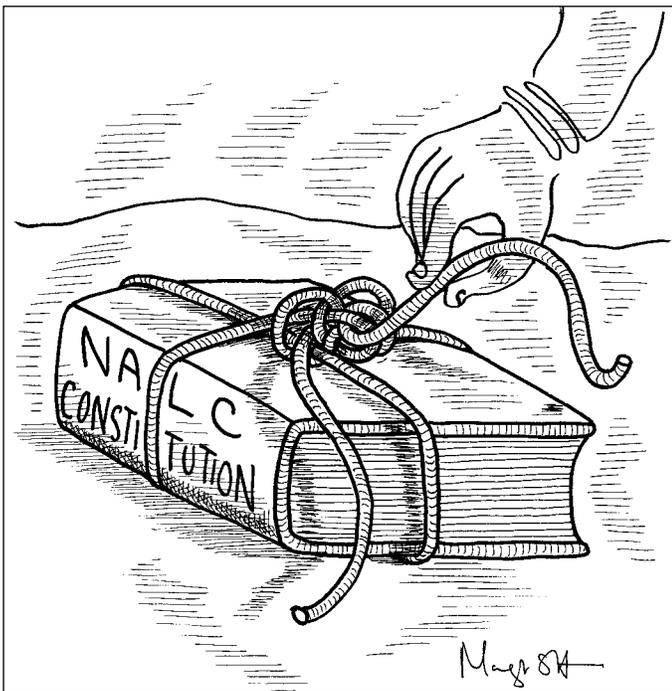


ACTIVIST

NALC

A NEWSLETTER FOR BRANCH LEADERS OF THE NATIONAL ASSOCIATION OF LETTER CARRIERS
VOL. 14, NO. 4

FALL 1999



Rulings clarify *NALC Constitution*

(First in an Occasional Series)

It is often said that the *United States Constitution* is “a living document,” a document that is constantly being interpreted and reinterpreted in the light of events and situations the Founding Fathers could not have anticipated. The *NALC Constitution* is also a “living document.”

In part, this is because it too is constantly being applied to issues and concerns NALC’s founders could not possibly have imagined when they drafted the *Constitution* at the union’s founding convention in August 1889. Then, too, delegates to NALC national conventions have repeatedly utilized the amendment process—which is set forth in the document itself—to add and subtract from the *Constitution*.

Constitutions by their nature establish the governing prin-
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How to get members politically active

It’s not difficult for thoughtful NALC branch leaders to come up with reasons why union members should care about what happens in Congress. Letter carriers are constantly at risk from potentially harmful legislation that could drastically affect their lives—from changes in retirement or health benefits systems to abolishing mail delivery on Saturdays.

The challenge comes when branch leaders look for ways to make the potential threats come alive for carriers—to help members realize how

seemingly mundane, day-to-day legislative activities of the branch will protect carriers’ jobs.

“For many people, it’s tough enough to get the job done every day,” notes Bruce Diedrickson, president of New Jersey Merged Branch 38. “It takes an extra effort to raise members’ awareness of the need for political activity.” Bill Cook, president of Schnectady, New York Branch 358 agrees. “Political thinking doesn’t come naturally to a lot of members,” he says. “It’s not something that clicks into place immedi-

ately and people say, ‘Yes, I understand.’ You’ve got to clarify the connection between the carrier’s life and
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NALC constitution

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ciples of organizations and political entities. For this union, the *NALC Constitution* and its related constitutional documents—the *Constitution for the Government of Subordinate and Federal Branches* and the *Constitution for the Government of State Associations*—is an amalgam of a vast number of discrete provisions.

Taken together, they are designed to enable the organization to function effectively and democratically including, for example, provisions setting



New issues are continually presented, and certain basic questions are asked repeatedly.



forth criteria for membership and running for office, responsibilities of the members, procedures for election of officers and convention delegates, and requirements for handling the organization's finances.

Under Article 9, Section 1(j), the National President is empowered to interpret the *Constitution*. This provision, in essence, requires the president to determine whether particular actions of a branch or state association—either actual or contemplated—violate the *Constitution*. “Presidential

Rulings” are issued in response to written requests from the membership—usually branch officers—and are compiled every two years in the *President's Report to the Biennial Convention* that is printed in the *Postal Record* and distributed to convention delegates.

Although new issues are continually presented, over the years certain basic questions are asked repeatedly. In an effort to present the common answers to these basic questions—and thus not only prevent unnecessary requests for Presidential Rulings but, more importantly, enable the branch to make the appropriate decisions at the outset—the major constitutional questions generating presidential rulings will be discussed in the *NALC Activist* on an occasional basis.

These discussions—essentially highlighting and summarizing key elements of what might be called “NALC constitutional law”—should be viewed simply as guides setting forth answers to commonly asked questions and not as an effort to anticipate new questions or to serve as a complete explanation of any article or section of the *NALC Constitution*.

This story will explore Presidential Rulings clarifying and applying the constitutional language of both Article 6, Section 4 and Article 5, Section 2 of the *NALC Constitution* as well as Article 5, Section 2 of the *Constitution for the Government of Federal and Subordinate Branches* that limits the rights of members who have applied for or have served in supervisory positions. Questions that, on the surface, would appear to be self-evident but upon closer review require careful thought and analysis are continually being posed concerning the application of these provisions.

An issue raised repeatedly is **under what circumstances is a member prohibited from serving as a**

branch officer or convention delegate because the member is holding or applying for a supervisory position.

Article 6, Section 4 of the *NALC Constitution* states that “Any regular Branch member who shall accept a supervisory position in the Postal Career Service for any period of time, whether one (1) day or fraction thereof, either detailed, acting, probationary or permanently, or who shall leave the Postal Career Service, shall immediately vacate any office held by him/her in this National Association, its Branches, State Associations or its subsidiaries—the NALC Health Benefits Department, the NALC Life Insurance Department.... Upon termination of such supervisory status, such member shall be ineligible for election to any office for two (2) years. Upon nomination, the candidate must certify that he/she has not served in a supervisory capacity for the 24 months prior to the nomination.” Article 5, Section 2 of the *Constitution for the Government of Federal and Subordinate Branches* contains similar language and Article

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5, Section 2 of the *NALC Constitution* explicitly imposes this same prohibition on delegates and alternate delegates to National and State Conventions.

Who's a supervisor

Although the constitutional language is clear, situations continue to arise concerning exactly **what positions are supervisory in nature**. In general, it has been consistently ruled that a position is supervisory if the individual holding the position has the authority to discipline bargaining-unit employees or otherwise exercise supervisory authority over their work (June 30, 1997, and a number of other rulings). More specifically, the job description of the position of *ad hoc* supervisor in the postal business center clearly indicates that the position includes supervisory responsibilities (May 26, 1994).

