who is likely to be involved in the investigation of charges as a witness should not appoint the committee. If there are no other officers, then the investigating committee may be appointed by action of the members of the Branch. Specifically, the Branch could nominate and elect members to the committee at a regular or special meeting. Alternatively, the members could vote to select an individual disinterested branch member to appoint the members of the committee.

Portsmouth, Rhode Island Branch 57

(December 15, 2009): This is in reply to your letter, dated December 1, 2009, requesting guidance as to the application of Sections 21.2 and 21.3 of the *NALC Regulations Governing Branch Election Procedures (RGBEP)* which govern the timeliness of Branch election appeals. Section 21.2 provides that an aggrieved member may appeal the decision of the Election Committee to the Branch Executive Board within five days of the Committee's decision. Section 21.3 provides that an aggrieved member may appeal the ruling of the Branch Executive Board to the next scheduled meeting of the Branch within five days after receiving the ruling of the Branch Executive Board.

Please be advised that the intent of Section 21.2 of the *RGBEP* is to provide the aggrieved member five days to prepare and submit the appeal from the Election Committee's decision. Similarly, Section 21.3 is intended to provide aggrieved members five days to notify the Branch Recording Secretary of his/her intent to appeal the Executive Board's ruling to the membership of the Branch.

In light of the foregoing, where the Branch follows a practice of sending the decision of the Election Committee or the Executive Board to the parties by certified mail, the timeliness of any appeal should be measured from the first day that the aggrieved member reasonably could have received the decision. Application of this principle will necessarily depend on the particular facts presented. If, as you suggest, a member deliberately delays picking up a decision at the post office after receiving a USPS certified mail notice, then there may be a basis for concluding that a subsequent appeal, submitted more than five days after he/she could have obtained the decision, is untimely. Such a decision must be made, in the first instance, at the Branch level. The Branch's decision may ultimately be appealed to the National Committee on Appeals.

Sun City, Arizona Branch 6156

(December 17, 2009): This is in reply to your letter, faxed to my office on December 15, 2009, requesting that I address two concerns regarding the recent election of officers in Branch 6156. First, according to your letter, the chair of the Election Committee endorsed two candidates in a mailing, both of whom went on to win their elections. Second, you report that the use of a specially colored ballot in one office effectively allowed observers of the ballot count to be able to determine how the members in that office voted.

With regard to the first issue, past presidential rulings have recognized that a Branch Election Committee must be composed of disinterested members. The rulings have noted, for example, that members of a candidate's campaign committee are not eligible to be appointed to the Branch Election Committee.

As to the second issue, both federal law and the NALC *Regulations Governing Branch Election Procedures (RGBEP)* require the use of a secret ballot to elect branch officers. See, *RGBEP*, Section 11.2.

Apart from the foregoing, it would be inappropriate for me to rule specifically on the situations described in your letter. Objections to the conduct of an election must be raised in the form of a post-election appeal in accordance with the procedures set forth in Section 21 of the *RGBEP*. As provided therein, the Branch's resolution of such objections may ultimately be appealed to the National Committee on Appeals.

Palatine, Illinois Branch 4268

(January 4, 2010): This is in reply to your letter, dated December 10, 2009, requesting guidance as to how Branch 4268 may appoint a committee to investigate charges under Article 10 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. According to your letter, the charges are against the President of the Branch, as well as the Executive Vice President and yourself, as Recording Secretary.

Prior rulings have established that where the President, Vice President, and/or other officers are charged, the highest ranking officer who has not been charged should appoint the investigating committee. The rulings have also recognized that an officer who is likely to be involved in the investigation of charges as a witness should not appoint the committee. If there are no other officers eligible to appoint the committee, then the investigating committee may be appointed by action of the members of the Branch. Specifically, the Branch could nominate and elect members to the committee at a regular or special meeting. Alternatively, the members could vote to select an individual disinterested Branch member to appoint the members of the committee.

Amherst, Massachusetts Branch 46

(January 4, 2010): This is in reply to your letter, dated December 14, 2009, concerning pending appeals by candidates in a local steward election in Branch 46.

Please be advised that it would be inappropriate for me to intervene in this matter by ruling on the issue described in your letter. The dispute rests on local facts and the application of the Branch By-laws and must be resolved, in the first instance, at the Branch level. The Branch's ultimate decision may be appealed to the National Committee on Appeals.

I can advise you that the NALC *Regulations Governing Branch Election Procedures (RGBEP)* are not binding on the election of stewards who are not members of the Branch Executive Board. See *RGBEP*, Section 2.1. Rather, as provided in Article 4, Section 5 of the *Constitution for the Government of Subordinate and Federal Branches*, stewards may be elected in individual stations "as the Branch may determine[]." Of course, the Branch may choose to base its steward election procedures on the *RGBEP*, but it is not required to do so.

Jacksonville, Florida Branch 53

(January 5, 2010): This is in reply to your letter, which was faxed to my office on January 4, 2010, concerning an issue pertaining to a steward election in Branch 53.

Please be advised that there are no provisions in the *NALC Constitution* which address the issue described in your letter. Rather, as provided in Arti-

cle 4, Section 5 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*, stewards may be elected in individual stations "as the Branch may determine[]." Moreover, as National President it would be inappropriate for me to rule on the meaning or application of the Branch 53 By-law provisions governing steward elections. Disputes over the meaning or application of by-laws must be addressed, in the first instance, at the Branch level.

Accordingly, I can only advise that you make whatever decision you feel may be required by the Branch By-laws. If you conclude that the By-law provisions do not mandate a specific decision, you should take whatever action that you believe is in the best interest of the Branch, so long as it is not inconsistent with the By-laws. Your decision may be appealed under the provisions of Article 11 of the *CGSFB*.

Honolulu, Hawaii Branch 860

(January 5, 2010): This is in reply to your letter, dated December 13, 2009, requesting permission on behalf of Branch 860 to add two additional delegates to its list of delegates to the 2010 National Convention. According to your letter, the Branch conducted delegate nominations at its November meeting, but did not fill its complement of 35 delegates. The two members in question did not attend the November meeting. According to your letter, there are no other members who qualify for the 2010 Convention. The Branch now requests dispensation permitting these two members to be nominated as delegates, which will result in their election by acclamation.

At the outset, your assertion that the two members referenced in your letter are the only remaining members of the Branch who are "qualified" to be delegates cannot be accurate. Under the provisions of Article 5, Section 2 of the *NALC Constitution*, all members in good standing are eligible to be elected delegate or alternate delegate, except for those members who have served in, accepted, or applied for supervisory positions within the previous two years. It may be that what you are suggesting is that these two individuals are the only remaining members that meet the Branch's criteria for receipt of Branch funds. Be advised that the number of delegates the Branch chooses to fund is a different issue from the number of delegates which the Branch is entitled to send. While the Branch does have discretion to determine which of its elected delegates it will fund, it would be improper for the Branch to restrict the number of delegates to the Convention which Branch members may nominate and elect.

In light of the foregoing, I am treating your letter as a request for dispensation to extend the nomination deadline for delegates to the National Convention. While such an extension is permissible, it would be inappropriate for the extension to apply solely to two members, as suggested in your letter. Accordingly, the Branch may extend the deadline for nominations for delegate, but must notify all members of this extension and the opportunity for each member of the Branch to be nominated. If this process results in more nominees than delegate positions, the Branch will be required to conduct an election of delegates. If any member is elected who is not qualified to receive Branch funds, that member may attend the Convention at his/her expense.

Therefore, in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant Branch 860 dispensation to extend the time for nomination of delegates, subject to the conditions specified above. Please conduct the new nominations as expeditiously as possible following appropriate written notice to the members.

Rocky Mount, North Carolina Branch 1321

(January 8, 2010): Each of you have recently submitted to me requests that I rule on various issues pertaining to the recent election of officers in Branch 1321. On the basis of the facts set forth in your letters, I now make the following rulings.

First, it would be entirely inappropriate for me to express any view as to the merits of any of the issues raised by the original appeal to the Election Committee or the Committee's subsequent decision. Those issues must be resolved in accordance with the appeal procedures set forth in Section 21 of the NALC *Regulations Governing Branch Election Procedures*.

Second, previous rulings have held that in branch elections in which there is a dispute as to whether certain ballots were properly counted the result of the election as determined by the election committee should stand while appeals are still pending. Accordingly, the winners of the election determined by the election committee should be installed as scheduled on January 11 and should hold office during the completion of the appeal process. A new election or new installation may subsequently be necessary if: (1) the Branch decides to overturn the election committee; or (2) an appeal is taken to the National Committee on Appeals and the Committee determines that a new election should be conducted or that other candidates should prevail.

Third, if the Branch decides to hold a new election, that election should go forward even if there is an appeal to the National Committee on Appeals. Those candidates who were declared by the election committee to have won the initial election and were installed as officers are entitled to remain in office pending the new election and the next installation.

Fourth, prior rulings have established that, if a re-run election is held, the Branch President is free to disband the election committee and to appoint a new committee, or the President may leave the previously appointed committee in place.

I trust that the foregoing addresses your concerns. Again, the above rulings are intended to address procedural matters only. I express no view as to the merits of any of the substantive issues raised by your letters.

South Suburban Merged, Illinois Branch 4016

(January 12, 2010): This is in reply to your letter, which you faxed to my office on January 4, 2010, pertaining to the vacancy in the office of Vice President of Branch 4016. According to your letter, the incumbent Vice President, who was to be installed on January 12 for a full term, has resigned to accept a position in postal management.

At the outset, your letter indicates that you were elected President for the term beginning January 12. However, you assumed the Presidency on November 30 due to an injury suffered by the incumbent President, Frank Kiefer. Please bear in mind that your succession to the Presidency only covers the balance of Brother Kiefer's term. You must still be installed on January 12 to begin your new term of office as President.

The vacancy in the office of Vice President is governed by Article 4, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches*, providing that vacancies in Branch offices (other than Branch President) are to be filled by presidential appointment (unless the Branch By-laws provide for a specific order of succession which apparently is not the case in Branch 4016). Such appointees fill the vacancy until the next term of office. Accordingly, any successor Vice President whom you would have appointed prior to January

12 would only be eligible to fill the office for the balance of that term, i.e., until January 12. On January 12, the position would again become vacant upon the commencement of the new terms, and you would be required to make another appointment following your installation as President. Accordingly, you may wait until after the installation to fill the vacancy, as suggested in your letter.

Lewis Jones, Atlanta, Georgia

(January 12, 2010): This is in reply to your letter, dated December 7, 2009, requesting that I rule on the propriety of the ballot instructions used by Branch 73 in connection with its election of delegates to the National and Georgia State Association Conventions. In particular, you question the instruction that each member vote for 90 nominees. You now assert that this is improper because the Branch is entitled to 101 delegates.

Previous presidential rulings have recognized that a Branch must allow its members to nominate and elect delegates to fill all the delegate positions to which the Branch is entitled under Article 4, Section 1 of the *NALC Constitution*. While the Branch may limit the number of delegates who will receive Branch funds for attending the Convention, it must allow the full delegation to attend, even if some delegates do so at their own expense.

Apart from the foregoing, it would be inappropriate for me to rule specifically as to whether the specific ballot instructions which you forwarded with your letter are inconsistent with the *Constitution*. Objections to the conduct of an election must be raised in the form of a post-election appeal in accordance with the procedures set forth in Section 21 of the *NALC Regulations Governing Branch Election Procedures*.

Bloomington, Illinois Branch 4268

(January 12, 2010): This is in reply to your letter, dated December 16, 2009, requesting guidance as to who should appoint the committee to investigate charges against the President, Vice President, and Recording Secretary of Branch 4268.

I am enclosing a copy of my letter to Brother Mario Flores, dated January 4, 2010, which addresses this issue. My letter to Brother Flores noted that where the President, Vice President, and/or other officers of a Branch are charged, the highest ranking officer who has not been charged should appoint the investigating committee. In response to your specific inquiry, please be advised that the Branch may utilize any reasonable method to determine the relative ranking of officers for this purpose. The Branch may rely on relevant provisions of the *Constitution*, and/or its By-laws, and/or any established local practices.

Price, Utah Branch 2171

(January 12, 2010): This is in reply to your recent letter, received by my office on December 29, 2009, requesting dispensation to allow you, as President of Branch 2171, to appoint Brother Mark Montoya to be a steward in the Helper installation, notwithstanding the fact that he has served as a 204-b supervisor. According to your letter, Brother Montoya is now the only NALC member in the Helper installation.

While I certainly appreciate the Branch's dilemma, I cannot grant the requested dispensation. Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches* expressly provides that any member who holds a supervisory position in the Postal Service is ineligible to hold any office or position in the Branch for a period of two years following the termination of supervisory status. There are no exemptions from this rule.

I regret that I cannot provide a favorable reply.

Northern Kentucky Branch 374

(January 12, 2010): This is in reply to your let-

ter, dated December 27, 2009, concerning the election of delegates in Branch 374. According to your letter, 20 carriers were nominated to run for 17 delegate positions. You now ask whether any of the three losing candidates would have the right to replace any of the 17 elected delegates who decide not to attend the National Convention. You also ask whether any of these replacement delegates would be entitled to receive Branch funds for attending the Convention.

Please be advised that under the provisions of Article 4 of the *NALC Constitution*, the three nominees who were not elected to delegate positions are considered alternate delegates who replace any delegates who do not attend the Convention. Specifically, Article 4, Section 3 provides that an alternate delegate:

"shall be recognized as the delegate in the event of the inability of any delegate to attend the Convention, or of the death or resignation of any delegate.... [T]he alternate who received the highest number of votes shall be assigned to act instead of any one delegate who is unable to attend such Convention; and, when more than one delegate is unable to attend such Convention, alternates shall be assigned in accordance with the number of votes cast for each one in the election, and shall be certified in such numerical order to act in their stead."

The question of payment is entirely separate. Previous presidential rulings have recognized that the Branch is free to determine its own rules for compensating delegates, so long as the Branch does not violate its own By-laws, or the *NALC Constitution*, and so long as its rules are not arbitrary or discriminatory. Consistent with the foregoing, the Branch may limit the funds given to each delegate and may also decide to fund fewer than all of its delegates so long as the decision of who to fund is made in a fair and evenhanded manner.

Kimetra Y. Lewis, Lancaster, Texas and Cornelius Hynes, Dallas, Texas

(January 14, 2010): This is in reply to your recent letters, dated December 14, 2009 and January 6, 2010, respectively, requesting that I provide a definition of the phrase "disinterested members," which appears in Article 10, Section 3 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. In response to this request, please be advised of the following.

Article 10, Section 3 of the *CGSFB* provides for the appointment of a committee of "disinterested members" to investigate charges filed against an officer or member of the Branch. Previous rulings have recognized that the phrase "disinterested members" means that the members appointed to the committee must be disinterested with respect to all charges they are responsible for investigating. Quite obviously, the charging or charged parties may not be appointed to the committee. Similarly, any officer or member who is likely to be involved in the investigation as a witness should not be appointed. The rulings also indicate that a member who files separate charges against the charged or charging parties would be disqualified from serving on the investigating committee. However, contrary to your suggestion, the *Constitution* does not broadly disqualify all incumbent Branch officers from being appointed to an investigating committee.

Either the charging or charged parties may assert claims that members of an investigating committee were not disinterested in the context of an appeal from the decision of the Branch to the National Committee on Appeals under Article 11 of the *CGSFB*.

