

ARTICLE 10 REPORT AND RECOMMENDATIONS TO THE NALC EXECUTIVE COUNCIL

PREAMBLE

This report and its recommendations are submitted to the NALC Executive Council by virtue of the duties assigned to the panel by the Council pursuant to Article 10 of the NALC Constitution.

We think it worth noting that the panel, and all of the parties to the hearings have, from the inception, recognized the gravity and magnitude of the issues before us. In some 134-year history of the NALC, this is the first time that Article 10 charges have been filed against the national president by a sitting member of the executive council. And as such, the exercise of the hearings process and duties of this panel is unprecedented. All of us were plowing new ground.

The panel understands that we were selected on the basis of the reputation, experience, and institutional knowledge we bring to the process. And also, our capacity to be fair, unbiased, and objective. None of us have any close personal ties to either of the parties. None of us hold, or are seeking, any elective or appointive positions in the NALC and so there are no "political" considerations in play. We came to the process neutral.

As previously mentioned, this particular exercise of Article 10 is unprecedented. And so, we had no prior history to refer to. No direct on point templates for conducting the hearings. Furthermore, Article 10 makes no specific provisions for what the process should be, or the evidentiary standards to apply.

The panel decided to use process and evidentiary standards approximate to those commonly used in labor arbitrations. One which all the parties are very familiar with. However, this process has some inherent distinguishing factors from labor arbitration which necessitated some variations.

Our appointment and hearings were preceded by an investigative report submitted to the executive council pursuant to Article 10. The panel was faced with a decision on what the status of that report was at our stage of the Article 10 process. It is our view that in the scheme of Article 10, the role of the investigator is to conduct a *fact-finding* mission. Accordingly, the panel notified the parties in advance that what was contained in the investigative report, which was represented as *facts*, would be treated as established facts unless refuted by the weight of evidence presented at the hearings. But also, that which could be viewed as *the opinion* of the investigator, would not carry weight.

Because the charges are against the national president, the executive vice president assumed the duties of assisting the panel with the administrative aspects of the hearings. The panel recognizes here, and credits Executive Vice President Paul Barner

for his extraordinary assistance and cooperation throughout this process. From the inception, he assured the panel of our independence, the faith which the executive council had in us, and importantly, that we would be provided with whatever resources and permitted to take whatever time was necessary to properly perform our duties. Those assurances were entirely fulfilled.

The panel advised both the charging and charged parties in advance of the process and evidentiary standards to be used, and ground rules for the proceedings. We in turn provided assurances to them that they would be provided with ample time to present their cases and that we would stand as genuine neutrals during the hearings and in the crafting and submission of our report and recommendations to the council.

Hearings were held at NALC Headquarters in Washington DC. The parties were present in person to present their cases on the four separate charges before us. There were numerous witnesses called. Most appeared in person. Some witnesses testified virtually using technology which would not compromise the panel's ability to access their credibility and veracity of their testimony. Considerable documentary evidence was submitted by the parties and entered as either joint or charging and charged party exhibits.

Twelve days of hearings were held during the period December 12, 2023, through February 16, 2024.

It was not an easy task to reconcile the busy schedules of both the national president the director of city delivery, and the numerous witnesses, most of who were national officers or NALC staff either at headquarters or in the field. Closing arguments were presented to the panel on March 7, 2024, concluding the hearings.

The panel extended to, and notes here, our appreciation for the extraordinary cooperation and professionalism which both parties exhibited during the entire process.

We turn now to our findings, report, and recommendations to the council.

The panel sees no need for an exhaustive recitation of all the testimony and evidence presented at the hearings. The council has already reviewed the investigative report, and the responses to the charges submitted by both parties. The documentary evidence in the record is available for the council's pursuit as it deems necessary and appropriate. The panel stands available to answer any questions the council may have about us, and or to appear before the council should it see fit to request that.

And so, this report provides a summary of the significant and substantial material and arguments which were presented to us, and our conclusions.

CHARGES

As a preliminary the charged party Brian Renfroe, asserts that in order for a charge under Article 10 to be upheld the conduct must rise to the level of neglect of duty and or a violation of the NALC constitution. Given the language in the first sentence of Article 10 the panel agrees with this premise.