The existence of employees to supervise is not necessary for the position to be deemed supervisory for the purposes of the constitutional prohibitions. For example, application for a postmaster position in a small post office with no employees was considered supervisory on the grounds that the position description explicitly stated that the position involves supervisory functions and that the member securing the position would be eligible to be transferred to a position that directly supervises bargaining unit employees (February 3, 1994).

Usually, whether or not the position is supervisory is clear from the position description. For example, it has been held that since the job description of architect/engineer, EAS-20, contained no indication that the person holding such a position will have the power to oversee or supervise other bargaining unit employees, the position did not appear to be one that is supervisory in nature (January 5, 1994). Similarly, an EAS-21 position entitled Local Area Network Administrator was ruled non-supervisory because the vacancy announcement indicates the position is a technical administrative job that does not entail supervising bargaining unit employees (August 9, 1994).

A member who worked as a customer service representative selling Express Mail was not considered to have filled a supervisory position (August 10, 1989). Further, mere participation in a 40-hour "Initial Level Trainee Development Program" alone would not disqualify a person from holding a position in the branch if the participation was not tantamount to applying for a supervisory position (October 29, 1997), nor is applying for participation in a self-development training course by itself considered an application for a supervisory posi-

USPS BY THE NUMBERS

<u>USPS Operations—PFY 1999</u>	<u>Number</u>	<u>Chg from SPLY*</u>
Total mail volume year-to-date (YTD) (billions of pieces)	202.9	2.5%
Mail volume by class (YTD in billions)		
<i>First-class</i>	103.1	1.9%
<i>Priority Mail</i>	1.2	3.0%
<i>Express Mail</i>	0.1	3.3%
<i>Periodicals</i>	10.3	0.2%
<i>Standard A (bulk)</i>	86.3	4.1%
<i>Standard B (parcels)</i>	1.0	1.4%
<i>International</i>	0.9	-4.3%
Daily DPS letter mail volume (pieces)	174.8 million	20.6%
<i>Percent of total letter mail</i>	48%	—
City routes with DPS mail	141,238	6.3%
<i>Percent of total</i>	83.9%	—
Daily delivery points (millions)	131.0	0.9%
<i>Percent city</i>	74.7%	—
<i>Percent rural</i>	25.3%	—
City carrier routes	168,247	0.6%
Rural carrier routes	64,614	4.0%
Net Income (\$millions)	\$ 300	-45.5%
<i>Total Revenue</i>	\$62,745	4.4
<i>Total Expense</i>	\$62,445	4.9
<u>Employment/Wages—AP13/PFY 1999</u>		
City Carrier employment	243,162	0.1%
<i>Percent union members</i>	91.4%	—
<i>Percent career employees</i>	99.6%	—
City carrier casual/TE employment		
Casuals	5,786	-7.8%
<i>Percent of bargaining unit</i>	2.4%	—
Transitionals	862	-60.2%
<i>Percent bargaining unit</i>	0.4%	—
City carriers per delivery supervisor	17.8	-8.7%
Career USPS employment	797,795	0.7%
City carrier avg. straight-time wage	\$17.25/hr.	0.0%
City carrier overtime ratio (overtime/total work hours)	10.6%	—
<i>Ratio SPLY</i>	13.4%	—

*SPLY = Same Period Last Year

This information compiled by the NALC Research Department from USPS Reports.

tion under Article 5, Section 2 (November 5, 1997).

If a position description does not indicate that the individual would supervise or otherwise have the authority to discipline bargaining unit employees, the mere fact that the employee is paid at a level higher than Grade 6 is not by itself sufficient for the individual to be classified as a supervisor for purposes of the prohibitions in the *NALC Constitution* (January 21, 1998). Specifically, it was ruled that positions such as safety specialist and address information systems analyst were not supervisory in nature even though they were paid at a higher level than Grade 6 (April 9, 1990; see also March 8, 1989; April 17, 1989; and March 14, 1990).

Individuals applying for any 204b appointments are disqualified from holding office for two years

Some positions are considered supervisory by virtue of their impact on letter carriers or other bargaining-unit employees independent of whether they *directly* discipline or otherwise supervise the work of carriers. For example, individuals applying for *any* 204-b appointments were disqualified

from holding branch office for two years even if the 204-b position did not specifically authorize the individual to supervise letter carriers (March 29, 1994).

Similarly, a retired member who accepted a contract with the Postal Service to serve as a route examiner was held to be acting in a supervisory capacity and thus was disqualified from holding union office (August 30, 1993). Positions in the Postal Inspection Service are supervisory because of their obvious impact on carriers and other employees and thus these positions are subject to the prohibitions of Article 5, Section 2 (July 2, 1990; July 25, 1990; October 31, 1996).

Occasionally, a member wishing to run for convention delegate or union office may assert that he or she never actually applied for a supervisory position. Decisions as to **whether in fact a member has applied for a supervisory position** and, if so, whether he/she has withdrawn that application are matters for the branch to determine based on the facts presented (December 1, 1994, January 23, 1995). However, in general, it can be said that an inquiry and request for additional information concerning a supervisory position is not considered an application for that position (November 10, 1994).

On the other hand, an application does not necessarily have to be in writing (December 1, 1994). In fact, it is not necessary to file a Form 1991 (December 1, 1994). An individual need not serve in a supervisory position for any substantial length of time since Article 5, Section 2 expressly prohibits from holding office “a member who accepts a supervisory position in the Postal Career Service for any period of time whether one (1) day or fraction thereof” (August 2, 1994). Consequently, the designa-

tion “*ad hoc*” does not affect whether a position is considered supervisory or not since it simply indicates that the assignment is temporary. The length of the assignment is immaterial (October 20, 1998; see also May 26, 1994).

Questions have been raised regarding the **scope of National State Association or Branch “office”** in Article 6, Section 4 of the *NALC Constitution* and “office or position” in Article 5, Section 2 of the *Constitution for the Government of*

Some jobs in the branch are not considered an ‘office or position.’

State and Federal Branches. A steward, *whether appointed or elected*, is covered by the restrictions of Article 5, Section 2 of the *CGSFB* (October 15, 1992, May 3, 1994). The prohibition also applies to persons *appointed* to fill vacant branch officer positions (August 2, 1994). But some jobs in the branch are not considered an “office or position” within the language of the *Constitution for the Government of Federal and Subordinate Branches*. For example, the constitutional prohibition does not apply to service as a congressional legislative liaison (July 25, 1990). Chairing a branch election committee is not considered an office for purpos-

es of the limitations imposed as a result of applying for or holding supervisory positions (September 25, 1990).