Lansing, Michigan Branch 122

(January 15, 2010): This is in reply to your letter, dated December 16, 2009, requesting advice as

to two issues arising from your review of the Branch 122 By-laws.

At the outset, please be advised that the interpretation of Branch By-laws is the responsibility of the Branch. As National President, I am responsible for ruling on the interpretation of the *NALC Constitution*. Accordingly, in response to your specific questions, I can provide the following guidance as to the applicable provisions of the *Constitution*.

Your first question pertains to your assertion that the Branch has a practice of entertaining motions to cancel regular Branch meetings. As previous rulings have recognized, any such practice would conflict with the *Constitution*. Article 3, Section 1 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* specifically provides that "regular meetings of the Branch shall be held not less than once a month," subject only to the proviso that the Branch may opt to have only ten meetings a year. The rulings have also recognized that meetings can be cancelled due to unforeseen circumstances. However, your letter does not indicate that the Branch motions to cancel meetings have been based on unforeseen exigencies.

The second issue raised by your letter involves a Branch vote authorizing payment to a convention delegate who had not attended the minimum number of meetings provided by the By-laws due to an on-the-job injury. You now ask whether that vote was proper.

As a general principle, a Branch may not enact a resolution which conflicts with its By-laws. Generally, By-laws may be amended only through the procedures set forth in Article 15 of the *NALC Constitution*. However, as indicated above, it would be inappropriate for me to rule on whether the Branch vote described in your letter was in conflict with the By-laws. It is the responsibility of the Branch, in the first instance, to interpret and apply its own By-laws. The ultimate decision of the Branch would be subject to appeal under Article 11 of the *CGSFB*.

Calvin Lounds, Mason, Michigan

(January 15, 2010): This will acknowledge receipt of your letter, dated December 29, 2009, in which you express your disagreement with the vote taken by Branch 122 at its December meeting to authorize payment to a convention delegate who had not attended the minimum number of meetings provided by the By-laws due to an on-the-job injury.

I am enclosing a copy of my letter to Branch President Bates which addresses this issue. Please note that my letter does not rule on the meaning of the Branch By-laws. Disputes over the meaning or application of Branch By-laws must be resolved, in the first instance, at the Branch level.

As I noted in my letter to Sister Bates, you have the right to challenge any decision of the Branch by means of an appeal to the National Committee on Appeals in accordance with the procedures set forth in Article 11 of the *Constitution for the Government of Subordinate and Federal Branches*. I express no view as to the merits or timeliness of any such appeal.

Christopher Cadorette, Franklin, Massachusetts

(January 20, 2010): This is in reply to your letter, dated January 10, 2010, concerning the election of officers in Branch 34. Specifically you ask whether a National Officer's openly campaigning for a candidate for branch office, including sending an endorsement letter, would constitute a violation of Section 9.4 of the *NALC Regulations Governing Branch Election Procedures*, or federal law.

Please be advised that neither the NALC election regulations nor federal law generally prohibit national officers from supporting candidates in Branch elections. In the absence of an improper use

of union funds or resources, the conduct described in your letter would not be a *per se* violation.

Escondido, California Branch 2525

(January 20, 2010): Enclosed please find correspondence I have received from Branch 2525 member Susan Baker concerning your decision to remove her from the position of Assistant Shop Steward in the Orange Glen Post Office.

As previous presidential rulings have recognized, decisions of a Branch President between Branch meetings may be appealed to the next meeting of the Branch in accordance with the provisions of Article 11, Section 1 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. The material submitted by Sister Baker indicates that she should have been permitted to present her appeal at the December 3 meeting of the Branch, and the Branch should have been permitted to vote on the appeal.

Therefore, in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I am directing you to permit Sister Baker to present her appeal at the next regular meeting of Branch 2525 and to allow the Branch to vote on the appeal. The Branch's decision may be appealed to the National Committee of Appeals under the provisions of Article 11, Section 2 of the *CGSFB*.

This letter should not be read to express any view as to the merits of Sister Baker's appeal.

Manhattan, Kansas Branch 1018

(January 20, 2010): This is in reply to your letter, dated November 22, 2009, concerning the Postal Service's transfer of Branch 1018 Vice President Larry Williams to the St. Mary's, KS Post Office, which resulted in the transfer of his membership to NALC Branch 5418. Please accept my apology for the delay in responding to your letter. The NALC Membership Department has been trying to obtain clarification of Brother Williams' situation, and we have just now obtained the information we needed.

We have been advised that Brother Williams is the only current NALC member in the St. Mary's, KS Post Office, and that Branch 5418 has become defunct. In light of this information, I have instructed the NALC Membership Department to merge Branch 5418 into Branch 1018 and to restore Brother Williams' membership in Branch 1018. Branch 1018 will now have jurisdiction over the St. Mary's Post Office. By copy of this letter, I am instructing Secretary-Treasurer Jane Broendel, the NALC Membership Department, and National Business Agent Mike Weir to advise the appropriate officials of the Postal Service of this change.

Therefore, in response to your specific questions, there is no bar to Brother Williams' serving as a Branch 1018 officer or delegate to the National Convention.

Escondido, California Branch 2525

(January 25, 2010): This is in reply to your recent letter, which you faxed to NALC Headquarters on January 10, 2010, concerning your appointment of a committee to investigate charges against Branch 2525 President Randy Cruise under the provisions of Article 10 of the *Constitution for the Government of Subordinate and Federal Branches*. According to your letter, at the Branch meeting at which you named the committee, a member sought to challenge one of your appointments by means of appeal to the Branch. You apparently ruled that appeal out of order and advised the member that the appeal could be made at the meeting at which the committee submits its findings to the Branch, and that a subsequent appeal could be made to the National Committee on Appeals. You now ask whether your ruling was correct.

Please be advised that I have not received any request to overturn your decision from any member of the Branch. Accordingly, I decline to issue an interpretive ruling based on the limited facts set forth in your letter. It is certainly not necessary that you call a special meeting or appoint a new committee. Ultimately, what matters is that the facts are fully investigated and that a fair and accurate presentation is made to the Branch before it votes on the merits of the charges. As you suggested, challenges to the composition of the investigating committee can be made in an appeal to the Committee on Appeals from the Branch's decision.

Garden State Merged Branch 444

(January 25, 2010): This is in reply to your letter, which was faxed to my office on January 12, 2010, concerning the inability of Branch 444 to form a committee to investigate charges that have been filed against yourself, as President of the Branch, and the Vice President. I am also responding to Brother Earl Dorman's letter to Secretary-Treasurer Broendel, dated December 18, 2009, requesting a ruling as to whether NALC Branches are required to adhere to Robert's Rules of Order.

In light of the facts set forth in your letter, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant Branch 444 dispensation to continue the investigation and vote on the charges beyond the deadlines specified in Article 10, Section 1 of the *Constitution for the Government of Subordinate and Federal Branches*. In addition, by copy of this letter I direct National Business Agent Larry Cirelli to provide whatever assistance may be necessary to ensure the appointment of a committee to investigate the pending charges, which may include the appointment by Brother Cirelli of members from one or more Branches other than Branch 444.

In response to Brother Dorman's inquiry, previous presidential rulings have consistently recognized that the *NALC Constitution* does not require that Branches follow Robert's Rules in conducting their meetings. Moreover, even in those instances where Branches have adopted By-laws requiring adherence to Robert's Rules, presidential rulings have held that Robert's Rules cannot supercede the requirements of the *Constitution*.

Board Members, San Juan, Puerto Rico Branch 869

(January 26, 2010): This is in reply to your recent letter, which was faxed to my office on January 20, 2010, concerning your allegations against Branch 869 President John Rivera. In particular, your letter requests that I remove Brother Rivera from the presidency of the Branch.

Please be advised that your letter does not set forth any factual or constitutional basis for my summarily removing Brother Rivera from office. Of course, any one of you is free to seek Brother Rivera's removal by filing charges against him under the provisions of Article 10 of the *Constitution for the Government of Subordinate and Federal Branches*. I express absolutely no view as to the merits of any such charges.

I do appreciate that the Branch Board is deeply divided. As I believe you are aware, National Business Agent Larry Cirelli, at my request, has arranged to visit the Branch, during the first week of February, to investigate the situation in Branch 869. Brother Cirelli is authorized to recommend possible resolutions of the conflicts that are plaguing the Branch. I urge you to cooperate fully with his investigation.

Kenneth Walker Sr., Chicago, Illinois

(January 27, 2010): This is in reply to your most recent letter, received by my office on January 8, 2010, concerning the November, 2009 election

of officers in Branch 11, Chicago, IL.

Your letter appears to allege that the Branch violated Section 9.1 of the *NALC Regulations Governing Branch Election Procedures (RGBEP)*, requiring that "The branch must treat all candidates equally, any and all privileges extended to one candidate by the branch must be extended to all candidates." Specifically, you claim that your opponents in the election for Branch President obtained copies of the Branch mailing list, but that the Branch denied you access to the list.

As I indicated in my letter of November 24, you were entitled to pursue the above-described claim, and any other allegations relating to the conduct of the election, in the form of a post-election appeal as provided by Section 21 of the *RGBEP*. It is not clear from your letter whether you initiated such an appeal. If you did, then you must exhaust that process. In particular, the decision of the Election Committee is subject to appeal to the Branch Executive Board within five days of the Committee's decision. (See *RGBEP*, Section 21.2) A member cannot by-pass the appeal procedure by seeking a ruling from the National President.

In light of the foregoing, I am declining to comment on the substance of your allegations.

Wade Alford, Casa Grande, Arizona

(January 28, 2010): This is in reply to your letter, dated December 21, 2009, requesting that your dues payments to NALC Branch 704 be cancelled and that your branch membership be transferred from Branch 704 to Branch 6156.

Please be advised that it is not possible to grant your request, so long as you maintain your membership in the NALC. Consistent with the provisions of Article 2, Section 2 of the *NALC Constitution*, active members of the NALC must be members of the subordinate branch having jurisdiction over the installation in which they work.

Your letter does not indicate that you wish to cancel your membership in the NALC. You do have the right to cancel your membership in the NALC at any time if you wish. Cancellation of your dues withholding obligation is a separate matter. A USPS Form 1188 is necessary to cancel dues withholding as it serves as the written notification to the USPS. The Form must be completed and date-stamped by your employing office no more than 20 days, but not less than 10 days before your anniversary date. The Form 1188 may be obtained from your local USPS management. For your future reference, your anniversary date is October 18. Accordingly, your window period for properly executing the Form 1188 is September 25 through October 8.

Our records indicate that you are currently enrolled in the NALC Health Benefits Plan (HBP). Please be advised that in accordance with the *NALC Constitution*, you are required to pay full dues to the NALC. Cancellation of your NALC dues will result in the cancellation of your enrollment in the NALC HBP.

Please understand that I am not encouraging you to withdraw from the NALC or the HBP. To the contrary, we welcome your continuing membership. The foregoing paragraphs are merely intended to provide you with relevant information in light of the issues raised in your letter.

Finally, I am declining to comment on the substance of the other matters referenced in your letter.

William J. Lucini, National Business Agent

(February 1, 2010): This is to follow up on our recent email exchange concerning the closing of the Wynnewood, PA Post Office. It appears that the Postal Service is transferring all the letter carriers who had been employed at Wynnewood, which is within the jurisdiction of Branch 157, to the Upper Darby/Havertown, PA Post Office, which is within

the jurisdiction of Branch 725.

In light of the facts presented, I am hereby directing the NALC Membership Department to transfer the membership of the affected letter carriers from Branch 157 to Branch 725. You have indicated that the Presidents of both Branches have expressed support for this action.

Lake Havasu City, Arizona Branch 5850

(February 1, 2010): This is in reply to your letter, dated January 23, 2010, concerning the steward and alternate steward at the Bullhead City Station.

According to your letter, the steward, Louis Kinney, has acknowledged that he applied for a supervisory position. You now ask whether that application disqualifies him from continuing to serve as the steward at the Bullhead City Station, insofar as he was elected to that position.

Unfortunately, I must affirm that Brother Kinney's application for a supervisory position has resulted in his disqualification. Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* specifically provides that "All regular members shall be eligible to hold any office or position in the Branch, except that a member who voluntarily or otherwise, holds, accepts, or applies for a supervisory position in the Postal Career Service for any period of time . . . shall immediately vacate any office held, and shall be ineligible to run for any office or other position for a period of two (2) years after termination of such supervisory status." (Emphasis supplied.) This provision does apply to shop stewards. The period of disqualification is two years from the withdrawal in writing of the application for supervisory position.

Please be advised that given the situation, as described in your letter, there is no particular process that must be followed to effect Brother Kinney's removal. You may simply advise him that he is no longer eligible under the *Constitution* to serve as a steward. Of course, you may provide him with a copy of this letter.

In accordance with Article 6, Section 1 of the *CGSFB*, you have the authority as Branch President to appoint a successor steward, unless the Branch 5850 By-laws require an election. It would not be appropriate for me to interpret the By-laws or otherwise advise you as to how the By-laws are to be applied to this situation. The interpretation of the By-laws is the responsibility of the Branch, in the first instance.

You also ask for guidance pertaining to the status of the assistant shop steward in the Bullhead City Station. Your letter indicates that you limited this individual's responsibilities. I assume, although your letter does not expressly state, that you are considering the possibility of removing this individual from the position.

Again, it would be inappropriate for me to address the application of the Branch's By-laws to this situation. I can provide you with the following general outline of the relevant principles that have been recognized by previous presidential rulings, which are based on the *Constitution*.

The ability of the Branch President to remove shop stewards is determined by the manner of steward selection. If the Branch's stewards are appointed to office by the Branch President, the President may, pursuant to Article 6, Section 1 of the *CGSFB* remove a steward for good and sufficient cause. If, however, the shop stewards are elected by the members of each respective station, then the President may remove for good cause only if the Branch has made a specific provision for such removal in its By-Laws. In the case of shop stewards elected by the entire Branch, the stewards must be treated as regular Branch officers. Conse-

quently, they cannot be removed without complying with the specific procedures set forth in Article 10 of the *CGSFB*.

Beyond the foregoing, prior rulings indicate that a Branch President does have the authority to suspend a steward temporarily for failing to meet his/her responsibilities. Article 6, Section 1 of the *CGSFB* provides that the President of the Branch shall "have general supervisory powers over the Branch" and "shall, by virtue of his/her office be the chief steward for the Branch." Presidential rulings interpreting these provisions have long held that a Branch President may relieve a steward from his representational responsibilities for good cause. The delegates to the 2008 National Convention in Boston affirmed this authority by amending Article 6, Section 1 to provide specifically that "The President shall at all times have the authority to relieve any steward, whether appointed or elected, of any representational duties or functions, and to assign such duties or functions to another member appointed by the President, whenever the President concludes that such action is necessary to ensure that the Branch meets its representational responsibilities or to ensure Branch compliance with NALC policy."

Apart from providing the above framework, it would be inappropriate for me to advise what specific action you should take to resolve the issues referenced in your letter. Any action you take as Branch President would be subject to appeal under Article 11 of the *CGSFB*.

Brooklyn, New York Branch 41

(February 3, 2010): This is in reply to your letter, dated January 25, 2010, in which you ask several questions pertaining to proposed By-law changes to be considered by Branch 41.

According to your letter, the Branch may consider the elimination of two officer positions. In response to your first question, previous presidential rulings have held that a By-law amendment which eliminates an existing Branch officer position may go into effect beginning with the next term of office, as suggested in your letter. In response to your second question, the prior rulings indicate that the Branch would not be required to conduct nominations on October 12 for the two positions to be eliminated, so long as the By-law amendment is adopted before the Branch sends out its notice of nominations and election.