The four charges against national president Brian Renfroe that are before this panel were filed by Director of City Delivery Christopher Jackson. The panel renumbered these charges for the purposes of our hearings and this report.

Charge # 1: Neglect of Duty

The first essential component of this charge is "on or about April 20th, 2023, President Renfroe took a leave of absence from the NALC during contract negotiations which commenced on February 22, 2023, for an agreement which expires on midnight May 20th, 2023.

The inference here is that President Renfro neglected his duties by being absent during this period of time.

There is no dispute that Renfroe was on medical leave during the period April 17th through June 26, 2023, for the purpose of receiving treatment for alcoholism. At the hearings Renfroe provided the panel with medical documentation confirming this.

It is the panels understanding that there is legal precedent which holds that under the Americans with Disabilities Act:

- a) Alcoholism is a covered disability.
- b) An employer is required to provide reasonable accommodation for this disability.
- c) Such accommodation includes allowing employees to take leave for the purpose of alcohol treatment and rehabilitation without penalty.

We also understand that in addition, similar rights to leave exist under the Family and Medical Leave Act.

Further, NALC has long advocated for similar considerations for our members pursuant to Article 35 of the National Agreement.

Thus, the panel believes that the executive council should not impose any of the penalties provided for in Article 10 of the Constitution for Renfroe's absence during this period.

The next component of this charge is "during the period of the weeks preceding the opening session president Renfroe was missing and his whereabouts were unknown".

Renfroe pointed the panel to a document in evidence that listed an extensive summary

of his activities during the period January 3, 2023, through the opening of collective bargaining on February 22, 2023. It shows a host and multitude of activities pertaining to the performance of presidential duties including many related to preparations for collective bargaining. Many of those activities involved NALC officers and staff who then certainly knew where he was. This evidence was undisputed.

Corey Keller Blalock serves as the national president's Chief of Staff. She testified that she is in touch with Renfroe virtually every day whether he is in the NALC headquarters building or not and is aware of all of his activities. She verified the veracity of Renfroe's summary of activities.

In the investigative report submitted to the executive council the investigator Mike Weir stated "President Brian Renfroe started his leave of absence on April 17. Prior to then he was absent for significant periods of time during which no one knew where he was". Weir testified at the hearings. Neither his report nor his testimony provided any concrete evidence addressing that. It is unclear exactly what days and times he is referring to, what his definition of "significant" was, and whom he spoke with or otherwise learned of information that would lead to that conclusion.

Weir makes reference to his enclosure of the Door Access Flat Report which he attached with the submission of his investigative report. That report provides a record of when authorized individuals enter the headquarters garage, entry doors and use of elevators. Renfroe pointed out during his testimony, whether or not he was in the building on any particular day or days is not by itself, indicative of him not performing the duties of his position. He argues that this is particularly the case in the aftermath of Covid 19.

Renfroe admits to being absent on a number of days in the lead up to the opening of negotiations. He claims however that most of that was related to his alcoholism and associated infirmities. And that none of this affected his duties of preparing the NALC for collective bargaining in any substantial way.

Also, there was unrefuted testimony from current President Renfroe and Retired President Fred Rolando that:

- 1) There is nothing in the NALC Constitution or any current policy that requires the President of the NALC to get permission from anyone to take leave.
- 2) Nothing which requires the President to report when such leave will begin and end.
- 3) Nothing that requires the President to document the need for leave.

That said, and as an aside, the panel presumes that as a matter of courtesy and good business practice, the president would normally keep those with a need to know informed. And although this is beyond our province, suggest that steps be taken by the executive council to best assure that happens.

The next component of Charge # 1 is, " President Renfroe's continual absence and no

shows during a critical time of negotiations *has adversely impacted the union's ability to effectively represent the NALC's objectives during contract negotiations* (emphasis added). And "President Renfro's departure left the bargaining team with no notes or evidence of advanced preparation for negotiations. This placed the replacement negotiating team at a disadvantage of having to start from scratch midway through the negotiating period".

This claim is really at the heart of Charge# 1.