Moreover, although Article 5, Section 2 of the *NALC Constitution* clearly disqualifies individuals holding supervisory positions from serving as delegates or alternate delegates to a national or state convention, an individual is not barred from attending an off-year state association meeting that is simply a training event for which there are no elected delegates because he/she served in a supervisory position within the previous two years (January 5, 1995). In fact, it has been held more generally that the constitutional limitation does not apply to attendance at a training seminar (October 1, 1996).

Time limits

Some questions have been raised concerning the **two-year time limit** during which time a member cannot run for office or convention delegate. It is clear that for a person holding a supervisory position who then returns to a craft position, the two years begin from the time he/she exits the supervisory position. However, the issue is somewhat more complicated when a member has not held a supervisory position but rather has applied for one.

It has been ruled that the two-year period begins from the date the member *withdraws* his/her application from the Postal Service *in writing* (April 6, 1994) regardless of how many years have gone by since the date of the original application (July 8, 1993). It is not necessary that a member submit a withdrawal to the branch at that time (December 8, 1992).

The operative date is the date of the evidence the member can provide

when nominated (December 5, 1994). Consequently, in ruling that members must withdraw an application for a supervisory position by submitting a written request to the appropriate management official, it was also suggested that the member retain a photocopy of that letter, date stamped upon receipt by the Postal Service, as proof that the application had been withdrawn (November 16, 1988).

If a member who has applied for a supervisory position retires without submitting a written request to withdraw such application, the member would not be eligible to hold office for two years from the retirement date (November 20, 1992).

Whether a member is eligible for a branch office or position is determined at the time of nominations—not at the time of the election. Consequently, a member may not run for office or position if that employee served as a supervisor—or applied for such a position—within two years of the *nominations*, even if the member did not serve as a supervisor or apply for such a position within two years of the *elections* (November 13, 1986— a ruling issued prior to the *Constitution for the Government of Federal and Subordinate Branches* being amended to extend the two-year prohibitions against serving as a supervisor to also include applying for such a position).

Language only a guide

The Presidential Rulings discussed above amplify and refine the provision in the *NALC Constitution* that members who hold or apply for USPS supervisory positions cannot hold

CONSTITUTION of the NATIONAL ASSOCIATION OF LETTER CARRIERS of the UNITED STATES OF AMERICA

Laws For:
BRANCHES
STATE ASSOCIATIONS
U.S. LETTER CARRIERS MUTUAL
BENEFIT ASSOCIATION
HEALTH BENEFIT PLAN

As amended at the Sixty-first
Convention
Las Vegas, Nevada
July 27-31, 1998

union office or serve as a delegate to national and state conventions. As a result, the rulings clarify such issues as what constitutes both a supervisory position and a union office, when does the two-year period during which an individual cannot serve as an officer or convention delegate begin, and how it is determined that a member applied for supervisory position.

In a broader sense, however, these rulings demonstrate that the bare-bones language of the *Constitution* often serves only as a guide for both NALC members and the National President. Only through the Presidential Rulings that *apply* the language of the *Constitution* to the evolving reality of NALC life in hundreds if not thousands of workplaces and union halls throughout the country can the *NALC Constitution* become a truly useful—and “living” document. ■

Members and politics

continued from page 1

the need to write a letter or vote for a certain candidate.”

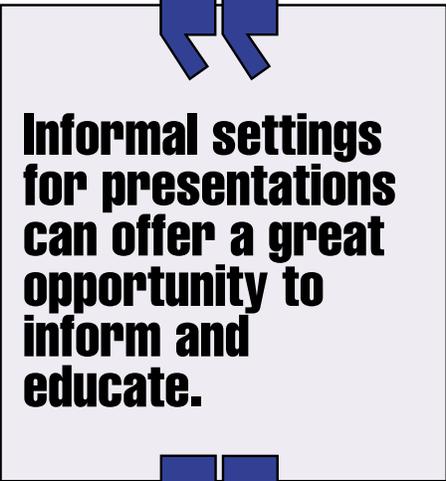
Although Election Year 2000 is almost a year away, it's not too early to begin efforts to educate and motivate branch members to be more politically active. In 1998, a major push by American labor unions resulted in substantial victories in congressional, state and local elections throughout the country. For the year 2000, the AFL-CIO is promoting a drive to get 2,000 union members into elected positions to counter the “fat-cat” businessmen and women, bankers and attorneys who traditionally dominate the political scene.

Although presidential election years are always a major focus of union political efforts, effective branch leaders realize that encouraging members' political activity must be an *ongoing process*. The union cannot expect members to mobilize suddenly and effectively at election time. Rather, the process of awakening political interest and activity in the branch must be continuous.

Such efforts can have multiple payoffs: Obviously, the NALC's political agenda has a greater chance of success as the number of involved members increases. However, the branch itself can also reap benefits from political action programs. People who have successful experiences with legislative and political activity—whether it's writing letters or making phone calls to Congressional representatives, campaigning for a NALC endorsed candidate, attending a legislative workshop or even visiting Capitol Hill—are much more likely to seek out other ways to become part of that essential core of dedicated, involved

volunteers that keep the branch strong.

In this story, branch leaders who are energetic and successful political activists share some of their ideas for educating and motivating members concerning legislative issues and politics. Their suggestions include **finding nontraditional ways to reach members, tapping hidden resources within the branch and focusing on members' interests to nurture and**



**Informal settings
for presentations
can offer a great
opportunity to
inform and
educate.**

encourage new political activists.

“When you consider the stakes, the extra effort is more than justified,” says Charlie Miller, vice president of Garden Grove, California Branch 1100. “What happens in Congress affects not only us letter carriers, but also the whole network of our families and friends. We've all got to wake up, pay attention, and work for what we want.”

Going beyond the obvious

Given the multiple demands on branch leaders' time and energy, it's not surprising that many leaders rely

on traditional methods to inform and motivate members about politics. Newsletter articles, announcements at branch meetings, and COLCPE drives within the station all have their place in effective political mobilization. (For more information about these basic approaches, see the articles “Political action: Maximizing branch resources,” in the Summer 1996 *NALC Activist* and “COLCPE drives get members involved,” in the Winter 1992 *NALC Activist*).

However, sometimes it takes a bit more to reach out and grab members' attention. Velma McClinton, treasurer of Van Nuys, California Branch 2462 and a longtime political activist, has discovered that informal branch events such as picnics and dinners offer a great opportunity to inform and educate members. “As a district officer for the California State Association, I'll visit all the branches in my district at least four times a year,” she says. “Although three visits are to branch meetings, I always try to get to at least one branch function where members and their families are gathered.” The informal setting, McClinton has discovered, offers more scope for questioning and lively discussion of political issues.