You also inquire as to the effective date of a possible By-law amendment increasing the salaries of the Branch officers. Please be advised that the Branch is free to choose the effective date for a salary increase, and may state the effective date in the wording of the By-law amendment. If the Committee of Laws' approval of this amendment occurs after the effective date, then the Branch may pay the increase retroactively.

Indiana State Association of Letter Carriers

(February 3, 2010): This is in reply to your recent letter, received by my office on January 28, 2010, concerning the resignation of Brother David Miller as President of the Indiana State Association of Letter Carriers. As Vice President, you have assumed the duties of the President pending the election of a new President. According to your letter, the Indiana State Association Executive Council has determined that there shall be an election for President at the 2010 Convention, rather than wait for the next regular election in 2011. You now ask whether the State Association is proceeding correctly.

The answer to your question is yes. Article 8, Section 2 of the *Constitution for the Government of State Associations (CGSA)* provides that "in case of [the] resignation...of the President[,...]the Vice President shall then perform all the duties incumbent upon the President until an election can be

held." Previous rulings indicate that this language requires that a presidential election must take place at the next convention, unless the State Association By-laws or past practice dictates a different approach, such as holding a special election following the resignation of the President. It does not appear that the Indiana State Association By-laws require a special election. Similarly, you have not indicated that the Indiana State Association has an established practice for filling vacancies in the office of President. Accordingly, the decision of the Executive Council is consistent with the *Constitution*.

Please note that until a new President is elected, it is incumbent on you, as Vice President, to discharge all duties of the President under the provisions of Article 8, Section 2 of the CGSA.

Slidell, Louisiana Branch 4342

(February 4, 2010): This is in reply to your letter, dated January 21, 2010, concerning the decision of the Branch 4342 Election Committee to conduct a re-run election for the position of steward in Station 70062. You now ask whether the Committee must provide the full 45 days notice of this election that is required for regular Branch elections by Section 5.1 of the *NALC Regulations Governing Branch Election Procedures (RGBEP)*.

Please be advised that the *RGBEP* are not binding on the election of stewards who are elected only by the members in the stations they represent, so that they are not eligible to be members of the Branch Executive Board. See *RGBEP*, Section 2.1. Rather, as provided in Article 4, Section 5 of the *Constitution for the Government of Subordinate and Federal Branches*, stewards may be elected in individual stations "as the Branch may determine[.]" The Branch may choose to base its steward election procedures on the *RGBEP*, but it is not required to do so. Accordingly, the Branch is not required to provide the 45 day notice that is normally required for officer elections. Instead, the Branch may conduct the re-run election at issue in any manner it chooses that is consistent with the Branch By-laws.

Of course, I have assumed that stewards in Branch 4342 are elected by station. If this assumption is wrong, and stewards are Branch officers elected by the entire membership, then the requirements of the *RGBEP* would be applicable. However, consistent with past presidential rulings, I would entertain a request from the Branch for dispensation to reduce the notice period to 15 days, which is the minimum period required by federal law. If such dispensation is required, please advise me in writing expeditiously.

Fresno, California Branch 231

(February 16, 2010): This is in reply to your letter, dated January 31, 2010, concerning proposed changes to the Branch 231 By-laws that would create a new office of Assistant Secretary-Treasurer.

In response to your specific question, please be advised that as soon as these amendments are adopted and go into effect, the Branch President may fill the new position by appointment, in accordance with Article 4, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches*. The appointed Assistant Secretary-Treasurer would be entitled to serve until the next regular election of Branch officers.

Georgia State Association of Letter Carriers

(February 22, 2010): This is in reply to your letter, dated February 4, 2010, requesting dispensation to register the delegates-at-large from the Georgia State Association of Letter Carriers to the 2010 National Convention after the June 10 deadline. According to your letter, the GSALC Convention is scheduled for June 11 and 12, so that the

election of these delegates cannot take place before the deadline.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation.

Please make arrangements with Secretary-Treasurer Jane Broendel to register the delegates as expeditiously as possible after the GSALC Convention.

San Antonio, Texas Branch 421

(February 22, 2010): This is in reply to your letter, dated February 7, 2010, requesting rulings on two issues.

The first issue concerns the investigation of charges under Article 10 of the *Constitution for the Government of Subordinate and Federal Branches*. Specifically, you ask whether Article 10, Section 3, which provides that the parties are entitled to cross-examine witnesses, allows the charging and charged parties to cross-examine each other. Generally speaking, the answer to this question is yes. The parties' right of cross-examination is not limited to non-party witnesses.

The second issue concerns the election of stewards in Branch 421. According to your letter, certain stations were not able to conduct a vote for steward. You ask whether it would be permissible under the *NALC Regulations Governing Branch Election Procedures (RGBEP)* for the Election Committee to allow members at these stations to vote on the day after the election in light of extenuating circumstances.

Please be advised that the *RGBEP* are not binding on the election of stewards who are elected by station and are not members of the Branch Executive Board. See *RGBEP*, Section 2.1. Rather, as provided in Article 4, Section 5 of the *Constitution for the Government of Subordinate and Federal Branches*, stewards may be elected in individual stations "as the Branch may determine[.]" Of course, the Branch may choose to base its steward election procedures on the *RGBEP*, but it is not required to do so. Accordingly, in the situation described in your letter, the Branch may remedy the problem in any manner that is consistent with its By-laws.

Naugatuck, Connecticut Branch 746

(February 22, 2010): This is in reply to your letter, dated February 9, 2010, concerning the tie vote for the highest alternate delegate position in Branch 746. Your letter requests advice as to how to break the tie.

Please be advised that Section 11.31 of the *NALC Regulations Governing Branch Election Procedures (RGBEP)* expressly provides that in the event of a tie vote, a run off election must be held within 30 days. The two candidates involved may mutually agree to waive their right to a run off election. For example, they could agree among themselves who would be the first alternate; or they could agree to flip a coin. However, absent such agreement, the only alternative would be to conduct a run off election in accordance with all applicable requirements as set forth in the *RGBEP*.

I understand that the 30 day time period for conducting the re-run has passed. In accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant Branch 746 dispensation to conduct a late run off election, if the candidates are unable to agree on an alternative method of breaking the tie.

Illinois State Association of Letter Carriers

(February 23, 2010): This is in reply to your letter, dated February 4, 2010, concerning changes in the Postal Service's procedure for selecting supervisors. You now ask when under these new proce-

dures a member would be deemed to have "applied" for a supervisory position for purposes of applying the restrictions on holding union office or serving as a delegate which are set forth in Article 5, Section 2 of the *NALC Constitution* and Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*.

You have certainly identified an important question. However, for the time being, I believe it would be premature to address this issue now based on an understanding of the new process which may not be precisely accurate or universally applicable.

To put this response in context, please understand that previous presidential rulings have consistently held that the determination whether an individual has "applied" for a supervisory position must be made on a case-by-case basis at the Branch level. The rulings have recognized that the prohibition set forth in Article 5, Section 2 covers any application for a supervisory position. It was not necessary that the member file a Form 991 or otherwise submit an application in writing. An oral statement indicating a member's interest in a 204b position may or may not have constituted an application for a supervisory position, depending on the member's intent, the specific wording of the statement, local practices, and other relevant circumstances. Similarly, previous rulings have held that taking an examination may or may not have constituted an application depending on whether management considered individuals who had passed the test as having applied for a supervisory position or whether additional steps would be necessary. Local practices have been recognized as relevant to the determination whether a member had applied for a supervisory position.

If the Postal Service does promulgate a national procedure for supervisory applications, I may revisit this matter and issue a broad ruling. For the moment, I would suggest that each Branch continue to approach this issue on a case-by-case basis, taking into account any relevant local practices.

Columbia, Missouri Branch 763

(February 23, 2010): This is in reply to your letter, dated January 29, 2010, in which you seek guidance with respect to the election of convention delegates from Branch 763.

Before responding to your specific questions, I note that I have also received a letter from Branch 763 member Richard Mitchem which asserts that the Branch did not conduct an election of delegates. If this is true, then none of the officers or members of the Branch will be eligible to participate in the National Convention as delegates. Both the *NALC Constitution* and the *NALC Regulations Governing Branch Election Procedures (RGBEP)*, consistent with federal law, require that delegates to National and State Conventions be elected. See generally, *NALC Constitution*, Articles 4 and 5; *RGBEP* Section 2.1.

Article 5, Section 4 of the *NALC Constitution* requires that the election of delegates must take place no later than the December of the year preceding the Convention. I would be prepared to entertain a request from Branch 763 for dispensation to conduct a late election of delegates. However, any such request must be in writing and should include an explanation for the apparent failure of the Branch to conduct a delegate election.

The remainder of this letter addresses the specific issues raised in your letter.

First, you ask whether the Branch may provide in its by-laws that a member must have attended nine meetings and be in good standing "in order to be a delegate, paid, unpaid, or alternate." The answer to this first question is no. As numerous presidential rulings have recognized, Branches are

prohibited from instituting a minimum meeting attendance requirement for the election of convention delegates. Imposition of such a requirement conflicts with Article 5, Section 2 of the *NALC National Constitution* which provides that all "qualified regular members shall be eligible to be a delegate or alternate delegate to the National Association Convention or State Convention..." The term "qualified regular members" refers to all members in good standing, regardless of the number of meetings they may have attended.

Branches may, however, impose a reasonable meeting attendance requirement for receipt of Branch funds to attend a convention. Article 6, Section 6 of the Branch 763 By-laws that you forwarded to me states that the requirement of attending nine meetings relates to whether a delegate will qualify for compensation. This language is consistent with the *Constitution*. However, the Branch may not amend it to establish a meeting attendance requirement for unpaid delegates.

Your second question refers to two members who wish to attend the Convention as delegates, who have not been selected to receive compensation. Your question indicates some confusion over the requirements of the *Constitution*. As noted above, all delegates, whether paid or unpaid, must be nominated and elected. Under the provisions of Article 5, Section 2 of the *NALC Constitution*, all members in good standing are eligible to be elected delegate or alternate delegate, except for those members who have served in, accepted, or applied for supervisory positions within the previous two years. At the same time, the number of delegates the Branch chooses to fund is a different issue from the number of delegates to which the Branch is entitled to send. While the Branch does have discretion to determine which of its elected delegates it will fund, it would be improper for the Branch to restrict the number of delegates to the Convention which Branch members may nominate and elect. Members who have been elected delegates must be permitted to attend the Convention, even if they have to do so at their own expense.

Finally, you ask for guidance to determine whether a member who has been in non-pay status for over four months is in good standing so that she can attend the Convention as a delegate. Numerous presidential rulings have addressed the application of the *Constitution* to the situation described in your letter. These interpretations may be summarized as follows.

Whether or not an individual from whom dues have not been collected is eligible to be a delegate turns on whether the individual has forfeited his/her membership under the provisions of Article 7, Section 4 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. Under Article 7, Section 4, any member who fails to pay monthly dues for 30 days must forfeit his/her membership. Article 7, Section 4 permits Branches to extend the 30 day grace period for not more than an additional 60 days "for good and sufficient reasons, under reasonable rules uniformly applied." Your letter does not indicate whether Branch 763 has ever acted to extend the 30 day grace period. In any event, at the end of the grace period, if the member is still delinquent, he/she must forfeit his or her membership.

An additional exception to the forfeiture rule is provided by Article 7, Section 3(b) of the *CGSFB*. It states that a Branch may exempt any member from dues payments under reasonable rules uniformly applied for a stated period of time. Thus, for example, a Branch could adopt a policy providing that members will be exempt from dues payments while on workers compensation or leave without pay. Your letter does indicate that Branch 763 has imple-

mented such an exemption. However, the question whether the Branch has done so must be resolved at the Branch level.

Prior to the time of forfeiture, the member retains full membership rights, including the right run for a delegate position, notwithstanding the dues delinquency. But when the point of forfeiture is reached, the member loses all rights of Branch, State Association and National membership. This would include the right to be a convention delegate.

Where Article 7, Section 4 applies—i.e., cases in which a member fails to pay a fine or an assessment or monthly dues within 30 days or an extended grace period—the forfeiture of membership is automatic. It would not be necessary for the Branch to initiate charges or provide formal notice to the individual. While the Branch is expected to notify NALC Headquarters in writing of any forfeiture and the reasons for it, the mere fact that the Branch has failed to notify NALC Headquarters of the changed status of a member does not, in and of itself, confer membership rights on an individual who has forfeited membership rights by failing to pay dues.

As indicated above, it is the responsibility of the Branch to apply the above guidelines to individual situations based on the particular fact circumstances.

Turlock, California Branch 1742

(February 25, 2010): Your recent letter to the Chairperson of the NALC Committee on Appeals, dated February 6, 2010, has been referred to me for reply, insofar as your letter raises issues of interpretation under the *NALC Constitution* and *NALC Regulations Governing Branch Election Procedures (RGBEP)*.

Your letter concerns the conduct of the election of officers in Branch 1742. Apparently, a member has protested the fact that members were not allowed to accept nomination for more than one position. Please be advised that any such prohibition would have been consistent with Section 6.5 of the *RGBEP*, which provides that: "No person shall accept nomination for more than one office."

Your letter also asserts that the past practice of the Branch has been that retiree members were not allowed to vote. This is a violation of the *Constitution*. Retiree members are "regular" members under Article 2, Section 1 of the *NALC Constitution* and are fully entitled to participate in the election of Branch officers. See also, Section 11.4 of the *RGBEP* which states that "Each regular branch member, as defined in Article 2, Section 1 (a) of the *NALC Constitution*, is entitled to one vote for each position to be filled."

Your letter asks for assistance in remedying the apparent failure of the Branch to conduct its election of officers properly. In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant Branch 1742 dispensation to conduct a new election of officers. Please make sure that the new election is conducted as expeditiously as possible, and in accordance with the requirements of the *RGBEP* and the Branch By-laws.

You may contact the office of your National Business Agent, Manny Peralta, for any further advice or assistance in conducting the election.

Finally, I am referring your request for a copy of the current Branch 1742 membership list to Secretary-Treasurer Jane Broendel and the NALC Membership Department for response.

Terry Krokosz, Vista, California

(February 25, 2010): This is in reply to your letter, dated February 8, 2010, concerning the process for appealing the composition of a committee appointed to investigate charges filed under Article 10 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. Specifical-

ly, your letter raises the question of how and when such an appeal can be made under Article 11 of the *CGSFB*.

The answer to this question is not quite as clear cut as your letter suggests. Under Article 10, Section 3, the Branch President, or Vice President, if the charges are against the President, has discretion to appoint the investigating committee. Article 10 does not require that the appointment of the committee be made at the meeting at which charges are read. At the same time, as you recognize, Article 11, Section 1 of the *CGSFB* provides that an appeal from a decision of the Branch President (in this case the Branch 2525 Executive Vice President) may be made to the Branch at the meeting at which the subject appealed from is "under consideration." So the question whether the composition of the committee can be appealed at the meeting at which the charges are read turns on whether the appointment of the committee has been made and is the subject of consideration by the Branch at that time. That is essentially a factual question to be decided on a case-by-case basis.

