

NAPS v. USPS & UPMA

An Update

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VICTORY!

Historic

Landmark

Precedent-setting

Courage

Clarity

SUPERVISOR RIGHTS TO FAIR PAY AND CONSULTATION



Postal Reorganization Act of 1970

Congress recognized the “vital role” of supervisory personnel

Protected supervisory rights through participatory management

Required pay differential and pay comparable to private sector pay

BACKGROUND

FY 2016-2019 pay package for Field EAS personnel

Slow process, late outcome.

USPS issued pay decision for “Field” EAS personnel in June 2018.

USPS rejected most of NAPS’ recommendations without explanation.

USPS refused to consult with NAPS over Area/HQ employees and postmasters.

NAPS PATH OF LITIGATION

FMCS panel - Unanimous decision

U.S. District Court (D.C.) - dismissal of complaint

**U.S. Court of Appeals (D.C. Circuit)
Unanimous decision, remand to
District Court**



FACTFINDING PANEL FINDINGS AND RECOMMENDATIONS



UNITED STATES OF AMERICA
FEDERAL MEDIATION AND CONCILIATION SERVICE
PURSUANT TO 39 U.S.C. §1004(f).

IN THE MATTER OF:)
UNITED STATES POSTAL SERVICE)
AND)
NATIONAL ASSOCIATION OF)
POSTAL SUPERVISORS)
FMCS: #180706-06229)

ISSUED: April 30, 2019

FACTFINDING REPORT AND RECOMMENDATIONS

PANEL MEMBERS:

Susan E. Halperin, Neutral Chair
Robert S. Hite, Neutral Member
Joshua M. Javits, Neutral Member

APPEARANCES:

FOR THE UNITED STATES POSTAL SERVICE:

Katherine S. Attridge, Manager, Collective Bargaining & Arbitration
Bruce A. Nicholson, Manager, Labor Relations Policy Administration
Erin E. Lynch, Chief Counsel, Labor Law
Terence F. Flynn, Labor Counsel

FOR THE NATIONAL ASSOCIATION OF POSTAL SUPERVISORS:

BROWN, GOLDSTEIN & LEVY, LLP
Andrew D. Freeman
Jean M. Zachariasiewicz

The panel agreed with NAPS that the Postal Service's 2016–2019 Pay Package violated the PRA by:

- Failing to take into account private sector compensation and
- Failed to provide adequate pay differentials between supervisors and staff.

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- EAS compensation was not comparable to private sector pay
- The USPS pay-for-performance system was “seriously flawed”
- The Supervisory Differential was unreasonably calculated and inadequate
- The panel found these problems impacted supervisory retention.

NAPS FILES LAWSUIT – JULY 26, 2019

Alleging USPS violated the Postal Reorganization Act (Title 39) by:

- Failing to provide a pay differential**
- Failing to compare private sector compensation and benefits**
- Refusing to consult with NAPS over pay for Area/HQ employees and postmasters**

UPMA intervened in lawsuit, contesting NAPS' representation claims.

U.S. DISTRICT COURT RULING – JULY 17, 2020



Senior Judge Royce Lamberth grants USPS and UPMA motions to dismiss NAPS' lawsuit,

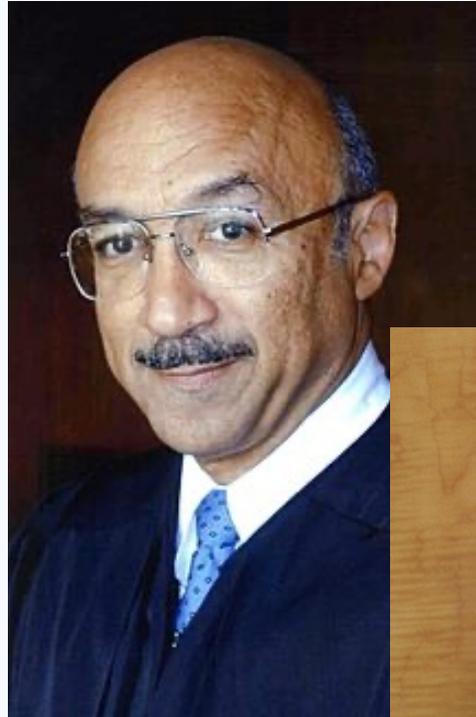
J. Lamberth: NAPS failed to state a claim showing that USPS violated a “clear and mandatory” statutory directive.