Schnectady Branch 358 president Bill Cook also relies on informal gatherings to spread the NALC's political message. “When people are relaxed and enjoying themselves already,” he says, “they seem to be that much more receptive to what you have to say.”

Another bonus of making presentations at such events is that members' spouses and other family members also hear the union's message. “Everything that Congress does affects not only our members, but also their whole families,” Cook notes. “And there are other legislative issues even beyond the tradition-

al letter carrier concerns that spouses and family members should know about.”

For these reasons, Cook and other New York political activists have targeted NALC auxiliaries as key players in the legislative arena. “A lot of people assume that auxiliaries have become a thing of the past,” he said. “That’s simply not true. Letter carrier spouses can be a tremendously effective voice, and auxiliaries should be at the forefront of any political or legislative effort.” Strategies to involve and educate spouses can range from inviting them to branch meetings to setting up special workshops targeted at carriers and their spouses. New York’s Tinley District, for example, has changed its district meeting from a three-hour Sunday morning event to an overnight seminar to which union activists and their spouses are invited. “For our upcoming district meeting, we’ve invited NALC’s Legislative Department to put on a workshop,” Cook says. “Probably 80 to 90 percent of the people at the meeting have never been exposed to that kind of message from the union. We’re hoping to develop a core of ‘disciples’ who will go out and spread the word back at their own branches and stations.”

Community concerns

Cook and other branch leaders point out that often, community issues and concerns can draw letter carriers into greater involvement with politics. “It’s hard for a lot of people to focus on Washington,” Cook says. “But talk about industrial development in their community, and how people are moving away because of lack of work. Letter carriers will see right away that if the population is dwindling, their jobs may be at risk. And you can get people interested in fighting for their communities not



NALC Branch 38 member David Jendzejewski (seated, l.) enjoys breakfast with Rep. Rush Holt and other New Jersey NALC political activists.

only because it’s where they live, but because their working future depends on the survival of the community.”

Communities that don’t have economic problems still have issues that can politicize NALC members. “Look at schools, for example,” says Branch 1100’s Charlie Miller. “People care about the quality of their child’s education, and what may be happening in their schools. The federal budget and Congress can have a huge impact on what happens in local schools. That’s an issue a lot of younger members could get into and get behind.” And once members are “hooked” by a local or community issue, it’s that much easier to introduce them to NALC’s issues, adds Schnectady’s Bill Cook.

Targeting members

Building involvement in younger NALC members can be a challenge, as many politically active branch leaders have discovered. “Statistics tell us that people aged 18 to 35 are

usually less likely to vote than older people,” says Schnectady’s Cook. “It’s understandable—these are people starting out on careers and families, facing a lot of stress and demands on their time.”

However, this group can also be profoundly affected by changes in legislation that affect their jobs. “When you’re young it’s hard to relate to issues about retirement, for example,” notes Velma McClinton of Van Nuys Branch 2462. “But before you know it, you’re facing those issues directly—or else someone in your family is affected.” Finding ways to motivate younger carriers may take some extra effort, she says. “You’ve got to begin translating what happens in Congress into terms that are meaningful to everyone—how the budget, for example, impacts our day-to-day life. What’s happening in health care, education and child care, for example, can affect young families in significant ways.”

McClinton has discovered one strategy that seems to help draw in younger members—she asks them to

help research political issues on the Internet. “There is simply a ton of information out there, and computer-savvy people can really help get access to that resource,” she says. As a side benefit, members who have strong computer skills may find themselves being drawn into debate and discussion about the issues they research—and may volunteer for additional commitments. (Members can begin with the legislative and political information on NALC’s web site, at www.nalc.org/legpol.html. Another source of general information on legislation affecting union members is the AFL-CIO’s home page, www.aflcio.org, which provides additional links to political and legislative sites.)

Finally, it’s important to remember that building an effective branch political and legislative program is a long-term commitment. As is true for almost every aspect of politics itself, change doesn’t happen overnight. Certainly no one can testify to the truth of that assertion more powerfully than David Jendzejewski, assistant steward and safety office of New Jersey Merged Branch 38.

More than 15 years ago, Jendzejewski decided to devote his spare time to political issues. “I learned that what we lose as letter carriers, we lose through legislation,” he says. “And once it’s gone, it’s gone for good.” So he volunteered to become the legislative liaison to New Jersey’s 12th District Congressman, Dick Zimmer, who was very conservative. “I’d have to say that Zimmer voted against us maybe 85 percent of the time,” Jendzejewski remembers. “But I’d keep going down to Washington and meet with him and talk about our issues. People would ask me, ‘Why are you wasting your time? That guy will never change his mind.’ But it seemed important to try, to pro-

vide the information and the education.”

Time passed and Zimmer was replaced by Michael Pappas. “He wasn’t much better,” Jendzejewski remembers. “He voted against us maybe 80 percent of the time.” Jendzejewski did suffer periods of discouragement—the district had always voted Republican and seemed likely to continue to do so into eternity.

Then the unthinkable happened—a labor-friendly challenger, Rush Holt, won the 1996 election, in no small part due to efforts by Jendzejewski and other supporters from central New Jersey’s labor movement. “Today, I’ve got to say that all the work, the hanging in there, has been

‘What we lose as letter carriers, we lose through legislation.’

worth it,” Jendzejewski says. Rep. Holt is very accessible and even eager to attend functions that Jendzejewski coordinates, including a recent breakfast that drew a standing-room-only crowd.

“Persistence is really the key,” Jendzejewski says. “You have got to realize that you’re in for the long haul and just stick it out.” In the 16-plus years of his political involvement, Jendzejewski has built up a list of NALC political activists that started

with basically himself and now has grown to dozens of names. “You talk to hundreds of people, talk all the time, and every so often you find one person who is very interested, who gets fired up,” he says. “So you put them on your list, and you keep going.”

Ultimate payoffs

The strategies outlined above—whether it’s an information session at a branch picnic, a seminar for members and spouses, an appeal to computer whizzes or simple, straightforward persistence—may appear to require more energy and enthusiasm than overworked branch leaders can muster. However, such efforts can lead to significant gains for NALC. With every new political activist that comes on board, the union grows stronger. Members’ futures become more certain, and the branch itself benefits from an influx of new, committed volunteers.

