

NACI national arbitration award

On Dec. 12, 2024, NALC joined the American Postal Workers Union, the National Postal Mail Handlers Union and the National Rural Letter Carriers' Association in a national-level arbitration over National Agency Check with Inquiries (NACI) background-check separations. NACI is the background check performed by the Postal Inspection Service (PIS) on newly hired postal employees.

The dispute escalated to the interpretive step after management argued that the separations, due to an unfavorable NACI, were "administrative" and not subject to the grievance procedure. Management claimed the separations were based on failure to meet a condition of employment rather than a disciplinary action.

The unions took the position that all post-probationary employees must be given due process and grievance appeal rights consistent with the National Agreement. The NALC specifically proposed that the following interpretive issues be answered at the arbitration hearing:

1. Whether, when the Postal Service terminates an employee based on an unfavorable NACI report after the employee has completed probation, is a grievance challenging the termination arbitrable?
2. If such grievance is arbitrable, does the Postal Service have the burden of proof to establish cause in the arbitration?

During the arbitration hearing, the unions made it clear they were not challenging the right of the Postal Service to set eligibility criteria and determine suitability under its established standards. The testimony presented by the unions dealt mostly with the history of the issue of criminal background checks and how they have been dealt with by the parties over the last 30-plus years. In her award, the arbitrator said it appeared that prior to 2020, the Postal Service never challenged the arbitrability of grievances arising from a problem with background checks, which mostly appeared in cases involving falsification of job applications. Those cases were heard on the merits regionally and ended in differing results depending on the individual circumstances.

The unions also contended that there is no contractual language that excludes non-probationary employees from filing grievances over their removal for an unfavorable NACI rating, or from arbitration, and that the only explicit prohibition in the contract for access to the grievance procedure is Article 12.1(A) covering probationary status. The unions also maintained that Article 3 is not a limit on arbitration, and management rights

must be exercised in compliance with other provisions of the National Agreement, including Articles 15 and 16 Article 19, incorporating provisions of handbooks, manuals and published regulations that directly relate to wages, hours, or working conditions of employees, including the *Employee and Labor Relations Manual (ELM)* and *Handbook EL-312 Employment and Placement*.

The NALC asserted that the Postal Service's statutory right to set hiring standards in the Postal Reorganization Act (PRA) does not give it free rein to discharge employees who have completed probation, noting that the PRA requires the Postal Service to exercise its rights (including hiring and discharging employees) consistent with applicable laws, regulations and collective-bargaining agreements (CBAs).

The unions also noted that there is no reference to "conditional employment" in the CBAs, and that the language in the postings and job offers were not negotiated with the unions and cannot amend the interpretation of the CBAs. The NALC also asserted that whatever the PIS's appeal process involves, it is not a substitute for the arbitration process, which involves a hearing before a neutral arbitrator with representation.

The Postal Service raised a threshold issue that this dispute is not substantively arbitrable, since an arbitrator's jurisdiction is contractually derived, and the arbitrator's authority is limited to interpreting or applying CBAs.

Arbitrator Margo R. Newman rejected the Postal Service's threshold claim and found the matter to be arbitrable. She wrote:

A review of the express language used by the parties in the National Agreement with respect to the Grievance-Arbitration Procedure, reveals a very broad definition of what constitutes a grievance - a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment - and some examples (although not comprehensive) such as a complaint of an employee which involves the interpretation, application of, or compliance with provisions of this Agreement or any Local MOU not in conflict with it...Absent any clear prohibition against filing a grievance protesting a non-probationary employee's separation/ termination of employment for receiving an unfavorable NACI, such grievance would fit the definition of a dispute related to conditions of employment which involves the application of, or compliance with, provisions of the Agreement. Thus, Article 15 is susceptible to an interpretation that covers this dispute.

The arbitrator also wrote:

...the only express prohibition to access to the grievance procedure in the National Agreement is Article 12.1(A),

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NACI national arbitration award (continued)

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where the parties negotiated the right of the Postal Service to separate any probationary employee during the probationary period, and such employee “shall not be permitted access to the grievance procedure in relation thereto.”...I find that a complaint by a non-probationary employee with respect to the results of such determination is a dispute related to a condition of employment that clearly falls within the definition of a grievance in Article 15.

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. She wrote:

Even if these separations are not, per se, disciplinary in nature, Arbitrator Das’ analysis that an involuntary separation-disqualification after the probationary period is considered a removal under ELM 365.311, which must be for cause, provides the basis for a cause analysis of the Postal Service’s removal/separation action. That provision notes that the only exceptions to such “removal” are employees who have not completed their probationary period and em-

ployees serving under a temporary appointment.

Arbitrator Newman concluded:

The Postal Service’s notice to applicants/employees that their appointments are “conditional” on them receiving a favorable NACI does not change this fact. The Postal Service is not able to unilaterally create a class of “conditional employees” to avoid the consequences of their becoming regular employees with full collective bargaining rights.

Arbitrator Newman’s award summary stated:

1. A grievance protesting the separation/removal of a non-probationary employee based upon an unfavorable NACI report is substantively arbitrable under Article 15.
2. In such arbitration, the Postal Service must prove that it had just cause for the separation/removal under the principles of Article 16.

The four postal unions and the USPS have agreed that cases held pending the outcome of this issue should be immediately processed and resolved in accordance with this decision.

Director of City Delivery

Red Line Policy (continued)

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Although case label separations are useful to carriers when processing undeliverable mail, they are not the only tool the Red Line Policy is denying carriers access to. Carriers rely on PS Form 3982s located at their cases as a reference to accurately forward mail for addressees. Under the Red Line Policy, a carrier is unable to review PS Form 3982s when processing undelivered mail at the end of the day. Section 241.3 clearly explains the form’s purpose:

241.3 Purpose and Duration of PS Form 3982

241.31 Purpose

241.311 PS Form 3982 provides a quick reference for carriers unfamiliar with customer removals from the route so the mail for these customers can be withdrawn from the case and bundled for forwarding by the CFS. (Exception: In a Delivery Point Sequence environment where customer removals may first be identified while performing street duties, they must be withdrawn and returned to the office for processing). Use of a PS Form 3982 or a locally developed policy to identify removals while performing street duties will be used.

Additionally, since the policy does not permit carriers to take any mail to their case at the end of the day, it fails to adhere to the *Handbook M-39* requirement that mail being properly held at the unit should be kept at the carrier case unless there is no space available:

117.1.K. Hold Mail

Instruct the carrier to place hold mail in a central location only when space is not available at the carrier’s case.

NALC has not been provided with notification of any proposed changes regarding these handbook provisions in accordance with Article 19 of the National Agreement; therefore, if postal management has implemented the Red Line Policy in your office, contact your local union representative and request that a grievance be filed.

Be sure to read my monthly column and visit the City Delivery page on the NALC website for all the latest news on city delivery activities.