The determination of whether the appointment of the committee was under consideration at a particular Branch meeting is not an appropriate subject for a ruling by the National President. Rather, that question must be addressed, in the first instance, at the Branch level. In this case, the procedural ruling by Sister Mize at the January 7, 2010 meeting that the challenge to her appointments was not then a proper subject of appeal could itself have been appealed to the Branch at that meeting. Alternatively, insofar as Sister Mize's procedural ruling was allowed to stand, an appeal to the Branch challenging the composition of the committee could be made at the meeting at which the committee reports its findings to the Branch. Finally, previous rulings have recognized that even if there is no separate appeal challenging the committee appointments, a claim that one or more committee members was not "disinterested" can be included in an appeal to the National Committee on Appeals from the Branch's ultimate determination of the merits of the charges.

Homar Hernandez Jr., San Antonio, Texas

(February 25, 2010): This will acknowledge receipt of the material you forwarded to me by letter dated February 15, 2010.

While I appreciate your concern, I must advise that it would be entirely inappropriate for me to intervene in these matters at this time. Both the charges that you submitted against Branch 421 President Nancy Feldt, and the charges that have been filed against you must be addressed, in the first instance, at the Branch level. Of course, the Branch decisions in these matters are subject to appeal to the National Committee on Appeals in accordance with the procedures set forth in Article 11 of the *Constitution for the Government of Subordinate and Federal Branches*. However, there is no basis for intervention by the National President at this time.

San Diego, California Branch 70

(March 8, 2010): This is in reply to your fax, dated February 10, 2010, concerning a proposal that would require members of Branch 70 to participate in COLCPE in order to be eligible to serve as a convention delegate.

While I appreciate the sentiment underlying this proposal, I must advise that such a qualification standard for delegates would be in conflict with both the *NALC Constitution* and the *NALC Regulations Governing Branch Election Procedures (RGBEP)*. Article 5, Section 2 of the *NALC Constitution* expressly states that "All qualified regular members shall be eligible to be a delegate or alter-

nate delegate to the National Association Convention or State Convention," except for those members who hold accept or apply for supervisory positions in the Postal Service. Similarly, Section 4.1 of the *RGBEP* provides that "All regular members . . . are eligible to hold any office or position in the branch," except for those who fall within the supervisory disqualification (Section 4.11) or have been convicted of certain crimes (Section 4.12). Restricting delegate eligibility to members who participate in COLCPE would be inconsistent with these provisions. Accordingly, the Branch should not entertain the proposed motion.

Marianette Henderson, Detroit, Michigan

(March 8, 2010): This is in reply to your letter, dated February 10, 2012, concerning the election of stewards at the Livonia, Michigan Main Post Office. Your letter requests an investigation of this election by the National Union, based on your allegations that the conduct of the election violated the Branch 1 By-laws.

While I appreciate your concern, I must advise that there is no basis for intervention by the National Union at this time. The proper procedure for pursuing your claims would be to initiate an appeal to the Branch in accordance with the provisions of Article 11 of the *Constitution for the Government of Subordinate and Federal Branches*. The Branch's decision would then be subject to appeal to the National Committee on Appeals, again in accordance with procedures set forth in Article 11.

I express no view as to the merits or timeliness of any such appeal.

David Kelly, Crystal Lake, Illinois

(March 9, 2010): This is in reply to your letter, dated February 21, 2010, concerning charges that have been filed against officers of Branch 4268. You have been appointed to the committee to investigate these charges. Your letter asks five specific questions relating to the procedures the committee should follow in conducting its investigation.

Before addressing your specific questions, I would call your attention to Article 10 of the *NALC Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. Article 10 sets forth the basic rules governing the filing and processing of charges.

Your first question asks what is your time line to investigate the charges, have a hearing, and render a decision. Please be advised that the function of the committee is to investigate the charges and to report to the Branch. It is the Branch that will render the ultimate decision. Article 10, Section 1 of the *CGSFB* states that the Branch's determinations are to be made "at the next regular Branch meeting after [the meeting at which] the charges are read to the Branch." Article 10, Section 1 also states that the vote regarding these matters "may be continued [i.e., postponed] once, by motion, to the following regular Branch meeting." In addition, prior rulings have recognized that circumstances sometimes arise which prevent an investigating committee from completing its investigation within the time frame provided by Article 10, Section 1 (e.g., witness unavailability, extensive documentation). The rulings have instructed committees in these circumstances to complete their investigations as soon as possible.

Your second and third questions ask me to determine whether some or all of the charges allege a "chargeable wrong" or have been stated with sufficient specificity to justify going forward with the investigation. It would be inappropriate for me to comment on the specifics of the matters before you. I can advise that Article 10, Section 2 of the *CGSFB* states:

"Charges must be made in writing, specifying the offense, failure, neglect, or misconduct so as to fully apprise the member or officer of the nature thereof, and shall be signed by a member of the Branch..."

As previous rulings have recognized, although Article 10, Section 2 does require specificity, this does not mean that charges are invalid unless stated in exhaustive detail. It is up to the committee and the Branch to apply the above-stated principles to the facts of this case. Your committee may very well conclude that the charges, as written, are insufficient to state a violation of the *Constitution*. However the investigating committee may not rely on any such conclusion to avoid completing its investigation and reporting to the Branch. The committee may communicate its opinion as to the sufficiency of the charges to the members. But the members must be given the opportunity to vote on the charges.

Your fourth question is whether the committee is required to conduct a "public trial" following its investigation. While a public trial is not required, the committee must conduct its investigation in a manner that satisfies the requirements of the *Constitution*. In particular, Article 10, Section 3 of the CFGSFB provides that the investigating committee is to "summon the parties, hear and take down or cause to be taken down or recorded, the testimony and/or documentary evidence presented." It further states that all parties are "entitled to be heard by the committee, to present evidence, and to cross-examine all witnesses who make statements to the committee". However please note that Article 10, Section 3 also states that "rules of evidence and rules of judicial procedure need not be observed."

Your fifth question is whether the committee is required to record electronically all interviews and trial procedures. Please be advised that electronic recording is permissible under the *Constitution*, but not mandatory. However, if the committee does record its proceedings electronically, all parties should be notified.

Monica Howard, Chicago, Illinois

(March 9, 2010): This is in reply to your letter, dated February 18, 2010, concerning the situation in Branch 4268, Palatine IL.

While I appreciate your concern with the governance of the Branch, I must advise that it would be entirely inappropriate for me to comment on any of the matters referenced in your letter. In particular, the Branch's decision to order a re-run election for the office of Health Benefits Representative could have been appealed to the National Committee on Appeals in accordance with the provisions of Sections 21.4-21.44 of the *NALC Regulations Governing Branch Election Procedures*. The arguments set forth in your letter could have been incorporated in such an appeal.

Similarly, I cannot comment on issues which are the subject of pending charges against the current officers of the Branch. Those charges must be resolved in accordance with the procedures set forth in Article 10 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. The Branch's decision may be the subject of an appeal to the National Committee on Appeals under Article 11 of the *CGSFB*.

Romeo Flores, Brownsville, Texas

(March 10, 2010): This is in reply to your letter, dated February 22, 2010, requesting that I rule on the conduct of the 2009 election of officers in Branch 1456.

While I appreciate your concern, I must advise that there is no basis for your request. As I stated in my letter to Branch President Lopez, objections to the conduct of a branch election must be submitted in the form of a post-election appeal in accordance

with the provisions of Section 21 of the *NALC Regulations Governing Branch Election Procedures (RGBEP)*.

The previous correspondence from Brother Lopez stated that the election took place on November 18, 2009. Therefore, it appears that your appeal to the Branch Election Committee was untimely. Section 21.1 of the *RGBEP* specifically states that all objections to the conduct of a branch election must be mailed to the Chairperson of the Branch Election Committee "within five (5) days of the date of the election." According to your letter, you did not submit your appeal until February 1, 2010, which is well beyond the time frame for initiating a post-election appeal. The fact that your Branch President had requested an interpretive ruling from me did not mean that you could delay the submission of an appeal.

Finally, I note that your objection to the conduct of the election appears to be based on the failure of the Branch to enforce a supposed requirement in the By-laws that candidates resign from current positions in order to be nominated. As I indicated in my letter to Brother Lopez, such a requirement would be inconsistent with the *Constitution* and previous presidential rulings.

Belleville, Illinois Branch 155

(March 10, 2010): This is in reply to your letter, dated January 30, 2010, protesting the merger of the letter carriers employed at the Lebanon, IL Post Office into Branch 1197.

While I appreciate the pragmatic concerns expressed in your letter, I must advise that there is no basis for your protest. The merger in question was achieved by vote of the members of both branches in accordance with the procedures set forth in Article 2, Section 3 of the *NALC Constitution*. Since the appropriate procedures were followed, I approved the merger. The issues raised in your letter simply do not present grounds for overturning the merger.

Springville, Utah Branch 2821

(March 10, 2010): This is in reply to your recent letter, received by my office on February 22, 2010, requesting that I approve a proposal that would allow the Branch to hold only four meetings a year.

At the outset, your letter provides a persuasive explanation of the reasons underlying this request. However, I cannot approve it. As you recognize, Article 3, Section 1 of the *Constitution for the Government of Subordinate and Federal Branches* requires that Branches conduct at least ten meetings a year. As President, it is my obligation to enforce the *Constitution* as written. I cannot rule that express language in the *Constitution* is permanently inapplicable to a particular Branch.

Please note that there are ways that the Branch can satisfy the constitutional requirement with minimal expense (e.g., meeting on postal property). I suggest that you discuss this matter further with NBA Price's office to explore options for conducting meetings.

In addition, the Branch may consider submitting a proposed amendment to the *Constitution* for consideration at the upcoming National Convention to allow small Branches to meet fewer than ten times per year.

Fairfield, Iowa Branch 726

(March 10, 2010): Your letter to Secretary-Treasurer Jane Broendel, dated January 21, 2010, has been referred to me for reply insofar as your letter raises issues of interpretation under the *NALC Constitution*. According to your letter, Branch 726 presently maintains the minimum Branch dues structure under the provisions of Article 7, Section 2 of the *NALC Constitution*. You now ask whether

the Branch can eliminate its minimum Branch dues, so that its members would only be required to pay National and State per capita tax.

While I appreciate that your letter reflects the sincere wishes of the members of Branch 726, I must advise that the answer to your question is no. Article 7, Section 2 establishes a minimum dues structure, which includes a minimum Branch dues requirement, which is binding on all Branches that have a dues structure. The minimum Branch dues cannot be eliminated.

The minimum dues structure was adopted by the NALC Convention in 1984. Rulings issued shortly thereafter recognized that the new minimum Branch dues requirement was not intended to cover Branches which did not then have any Branch dues. However, the rulings do not permit Branches that have dues, such as Branch 726, to eliminate their existing Branch dues.

Although the Branch dues cannot be eliminated, previous rulings have recognized that a Branch may enact a rebate of dues to its members. Article 12, Section 3 of the *Constitution for the Government of Subordinate and Federal Branches* provides, in pertinent part, that all funds of the Branch "shall be devoted to such uses as the Branch may determine ...when ordered by a majority vote of the members present and voting at a regular meeting." A dues rebate that is enacted in accordance with Article 12, Section 3 is permissible, so long as it does not conflict with any provisions in the Branch By-laws.

Branch 2691 Members, Clovis, New Mexico

(March 16, 2010): Your letter, dated February 10, 2010, that was sent to NALC Headquarters has been referred to me for reply. Your letter, and the attached statements, make a variety of allegations against the President of Branch 2691, Katherine Mullins.

By copy of this letter, I am directing National Business Agent Kathy Baldwin to assign a representative from her office to investigate the situation in Branch 2691 and to report back to me with any recommendations for further action.

This letter should not be read as expressing a view as to any of the matters referenced in the documents that you forwarded to us.

La Mesa, California Branch 3347

(March 19, 2010): This is a follow-up to our email exchange on February 19, 2010, concerning the proposed merger of Branch 3347 and Branch 70.

In light of the facts set forth in your original email, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby confirm that I have granted Branch 3347 dispensation to conduct the vote on the proposed merger upon 28 days notice.

Brookwood, Alabama Branch 1096

(March 24, 2010): This is in reply to your letter, dated March 8, 2010, concerning the tie vote for first alternate delegate to the National Convention from Branch 1096. According to your letter, you have learned that one of the delegates will be unable to attend the Convention, so that it is now necessary to break the tie.

Please be advised that previous presidential rulings have authorized breaking such ties by flipping a coin so long as both alternates consent to this procedure. I would urge both affected members to agree to a coin flip to save time and the obvious inconvenience and expense that would be necessitated by a special election.

In the absence of consent by both alternates, the Branch will be required to conduct a special election to break the tie. Such an election can be conducted on an expedited basis. In light of the facts presented, and in accordance with my authority under Arti-

cle 9, Section 1 of the *NALC Constitution*, I hereby grant Branch 1096 dispensation to conduct a special election between the two alternates upon 15 days notice mailed to each member of the Branch.

Dennis Smith, Lake in the Hills, Illinois

(March 24, 2010): This is in response to your letter, dated March 11, 2020, concerning the decision of Branch 4268 to uphold an appeal challenging your recent election as Branch Health Benefits Representative. At its meeting on February 10, 2010, the Branch voted to order a re-run election. You now ask me to rule on several objections to this decision by the Branch.

While I appreciate your concerns, I must advise that it would be inappropriate for me to intervene in this matter at this time. The arguments stated in your letter should have been directed to the National Committee on Appeals. Section 21.4 of the *NALC Regulations Governing Branch Election Procedures (RGBEP)* clearly provides that a member aggrieved by the decision of the Branch with respect to an election appeal may appeal the Branch's decision to the National Committee on Appeals. The procedures for submitting such an appeal are set forth in sections 21.41-21.44.

It is not clear from your letter whether you have initiated an appeal to the Committee. In any event, it would not be proper for me to comment on the merits or timeliness of any such appeal. However, by copy of this letter to Vice President George Mignosi, who is chairman of the Committee, I am requesting that the Committee resolve your appeal expeditiously if it is submitted.

Finally, I am enclosing a copy of my letter to Branch 4268 Recording Secretary Mario Flores which addresses the timing and conduct of the re-run election.

Palatine, Illinois Branch 4268

(March 24, 2010): This is in reply to your letter, dated February 17, 2010, concerning the disputed election of the Branch 4268 Health Benefit Representative (HBR). According to your letter, the appeal submitted by the losing candidate was sustained by the Branch and a re-run election has been ordered. You now ask whether the re-run election should be conducted immediately or stayed pending the result of an appeal by the winning candidate to the National Committee on Appeals.

Please be advised that previous rulings indicate that a re-run election may be commenced when the appeal process has been exhausted at the Branch level. Accordingly, it appears that the re-run may go forward, notwithstanding the appeal to the National Committee. However, I caution that if the Committee upholds the appeal, the result of the original election may very well be reinstated. Accordingly, the Branch should consider delaying the re-run until the Committee issues its decision.

You also ask whether the Branch's decision to order a new election requires the reopening of nominations for the office of HBR. Generally, a decision to sustain an election appeal does not necessarily require new nominations. If the original appeal did not challenge the conduct of nominations, and only raised objection with respect to the subsequent conduct of the election, then a decision to sustain that appeal would normally only require a re-run of the election, not the nominations.

However, as previous rulings have recognized, it is up to the Branch to decide on the applicability of the foregoing comments to your specific situation. It was the Branch that decided to sustain the appeal. Accordingly, it is the Branch's responsibility to determine the meaning of its own decision.