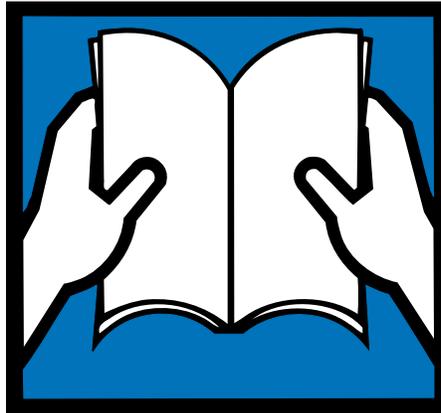
“Working together to understand or influence our political process can help build members’ confidence in themselves and in the union,” notes Velma McClinton. “Too often, we feel powerless, like the wheels of government are going to keep turning no matter what and run right over ourselves and our families.” By getting involved in the political process, McClinton notes, members can begin to regain a feeling of control and power. “You can be on the inside track, ahead of the curve and prepared for what’s coming next,” she says. “And once people get a taste of what they can do, the influence they can have, they will keep coming back for more. As a result, the union achieves more of its goals, and members recognize the power of working together.” ■

Get the facts in reversion grievances

Stewards and other branch officers are well aware that the provisions in the *National Agreement* requiring management to maximize the number of full-time letter carriers and minimize the number of part-timers are among the most important contractual protections carriers have. But it requires constant monitoring and, if necessary, the filing of grievances. In so doing, stewards help to ensure that a sufficient number of full-time carriers with regular schedules are available to provide the best possible service to the public as well as enable part-time carriers to move into full-time positions in the shortest possible time.

Most typically, maximization grievances occur when the Postal Service has violated the “maximization” provisions of Article 7, Section 3 by failing to **convert** part-time flexibles to full-time regulars in accordance with the strictures set forth in these provisions of the contract. The *NALC Activist* has discussed such cases in the past. These stories suggest how stewards can recognize the need to convert positions, how to prepare the facts should it be necessary to file a grievance, and become aware of the defenses management has at its disposal. (See “The case of the missing carrier,” Winter 1989; “The case of the insufficient case,” Spring 1990; and “The case of the missing jobs,” Fall 1991.)

Less common but equally troublesome is when management violates Article 7 by **reverting**—that is, eliminating—full-time positions. Often by reverting these positions, management *minimizes* the number of full-time carriers in the unit, inevitably increasing carrier workloads which



eventually leads to deteriorating service.

Management *may* be within its contractual rights when reverting a position, for not every reversion violates Article 7. Fortunately, however, a lengthy history of arbitral awards sets both **standards** that management must meet when deciding to revert and a **method** or **procedure** for NALC branches to employ when grieving a reversion. Key to deciding whether to grieve a reversion—and to prevailing should a grievance be filed—is to understand that despite what your management may claim, the Postal Service does *not* have an unfettered right to revert positions.

However, should a reversion grievance proceed to arbitration, the **burden of proof** rests with the union. This means that the NALC must establish what is called a *prima facie* case that the contract has been violated—and management must then refute this case. Since it is the union’s responsibility to establish that management has violated the contract—and, in more practical terms, has no acceptable business reason for reverting the position—the steward is the first line of offense. That is to

say, it is the steward’s responsibility to gather the facts that demonstrate that management should not have reverted the position.

Of course fact-gathering is always the steward’s responsibility when deciding whether to file a grievance and, once filed, preparing the grievance as it goes forward. However, this essential steward task is even more important with maximization grievances. Should the union **not** present sufficient facts indicating the Postal Service violated the contract—that is, fail to make a *prima facie* case—management has no responsibility to defend its action. In essence, then, the *burden of proof* is on the steward!

The responsibility to gather the facts—always a steward’s **burden**—is especially great in reversion because the fact-gathering duties must be performed **continuously** and in **anticipation** of any management action. This is true for conversion cases as well. However, stewards may be able to foresee a conversion case around the corner as overall work hours and overtime increase and part-time flexibles hours simultaneously mount. With reversion cases, on the other hand, the steward may have relatively little warning that management is about to revert positions. (See “Know your contract” on p. 11.) As a consequence, the wise and diligent steward is **continually monitoring** work hours and other operational data.

An example of both how the NALC prevailed in a recent reversion case—and how arbitrators approach these cases—is Case C-19797. In his decision, Arbitrator Louis M. Zigman held that management had violated Article 7, Section 7.3.B. when it

reverted five Reserve Letter Carrier positions in November 1994 after they had been posted for bid and not filled by regular carriers.

NALC position

The union advocate recognized that management would argue that Article 3 (Management Rights) of the contract gives management the right to manage its work force, which would incorporate the right to revert positions whenever management believed this was necessary “to maintain the efficiency of the operations...” (Article 3.C). But the NALC argued that management could exercise its Article 3 rights only “so long as the

NALC presented evidence showing the actual hours worked by the reserve carriers.

exercise of those rights do not conflict with other negotiated terms of the National and/or local agreements”—specifically, in this case, Article 7.3.B. requiring management to maximize the number of full-time employees.

To support its argument that by reverting the five Reserve Letter Carrier positions, management did violate 7.3.B., the union presented evidence showing the actual hours worked by the five RLC carriers prior to their reversion. The union’s advo-

cate also introduced into evidence the hours that casuals, Transitional Employees, Part-Time Flexibles and carriers on the Overtime Desired List had worked between February 1, 1994 and September 20, 1994—most of the eight months immediately prior to the reversion. In addition, the union showed that the five carriers whose positions had been reverted were fully occupied during this period. None had been given make-work assignments or had been sent home early due to lack of work or had worked in another craft to meet their eight-hour guarantees.

Furthermore, after the reversion, 15 additional regular routes were established. This indicated even more work was available for the reverted carriers. But instead of maintaining the RLC positions, management had increased the number of part-time flexibles. “The significance of this analysis,” the union stated, “is that it shows the RCL’s not only were worked their reporting guarantee, but that the workload beyond that performed by the regular carriers on their routes was significantly high, which warrants retention of full-time assignments.”

Finally, the union argued that its evidence was undisputed since management had failed to present *any* evidence at all during the previous steps of the grievance procedure. According to arbitral precedents, NALC claimed, management is required to present proof to justify the elimination of these positions once the union has made a *prima facie* case that there was sufficient work to continue the reverted positions.

USPS position

Management’s position was the polar opposite of the union’s. Dismissing the relevance of Article 7.3.B. to management’s right to revert

a position, management claimed that Article 3 gave it the discretion to revert positions “as long as the decision is not arbitrary, capricious or so unreasonable to be an abuse of its discretion.” But even if one assumed that Article 7.3.B. limited management’s ability to revert positions, the Service continued, the union had failed to demonstrate that there was sufficient work to justify retention of the five Reserve Letter Carrier positions.