The charge makes specific reference to Article 9 Section 1 (e) of the NALC Constitution which provides in pertinent part, "The President shall have the authority and responsibility for carrying out the collective bargaining duties of the Union". We read this clause as a general, overall mandate and obligation to be at the head of the union's collective bargaining efforts. But it does not designate the president to any specific assignments during the course of collective bargaining negotiations.

An important specific designation is made elsewhere in the Constitution which we will come to *infra*. This said, there is no doubt that should the president substantially fail to perform the responsibilities set forth in the above referenced clause, they could be guilty of neglect of duty and a violation of the constitution.

The charging party, Brother Jackson, presented two main witnesses to testify at the hearings on these points.

Before reviewing their testimony, it is useful to point out a development which evolved during the course of the hearings. A plain reading of Charge # 1 on its face, suggests that Jackson is accusing Renfro of dereliction with respect to the entire bargaining process, including work rules. During the hearings, however, the charging parties' arguments and evidence for the most part, addressed bargaining on the economic issues (pay, benefits and other financial compensation).

The first witness was Executive Vice President Paul Barner. Barner testified that he had no prior direct experience with the union's economic bargaining. He stated that in the lead up to, and during the time that he was substituting for president Renfro on the economic bargaining with the Postal Service, that Renfro did not provide him with much help with preparations. He stated that all along, he did not have substantial conversations with Renfro about the economic bargaining, was not given a specific plan, notes, advice or instructions. Barner said that all of this made him feel at some disadvantage, and that he was sort of starting from scratch at the beginning of economic negotiations. That led him to reach out to former NALC President Fred Rolando. He asked, and Rolando agreed to join Barner in the economic negotiations.

Under cross examination and questions from the panel, Barner confirmed that although there was some delay and lack of communication in the beginning, the entry of Rolando, because of his vast experience with economic bargaining, and his relationship with Deputy Postmaster General and chief negotiator for the Postal Service Doug

Tulino, allowed the NALC to "hit the ground running". And that the economic negotiations had gotten back on track. At the end of the day, he did not believe that the ability of the NALC to achieve its economic goals in bargaining had been compromised.

Former NALC President Fred Rolando appeared at the hearing. Although called to the stand by Chris Jackson it turned out that his testimony was relevant to the arguments being made by both parties. Rolando testified about his experience leading the NALC through three prior rounds of national contract negotiations. He confirmed that in every round, the NALC's approach, particularly on the economic package is in large part dictated by outside forces and conditions such as the state of the US labor economy, the financial condition of the Postal Service, developments in bargaining with the other postal unions and unions outside of the Postal Service, and changes in the working conditions and contributions of letter carriers. And that while there are some constants, each president has brought their own approach to the process.

As to his involvement in the present round of negotiations, he agreed that his prior experience and his relationship with Tulino allowed him and Executive Vice President Barner to get the economic negotiations up to speed. He testified that he and Barner had eight meetings with Tulino on the economics package prior to May 20, the expiration of the current contract. That they initially shared with the Postal Service a customarily used table that Fred had put together the previous year with the assistance of Jim Yates. Yates, the NALC Director of the Mutual Benefits Association is also a labor economist and has performed that function for NALC bargaining in past negotiations. The tables he provides present cost analysis (starting pay, top pay, number of steps, waiting periods, etc.), so that the parties can see what the costs of changes will entail.

Significantly, because Fred and Paul believed that good progress was being made, they asked Yates for an updated table to share with Tulino. Rolando testified that he believes the state of these negotiations was in a good place when Renfroe returned, and he left the bargaining. Under questioning from the panel, Rolando opined that for a variety of reasons, one could not deduce that Renfroe's initial absence from the negotiations was the reason that bargaining has not been concluded at this point in time.

Still, Rolando reiterated in testimony what he said to Weir during Weir's investigation. That in his opinion, Renfroe's stepping away for treatment for his alcoholism at that stage of negotiations was negligent and potentially disastrous. That there were a number of instances of alcohol related misbehavior Renfroe had engaged in which Rolando was aware of and which in his opinion, should have led Renfroe to seek treatment prior to this critical period of time. He did appear to walk this back some in his testimony by saying this would all be so if it was "on purpose".