Hammond, Indiana Branch 580

(March 25, 2010): This is in reply to your letter, dated March 5, 2010, requesting a presidential ruling to resolve a dispute over certain appointments you have made as President of Branch 580. According to your letter, you filled a vacancy in the office of Treasurer by appointing the incumbent Recording Secretary to this position. You then appointed another member to serve as Recording Secretary. Some members have now questioned whether you had the authority to appoint the Recording Secretary to a different office before he had completed his full term of office.

At the outset, the actions described in your letter are consistent with the *Constitution*. Article 4, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* specifically provides that in the event any Branch office becomes vacant, the Branch President may appoint a successor officer, unless the Branch By-laws provide for an order of succession. There is no language in the *CGSFB* which would prevent a Branch President from appointing an incumbent officer to fill a vacancy in another office, and then appointing another member to fill the resulting vacancy.

I do not read Article IV, Section 3 of the Branch 580 By-laws to provide anything more than establishing that the term of office for Branch officers is two years. If this language were interpreted to require an incumbent officer to serve a full term, so as to prevent the Branch President from appointing an incumbent officer to fill a vacancy in another Branch office, then the By-law would be an unconstitutional infringement on the authority of the Branch President.

In sum, it appears that your actions were appropriate.

Dallas, Texas Branch 132

(March 25, 2010): This is in reply to your letter, dated March 3, 2010, concerning the adjournment of the meeting of Branch 132 that took place on March 1. According to your letter, a number of items of business were not addressed at that meeting.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant Branch 132 dispensation to conduct all items of unfinished business from the March 1 meeting at its next regular Branch meeting. However, I am not prepared to authorize the Branch Executive Board to make decisions that must be made by the members of the Branch under the *Constitution* or the Branch By-laws.

Please understand that I am very concerned about the situation in Branch 132. Therefore, I have asked NALC Director of Health Benefits Tim O'Malley to attend the next meeting of the Branch as my representative. Brother O'Malley is authorized to act as a neutral observer and to recommend possible courses of action to me.

Jacksonville, Florida Branch 53

(March 26, 2010): This is in reply to your letter, dated March 18, 2010, concerning the charges that have been filed by Brother Russ Dill against Brother J.T. Adams.

While I appreciate your concerns, I must advise that a Branch President cannot declare charges invalid on their face so as to prevent them from being processed by the Branch. As previous rulings have recognized, once filed, charges must be processed by the Branch in accordance with the procedures set forth in Article 10 of the *Constitution for the Government of Subordinate and Federal Branches*. This means that you will have to appoint a three person committee to investigate the charges, and the members will be required to vote on the charges.

The argument cited in your letter (i.e., that the

charges concern the content of a paid political ad which cannot legitimately be the basis for allegations under Article 10) may be presented to the investigating committee and to the Branch when the charges are considered. Ultimately, if the charges are sustained, this argument may be raised in an appeal to the National Committee on Appeals.

The above should not be read as expressing any view as to the merits of the charges or your suggested argument against them.

Beverly Hills, California Branch 2293

(March 29, 2010): This is in reply to your letter, dated March 22, 2010, concerning the failure of Branch 2293 to conduct an election of delegates to the 2010 National Convention. You now request dispensation to conduct a special election of delegates outside the time frame provided by Article 5, Section 4 of the *NALC Constitution*.

In light of the facts presented in your letter, and in accordance with my authority under Article 9, Section 1 of the *Constitution*, I hereby grant the requested dispensation. Please note that the Branch must provide notice of nominations and election of delegates by mail to each member of the Branch. The elected delegates must be registered by June 10.

This dispensation extends only to the election of delegates to the 2010 National Convention. In the future, the Branch must adhere to the time frames provided by the *Constitution*.

Peggy Cooper, Seattle, Washington

(March 29, 2010): Thank you for your recent letter, received by my office on March 24, 2010, in which you advocate permitting former NALC members to rejoin the Union after they retire.

The *NALC Constitution* requires that a retiring member execute a Form 1189 at the time of retirement in order to maintain his/her status as a regular member of the NALC. See Article 2, Section 1(e). It is NALC's practice to mail blank Forms 1189 at least twice to retiring members before formally terminating their membership. As previous presidential rulings have consistently held, retirees whose membership is terminated because they failed to execute the Form 1189 are not eligible to rejoin the NALC as regular members at a later time.

Your suggestion that these retired former members be allowed to rejoin the NALC would require that the *NALC Constitution* be amended. Amendments can be submitted by NALC Branches for consideration by the National Convention. It would be up to the delegates to decide whether to adopt any amendment permitting former members to rejoin the NALC after retiring.

Lincoln Park, Michigan Branch 758

(April 13, 2010): This is in reply to your letter, dated March 17, 2010, in which you ask me to address several questions pertaining to the conduct of Branch meetings and other matters.

At the outset, please be advised that my role as National President is to interpret the *NALC Constitution*. Accordingly, I can advise you as to whether there are provisions in the *Constitution*, or previous presidential rulings, which are relevant to the issues raised in your letter. It would not be appropriate for me to resolve disputes over the meaning or application of a Branch's By-laws or over past practices of a Branch. Such disputes must be resolved, in the first instance, at the Branch level.

With regard to your specific questions, the *NALC Constitution* does not prescribe detailed procedures for the conduct of Branch meetings. Previous presidential rulings have consistently recognized, for example, that Robert's Rules are not binding on NALC Branches. Branches may adopt Robert's Rules, but they are not required to do so. For those Branches that do recognize Robert's Rules, previ-

ous presidential rulings have also stated that Robert's Rules cannot be applied in a manner which is inconsistent with the *Constitution*. Branches that do not adopt Robert's Rules may utilize any reasonable procedures or practices for conducting meetings, so long as they are consistent with the *Constitution*.

You also ask whether Branch officers can make or second motions. There are no provisions in the *NALC Constitution* which would prohibit Branch officers from making or seconding motions at Branch meetings. If, as you suggest, the Branch 758 By-laws are silent on this matter, and the Branch has not adopted rules of procedure which prohibit officers from making or seconding motions, then it would be permissible for officers to do so.

Apart from the foregoing, you also ask what would happen if the Branch were to sustain charges that have been filed against the Branch President and were to vote in favor of his removal, as provided by Article 10, Section 4 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. Previous presidential rulings have held that if a charge against an officer is sustained by the Branch, and the Branch votes to impose a penalty of removal, the penalty would go into effect immediately, notwithstanding the filing of an appeal by the charged party. If the Branch President were removed, the Vice President would assume the presidency of the Branch for the remainder of the term, as provided by Article 6, Section 2 of the *CGSFB*. Of course, the NALC Committee of Appeals would have the authority to reinstate the removed Branch President if it were to uphold his/her appeal.

Finally, you ask what would happen if no member runs for Branch President during the next Branch 758 election. As indicated above, under Article 6, Section 2 of the *CGSFB*, if the office of Branch President were vacant after the election has been conducted, the elected Vice President would assume the presidency. Alternatively, the President of the NALC is authorized to grant Branches dispensation to conduct a special election to ensure that a Branch has a President. In any event, the unfortunate situation suggested in your letter would have to be assessed if it were to arise in light of the circumstances then present.

St. Charles, Missouri Branch 984

(April 12, 2010): This is in reply to your letter, dated March 8, 2010, requesting permission to register seven members as delegates from Branch 984 to the 2010 National Convention. According to your letter, each of the named members was properly elected.

Insofar as these members were elected, I am directing Secretary-Treasurer Broendel's office to register these seven members as the delegates from Branch 984. I note, however, that your letter does not include a list of alternate delegates. Unless a list of elected alternates is provided by June 10, NALC will not register any alternates from Branch 984.

In addition, the attachment to your letter indicates that the Branch views members who have not attended a minimum number of Branch meetings to be "ineligible" to be delegates. This may reflect a misunderstanding of the *NALC Constitution*. As numerous presidential rulings have recognized, Branches are prohibited from instituting a minimum meeting attendance requirement for the election of convention delegates. Imposition of such a requirement conflicts with Article 5, Section 2 of the *NALC National Constitution* which provides that all "qualified regular members shall be eligible to be a delegate or alternate delegate to the National Association Convention or State Convention . . ." The term "qualified regular members" refers to all

members in good standing, regardless of the number of meetings they may have attended.

Branches may impose a reasonable meeting attendance requirement for receipt of Branch funds to attend a convention. Accordingly, the Branch remains free to restrict payment of Branch funds to those elected delegates who satisfy a meeting attendance requirement set forth in the Branch By-laws. However, delegates who do not receive funding may attend the Convention at their own expense.

Stan Price, Palatine, Illinois

(April 14, 2010): This is in reply to your letter, dated March 16, 2010, requesting rulings on numerous issues pertaining to the procedures that Branch 4268 is following in processing charges that you have filed against other members and in handling an appeal of the Branch election that you have submitted.

Most of the issues raised in your letter are inextricably bound up in the specific facts of your appeals. Accordingly, it would be inappropriate for me to issue a ruling to resolve these matters. If you are dissatisfied with any actions by Branch officers or decisions by the Branch, you may, of course, submit an appeal to the National Committee on Appeals under Article 11 of the *Constitution for the Government of Subordinate and Federal Branches* (with regard to the charges) or under Section 21.4-21.44 of the *NALC Regulations Governing Branch Election Procedures* (with regard to the election appeal). I express no view as to the merits or timeliness of any such appeal.

I can rule on two issues raised in your letter which involve the interpretation of the *Constitution*. First, prior rulings have long established that Branches are not required to follow Robert's Rules. Second, prior rulings have also made clear that a member against whom charges have been brought does have the right to defend himself at the Branch meeting at which the charges are considered and does have the right to vote on the charges.

Board Members, San Juan, Puerto Rico Branch 869

(April 14, 2010): This is in reply to your two letters, dated March 18 and 24, 2010, in which you seek to appeal to me objections you have raised concerning the appointment of the committee to investigate charges you have brought against Branch 869 President John Rivera. In your first letter of March 18 you objected to the inclusion of Brother Modesto Figueroa as a member of the committee and believe that you should have been allowed to appeal his selection to the Branch. In your second letter of March 24 you object to the subsequent replacement of committee members.

At the outset, it would be entirely inappropriate for me to intervene in this matter at this time. I can advise you that an appeal to the Branch challenging the composition of the committee can be made at the meeting at which the committee reports its findings to the Branch. In addition, previous rulings have recognized that even if there is no separate appeal challenging a committee appointment, a claim that one or more committee members was not "disinterested," or that appointments to the committee were otherwise improper, can be included in an appeal to the National Committee on Appeals from the Branch's ultimate determination of the merits of the charges.

Gloria Moore, Wylie, Texas

(April 16, 2010): This is in reply to your letter, dated March 15, 2010, concerning the ongoing dispute over officer compensation in Branch 132.

At the outset, please accept my regret for the delay in responding to your letter. However, I have been out of the office for most of the time since

your letter arrived. In addition, I wish to assure you that I do appreciate your commitment to the Branch, and the sincerity of your view.

Nonetheless, I must reiterate that there is no basis for formal intervention by the National Union in this matter at this time, particularly in light of the recent audit of the Branch by the Department of Labor. Disputes over whether compensation received by Branch officers was properly authorized by the Branch are to be resolved in the first instance at the Branch level. You are certainly free to initiate charges against officers under Article 10 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. Any decision by the Branch may be appealed to the National Committee on Appeals under Article 11 of the *CGSFB*. The Committee will then be in a position to review the dispute in light of a documentary record with the positions of both sides fully argued. Please note that the present members of the Committee on Appeals have had no connection to this dispute.

Apart from the foregoing, I am sure that you are aware that I assigned NALC Director of Health Benefits Tim O'Malley to attend the last Branch 132 meeting. Brother O'Malley remained after the meeting to discuss any issues with any concerned member of the Branch. If Brother O'Malley is assigned to a future meeting, you should feel free to discuss your particular issues with him.

Finally, please note that Article 10, Section 8 of the *CGSFB*, which you quote in your letter, was deleted from the *Constitution* by the 2008 National Convention. Prior rulings interpreting this provision had held that this provision was never intended to apply to internal Branch matters, but instead pertained to members who improperly involve the Branch in federal, state, or local governmental politics. The delegates to the 2008 Convention recognized that this section had become obsolete.

Mobile, Alabama Branch 469

(April 22, 2010): This is in reply to your letter, dated March 5, 2010. Please accept my apology for the delay in responding to your letter. I have been out of the office much of the time since it arrived.

Your letter requests that I resolve a dispute as to which of two members of Branch 469 should be recognized as a delegate to the 2010 National Convention. The dispute arises from the resignation of the Branch's Health Benefits Representative (HBR). The Branch By-laws provide that the HBR, along with other Branch officers, shall be a delegate to the National Convention. When the elected HBR resigned, the Branch's first alternate was designated to replace him. You have since appointed a successor HBR, so that the question now arises as to which of these two should be recognized as the Branch delegate.

The information provided in your letter indicates that the successor HBR is not eligible to serve as a delegate. Article 5 of the *NALC Constitution*, in accordance with federal law, expressly requires that delegates be elected. While it is permissible for Branches to provide in their By-laws that certain officers will be delegates by virtue of their office, the member must be elected to such office. Numerous presidential rulings have held that a member who has been appointed to an office may serve as a delegate by virtue of that office only when one of two conditions has been satisfied: (1) if, before the appointment, the member had been separately elected to be a delegate; or (2) if, prior to the appointment, the member had been elected to a different Branch office for which the By-laws provide that the office holder shall automatically be a delegate.

The information provided in your letter indicates that the successor HBR does not meet either of the two requirements described above. Accordingly, it

appears that the first alternate should continue to be recognized as the replacement delegate.

Charlottesville, Virginia Branch 518

(April 22, 2010): This is in reply to your recent letter, received by my office on April 2, 2010, inquiring whether the Treasurer of Branch 518 remains eligible to hold office. According to your letter, this member has transferred to the Clerk Craft.

Please be advised that this member's transfer to another craft does not, by itself, render him/her ineligible to hold Branch office. Generally speaking, non-letter carrier members, such as clerks and rural letter carriers, have full rights as members of the NALC. Article 2, Section 1(a) of the NALC National Constitution defines regular members as including non-supervisory employees of the Postal Career Service. It does not limit regular membership to employees in the letter carrier craft. Accordingly, non-supervisory employees, in most instances, are entitled to participate fully in the activities of the Branch. For example, they may attend, speak, and vote at branch meetings; vote in national and branch elections; and be elected officers.

There are certain limited restrictions on the rights of non-letter carrier members. Article 1, Section 1(a) provides that "non-letter carrier regular members shall have no voice or vote in the branch in any matter pertaining to the ratification of a national working agreement, local memorandum of understanding, or proposed work stoppage." In addition, prior rulings have established that non-letter carrier regular members may not vote for shop stewards who are elected by station.

I have also been presented with a fax you sent on April 13 indicating that the individual who transferred has not paid dues for over 30 days. If that is the case, the individual may have forfeited membership in the NALC.

Under Article 7, Section 4 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* any member who fails to pay monthly dues for 30 days must forfeit his/her membership. Article 7, Section 4 permits Branches to extend the 30 day grace period for not more than an additional 60 days "for good and sufficient reasons, under reasonable rules uniformly applied." Your letter does not indicate whether Branch 518 has ever acted to extend the 30 day grace period. In any event, at the end of the grace period, if the member is still delinquent, he/she must forfeit his or her membership.