The arbitrator rules

After reviewing the arguments of the parties as well as the numerous previous arbitration decisions both

Management must present proof to rebut the union’s prima facie case.

the NALC and the USPS had cited in support of their respective positions, Arbitrator Zigman found in favor of the union. First, he agreed with the NALC that “management does not have unfettered discretion when reverting these full-time positions.” Second, prior arbitration decisions clearly place the burden of proof on the union to establish a contractual violation. As the arbitrator wrote, “If the union is unable to establish a *prima facie* case, local management does not have to present any evidence.”

In this particular case, the Arbitrator found that “the testimony was *unrebutted* that the union representative did present the evidence during the grievance procedure and that the management representative rejected it.” Moreover, Zigman found that the union had presented “sufficient evidence” to establish a *prima facie* case and that management had “presented absolutely no evidence at all to rebut the union’s evidence.” As a consequence, the Arbitrator concluded that the USPS had violated Article 7.3.B. of the National Agreement when it reverted the five RLC positions, and he ordered that the positions be re-established and re-posted as of or about the date on which they were posted and not filled. He furthermore agreed with the NALC that the five current senior PTFs should be converted to regulars to fill the reverted positions as of that date.

How it all began

In this case, as in many arbitration decisions, the Arbitrator drew upon a number of previous awards—including one of his own—cited by the parties, but he did not discuss them fully. Consequently, to understand the complete basis for Zigman’s decision as well as other decisions on reversion cases, stewards should be aware of the evolution of postal arbitrators’ opinions in reversion *and* conversion cases.

Current arbitral thinking on reversion cases stems from two key conversion cases where the union had argued that management had violated its Article 7 obligations by failing to convert part-timers to full-time positions. In a seminal 1976 APWU case (C-00421), then National Arbitrator Sylvester Garrett broke new ground by finding that the Postal Service had an obligation to maximize the number

Know your contract: Reversions

Restrictions on management’s ability to revert positions is not specifically set forth in the National Agreement. However, Article 7.3.B’s requirement that the Postal Service maximize the number of full-time employees and minimize the number of part-timers has been held by arbitrators as placing a limitation on management’s ability to revert positions. Article 7.3.B. reads as follows:

“The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations...”

In addition, Article 41.1.A.,

although not limiting management’s *right* to revert positions, does set forth requirements for *how* management must conduct the reversion. The relevant portion of Article 41.1.A follows:

“When a position is under consideration for reversion, the decision to revert or not to revert the position shall be made not later than 30 days after it becomes vacant. If the decision is made not to revert, the assignment must be posted within 30 days of the date it becomes vacant. The Employer shall provide written notice to the Union, at the local level, of the assignments that are being considered for reversion and of the results of such consideration.”

of full-time positions even in offices with fewer than 200 “man years” of employment. But he also held that although this obligation was “balanced” by considerations of *economic efficiency*, management must demonstrate that inefficiencies would result from conversions *if* the union has established a *prima facie* case for at least some conversions. In this case, Garrett ruled that the union had met its burden, but that management, while asserting that conversions would result in inefficiencies, had not provided “concrete documentation of the nature and extent of such inefficiency.”

In general, however, Garrett asserted that “a standard of practicality should govern in evaluating the relevant circumstances in any given postal installation to determine the extent to which maximization should

be achieved...,” adding that there was no obligation to do so if converting part-time flexibles “would produce a demonstrable increased cost...”

In a 1978 NALC case (C-02978), National Arbitrator Howard Gamser endorsed Garrett’s conclusions but added another criterion for *not* converting the position—an adverse impact on management’s “flexibility in meeting its responsibility...to ‘direct the workforce.’”

The Garrett-Gamser analysis was applied to a reversion case as early as 1982 when regional Arbitrator Herbert L. Marx, Jr. in case C-03667 ruled that management had violated Article 7.3 when it reverted a full-time vacation relief position after the carrier in the position had bid on another job. Following Gamser and Garrett, Marx held that although

Article 3 gives management wide latitude to manage the workforce and determine the nature of the employee compliment, this latitude is limited by, among other provisions, Article 7.3 which imposes “specific obligations upon the Postal Service.” Finding that the NALC has provided data supporting the continuation of the full-time vacation relief position and that the Service had failed to explain the basis for the change to the union, the arbitrator ordered the position must be re-established.

Subsequent conversion and reversion cases have built upon the foundation laid out by Garrett, Gamser and Marx. In a 1992 case (C-12126), Arbitrator James Barker found for the NALC. In his view, the union had demonstrated that an additional position could be established “without creating idle time or additional overtime expenses, and without loss of efficiency or level of productivity,” while the Service had failed to refute convincingly the union’s *prima facie* case. Moreover, “[a] showing of ‘bad faith’ on the part of management is not part of the burden which the union must bear.” In fact, management’s obligation to *rebut* the union’s case and not simply claim that the evidence presented was insufficient was key to Arbitrator Louis V. Baldwin, Jr. finding for the union in a 1992 APWU conversion case (C-12157)

Two recent NALC reversion cases reinforce the initial Gamser/Garrett/Marx approach while emphasizing that the union must provide *specific* operational data to justify retaining positions that management had reverted.

Arbitrator Zigman, in a 1997 case (C-16954) involving the reversion of one Reserve Letter Carrier position, held that the union’s evidence that at least six part-time flexibles, transitional employees and casuals had

been working more than 40 hours per week was “sufficient evidence” to conclude that management had violated the contract.

But following the remedies that Garrett and Gamser had devised in their early cases, he reverted the position for a six-month period to give management an opportunity to “demonstrate through objective evidence that the position had had an adverse impact on the efficiency of the operations or that it has resulted in due increased costs...” If at that time Zigman were to find for the Service, then the union would have “a right to contest that decision,” and Zigman himself would retain jurisdiction over the implementation of his award.

**Management’s
argument for
‘flexibility’ was
not convincing.**

Similarly, in 1999 NALC reversion case (C-19605), Arbitrator William Eaton held that once the union has demonstrated that there would be no inefficiency by *not* reverting a position—that is, “that ample work is available, that there is an unusual percentage of part-time employees, that PTFs are working full 40 hour weeks on a continuous basis, or even excessive overtime, or through similar evidence”—then management has the burden “to show that inefficiency would occur if the position were retained...”

In this case, Eaton found both that the NALC had established a *prima facie* case that retention of the two reverted positions would lead to inefficiencies and that management’s argument in rebuttal that “flexibility” justified its action was not convincing when measured against Garrett’s standard requiring “documentation of the nature and extent of such inefficiency.” Moreover, management cannot justify reversions of vacant positions on the basis that because no one bid on them, filling the positions would require the conversion of part-time flexibles. Consequently, in finding for the union and ordering the re-establishment and reposting of the two positions, Eaton also ordered the conversion of the two senior PTFs to full-time status to fill the recreated positions.

