

Branch elections— campaign fundamentals



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As we look to the fall, many branches will begin the planning phase for conducting branch nominations and elections. As such, I routinely receive calls concerning questions about election procedures. In this article, I will provide an overview of NALC branch election regulations and procedures and review some of the more common questions and the regulations addressing specific campaign provisions.

One such frequently asked question by candidates and branch officers concerns whether the NALC logo can be used on campaign material in branch elections. Past presidential rulings have stated,

“Consistent with federal law, the *NALC Regulations Governing Branch Election Procedures (RGBEP)* generally prohibits the use of union funds and resources to support or oppose candidates in branch elections. (See Sections 9.4 and 9.7 below.) The NALC logo is the intellectual property of the NALC. Therefore, branches should treat the use of the logo by candidates as a prohibited practice and should try to prevent it. However, the mere fact that a candidate has included the logo on campaign material does not necessarily invalidate a branch election or require that a rerun election be conducted. The question of whether the use of the logo may have affected the outcome of the election would have to be considered in light of all relevant circumstances in the context of a post-election appeal under Section 21 of the *RGBEP*.”

Let’s take a look at the *RGBEP* regarding campaigns. The handbook is available online at nalc.org and from the NALC Store. It should be readily accessible in every branch. This handbook is a great resource for branch officers and particularly the election committee. It covers all necessary procedures and timeframes.

NALC REGULATIONS GOVERNING BRANCH ELECTIONS

9.0 CAMPAIGN

9.1 The branch must treat all candidates equally; any and all privileges extended to one candidate by the branch must be extended to all candidates.

Comments: An example of equal treatment: if a branch permits one candidate to copy a membership list, all other candidates must be allowed to copy it. There are no exceptions to the requirement of equal treatment. The Department of Labor scrutinizes this aspect of elec-

tions very closely and will set aside elections based upon even minor violations.

9.2 A branch must honor all reasonable requests to distribute campaign literature at a candidate’s expense.

Comments: This provision is often troublesome for local branches, primarily due to different interpretations of the term “reasonable.” If at all feasible, branches should distribute campaign literature when asked to do so. For example, a branch should not refuse to distribute literature merely because it has a small staff which cannot handle the extra work. Instead, the branch could hire temporary help to prepare and mail the literature, and charge the cost of the temporary help to the candidates. Treating all candidates the same by refusing to distribute campaign literature does not fulfill the intent of the law.

In the event a candidate cannot afford to distribute literature, the branch does not have to distribute literature free of charge. However, if a branch distributes literature for one candidate without charge, then it must do the same for all candidates.

In order to avoid complaints of unequal treatment, branches should advise all candidates in advance of the conditions under which it will distribute literature, and should promptly advise all candidates of any change in those conditions.

9.3 A branch can neither censor campaign literature nor require that branch representatives be permitted to read the literature before it is distributed.

9.4 A branch may not use branch dues, assessments or similar levies or contribute anything of value to promote one candidate over another, or discriminate against any candidate.

Branch funds, however, may be used for all notices and for all other expenses necessary for conducting the election.

Comments: This provision is commonly violated in branch elections. The bottom-line is that a branch is absolutely prohibited from criticizing or endorsing any candidate in a union-financed newspaper, publication, or letter.

On the other hand, publication of information sheets with biographical data is permissible, providing all candidates are given an equal opportunity to submit data and the data for each candidate are given equal space and prominence.

Similarly, providing newspaper space for candidates to present their views is permissible, providing all candidates are given an equal opportunity to submit their statements and are given equal space and prominence in the branch paper. Branches can also sponsor a debate at a branch meeting. However, all candidates must be informed of the time and date of the debate and must be given an equal opportunity to express their views at the meeting.

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Grievance remedies (continued)

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thority under the *National Agreement* by issuing punitive remedies against USPS.

It's worth repeating that this federal court decision stated that arbitrators do not exceed their authority under the *National Agreement* by issuing punitive remedies against the USPS. Despite this explicit language, never label a remedy as punitive. Make sure the requested remedy is appropriate and necessary to ensure future compliance.

The *JCAM* discusses specific remedies in only a few instances. One such instance deals with overtime equitability. National Arbitrator Gamser explained that generally the proper remedy for an employee deprived of equitable overtime opportunities is an equalizing opportunity in the next quarter. This isn't the case when management disregards their obligation or there isn't a chance to provide an equalizing opportunity. *JCAM* page 8-14 states:

Remedies. National Arbitrator Howard Gamser ruled in NC-S-5426, April 3, 1979 (C-03200) that the Postal Service must pay employees deprived of equitable opportunities for the overtime hours they did not work only if management's failure to comply with its contractual obligations under Article 8.5.C.2 shows 'a willful disregard or defiance of the contractual provision, a deliberate attempt to grant disparate or favorite treatment to an employee or group of employees, or caused a situation in which the equalizing opportunity could not be afforded within the next quarter.' In all other cases, Gamser held, the proper remedy is to provide 'an equalizing opportunity in the next immediate quarter, or pay a compensatory monetary award if this is not done...'

The *JCAM* also discusses remedies for opting violations, out-of-schedule work, and some overtime violations. As always, grievance handlers should consult the

JCAM with their counterpart when working to resolve a grievance.

Interest on back pay

When an arbitration award determines that an employee is entitled to back pay, the Postal Service is required to pay interest on back pay at the Federal Judgment Rate. This is found in MOU Re: Interest on Back Pay (*JCAM* page 15-23). The Federal Judgment Rate is a federal post-judgment interest rate for civil and bankruptcy cases and varies over time. Because this MOU is only specific to arbitration awards, it can be appropriate to consider adding interest at the Federal Judgment Rate to a remedy request.

Documentation

Requested remedies should be supported with documentation. This can include pay stubs or clock rings demonstrating loss of work and pay. It can and should also include statements from grievants describing their harm. These statements may include emotional and financial harm depending on the circumstances and violations. Do not take this step lightly. Just because you've proved a contract violation and included all the supporting documentation and statements doesn't mean the remedy is a given. Supporting documentation to prove the remedy requested should also include prior grievances of the same nature, including Informal A, Formal A and Step B, as well as arbitration decisions.

Grievance handlers who are working toward resolving issues and pursuing appropriate remedies for aggrieved letter carriers deserve a special thank-you. Without proper remedies, there are no rights.

Executive Vice President

Branch elections (continued)

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9.5 The United States Postal Service may not contribute money or anything of value to the campaign of any candidate.

9.6 Branch officers and candidates may not campaign on union time.

9.7 Branch officers and candidates may not use branch funds, employees, office space, telephones, facilities, equipment or materials to campaign.

9.8 No campaigning is allowed within a polling place during voting.

I hope this helps to clarify some of the campaign issues that may arise during branch election periods. Remember, the intent of this article is to educate our members, not to create problems—especially since any objection to an election must be based on the fact circumstances in that particular election.