Where Article 7, Section 4 applies—i.e., cases in which a member fails to pay a fine or an assessment or monthly dues within 30 days or an extended grace period—the forfeiture of membership is automatic. It would not be necessary for the Branch to initiate charges or provide formal notice to the individual. While the Branch is expected to notify NALC Headquarters in writing of any forfeiture and the reasons for it, the mere fact that the Branch has failed to notify NALC Headquarters of the changed status of a member does not, in and of itself, confer membership rights on an individual who has forfeited membership rights by failing to pay dues.

Prior to the time of forfeiture, the member retains full membership rights, notwithstanding the dues delinquency. But when the point of forfeiture is reached, the member loses all rights of Branch, State Association and National membership. This would include the right to be a Branch officer. Similarly, the individual would no longer have a right to attend Branch meetings.

Finally, it is the responsibility of the Branch to apply the above guidelines to individual situations based on the particular fact circumstances.

Harry Keim, Carlisle, Pennsylvania

(April 26, 2010): This is in reply to your letter,

which was faxed to my office on April 20, 2010, seeking guidance with respect to the proper procedure for investigating charges against members of Branch 500. You are the chairman of the committee appointed to investigate these charges pursuant to Article 10, Section 3 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*.

Your first question is whether one of the charged parties could have an attorney or witness present when the party comes to answer the charges. Past rulings have established that it is up to the investigating committee to determine whether a charged party may be allowed to have an attorney present at the committee hearing. If the committee decides to allow legal counsel participation, the expense would be borne by the party choosing such representation, unless the Branch votes to reimburse the party for expenses incurred. In addition, the participation of an attorney should not be permitted to delay the proceedings.

I am not clear what you mean by having a "witness" present. A charged party has the right under Article 10, Section 3 to "present evidence." This would include the right to have a witness testify as to relevant facts. However, your letter suggests that you are instead referring to an individual who would accompany the charged party to the hearing to "witness" the proceedings. The committee has discretion to allow or deny the presence of such an individual. A request to allow a member of the Branch to attend, however, should not be unreasonably denied.

Your second question is whether there is any established "precedent" for conducting cross-examination. As you recognize, Article 10, Section 3 guarantees the parties the right "to cross-examine all witnesses who make statements to the committee," but goes on to state specifically that "rules of evidence and rules of judicial procedure need not be observed." Normally, cross-examination of witnesses is conducted face-to-face. However, the committee has discretion to develop reasonable procedures to ensure that the hearing is conducted in an orderly manner. The overriding requirement is that the all parties be treated fairly.

Finally, any party who believes that his/her rights under the *Constitution* have been compromised may appeal to the National Committee on Appeals from the Branch's decision on the merits of the charges in accordance with the procedures set forth in Article 11 of the *CGSFB*.

Terry Murnane, Kansas City, Missouri

(April 27, 2010): This is in reply to your letter, dated April 9, 2010, requesting dispensation permitting you to attend the National Convention as a delegate from Branch 30, Kansas City, MO, despite the fact that your request to transfer to Omaha, NE has been granted.

I certainly appreciate your dedication and past service to the Branch and the NALC over the past seven years. However, I must advise that the requested dispensation cannot be granted. Prior rulings have consistently recognized that when a member permanently transfers to a postal installation within the jurisdiction of another Branch, his/her membership is transferred to the gaining Branch. He/she is no longer eligible to serve as a delegate from the original Branch.

I regret that I cannot provide a more favorable reply to your request for dispensation. However, I would encourage you to pursue your alternative suggestion that you attend the Convention as a guest.

Lancaster, California Branch 4430

(April 27, 2010): This is in reply to your letter, dated April 15, 2010, inquiring as to the appropriate time frame for conducting a rerun election of officers in Branch 4430. According to your letter, the

Branch will not conduct new nominations, but has decided to redo the balloting.

As you correctly note, Section 5.1 of the *NALC Regulations Governing Branch Election Procedures (RGBEP)* applies to the regularly scheduled nominations and election of officers. It requires that the Branch provide notice by mail of both the nominations and the election at least 45 days before the election. However, this 45 day requirement does not apply to re-run elections which do not involve new nominations.

Previous rulings have permitted Branches to provide 15 days notice of a re-run election, which is the minimum legal requirement. However, in this case, Branch 4430 will be conducting a mail ballot. Section 14.2 of the *RGBEP* does provide for a minimum 20 day balloting period when elections are conducted by mail.

In light of the foregoing, the Branch may mail ballots no later than 20 days before the date ballots must be returned. An appropriate notice of the re-run election may be mailed with the ballots. The required information may be stated on the ballot itself, if it is more convenient to do so.

Hammond, Indiana Branch 580

(April 27, 2010): This is in reply to your letter, dated January 6, 2010, and the accompanying handwritten note.

At the outset, I apologize for the delay in responding to your letter. A timely response was drafted but apparently was misplaced. I sincerely regret any inconvenience.

In addition, I was sorry to learn of your health problems, and the losses in your family. Please accept my condolences and best wishes for a full recovery.

Your letter describes two issues. The first is a suspected improper use of a Branch mailing list by one of the candidates in the recent election of officers in Branch 580. While I appreciate your concern, I must advise that it would be inappropriate for me to rule or otherwise comment on this matter at this time. Allegations of improper use of union resources in a Branch election must be addressed, in the first instance, at the Branch level in accordance with the procedures for post-election appeals which are set forth in Section 21 of the *NALC Regulations Governing Branch Election Appeals*. It is not clear from your letter whether the losing candidate initiated such an appeal.

The second issue discussed in your letter concerns a the filing of a change of address form involving the Branch's two post office boxes by someone using your name. Your letter indicates that you have diligently pursued this matter with the Postal Service. I do not have any suggestions for further actions that you may consider. I hope that this apparent mystery is resolved to your satisfaction. In any event, your letter does not suggest that any ballot tampering occurred or that the vote count was otherwise affected.

Elizabeth City, North Carolina Branch 1127

(April 28, 2010): This is in reply to your letter, dated January 8, 2010, requesting dispensation permitting Branch 1127 to conduct a special election to fill the vacancy created by the resignation of Branch President Patricia Harrell.

At the outset, I apologize for the delay in responding to your letter. A timely response was drafted but apparently was misplaced. Thank you for calling my office to alert us to our failure to respond.

In light of the facts set forth in your letter, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. Please feel free to contact your National Business Agent, Judy Willoughby, for

advice or assistance in conducting the election. The election should be held as expeditiously as possible.

Aiken, South Carolina Branch 1569

(April 29, 2010): This is in reply to your letter, dated April 12, 2010, and your subsequent telephone conversation with my assistant. Apparently, Branch 1569 has voted to compensate a member for serving as a delegate to the State Convention even though she did not satisfy the minimum meeting attendance requirement provided by the Branch By-laws. You have indicated that you intend to withhold payment to this member, pending a ruling from me.

At the outset, your letter states that the member is "ineligible for the State Convention." This language suggests some confusion as to the applicable *Constitutional* principles. As numerous presidential rulings have recognized, Branches are prohibited from instituting a minimum meeting attendance requirement for the election of convention delegates. Imposition of such a requirement conflicts with Article 5, Section 2 of the NALC National Constitution which provides that all "qualified regular members shall be eligible to be a delegate or alternate delegate to the National Association Convention or State Convention . . ." The term "qualified regular members" refers to all members in good standing, regardless of the number of meetings they may have attended.

Branches may impose a reasonable meeting attendance requirement for receipt of Branch funds to attend a convention. Accordingly, the Branch remains free to restrict payment of Branch funds to those elected delegates who satisfy a meeting attendance requirement set forth in the Branch By-laws. However, delegates who do not receive funding may attend the Convention at their own expense.

Turning to the question posed in your letter and telephone call, as a general principle a Branch may not enact a resolution which conflicts with its By-laws. At the same time, I am in no position to determine whether the Branch vote to pay the delegate in question is in conflict with the current By-laws. You did not enclose a copy of the By-laws with your letter. Moreover, disputes over the meaning or application of Branch By-laws must be resolved, in the first instance, at the Branch level. Accordingly, your decision as Branch President to withhold payment may be appealed to the members of the Branch in accordance with Article 11 of the *Constitution for the Government of Subordinate and Federal Branches*. The Branch's decision may be appealed to the National Committee on Appeals.

There is one possible alternative solution. The Branch may vote to amend the By-laws in accordance with Article 15 of the *NALC Constitution*. For example, the Branch could eliminate or reduce the meeting attendance requirement, or enact a provision allowing the Branch to vote on a case-by-case basis to authorize payment to delegates who do not meet the meeting attendance requirement. The amendment could incorporate an effective date that would ensure that it could allow payment to the delegate in question.

Alfred Rick, Newington, Connecticut

(April 30, 2010): This is in reply to your letter, dated March 28, 2010, concerning the request by a declared candidate for President of Branch 86 for access to the Branch membership list and/or to have the Branch distribute campaign literature. The Branch is not scheduled to conduct nominations until January 12, 2011. It appears that the Branch does not provide access to the mailing list to candidates. In addition, I have been advised that the Branch has voted to adopt a policy of not distributing campaign literature until 30 days prior to nom-

inations.

Your letter also contains a number of specific personal allegations. I am declining to comment on any of those matters. I can provide the following general statements of the applicable principles embodied in the *NALC Regulations Governing Branch Election Procedures (RGBEP)*.

First, NALC Branches are not required to provide candidates with direct access to the Branch membership list. However, if a Branch does provide access to one candidate, then it must provide equal access to all other candidates. See *RGBEP* Section 9.1 and accompanying Comments.

Second, if the Branch does not allow candidates access to the mailing list, then it would be a violation of the *RGBEP* for a Branch officer to use the list to further his/her candidacy. See *RGBEP* Section 9.7. (I am not suggesting that any of the officers of Branch 86 have improperly used the Branch mailing list.)

Third, Section 9.2 of the *RGBEP*, consistent with federal law, provides that Branches must honor all reasonable requests to distribute campaign literature at a candidate's expense. The Comments accompanying Section 9.2 further admonish Branches to advise all candidates in advance of the conditions under which literature will be distributed.

As previous rulings have recognized, federal law may require that an individual be treated as a candidate for this purpose before he/she has been officially nominated. The law remains unclear as to how far in advance of nominations a union must honor requests to distribute literature. In a 1991 decision, *IOMM&P v. Brown*, the Supreme Court held that a union was required to honor a request to distribute literature during the month prior to the convention at which nominations were to take place. The NALC has not adopted a national policy which establishes a date certain for honoring requests to distribute literature. Additional guidance may be sought from the Department of Labor.

Claims that any of the foregoing rules have been violated may be pursued through the appeal procedure set forth in Section 21 of the *RGBEP*.

Hartford, Connecticut Branch 86

(April 30, 2010): This is in reply to your letter dated April 16, 2010 concerning the request by a declared candidate for President of Branch 86 for access to the Branch membership list and/or to have the Branch distribute campaign literature. The Branch is not scheduled to conduct nominations until January 12, 2011. It appears that the Branch does not provide access to the mailing list to candidates. In addition, according to your letter, the Branch has voted to adopt a policy of not distributing campaign literature until 30 days prior to nominations.

Your letter also contains a number of specific personal allegations. I am declining to comment on any of those matters. I can provide the following general statements of the applicable principles embodied in the *NALC Regulations Governing Branch Election Procedures (RGBEP)*.

First, NALC Branches are not required to provide candidates with direct access to the Branch membership list. However, if a Branch does provide access to one candidate, then it must provide equal access to all other candidates. See *RGBEP* Section 9.1 and accompanying Comments.

Second, if the Branch does not allow candidates access to the mailing list, then it would be a violation of the *RGBEP* for a Branch officer to use the list to further his/her candidacy. See *RGBEP* Section 9.7. (I am not suggesting that any of the officers of Branch 86 have improperly used the Branch mailing list.)

Third, Section 9.2 of the *RGBEP*, consistent with

federal law, provides that Branches must honor all reasonable requests to distribute campaign literature at a candidate's expense. The Comments accompanying Section 9.2 further admonish Branches to advise all candidates in advance of the conditions under which literature will be distributed.

As previous rulings have recognized, federal law may require that an individual be treated as a candidate for this purpose before he/she has been officially nominated. The law remains unclear as to how far in advance of nominations a union must honor requests to distribute literature. In a 1991 decision, *IOMM&P v. Brown*, the Supreme Court held that a union was required to honor a request to distribute literature during the month prior to the convention at which nominations were to take place. The NALC has not adopted a national policy which establishes a date certain for honoring requests to distribute literature. Additional guidance may be sought from the Department of Labor.

Claims that any of the foregoing rules have been violated may be pursued through the appeal procedure set forth in Section 21 of the *RGBEP*.

Hartford, Connecticut Branch 86

(April 30, 2010): This is in reply to your letter, dated March 26, 2010, concerning the request by a declared candidate for President of Branch 86 for access to the Branch membership list and/or to have the Branch distribute campaign literature. The Branch is not scheduled to conduct nominations until January 12, 2011. It appears that the Branch does not provide access to the mailing list to candidates. In addition, I have been advised that the Branch has voted to adopt a policy of not distributing campaign literature until 30 days prior to nominations.

I can provide the following general statements of the applicable principles embodied in the *NALC Regulations Governing Branch Election Procedures (RGBEP)*.

First, NALC Branches are not required to provide candidates with direct access to the Branch membership list. However, if a Branch does provide access to one candidate, then it must provide equal access to all other candidates. See *RGBEP* Section 9.1 and accompanying Comments.

Second, if the Branch does not allow candidates access to the mailing list, then it would be a violation of the *RGBEP* for a Branch officer to use the list to further his/her candidacy. See *RGBEP* Section 9.7. (I am not suggesting that any of the officers of Branch 86 have improperly used the Branch mailing list.)

Third, Section 9.2 of the *RGBEP*, consistent with federal law, provides that Branches must honor all reasonable requests to distribute campaign literature at a candidate's expense. The Comments accompanying Section 9.2 further admonish Branches to advise all candidates in advance of the conditions under which literature will be distributed.

As previous rulings have recognized, federal law may require that an individual be treated as a candidate for this purpose before he/she has been officially nominated. The law remains unclear as to how far in advance of nominations a union must honor requests to distribute literature. In a 1991 decision, *IOMM&P v. Brown*, the Supreme Court held that a union was required to honor a request to distribute literature during the month prior to the convention at which nominations were to take place. The NALC has not adopted a national policy which establishes a date certain for honoring requests to distribute literature. Additional guidance may be sought from the Department of Labor.

Claims that any of the foregoing rules have been violated may be pursued through the appeal procedure

dures set forth in Section 21 of the *RGBEP*.

Orem, Utah Branch 4235

(May 4, 2010): Thank you for your letter, dated April 14, 2010. I appreciate your expressions of support.

Your letter also seeks a ruling as to the apparent decision of Branch 4235 to fund only one delegate, yourself, to attend the 2010 Convention. Specifically, you request that you be permitted to secure all votes of the Branch at the Convention.

Please be advised that all delegates from the Branch who were properly nominated and elected are entitled to attend the Convention. The Branch certainly has discretion to determine how many, and which delegates, it will fund. However, delegates who do not receive funds are entitled to attend the Convention at their own expense.

Whichever delegates attend the Convention from your Branch will be allocated the full voting strength of the Branch as provided by Article 4, Section 1 of the *NALC Constitution*. Accordingly, if you are the only delegate, you will be entitled to exercise the Branch's full voting strength in any ballot vote that takes place at the Convention.