NAPS APPEALS TO D.C. CIRCUIT COURT OF APPEALS

**September 2020 – NAPS
appealed the District Court’s
decision to the Appeals Court.**

**September 21, 2021 – Case
argued before 3-judge panel of
the D.C Circuit Appeals Court**

- **Senior Judge Harry T. Edwards**
- **Judge Cornelia Pillard**
- **Judge Robert L. Wilkins**



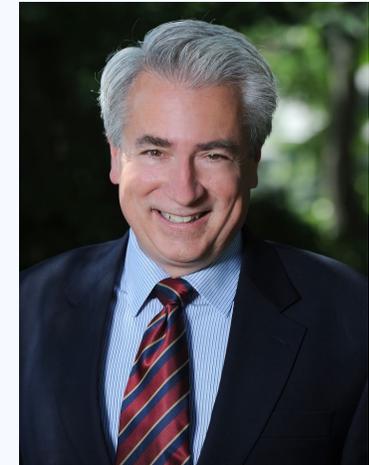
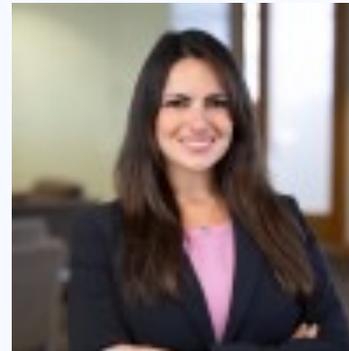
U.S. CIRCUIT COURT – “02-22-2022 RULING”

The Appeals Court **UNANIMOUSLY OVERTURNS** the District Court decision.

“... [W]e reverse the judgment of the District Court and remand for further proceedings consistent with this opinion.” (P. 15 and 32)



NAPS LEGAL TEAM



SIX MAJOR FINDINGS OF THE APPEALS COURT

- 1. Judicial Review of USPS Pay Decisions**
- 2. USPS Title 39 Responsibilities to EAS Personnel**
- 3. Representation of EAS Personnel**
- 4. Pay Differentials for EAS Personnel**
- 5. EAS-Private Sector Pay/Benefits Comparability**
- 6. USPS Transparency in Consultation with NAPS**

1. JUDICIAL REVIEW

The District Court wrongly dismissed the case. *“We disagree because the Postal Service’s position is directly at odds with our precedent.”*

Judicial review is available over claims that the agency has acted *ultra vires*, or outside its authority.

The Appeals Court in 1979 heard a lawsuit brought by NAPS contesting USPS pay decisions,

“The scope of review [in that case] plainly controls the disposition of this case.”

2. USPS TITLE 39 RESPONSIBILITIES TO EAS PERSONNEL

The Postal Service wrongly interpreted 39 U.S.C. §1004(a), which states:

(a) It shall be the policy of the Postal Service to provide compensation, working conditions, and career opportunities that will assure the attraction and retention of qualified and capable supervisory and other managerial personnel; to provide adequate and reasonable differentials in rates of pay between employees in the clerk and carrier grades in the line work force and supervisory and other managerial personnel; to establish and maintain continuously a program for all such personnel that reflects the essential importance of a well-trained and well-motivated force to improve the effectiveness of postal operations; and to promote the leadership status of such personnel with respect to rank-and-file employees, recognizing that the role of such personnel in primary level management is particularly vital to the process of converting general postal policies into successful postal operations.

These provisions “are clear and mandatory, enforceable provisions subject to review for ultra vires [invalid] acts.” (D.C. Circuit Court opinion, p. 16),

“The Postal Act’s requirements that the Postal Service ‘shall’ consult with recognized organizations, maintain ‘adequate and reasonable differentials in rates of pay’ between supervisors and clerks and carriers, and ‘achieve and maintain compensation for its officers and employees comparable to the rates and types of compensation paid in the private sector’ are clear and mandatory, enforceable provisions subject to review for ultra vires [invalid] acts.” 39 U.S.C. §§ 101(c), 1003(a), 1004(a), (b).



3. REPRESENTATION OF EAS

NAPS is entitled to represent ALL supervisors, managerial personnel and postmasters, regardless of location. THIS MEANS ALL EAS PERSONNEL.

