



## NATIONAL ASSOCIATION OF POSTAL SUPERVISORS

*National Headquarters*  
1727 KING STREET, SUITE 400  
ALEXANDRIA, VA 22314-2753  
(703) 836-9660

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### **Board Memo 033-2025: FAQs Regarding NAPS vs USPS Lawsuit**

#### **Executive Board,**

Please see attached frequently asked questions (FAQs) regarding the NAPS vs. USPS lawsuit. The FAQs have graciously been provided by NAPS attorneys to keep our members up to date on the status of the lawsuit.

Please share this information with your membership.

Thank you and be safe.

NAPS Headquarters

## **Frequently Asked Questions regarding *NAPS v. USPS* lawsuit**

**April 2025**

**By Andrew Freeman, Bruce Moyer, and Lauren Kelleher\***

### **What's the lawsuit about?**

The lawsuit is about the 2016-2019 pay package the Postal Service provided to all EAS employees (in effect from January 2019 to August 2021) as well as which EAS employees are entitled to be represented by NAPS. NAPS has asserted that the Postal Service violated Title 39 by failing:

1. To provide an "adequate and reasonable" supervisory differential for supervisors of clerks and carriers;
2. To provide compensation for all EAS employees comparable to counterparts in the private sector; and
3. To recognize NAPS's representation of all EAS employees throughout the Postal Service.

### **Why has the lawsuit taken so long?**

As the saying goes, "the wheels of justice turn slowly." NAPS first contested the 2016-2019 pay package in July 2019, when it appealed to a factfinding panel commissioned by the Federal Mediation and Conciliation Service. The three-member panel unanimously recommended that USPS make specific changes to the pay package and the EAS pay system. USPS rejected those recommendations (as permitted under the law), prompting NAPS to challenge the pay package in federal court in July 2020. In federal trial court, NAPS narrowed its claims to the three Title 39 obligations referenced above, but the court dismissed the lawsuit on procedural grounds. NAPS promptly appealed that ruling. In February 2022, the appeals court ruled for NAPS on every issue. The case then returned to the trial court, where the Postal Service refused to provide NAPS with the pay data it needed to prove its case. Legal wrangling persisted over the terms of discovery for the next year-and-a-half. Finally, in August 2023, the court ordered USPS to provide the pay data, but USPS did not produce the data NAPS needed until spring 2024. According to NAPS's expert, that data showed that the Postal Service paid thousands of supervisors of clerks and carriers at a lower rate of pay than the clerks and carriers they supervised. NAPS took those and other findings to the district court in March 2025 through a motion for summary judgment, which the Postal Service has contested. Briefs on the motion are expected from the parties into summer 2025, ultimately resulting in a decision from the district trial judge.

### **When will the lawsuit likely end?**

It is hard to predict. We don't expect a decision from the trial court before the first quarter of 2026. After that, whichever side loses may appeal. If NAPS wins, the Postal Service will have additional work to do to comply with any order of the court.

**Why do the topics addressed by the lawsuit differ from the topics addressed in the initial factfinding?**

In the factfinding, NAPS was permitted to challenge all aspects of the pay package but not the scope of representation. In the lawsuit, NAPS is permitted to challenge only aspects of the pay package that directly violate Title 39's requirements but is also allowed to challenge the Postal Service's refusal to recognize NAPS as the representative of various groups of EAS employees.

**What does NAPS have to show for the effort thus far?**

NAPS won an historic opinion from the U.S. Court of Appeals for the District of Columbia in February 2022. The Appeals Court ruled for NAPS on every issue that:

1. NAPS has the right to enforce the requirements of the Postal Reorganization Act (Title 39) in court;
2. Postal Service must provide "some differential" in rates of pay between supervisors and clerks and carriers;
3. The Postal Service must consider private sector compensation when setting EAS compensation;
4. NAPS represents all postmasters; and
5. NAPS represents all EAS employees unless a particular EAS employee is not a "supervisory or other managerial employee."

