



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

December 16, 2010

To: Regional Coordinators
National Business Agents

From: Mike Morris, Director of Industrial Relations 

Re: Step 4 Disputes on National Reassessment Process

There have been inquiries regarding which cases should be held in abeyance pending the outcome of Step 4 disputes relating to the National Reassessment Process (NRP). Currently disputes relating to NRP that are pending arbitration at the national level involve the following issues: (1) whether seniority has to be applied in reassigning employees who have been injured on duty but are partially recovered, (2) whether management's obligation to locate a job for a partially recovered injured employee (whose recovery occurs more than one year from the date eligibility for compensation begins) extends beyond the employee's local commuting area, and (3) whether a violation of the National Agreement exists when an employee who hasn't completed one year of continuous LWOP is placed on separation-disability after he/she accepts non-postal employment under the Office of Workers' Compensation Program (OWCP) Vocational Rehabilitation Program.

The APWU's position in the first dispute (USPS#Q00C-4Q-C 07006778) is that when two or more employees who have been injured on duty are considered for reassignment or reemployment during the same time period, management must conduct the interactive interview and job offer process called for by the NRP in order by seniority. Therefore, the most senior employee should be considered before the employee with the least seniority. In support of our position, the APWU cites ELM Section 546.21 (Compliance), which states that reassignment or reemployment of employees injured on duty shall be in compliance with applicable collective bargaining agreements, and individuals so reassigned or reemployed shall receive all appropriate rights and protections under the agreements. We then assert that seniority provisions in the craft articles are applicable in this case, consistent with the language of ELM Section 546.21. The APWU also refers to ELM Section 546.142 (Obligation) that in reassignment or reemployment decisions, the Postal Service "should minimize any adverse or disruptive impact on the employee." We argue that loss of craft seniority rights constitutes an adverse and disruptive impact in violation of this ELM provision.

The APWU's position in the second dispute (USPS#Q06C-4Q-C 07078116) is that the assignment of an employee with an accepted workplace injury, who has partially recovered more than one year from the date eligibility for compensation begins, shouldn't be limited to the local commuting area. To support our position, the APWU cites ELM 546.142 which provides that management must make every effort toward assigning the employee consistent with the employee's medically-defined work limitation tolerance. We assert that this language extends management's obligation beyond the requirement of 5 CFR 353.301(d), to make every effort to restore a partially recovered employee in the local commuting area. Our position is that the ELM language doesn't limit the required "effort" by management to specific geographic areas. In addition, the APWU argues that by limiting the area for finding medical suitable work, the Postal Service could be prevented from assigning an employee and cause their eventual loss of postal employment. This limited search for jobs therefore violates the requirement in ELM 546.142 to minimize any adverse or disruptive impact on an employee.

The APWU's position in the third dispute (USPS #Q06C-4Q-C 07153792) is that ELM 545.9 doesn't permit the Postal Service to initiate a separation-disability before the expiration of one year of continuous LWOP/IOD. That ELM provision permits the issuance of a disability-separation only when an employee receiving wage loss compensation has been in continuous LWOP for a year, is not likely to return in six months, and USPS headquarters has concurred.