Note to stewards

Reversion cases, like their sister conversion cases, require stewards to be alert, diligent and “fact-obsessive.” They also require stewards to “look around the corner” to anticipate what management *might* do in the future. And although stewards should recognize that not every reversion is a violation of the National Agreement, only by *continuously* gathering work hour, overtime and employee complement data will stewards be in a position first to determine whether the reversion was justified and, if so, then to arm the union’s arbitration advocates—should the case proceed that far—with the facts necessary to make a *prima facie* case. Of course, once that case has been made, the burden shifts to management to *demonstrate* with specific data that not reverting the position or positions will result in inefficiencies, excessive cost and inflexibility. More often than not, management has been unable to meet *its* burden. ■

What to do when an OWCP claim is denied

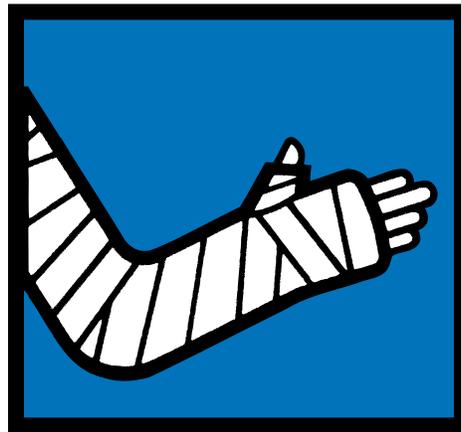
Times change, and the job of a letter carrier certainly has changed in recent years. But what hasn't changed and probably never will is that carriers are injured on the job. This is why we are reprinting, with slight modifications, "What to do when an OWCP claim is denied," an article that originally appeared in the Spring 1991 NALC Activist.

Imagine that a letter carrier comes to you with bad news—the Office of Workers' Compensation Programs (OWCP) district office has denied the carrier's claim for compensation. At the same time, the carrier hands you a sheet of paper headed "Appeal Rights" that the district office sent along with the denial. "Now what do I do?" the carrier may ask. And it's up to you to sort out the various options available to that carrier.

Here are the options described on that sheet: First, carriers can ask for an **oral hearing before a hearing representative in OWCP's Branch of Hearings and Review** in which the carrier can present his or her case in person, or can ask the hearing representative to **review the written record** without a face-to-face hearing.

Or carriers can ask for **reconsideration of the decision by OWCP's district office**. The reconsideration would be based on submission of *new evidence* that the district office did not have at the time it made the initial denial. The third option is to make an **appeal to the Department of Labor's Employees' Compensation Appeals Board (ECAB)** *without* submission of new evidence.

Each of these choices has different time limits, and circumstances may



make one choice better than another. Carriers can easily become confused when faced with these options, so one of the most valuable services a steward or branch officer can perform is to help the carrier decide what to do.

Denial date

The first and most critical task the steward has is to determine the exact date of the original OWCP denial. This is the date that appears on the formal OWCP "Compensation Order" denying the claim or, in some cases, an OWCP letter stating that the claim has been denied. This date is all-important because all the time limits begin to run with *this* date—**not** the date the carrier receives the Compensation Order or letter.

For example, the first option described above—an oral hearing or review of the written record by an OWCP hearing representative—is only possible if the carrier requests such a hearing or review *within 30 calendar days* of the denial. The request, in the form of a letter (more about that later), must be mailed to the Branch of Hearings and Review

within the 30-day period. But, by the time the carrier gets the denial, there may be only 20 days left—or even less. So unless the carrier acts promptly, this option may be completely unavailable. OWCP will *not* grant an exception to the 30-day time limitation *for any reason*.

But should the carrier ask for this oral hearing or review of the written record if that option is still open? Usually, the answer is yes. OWCP hearing representatives are very expe-

The steward must determine the exact date of the original OWCP denial.

rienced, many having a background of years of examining claims—and they are totally independent of the district office that made the initial denial.

And asking for an oral hearing or review of the written record does not affect the carrier's rights to the other options, should this be necessary, for the carrier can still request **reconsideration** based on new evidence or can **appeal** to the ECAB, provided the applicable time limits are met (more on this later).

There are advantages to having an actual oral hearing, as opposed to a

review of the written record. Because the oral hearing brings the carrier face-to-face with the OWCP hearing representative, the carrier has the opportunity to make sure that the representative understands any complex issues that may be involved.

An oral hearing can also help when the letter carrier's credibility is a factor in the denial—for example, if the Postal Service has challenged the carrier's version of the facts surrounding the injury or illness. By seeing and hearing the carrier, the hearing representative is better able to judge the truthfulness of the carrier's story.

Of course, it may be difficult or impossible for the carrier to get to an oral hearing, although hearings are held in major cities throughout the United States. And the carrier may be satisfied that there is nothing to be added to the record and no need

An oral hearing can help when the carrier's credibility is a factor.

to personally appear and discuss the factual and medical evidence. If so, a review of the written record *without* an oral hearing may be the way to go.

Whatever choice the carrier makes—whether to appear in person at an oral hearing or ask for a review of the written record—the carrier has

the opportunity to submit new evidence at this stage. If the carrier chooses the review of the written record, it's best to submit any new written evidence *with the request for the review*. This will ensure that the evidence is in the hands of the OWCP hearing representative at the time of the review.

Requesting either the oral hearing or the review of the written record is simple: The carrier sends a short, signed and dated letter to the Branch of Hearings and Review, Office of Workers' Compensation Programs, P.O. Box 37117, Washington, D.C. 20013-7117. As noted above, the carrier's letter must be *postmarked* within the 30-day limit.

Time has run out

But suppose the carrier has already missed the deadline for asking for this oral hearing or review of the written record by an OWCP hearing representative, which can easily happen, especially considering that the 30 days begins with the date the claim is denied—*not* when the carrier gets the denial.

In that case, the options are down to two—and one of those is only available if there is *genuine new evidence* that can be submitted with a request for **reconsideration**. The option of **appeal** is also still available at this time, but reconsideration is the better choice when the carrier *knows* that the OWCP district office did not receive all the factual and medical evidence, or if the evidence submitted to the district office was considered to be *insufficient* (i.e., OWCP took the position in their denial of the claim that the letter carrier did not meet his or her "burden of proof.")

Insufficient medical evidence is a key factor in many OWCP denials. That's why stewards need to make an extra effort to get all possible medical

evidence to OWCP at the very beginning of the claim process. (For detailed advice about how to obtain *probative* medical evidence for OWCP claims—that is, evidence that will be considered to be proper proof of the claim—see "Get the right kind of medical evidence," in the Fall 1998 *NALC Activist*.) But if the claim was initially denied because such evidence was lacking, then of course the steward must do everything possible to make sure the carrier gets the evidence needed, and submits it *with* the request for reconsideration.