Based on those legal rulings, NAPS continues to seek retroactive increases to the pay received by EAS employees in 2019-2021 (the implementation period of the 2016-2019 pay package) as well as recognition as the representative of all EAS employees.

**With respect to the supervisory differential, what is each side's primary argument?**

As noted above, in 2024 NAPS finally obtained the Postal Service's pay data for EAS members, carriers, and clerks and had its own expert forensic accountant analyze that data. The expert's analysis of the pay data found a significant lack of differential in pay between supervisors and carriers (and, though not as large, between supervisors and clerks). The expert found that over 10,000 supervisors of carriers (out of about 23,000) were not paid a base salary that was even 5% more than over 40,000 carriers, and over 7,000 supervisors of carriers were not paid a base salary that was even 5% more than over 90,000 carriers. Similarly, over 1,000 supervisors of clerks (out of almost 3,500) were not paid a

base salary that was even 5% more than 2,500 clerks. Because the Postal Service set the supervisory differential at 5%, NAPS asserts that 5% is the minimum differential required by Title 39. While we believe the differential should be higher, the appeals court left that determination to the Postal Service.

The Postal Service claims that the lack of a supervisory differential between tens of thousands of supervisors and the carriers and clerks they supervise is okay because, *on average*, supervisors have base salaries higher than carriers and clerks. NAPS has responded that carrier and clerk average salaries are pulled down by large numbers of low-paid carriers and clerks, particularly non-career employees. The lower averages created by those low-paid workers hide significant disparities between supervisors and line-workers, including the many thousands of carriers and clerks whose salaries are greater than their supervisors' salaries. The need for a higher floor for supervisors' rates of pay becomes even more apparent when overtime and a minimum differential of 5% are considered.

**If NAPS wins at the trial court, who among its members are the winners?**

- If NAPS wins with respect to the requirement that EAS compensation must be comparable to the private sector, then all EAS members from 2019 to the present should benefit (assuming that the court orders a compensation comparability study and that study shows that EAS positions were under-compensated when compared to the private sector); this may vary from position to position.
- If NAPS wins with respect to the supervisory differential, the primary beneficiaries will be (a) Supervisors of Customer Service, Managers of Customer Service, and some Postmasters, (b) who were employed at any time from January 2019 to August 2021 (the implementation period of the 2016-2019 pay package), and (c) were at the lower end of the supervisors' pay scale. Some Supervisors of Distribution Operations and Managers of Distribution Operations from that same period will also benefit. Supervisors of carriers will benefit more than supervisors of clerks because carriers were paid more than clerks but the Postal Service calculated its SDA minimum for both groups based on the lower-paid clerks, so applying the same 5% differential separately to each group (as has been done since September 2021) results in different minimum hourly rates or salaries.
- Postmasters have already won the right to be represented by NAPS.
- EAS employees in over 1,000 Headquarters and Area positions also stand to win the right to be represented by NAPS.

**If NAPS wins at the trial court, how would a remedy likely be fashioned with respect to the supervisory differential?**

There are a number of possibilities, but the court would likely order the Postal Service to recalculate the SDA minimum salary for 2019-2021 to assure that supervisors of carriers

and clerks are retroactively paid at least 5% more than the craft employees they supervised. NAPS will insist that these retroactive pay adjustments also bring about the recalculation and adjustment of retirement benefits for affected employees and retirees.

**What are the next steps? Can the lawsuit be settled?**

NAPS anticipates that briefing of cross-motions for summary judgment will conclude this summer. The judge can issue a decision anytime thereafter, though his decision is likely to take at least six months after briefing is concluded.

NAPS is committed to pursuing the lawsuit to a successful resolution, either by means of a judgment from the court or a settlement. A settlement of the lawsuit is always possible, dependent on good faith negotiations between the parties, but NAPS will not sell its members short.

The NAPS Executive Board will continue to assure that the best interests of all NAPS members are served and that NAPS members are adequately represented and compensated in accordance with the law.

