

Interpretive dispute—NACI award



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In my September/October 2024 *Postal Record* article, I discussed several interpretive disputes and how they are handled once received here at Headquarters. In this month's article, I wanted to provide an update on one of these previously mentioned interpretive issues.

As a reminder, Article 15.2. Step B (e) of the National Agreement provides:

If either party's representative at Step B or the NBA or Employer's Area representative thereafter maintains that the grievance involves an interpretive issue under the National Agreement, or some supplement thereto which may be of general application, the issue will be discussed with the appropriate National Union/Management Representatives at the Headquarters Level. If either party's National Representative determines the issue to be interpretive, a written notice will be sent to the other party specifying in detail the facts giving rise to the dispute, the precise interpretive issues to be decided and the initiating party's contention. The grievance(s) shall be held at the Step B level pending discussion at the national level or the outcome of a National Arbitration Award. If either member of the Step B team, the national business agent (NBA) or USPS area representative believes that an impasse grievance involves an interpretive issue, they can forward it to their appropriate national union/management representative.

In the September/October article, one of the issues for review that I talked about involved the use of National Agency Check with Inquiries (NACI) to separate an employee who has completed their probationary period. The dispute concerned employees who had been separated after completing probation due to an unfavorable NACI background check. The background checks are conducted by the Postal Inspection Service (PIS) and are standard for all newly hired postal employees. NALC took the position that the Postal Service could not simply administratively separate employees without affording them appeal rights under Article 15 of the National Agreement, basing its position in part on National Arbitration Award A01N-4A-D 05098663 before Arbitrator Das.

The Postal Service then issued a hold on all cases involving this issue and took the following position: After reviewing the matter, the Postal Service has de-

termined there is a national interpretive issue present. The issues surrounding NACI are distinguishable from the decision rendered by Arbitrator Das.

At the same time that NALC and USPS were discussing this issue, the other postal unions were in similar discussions. The matter escalated to the interpretive step after management argued that the separations were "administrative" and not subject to arbitration, claiming they were based on failure to meet a condition of employment rather than on disciplinary action. However, the unions contended that once an employee completes probation, they are entitled to the full protection of the collective-bargaining agreement, including the right to challenge terminations.

Ultimately, this issue was appealed to national-level arbitration, and on Dec. 12, 2024, NALC joined the APWU, NPMHU and NRLCA in a national-level hearing.

After hearing all the arguments brought forth by the unions and the Postal Service, National Arbitrator Margo R. Newman rejected the Postal Service's claim that the separations were outside the scope of the contract, noting that the National Agreement does not exclude such disputes from arbitration. In her decision issued June 30, 2025 (6X 21C-6X-C-24165358, C-37276), Arbitrator Newman ruled that non-probationary postal employees separated due to unfavorable background check results are entitled to due process and may challenge their removals through the grievance and arbitration procedure.

She emphasized that the only explicit exclusion from grievance applies to probationary employees. In addition, Arbitrator Newman maintained that the Postal Service must prove it had just cause for the separation, as required by Article 16 of the National Agreement.

The referenced NACI case and any other grievances referencing management removing a carrier who has passed their probationary period after an unfavorable NACI have been released for processing by the Step B teams. The Step B teams should resolve these cases in accordance with Arbitrator Newman's award. To review Arbitrator Newman's award in its entirety, visit nalc.org, choose the "News & Research" tab, and read the July 17 "National Ruling on the National Agency Check with Inquiries (NACI) Arbitration" post.

In future articles, I will continue to update the membership on many national-level interpretive disputes between NALC and the Postal Service.