Visalia, California Branch 866

(May 4, 2010): This is in reply to your recent letter, received by my office on April 23, 2010, requesting a ruling as to whether a member of Branch 866 has been disqualified from continuing to serve as a shop steward under Article 5, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*, as a result of having applied for a supervisory position. According to your letter, this individual made a "verbal inquiry" expressing interest in a 204b position.

As a general principle, the prohibition set forth in Article 5, Section 2 covers any application for a supervisory position. It is not necessary that the member file a Form 991 or otherwise submit an application in writing. An oral statement indicating a member's interest in a 204b position may or may not constitute an application for a supervisory position, depending on the member's intent, the specific wording of the statement, local practices, and other relevant circumstances.

Your letter does not provide sufficient information as to the nature of the communication with the postmaster to permit me to make a definitive ruling. For example, I do not know whether local management considered the oral expression of interest sufficient to constitute an application for a 204b position; nor am I familiar with the local practices for filling 204b vacancies in Visalia, CA.

In any event, as numerous presidential rulings have previously recognized, it is for the Branch to determine, in the first instance, whether or not a member has in fact applied for a supervisory position. If the Branch concludes that in the present case the verbal expression was not tantamount to an application for a supervisory position, then the member in question would remain eligible to serve as a steward.

If the Branch concludes that the member did apply for a 204b position, then she would be required to vacate the position of shop steward. The resulting vacancy could then be filled by appointment of the Branch President under Article 6, Section 1 of the *CGSFB*, unless the Branch By-laws require an election. (See *CGSFB* Article 4, Section 5.)

Austin, Texas Branch 181

(May 6, 2010): This is in reply to your letter, dated February 3, 2010, in which you ask various questions pertaining to ongoing investigations in Branch 181 of five sets of charges under Article 10 of the *Constitution for the Government of Subordi-*

nate and Federal Branches (CGSFB).

As to your first question, please be advised that nothing in the *Constitution* would prohibit you, as a Branch officer who has not been charged, from providing advice to members of an investigating committee with respect to the requirements of the *Constitution* or procedural issues.

Questions 2 through 5 in your letter pertain to the committees' proposed method of proceeding. According to your letter, in order to save time individual members of the committees have begun to interview parties and witnesses privately. These individuals will then be made available at a later time for cross-examination by the parties. You now ask whether this method of conducting the investigation is permissible.

The *Constitution* does not specifically authorize or prohibit this proposed procedure. Article 10, Section 3 of the *CGSFB* simply provides that the investigating committee is to "summon the parties" and to hear and record the testimony and documentary evidence presented by them. All parties are "entitled to be heard by the committee, to present evidence, and to cross-examine all witnesses who make statements to the committee." Presidential rulings have recognized that the committee may interview witnesses in addition to the charging and charged parties, and are not required to observe rules of evidence or judicial procedure. Ultimately, it is the responsibility of the committee to "find the true facts and report to the Branch."

If a committee believes that individual committee members can conduct the initial private interviews without undermining the committee's ability to "find the true facts," and without compromising any party's right of cross-examination, then it may follow the procedure described in your letter. Certainly, if the interviews were recorded, the recordings should be made available to the parties to assist in the cross-examination. Written notes of the interviews should be provided to the parties prior to cross-examination, to the extent that the notes are material to the charges, or will otherwise be relied upon by the committee. If the parties, upon review of the notes, waive cross-examination, the committee may elect not to interview the witnesses again.

I caution that any of the parties could challenge the manner in which the procedures may be implemented in an appeal to the National Committee on Appeals following the Branch's decision on the charge. Any such appeal would have to be resolved on the basis of the specific facts presented. My comments are intended solely to provide advice as to the applicable constitutional principles. It would be entirely premature for me to attempt now to resolve particular issues that may be raised by the parties.

Your final question concerns a committee member who is on leave for three weeks. Apparently, her personal situation will make it difficult, if not impossible, for the committee to complete its investigation in time to report to the next Branch meeting in accordance with Article 10, Section 1 of the *CGSFB*. You ask whether this member can be replaced or whether the time frame for the committee's report may be extended.

Please be advised that either option would be permissible under the *Constitution*. Prior rulings have recognized that circumstances sometimes arise which prevent an investigating committee from completing its investigation within the time frame provided by Article 10, Section 1. The rulings have instructed committees in these circumstances to complete their investigations as soon as possible. Moreover, as you recognize, Article 10, Section 1 of the *CGSFB* expressly states that the Branch vote on charges "may be continued once, by motion, to the following regular Branch meeting."

Such a vote could extend the time of the committee to complete its investigation.

At the same time, previous rulings have also cautioned that Branches should seek to resolve charges within the time frame reflected in the *Constitution*. If replacing the committee member in question would permit the investigation to be completed in a timely manner, without compromising the rights of the parties or the ability of the committee to find the facts, then this option may be considered.

Hayward, California Branch 1707

(May 17, 2010): This is in reply to your letter, dated May 6, 2010, requesting rulings with respect to the election and compensation of delegates to the 2010 National Convention from Branch 1707.

The first question is whether Sister Martinez may be named as a delegate to the Convention despite the fact that she rescinded her nomination at the November, 2009 nomination meeting. Unfortunately, this question must be answered in the negative. The *NALC Constitution*, consistent with federal law, requires that delegates be nominated and elected. Sister Martinez is welcome to attend the Convention as a guest.

The second question is whether the Branch may vote to compensate Sister Martinez and delegate Sonia Ibarra for attending the Convention even though neither satisfied the meeting attendance standard for compensation of delegates set forth in Article 9, Section 2 of the Branch By-laws. Generally speaking, Branches may not enact resolutions which conflict with their By-laws. However, it would be inappropriate for me to rule on the specific question presented here, whether Article 9, Section 2 was intended to prohibit the Branch from authorizing on a case-by-case basis compensation for members who did not meet the meeting attendance standard. Disputes over the meaning or application of by-law provisions must be addressed, in the first instance, at the Branch level. The Branch's determination may be appealed to the National Committee on Appeals under Article 11 of the *Constitution for the Government of Subordinate and Federal Branches*.

San Francisco, California Branch 214

(May 17, 2010): This is in reply to your letter, dated May 5, 2010, requesting dispensation permitting Branch 214 to register Berta Quezada as a delegate to the 2010 National Convention even though she was not nominated or elected. According to your letter, Sister Quezada was ill on the night the Branch conducted its nominations and election of delegates.

While I appreciate the circumstances and your positive comments about Sister Quezada, I must advise that the requested dispensation cannot be granted. The *NALC Constitution*, consistent with federal law, requires that delegates be elected. Sister Quezada is welcome to attend the Convention as a guest.

Harry Keim, Carlisle, Pennsylvania

(May 17, 2010): This is in reply to your letter, which was faxed to my office on May 7, 2010, in which you ask three additional questions concerning the proper procedure for investigating charges against members of Branch 500 under Article 10 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*.

With respect to your first question, as I stated in my letter of April 26, past rulings have established that it is up to the investigating committee to determine whether a charged party may be allowed to have an attorney present at the committee hearing. If the committee decides not to allow legal counsel participation, it would not be required to turn over

any notes or other documents to the attorney. At the same time, Article 10, Section 3 of the *CGSFB* guarantees the parties the right "to cross-examine all witnesses who make statements to the committee." The committee's notes of previously conducted interviews of witnesses may be essential to ensure that the parties can effectively cross-examine witnesses. Accordingly, previous rulings have recognized that written notes of interviews should be provided to the parties prior to cross-examination, to the extent that the notes are material to the charges, or will otherwise be relied upon by the committee.

Your second question is whether parties facing charges may call witnesses to support their statements. The answer to this question is yes. Article 10, Section 3 specifically provides that the parties "are entitled...to present evidence." The right to present evidence includes the right to call witnesses.

As to your third question, the committee has the authority to request that the parties produce documents which are relevant to the issues under investigation.

Colorado Springs, Colorado Branch 204

(May 18, 2010): This is in reply to your May 14, 2010 email to National Business Agent Roger Bledsoe, which he forwarded to me. Your email asks whether pending charges should be read at the next Branch 204 meeting. Apparently, the charges arise out of an alleged altercation that took place at a Branch Executive Board meeting. Your email suggests that reading the charges could reveal what transpired at the Board meeting, which may in turn violate Robert's Rules of Order.

In answer to your specific question, the charges must be read. Article 10, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches* specifically provides that "charges shall be read by the recording secretary at the first regular Branch meeting after service on the member or officer."

According to your email, the Branch By-laws provide that Robert's Rules shall apply to the conduct of Branch meetings when not in conflict with the *Constitution*. Since the *Constitution* requires the reading of the charges, the question whether such reading would violate Robert's Rules is irrelevant. Moreover, previous presidential rulings have consistently recognized that the *NALC Constitution* does not require that Branches follow Robert's Rules in conducting their meetings. Even in those instances where Branches have adopted By-laws requiring adherence to Robert's Rules, presidential rulings have held that Robert's Rules cannot supercede the requirements of the *Constitution*.

Members of Branch 92, Maine Merged

(May 21, 2010): This is in reply to your letter, received by my office on May 14, 2010, challenging the decision by Branch 92 President Mark Guilfoyle to appoint Brother Michael Fox to the office of Executive Vice President. According to your letter, the appointment of Brother Fox violates a provision of the Branch By-laws establishing an order of succession for all offices in the Branch. Your letter requests that I provide an interpretation of the disputed By-law provision.

As correctly noted in your letter, Article 4, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* expressly authorizes Branches to provide in their By-laws for an order of succession to fill vacancies that may arise in Branch offices. Accordingly, if, as you assert, Article IV, Section 2 of the Branch 92 By-laws does establish an order of succession which was by-passed by President Guilfoyle, then

the appointment of Brother Fox may not have been valid.

Nonetheless, at the present time it would be inappropriate for me to rule on the proper interpretation of the disputed By-law provision or the validity of the appointment, particularly since I have only your side of the story before me. As previous presidential rulings have consistently held, disputes over the meaning or application of Branch By-laws must be resolved, in the first instance, at the Branch level.

The correct procedure for challenging a Branch President's interpretation or application of a By-law would be to appeal the President's decision to the Branch as provided by Article 11, Section 1 of the *CGSFB*. The Branch's decision, in turn, may be appealed to the National Committee on Appeals in accordance with the procedures set forth in Article 11, Section 2 of the *CGSFB*.

Kingsport, Tennessee Branch 1999

(May 24, 2010): This is in reply to your letter, dated April 26, 2010.

As an initial matter, thank you for your expression of support, which I do appreciate.

Your letter seeks advice on the required procedures for voting on a proposed merger. Please be advised that the relevant procedures are set forth in Article 2, Section 3 of the *NALC Constitution*. Section 3(a) provides that merger proposals are to be considered at a regular or special meeting upon thirty days notice to the members. Section 3(e) states that "a majority affirmative vote of all regular members in good standing, present and voting, of each Branch proposing to merge, shall be necessary to authorize application for merger."

In response to your specific questions, the *Constitution* does not specify a minimum number of members who must attend a meeting to consider a merger. Past rulings have also held that insofar as Article 2, Section 3(e) specifically provides that mergers must be approved by a majority vote of those members "present and voting", the use of absentee ballots for merger votes is not permissible.

I would urge the Branch to carefully review Article 2, Section 3 in its entirety before initiating a vote on a proposed merger.

Gennaro Mascolo, Wethersfield, Connecticut

(May 24, 2010): This is in reply to your letter, dated May 13, 2010, concerning the disposition of charges that were filed against you under Article 10 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*. According to your letter, at the Branch 86 meeting on May 12, you were found guilty of one of eight charges. However, the Branch rejected motions to suspend you, and the chairman of the meeting then stated that the meeting would "move on without a penalty." You now ask me to interpret whether this statement was intended to allow the Branch to reconsider the question of an appropriate penalty for the charge at a later meeting.

Please be advised that it would be entirely inappropriate for me to seek to interpret the intent of the quoted remark, or to rule on a hypothetical procedural issue that may or may not arise in the future. I can comment on the applicable constitutional principal.

Article 10, Section 3 of the *CGSFB* specifically states that "if the Branch decides that the facts sustain the charge, then the Branch shall entertain a motion to fix the penalty, if any be required." Previous rulings interpreting this provision have held that balloting on questions of penalty is to be conducted at the same Branch meeting at which the members vote on the issue of whether or not the

facts sustain the charge.

If the Branch does reconsider the question of penalty at a subsequent meeting and imposes a penalty upon you, you would certainly have the right to appeal the Branch's action to the National Committee on Appeals in accordance with Article 11 of the *CGSFB*.

Mandeville, Louisiana Branch 6377

(June 2, 2010): This is in reply to your letter, dated May 13, 2010, requesting dispensation permitting Branch 6377 to register Sister Alicia Catrett as a delegate to the 2010 National Convention. According to your letter, Sister Catrett was the steward from former Branch 4521 and was instrumental in arranging the merger of that Branch with Branch 6377. You also indicate that it was assumed that after the merger Sister Catrett would be a delegate from Branch 6377.

Unfortunately, your request cannot be granted. As Secretary-Treasurer Jane Broendel correctly noted in her letter of May 10, previous rulings have consistently held that when a Branch no longer exists because it has been merged into another Branch, the previously elected delegates may not act as delegates from the non-existent Branch. They may act as delegates from the surviving Branch into which they have been merged only if the merger agreement that was approved by the members of the two Branches so stated. However, there is no indication in your letter to me that the merger agreement between Branches 6377 and 4521 provided that Sister Catrett would be a delegate from Branch 6377 following the merger.

Moreover, the *NALC Constitution*, consistent with federal law, requires that delegates be elected. As I read your letter, Sister Catrett was not even elected as a delegate from Branch 4521 prior to the merger.

While I appreciate the circumstances and your positive comments about Sister Catrett, I must advise that the request that she be registered as a delegate from Branch 6377 cannot be granted. Sister Catrett is welcome to attend the Convention as a guest.

Binghamton, New York Branch 333

(June 9, 2010): This is in reply to your letter, dated May 16, 2010, requesting that I provide a ruling interpreting a provision of the Branch 333 By-laws. Specifically, Article 4, Section 1 of the By-laws states that "Branch savings must be kept in a federally insured account." As Branch Treasurer, you would like to devote Branch funds to an alternative form of investment, which apparently is not federally insured, to obtain a higher rate of return. You suggest that this would be permissible under the By-laws because an "investment" is not "savings" within the meaning of Article 4, Section 1.

At the outset, it would be entirely inappropriate for me to interpret the By-laws. As previous presidential rulings have consistently held, disputes over the interpretation of Branch By-laws must be resolved, in the first instance, at the Branch level.

I can provide advice with respect to the relevant provisions of the *NALC Constitution*. Article 12, Section 1 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* provides that "All funds of the Branch shall be deposited in such bank or savings institution as the Branch may determine..." (emphasis supplied). Similarly, Article 12, Section 3 of the *CGSFB* states that "All funds shall be devoted to such uses as the Branch may determine..." (emphasis supplied). Accordingly, the investment you propose would have to be approved or authorized by the members, even if the restrictions on savings deposits in the current By-laws are inapplicable to investments, as you suggest.

Therefore, I would strongly recommend that the Branch adopt a By-law amendment addressing the ambiguity referenced in your letter before you proceed with your recommended investment. Since you have not provided a specific description of the proposed investment, I cannot suggest any particular wording for a By-law amendment. The amendment may authorize the specific investment you have in mind or provide for approval of proposed investments by vote of the members.