Which brings us to an important point. One which touches upon not only Rolando's opinion on this but is reflected throughout the charges before us. To wit, a lack of knowledge and or misunderstanding of medically established facts about the disease of alcoholism and the behavior of alcoholics. Renfroe entered into evidence, expert

information on this subject.

It included 1) a paper from the National Institute of Alcohol Abuse and Alcoholism titled, "Alcohol Use Disorder; From Risk to Diagnosis to Recovery" (Renfroe Exhibit 1) and, 2) a medically reviewed paper from The Recovery Village titled "Why Do Alcoholics Lie?" (Renfroe Exhibit 6)

This evidence is enlightening and informative on the broad issue of alcoholism and also particularly to the instant point. It demonstrates alcoholics experience a continuum and series of cycles with respect to recognition of their disease and the need to seek treatment and rehabilitation.

Assistant Secretary Treasurer Mack Julion testified as a witness called by Jackson. He established his credentials as a certified addiction counselor with a two-year degree in mental health and addiction studies. His testimony for the most part comported with the information contained in the above reference papers.

Renfroe testified to the panel about his long struggle with alcoholism. He insisted that until March of 2023 he was fully functional and performed all of the duties of NALC president. He said that was true when he held the position of executive vice president as well. He stated that around the middle of March his alcoholic condition and several associated infirmities began to rapidly accelerate and exacerbate. Those incidents which had occurred and the way he was feeling made it clear to him that he was dysfunctional and physically not in a position to adequately perform his duties. Thus, he decided to step away and receive treatment and engage in rehabilitation. He admitted that he understood that the timing was disadvantageous and that there might be some impact. He stated that although he knew there would be some criticism of him, he needed to prioritize what he thought to be in the best interests of the NALC and himself.

Turning back to the issue of whether his absence adversely impacted the unions' ability to effectively represent the NALC's objectives during contract negotiations as charged. He pointed out that prior to his taking leave the NALC had been engaged in extensive and intensive preparations for this round of bargaining for quite some time. He stated that he had led these preparations and had set up an internal structure as well as establishing with USPS how both work rules and economic discussions would be handled. He insisted that he had consistently communicated all of this to NALC officers and staff that were involved. He pointed out that NALC's general bargaining goals were no secret. As usual they were the product of convention bargaining resolutions and planning sessions with the executive council, staff, and the legal department. That he had announced these goals at both his installation ceremony and the opening of bargaining with the Postal Service. And that this was also communicated to the NALC membership via the NALC website, Postal Record, NALC Bulletin and at meetings in the field. This testimony was not disputed.

Renfroe was emphatic that in this round of bargaining, NALC was in a strong position, and that he has been and remains highly confident that we will achieve our main goals.

Renfroe also testified that he had full confidence in Executive Vice President Barner's ability to step up during his absence pursuant to the provisions of the NALC constitution. On this point, Renfroe related that when he realized he was in trouble, he went to Barner to consult and let him know he planned to take leave to enter treatment and rehab. He indicated that Barner was very supportive. He said that Barner expressed that he thought this was the right thing to do and told him not to worry about negotiations. That he had it covered and that Renfroe should just focus on recovery.

Renfroe also testified that while he was on leave, he had conversations with Barner in which Barner repeated that, told him that things were going well, and urged him not to rush to return.

The testimony of Barner at the hearings corroborated and comported with this.

In further support of his arguments that NALC was well prepared for negotiations and interest arbitration, if necessary, Renfroe called upon former Chief of Staff Jim Sauber.

Sauber was hired by former NALC President Vince Sombrotto as a research economist in 1985. He became the research director in 1990. In 2004 he was appointed as Chief of Staff to former President Bill Young. He served in that same capacity under President Rolando. During that time Sauber was heavily involved in collective bargaining. He participated in nine rounds of bargaining starting in 1987. Amongst other things he coordinated the work of professional staff for collective bargaining. He played a major role in the NALC's search for, hiring and preparation of outside experts for interest arbitration. He corroborated previous testimony that each national president brought some of their own approach to the bargaining process. He said that the one unifying thing was the response of NALC to both the internal and external circumstances at the time.