“We reject the Postal Service’s position that it may deny employees the representation rights granted by Congress by simply declaring employees not to be supervisory or other managerial personnel.” (P. 23)

The Postal Service's position was *"sparse and self-serving."* (P. 21)

The Postal Service's explanation *"reeks of chicanery."* (P. 25)

***"It is noteworthy that the Postal Service's position ... is belied by its own practice."* (P. 30)**

***"The Postal Service's proposed interpretation ... represents an 'utterly unreasonable' interpretation of the statute that contravenes Congress's careful wording and would deny thousands of managerial employees access to the protections of the Act as Congress intended."* (P. 31)**

Section 1004(b)'s Nested Structure

The Appeals Court determined that “this precisely crafted statute thus presents a ‘nested’ structure, in which Congress placed deliberate restrictions on postmasters’ organizations and managerial organizations, but conspicuously left the supervisory organization free to represent either postmasters or managers alongside supervisors.” (P. 27)

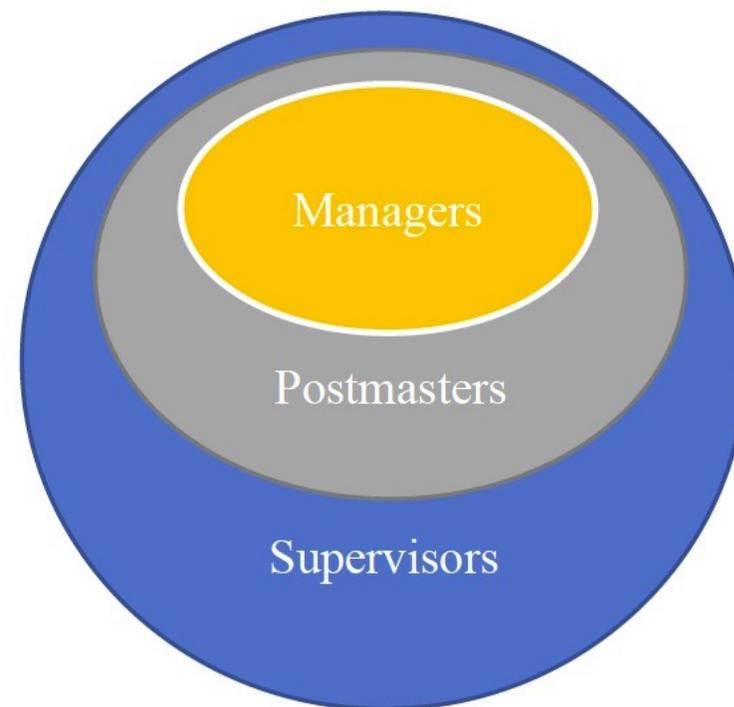


Figure 1: Section 1004(b)'s Nested Structure

“Supervisory organizations—beyond having to show they represent a majority of supervisors—are not limited in who else they can represent.” (P. 27)

“On remand, the District Court must determine which of these [Area and Headquarters] employees have been improperly excluded from the right to representation granted in section 1004(b).” (P. 25)

4. EAS-PRIVATE SECTOR PAY COMPARABILITY

USPS violated Title 39 by failing to assure EAS pay comparability with the private sector.

“Here, the Postal Service has not shown that it considered private-sector compensation and benefits, nor explained how it has achieved comparability in its rates. It has not provided a justification for its conclusion that comparability has been achieved, nor explained its resolution of factors built into the comparability requirement like locality pay and market-rate increases in pay. Absent a reasoned explanation showing otherwise, the Postal Service’s belated and limited look at pay—and not total compensation or benefits—for only eight of 1,000 positions plainly fails to meet its statutory obligation to achieve comparability in good faith ‘for all officers and employees.’” (P. 19)

5. PAY DIFFERENTIALS FOR EAS PERSONNEL

USPS violated Title 39 by failing to pay all supervisors some differential above the employees they supervise.

“ [t]he Postal Act does require some differential, and requires that that differential be adequate and reasonable.” (P. 17)

“It is the responsibility of the Postal Service to indicate that it has established ‘some differential.’ Here, such a showing has not been made.” (P. 17)

6. USPS TRANSPARENCY IN ITS CONSULTATION WITH NAPS

USPS violated Title 39 by failing to provide NAPS with its reasons for rejecting NAPS' recommendations

“The Postal Service exceeded the scope of its statutory authority by issuing the Field Pay Package without first explaining why it was rejecting the Association’s recommendations.” (P. 32)

NEXT STEPS

At Appeals Court:

UPMA request for reconsideration or rehearing *en banc*, filed *March 22, 2022*

Remand to District Court:

For further proceedings consistent with Circuit Court's decision.

ISSUES ON REMAND TO THE DISTRICT COURT

- **Pay Comparability**
- **Pay Differential**
- **Back Pay**
- **Area and HQ Representation**

- **Discovery and Trial**
- **Settlement**

NAPS CONTINUES ON THREE FRONTS ...



-- Lawsuit remand

**-- Implementation of 2020-2023
pay decision and work team
activity and preparation for next
round of pay talks**

**-- In Congress, advocating for
fairness in the pay consultation
process (HR 1623, HR 3077)**