Please understand that I am expressing no view as to whether the proposed investment referenced in your letter would constitute a prudent use of Branch funds. Any such investment must be consistent with the fiduciary obligations of Branch officers.

Austin, Texas Branch 181

(June 9, 2010): This is in reply to your letter, dated May 23, 2010, concerning various charges that are pending before Branch 181. According to your letter, the Branch ran out of time and did not vote on one of the charges after hearing the report of the investigating committee. Your letter requests, on behalf of the Branch, dispensation to continue the matter to the next Branch meeting.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. I caution, however, that under Article 10, Section 3 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* the report of the investigating committee and the vote on the charges must occur at the same meeting. Accordingly, the committee should present its report again before a vote is taken. In addition, the charged party must be given the opportunity to defend himself after the committee report is presented and before the vote.

Your letter also asks twelve specific procedural questions relating to the proper handling of charges. The answers below correspond to the number of the question in your letter.

1. An improperly written committee report, which fails to present the relevant facts, should be clarified, as you suggest, to reflect the facts so that the Branch can vote on whether the facts sustain the charge as provided by Article 10, Section 3 of the *CGSFB*.

2. Previous presidential rulings have held that when a member is subject to multiple charges there should be a separate vote on each charge so as to avoid confusion over the appropriate punishment.

3. The *NALC Constitution* does not require debate or discussion of charges following the committee's report. Previous rulings recognize that Branches have discretion to permit such debate in accordance with their By-laws, past practices, and the will of the members. The charged party, of course, must be given an opportunity to present a defense, even if debate is not permitted.

4. As noted, Article 10, Section 3 of the *CGSFB* expressly states that "the charged party is entitled to defend himself/herself before the Branch immediately before the vote is taken." A customary three minute time limit for speakers at Branch meetings would not be enforceable if it compromised this important constitutional right. On the other hand, previous rulings have recognized that the Branch may impose reasonable time limitations on the charged party's defense prior to the vote on the investigative committee's report. This may be done so that the Branch can compete the agenda of the meeting within a reasonable period of time. The reasonableness of any particular limit would have to be determined on a case-by-case basis.

5. The time of the Branch meeting should be extended beyond the time provided in the Branch

By-laws if this is necessary to ensure that the process required by Article 10, Section 3 is completed in one meeting. Such an extension of time to ensure compliance with the *Constitution* would be proper even if no motion is passed to extend the time of the meeting.

6-9. If the members decide by their vote that the facts sustain the charge, then, as expressly provided by the last sentence of Article 10, Section 3, "the Branch shall entertain a motion to fix the penalty, if required." It is not necessary to consider penalties in the order set forth in Article 10, Section 4. For example, it would not be necessary to consider expulsion or removal from office if a motion to suspend or reprimand the charged party is made and passed. If no motion is made from the floor, the Chair would not be required to call for a vote on the penalties set forth in Section 4. Previous rulings have recognized that Branches are not required to impose a penalty, even if the charges are sustained.

10. The validity of a penalty other than those listed in Article 10, Section 4 would have to be determined on a case-by-case basis, in light of the facts presented.

11-12. If the Branch allows debate on the charges, it would be up to the Branch to decide whether to impose a time limit on speakers (subject to answer 4). Similarly, the Branch is free to decide whether to allow speakers to yield their time to another speaker who has already spoken.

Harry Keim, Carlisle, Pennsylvania

(June 9, 2010): This is in reply to your letter, which was faxed to my office on May 25, 2010, in which you ask additional procedural questions pertaining to the processing of charges against members of Branch 500.

The first question is whether the charged parties are to be informed of the investigating committee's findings prior to the meeting at which the committee is to present its report. The relevant provisions of the *Constitution*, set forth in Article 10, Section 3 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* specify that the committee "will present a written report to the Branch." There is no provision for providing an advance copy of the report or for communicating the committee's findings to any of the parties before the meeting. The committee may, at its discretion, provide an advance copy of the report to the parties, or notify them of its findings, but it is not required to do so by the *Constitution*.

The second question concerns a request by one of the charged parties for copies of all documents and information that the committee has gathered during the course of the investigation. According to your letter, this member has waived his opportunity to cross-examine witnesses before the committee and plans to call witnesses to testify at the Branch meeting. This statement suggests that the individual in question has a misunderstanding of the constitutional process.

Article 10, Section 3 of the *CGSFB* provides that the investigating committee must conduct a hearing and record the "testimony and/or documentary evidence presented." Further, all parties, including the charged party, are entitled to participate at the hearing through presentation of evidence and cross-examination. As part of this process, the charged party would have the right to examine any documents presented as evidence at the hearing for consideration by the committee.

By contrast, previous presidential rulings have held that the purpose of the opportunity to present a defense before the vote at the Branch meeting, following presentation of the committee's report, is to permit the charged party to identify errors or omissions in the report, not to present new evidence.

The rulings make clear that the appropriate time to present evidence is during the committee fact-finding process.

Your letter suggests that the charged party in question may have inadvertently compromised his defense based on a misunderstanding of the process. I would be willing to entertain a request for dispensation to postpone the presentation of the committee's report, and to allow the committee to reopen its investigation, if this is necessary to provide an opportunity for the charged party to present a defense to the committee. I suggest that you consult with the charged party as expeditiously as possible and let me know whether such dispensation is required.

Sunday Omogoke, Upper Marlboro, Maryland

(June 14, 2010): Your letter, dated May 21, 2010, addressed to the NALC's Resident Officers has been referred to me for reply. Your letter protests the procedures for conducting a special election for the shop steward for the Bowie Main Office in Branch 4819.

It would be inappropriate for the National Union to intervene in this matter at this time. I can advise you as to the following guidelines for shop steward elections.

First, the *NALC Regulations Governing Branch Election Procedures (RGBEP)* are not binding on the election of stewards who are elected by station and are not members of the Branch Executive Board. See *RGBEP*, Section 2.1. Rather, as provided in Article 4, Section 5 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)*, stewards may be elected in individual stations "as the Branch may determine[]." Of course, the Branch may choose to base its steward election procedures on the *RGBEP*, but it is not required to do so.

Second, the conduct of a steward election must be consistent with any applicable provisions of the Branch By-laws. However, I cannot comment on whether procedures utilized for the special steward election in question were consistent with the Branch 4819 By-laws.

Third, any member who believes that a steward election was conducted improperly, may initiate an appeal. The Branch may apply to a steward election the appeal procedures for officer elections set forth in Section 21 of the *RGBEP*. If the Branch does not do so, then the member may simply appeal directly to the Branch under Article 11 of the *CGSFB*. The decision of the Branch may be appealed to the National Committee on Appeals.

Harrisburg, Pennsylvania Branch 500

(June 14, 2010): This is a follow up to your letter, dated April 9, 2010, to Secretary-Treasurer Jane Broendel. It is my understanding that the matters referenced in your letter were the subject of discussions involving Sister Broendel, Regional Administrative Assistant Dave Napadano, and yourself, and that two issues remain open requiring guidance from me.

The first question concerns the election appeal initiated by former Branch 500 President Shawn Tyrell. You have advised that Brother Tyrell later abandoned the appeal and that the appeal is now closed. However, some Branch members are seeking access to the appeal and the Executive Board's written response. You have asked whether these members are entitled to review this material.

Please be advised that neither the *NALC Constitution* nor the *NALC Regulations Governing Branch Election Procedures* contain any provisions addressing the release of election appeal documents after the appeal has been resolved. Assuming that there are no provisions of the Branch 500

By-laws which address this issue, the Branch would have discretion either to make the documents available for inspection or to decline to do so.

The second question is whether Brother Tyrell remains eligible to run for Branch office in light of his apparent failure to reimburse the Branch the remaining balance of the debt he owed for health benefit premiums which the Branch paid on his behalf. It would be inappropriate for me to rule on the eligibility of a specific individual to run for Branch office. I can advise you that, as a general principle, a member's failure to pay an individual debt to the Branch would not, by itself, result in a forfeiture of membership that would disqualify the member from being nominated for office. Article 7, Section 4 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* provides for forfeiture of membership where a member fails to pay "any fine, assessment or monthly dues within thirty (30) days." However, the term "assessment," as used in Article 7, Section 4, refers only to general assessments imposed on all the members of the Branch, not to individual charges or debts. The term "fine" refers to a penalty imposed by the Branch following the filing and processing of charges under Article 10 of the CGSFB.

Of course, a member who willfully refuses to pay an acknowledged debt to the Branch could be subject to charges under Article 10, and, if found guilty, could be expelled or suspended from membership, depending on the facts of the particular case. I express no view as to whether charges would have been appropriate in this case. In any event, it is my understanding that the Branch has not sought to enforce its claim against Brother Tyrell through the procedures provided by Article 10.

Oak Park, Illinois Branch 608

(June 14, 2010): Your recent letter to NALC Secretary-Treasurer Jane Broendel, which was received by her office on May 21, 2010, has been referred to me for reply. Your letter inquires as to the eligibility of former Branch 608 President Montago McCraney to attend the National and Illinois State Conventions as a delegate.

The information provided in your letter clearly indicates that Brother McCraney is not presently eligible to serve as a delegate. Articles 4 and 5 of the *NALC Constitution*, in accordance with federal law, require that delegates be elected. According to your letter, Brother McCraney was not nominated or elected to be a delegate.

Your letter does indicate that the Branch 608 By-laws provide that the Branch President and certain other officers will be convention delegates by virtue of their office. However, prior rulings have long established that in order for a member to serve as a delegate under such a by-law, the member must occupy the office in question at the time of the convention. Since Brother McCraney no longer occupies the office of Branch President he may not now serve as a delegate from the Branch by virtue of his former office.

San Antonio, Texas Branch 421

(June 14, 2010): This is in reply to your letter, dated May 6, 2010, requesting a ruling as to the rights of members in non-pay status under the *NALC Constitution*, in light of a By-law amendment recently adopted by Branch 421 and approved by the Committee of Laws. The new amendment provides that any member who is in non-pay status with the Postal Service and/or OWCP will be excused from dues.

As indicated in previous correspondence, it would be inappropriate for me to rule on the meaning or intent of the By-law amendment. Disputes

over the interpretation or application of Branch By-laws must be resolved, in the first instance, at the Branch level.

The constitutional issues raised by your letter were addressed in my letter to you, dated November 20, 2009. To summarize, Article 7, Section 4, of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* provides that any member who fails to pay monthly dues for 30 days must forfeit his/her membership. An exception to this requirement is provided by Article 7, Section 3(b) of the *CGSFB* which states that a Branch may exempt any member from dues payments under reasonable rules uniformly applied. The new By-law amendment appears to create such an exemption for members in non-pay status.

If a member is covered by a By-law exemption from the obligation to pay dues, then Article 7, Section 4 of the *CGSFB* would not apply. Accordingly, such member would not forfeit membership under Article 7, Section 4, and would remain in good standing, even though he/she failed to pay dues. In response to your specific questions, such member would retain the right to run for Branch office, to make nominations, to be elected as a Branch officer, to be a steward, to attend the NALC Convention as a paid delegate, and to vote in Branch elections.

As stated in my previous letter, it is the responsibility of the Branch to apply the above guidelines to individual situations based on the particular fact circumstances. In particular, it is the Branch's responsibility to determine whether any individual member is exempt from the obligation to pay dues under the new By-law amendment.

Patrick C. Carroll, National Business Agent, NALC

(June 22, 2010): Thank you for promptly assigning Regional Administrative Assistant Troy Clark to investigate the situation in Branch 788, Charlotte MI, in accordance with my letter, dated May 19, 2010. I have reviewed his thorough report and agree with his recommendation that a technical adviser should be appointed to assist the Branch in drafting By-laws and conducting an election of officers.

Accordingly, I am directing you to assign Brother Clark to follow up on these recommendations.

Please feel free to contact me if you need any additional information or assistance.

Chicago, Illinois Branch 2183

(June 23, 2010): Your recent letter to Secretary-Treasurer Jane Broendel, requesting that former member Edward M. Gracyas Jr. be permitted to rejoin the NALC as a retiree member, has been referred to me for reply. Please be advised that under the *NALC Constitution* the requested dispensation may only be granted by the National President.

In light of the extraordinary facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. In order to be reinstated as a member, Brother Gracyas will be required to execute a Form 1189 and pay all back dues for the period of non-membership since his retirement. Branch 2183 should contact Sister Broendel's office to make the necessary arrangements.

Las Vegas, Nevada Branch 2502

(June 23, 2010): This is in reply to your letter, dated June 8, 2010, in which you ask two questions pertaining to proposed amendments to the Branch 2502 By-laws.

The first question is whether a By-law amendment eliminating the office of Executive Vice President would take effect immediately and require the incumbent office holder to step down. Previous rul-

ings have advised that Branch offices should not be eliminated in mid-term while a duly elected officer is holding the office. The rulings have recognized that a By-law amendment which eliminates an existing Branch officer position may go into effect beginning with the next term of office.

Your second question is whether a two-thirds majority is required to enact a proposed amendment which would reduce the dues of Branch 2502. According to your letter, the present By-laws state that a two-thirds majority is necessary to enact any change to the By-laws. However, as previous rulings have recognized, Article 7, Section 2 of the *Constitution for the Government of Subordinate and Federal Branches (CGSFB)* provides that provisions of Branch By-laws requiring a greater than majority vote to pass amendments are inapplicable to proposals to increase dues. Instead, as expressly provided by Article 7, Section 2, proposals to increase Branch dues must be decided by majority vote. You now ask whether this restriction is applicable to a proposal to reduce Branch dues.

The answer to this second question is no. The rulings have expressly held that the provisions of Article 7, Section 2 of the *CGSFB* establishing procedures for increases in dues and initiation fees by majority vote are inapplicable to the distinct question of dues reduction. Since the *Constitution* is silent on the latter, the issue is controlled by the Branch By-laws. Thus, a By-law provision requiring a two-thirds majority for amendments to the By-laws may be applied to a proposed amendment to reduce Branch dues.

Bradenton, Florida Branch 1753

(June 29, 2010): This is in reply to your letter, dated June 17, 2010, requesting dispensation allowing Branch 1753 to conduct a special election for the offices of President and Vice President. According to your letter, both these offices are now vacant.

In light of the facts presented, and in accordance with my authority under Article 9, Section 1 of the *NALC Constitution*, I hereby grant the requested dispensation. Please conduct the special election as expeditiously as possible.

Fayetteville, North Carolina Branch 1128

(June 29, 2010): This is in reply to your letter, dated June 15, 2010, concerning a former member of Branch 1128 who apparently forfeited membership in the NALC for non-payment of dues. According to your letter, this member is seeking reinstatement, and the Branch wants to know whether this individual can be required to pay past dues to the Branch.

Please be advised that Article 7, Section 5 of the *Constitution for the Government of Subordinate and Federal Branches* specifically provides that "a former member whose membership has been forfeited [for non-payment of dues] may be reinstated by the payment of back fines, assessments and dues, as well as such reinstatement fee as the Branch may prescribe by reasonable rules, uniformly applied." This provision clearly authorizes the Branch to require a former member to pay back dues that accrued while he/she was still a member as a condition of reinstatement.

However, previous rulings have also held that a member's obligation to pay dues ends upon forfeiture of membership. Accordingly, the Branch cannot charge a former member back dues for the period of non-membership following forfeiture. A non-member cannot accrue a dues liability to the Branch.