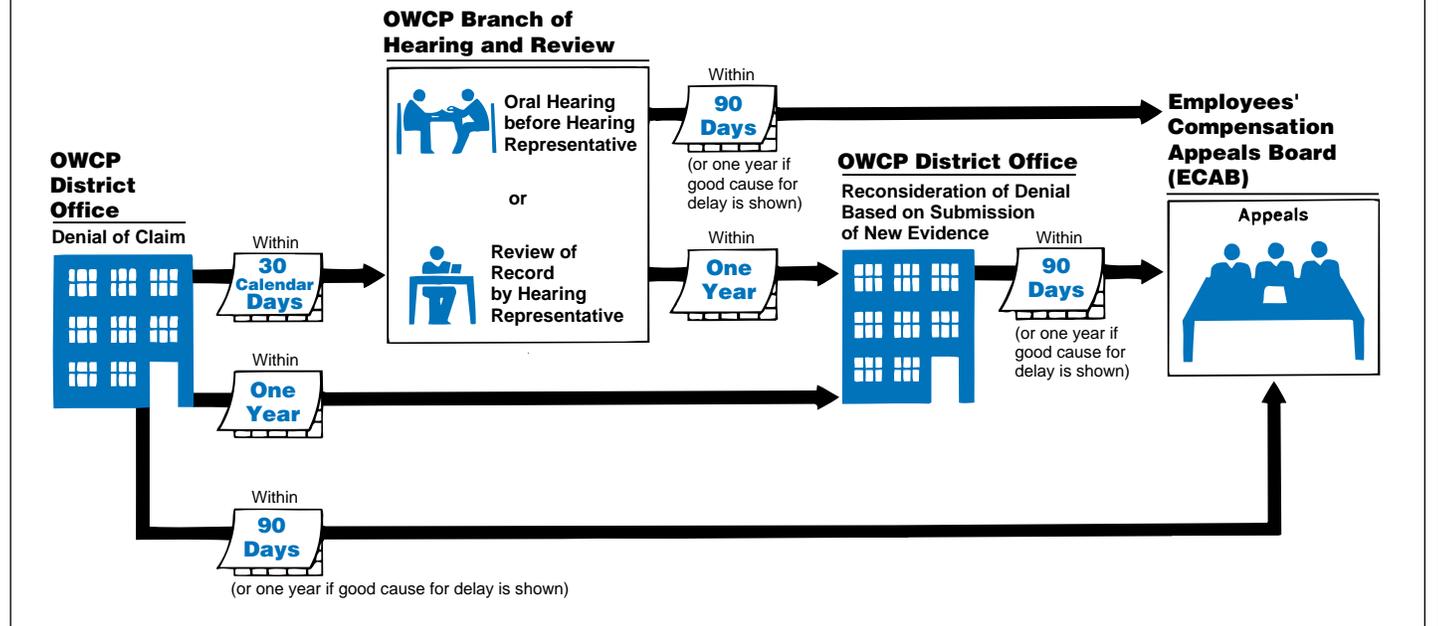
To request reconsideration, the letter carrier must send a brief, signed and dated letter to the *OWCP district office that denied the claim*. The letter

Insufficient medical evidence is a key factor in many OWCP denials.

should state: "I am requesting reconsideration of the decision dated _____ based on the enclosed new evidence." The carrier and the steward should keep copies of this letter and the new evidence.

The time limit for requesting reconsideration is longer than the limit for requesting an oral hearing or review of the written record. Carriers have *one year* from the date of the initial OWCP denial by the OWCP district office to request reconsideration.

OWCP APPEAL STEPS



If the carrier has already had the oral hearing or review of the written record described above, and the hearing representative has upheld the original denial of the claim by the OWCP district office, then the carrier has one year from the date of the OWCP hearing representative's decision.

If an earlier request for reconsideration was denied, the carrier has one year from the date of that denial to request yet another reconsideration based on additional evidence not introduced via the first request for reconsideration.

Now, assume that the original denial of the claim has been sustained—either by the OWCP hearing representative or by the OWCP district office after reconsideration—and the carrier has *no* further new evidence to submit. There is still one final action that the carrier can request—an **appeal** to the Employees' Compensation Appeals Board, at which the carrier can be

represented by the NALC's Director of Compensation in Washington, D.C.

Appeal to the ECAB should be made within 90 days of the most recent OWCP decision—whatever it was. This means that the 90 days begins to run with the date of the original denial or any denial following the original, such as a denial by a hearing representative after an oral hearing or by the OWCP district office after a request for reconsideration.

The 90-day time limit for a carrier's appeal to the ECAB can be extended to one year if good cause is shown for the delay. *No appeals are accepted after one year.*

The process for appealing to the ECAB is also quite simple. The letter carrier must send a short, signed and dated letter to the ECAB and need only state "I wish to appeal the OWCP decision dated _____ and am designating Bert Doyle, the NALC's Director of Compensation, as my representa-

tive." The date of the OWCP decision is very important. The carrier must also send a copy of this letter to Bert Doyle at NALC headquarters in Washington, D.C. It is not necessary to send him any other documentation.

Be sure that the carrier signs and properly addresses the appeal to Employees' Compensation Appeals Board, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Although the process of requesting further action following a denied claim may sound complex and arcane, it really boils down to some fairly clear-cut choices. The accompanying chart spells out the options and time limits involved.

Remember that the process involves strict time limits—and that a carrier cannot request more than one option at a time. Deciding which option to exercise should be fairly simple, depending on the reasons for the denial and the availability of any additional evidence. ■

Regional Training Seminars

Listed below are regional training and educational seminars scheduled to begin before April 1, 2000.

For more information, contact your national business agent.

Atlanta Region (Florida, Georgia, North Carolina and South Carolina)

February 26-27, Georgia State Association State Training Seminar, Lake Lanier Hilton, Lake Lanier, GA.

March 4-5, South Carolina State Association of Letter Carriers State Training Seminar, Hickory Knob State Park, McCormick, SC.

March 24-25, North Carolina State Association State Training Seminar, Holiday Inn, Salisbury, NC.

National Business Agent Matthew Rose, (954) 964-2116.

Philadelphia Region (Pennsylvania and southern New Jersey)

March 5-7, Region 12 RAP Session, Trump Plaza, Atlantic City, NJ.

National Business Agent Timothy O'Malley, (215) 824-4826.

St. Louis Region (Iowa, Kansas, Missouri and Nebraska)

February 18-20, Four State Regional RAP Session, St. Louis, MO.

National Business Agent Joe Miller, (314) 872-0227.

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