\* Andrew Freeman is the lead attorney in NAPS's lawsuit against the U.S. Postal Service. He is a partner at *Brown, Goldstein & Levy*, a nationally recognized law firm based in Baltimore, Maryland. Lauren Kelleher is an associate attorney at the firm who works with Andy on the lawsuit. Bruce Moyer is NAPS's legal counsel.

**Cut:**

**Initial Draft Talking Points:**

In July 2019, after the Postal Service rejected most of a factfinding panel's unanimous findings that the Postal Service's 2016-2019 EAS pay package was defective, NAPS filed a lawsuit against the Postal Service in federal district court in Washington, D.C.

The lawsuit challenges several aspects of the Postal Service's 2016-2019 pay package for EAS employees, which was in effect from January 2019 to August 2021:

1. The lack of an "adequate and reasonable" supervisory differential for supervisors of clerks and carriers;
2. The lack of compensation comparable to the private sector; and
3. The scope of NAPS's representation.

Note that NAPS was not allowed to enforce the factfinding panel's recommendations in court; it could only seek to enforce specific requirements of Title 39.

In July 2020, the federal district court dismissed NAPS's lawsuit on procedural grounds, prompting NAPS to appeal the decision to the U.S. Circuit Court of Appeals for the District of Columbia.

In an historic opinion in February 2022, the Appeals Court ruled for NAPS on every issue:

6. NAPS has the right to enforce the requirements of the Postal Reorganization Act (Title 39) in court;
7. Postal Service must provide "some differential" in rates of pay between supervisors and clerks and carriers;
8. The Postal Service must consider private sector compensation when setting EAS compensation;
9. NAPS represents postmasters; and
10. NAPS represents all EAS unless not "supervisory or other managerial employee."

NAPS then had to obtain a court order to force the Postal Service to share compensation data for all employees as well as job descriptions for positions the Postal Service claimed are not represented by NAPS. After NAPS obtained that order in August 2023, the Postal Service produced the relevant data in April 2024.

NAPS hired an expert to compare the rates of pay of supervisors of carriers and clerks with the pay of clerks in 2019, 2021, and 2023. NAPS's expert compared hourly rates of pay and salaries, with and without overtime.

NAPS's expert found that, regardless of whether overtime is included, approximately 10,000 supervisors of carriers (out of over 24,000) did not receive a rate of pay that was at least 5% greater than approximately 100,000 carriers. And approximately 1,000

supervisors of carriers (out of over 3,500) did not receive a rate of pay that was at least 5% greater than approximately 2,500 clerks. (The Postal Service had previously determined that 5% was an adequate differential.)

Although the judge limited the scope of discovery regarding whether compensation was comparable to the private sector, it is clear that the Postal Service conducted no survey of private sector compensation prior to the

In March 2025, NAPS filed a motion for summary judgment, asking the judge to find that the Postal Service must:

1. With respect to the supervisory differential: Implement an SDA calculation for 2019-2021 that achieves at least a 5% differential in rates of pay between all supervisors of carriers and all carriers and between all supervisors of clerks and all clerks.
2. With respect to pay comparability:
  - a. Obtain a compensation study regarding private sector compensation for jobs comparable to EAS jobs in 2019-21; and
  - b. Implement retroactively a pay package that achieves and maintains compensation and benefits comparable to comparable jobs in the private sector.
3. With respect to the scope of representation: Recognize NAPS as the representative of all EAS employees, including postmasters and employees designated as “Headquarters” or “Area” EAS.

NAPS anticipates that briefing of cross-motions for summary judgment will conclude this summer. The judge can issue a decision anytime thereafter, though it is likely to take at least six months after briefing is concluded.

NAPS is committed to pursuing the lawsuit to a successful resolution, either by means of a judgment from the court or a settlement. A settlement of the lawsuit is always possible, dependent on good faith negotiations between the parties, but NAPS will not sell its members short.

The NAPS Executive Board will continue to assure that the best interests of all NAPS members are served and that NAPS members are adequately represented and compensated in accordance with the law.