Sauber is now retired but he is on board as a consultant for these negotiations. He has been involved in planning and preparations for over a year and believes that NALC is "ready to go". As to interest arbitration, if necessary, he testified about a long and impressive list of highly regarded experts who are being prepared to testify on NALC's behalf. And about other tactics which NALC will employ which we will not reveal here for obvious reasons.

We say here as a panel that in our opinion anyone listening to this could not help but think that the Postal Service would be wise to settle with us.

Panel Conclusions on Charge# 1:

The charging party bears the burden to prove Neglect of Duty or Violation of the Constitution by Renfroe. The party has failed to meet the burden of proof in this charge.

As of the preparation of this report, the outcome of contract negotiations is yet to be determined. But there is no proof that any actions or inactions by Renfroe have

seriously compromised the union's ability to achieve its bargaining goals. The testimony of Renfroe relating to the times preceding and during negotiations was undisputed. And both parties agreed that the leave taken by Renfroe beginning on April 17, 2023 was covered by ADA.

As to the leave Renfroe took beginning on April 17, 2023, we have spoken to its protected status *supra*.

To address the issue of preparations for negotiations, the evidence speaks for itself.

The charging party refers to a "replacement negotiating team" in this charge. But in fact, there was no replacement team.

Article 9 Section 2 (a) of the NALC Constitution provides that "The Executive Vice President shall preside in the absence of the President". That is what occurred in this instance. The only change was Barner's decision to bring in former President Rolando to assist him while Renfroe was gone. That decision appears to have been wise and accrued to the benefit of the NALC and its members by having the most knowledgeable and experienced person around added to the mix. And both Renfroe and Rolando commended Barner for the job he did in Renfroe's absence.

Further, it must be pointed out that Article 9 Section 2 (c) provides that "The Executive Vice President shall serve as the *Director of Collective Bargaining Negotiations*" (emphasis added). Now, it is understood that historically, the national president has headed up the negotiations on the economic component of bargaining. But the Constitution does not specify or require that. Regardless, per the above cited Constitutional provisions, it is the duty of the Executive Vice President to prepare him/herself for the possibilities of having to assume those responsibilities.

For all of the above reasons, it is the recommendation of the panel to the Executive Council that Brother Renfroe be found not guilty of this charge.

Charge# 2:

There are two essential components to this charge.

The first is "**Circulating false or misleading statements about an NALC officer.**" The second is that Renfro "**Shared and referenced confidential information about an employee matter.**"

Although the officer at issue is NALC Vice President James Henry, Brother Henry did not file this charge. Instead, Brother Jackson filed it for the most part, on Henry's behalf.

Testimony and other evidence adduced at the hearing revealed that two prominent female headquarters staff members had brought allegations to NALC President Renfroe, that Henry had engaged in improper conduct with them, which they deemed as unwanted and sexual in nature, These allegations originated in Marietta GA where

the executive council was holding an Executive Council Meeting during the period January 23rd through 26, 2023. Renfro claimed that other headquarters staff members made similar allegations to him over the course of several weeks, but for a variety of reasons, none of that was flushed out at these hearings one way or another.

It is undisputed that Renfro contacted six former and current national officers and a letter carrier staff member about these allegations. Both in his written defense to the charge and his testimony at the hearings Renfro claimed that he did so solely to seek advice and council about how to handle such an allegation against a national officer. It is also undisputed that during these conversations, Renfro mentioned the names of the two staffers and who the accused was. But he insists that he asked those individuals to keep their conversations in confidence. And in his investigative report Mike Weir indicated that he spoke with each of these individuals and that they all asserted that they had not shared any information about these conversations with anyone else.

Nevertheless, rumors about all this started circulating at the NALC Region1 training which was conducted March 30th to April 1st, 2023. There is no proof Renfro directly circulated rumors or allegations about Henry at this event. Henry was not physically at the training; he made a virtual presentation.

Henry testified that when he first learned of this, he was shocked and indignant. The record shows that Henry wanted to address this one-on-one with President Renfro. Also, Renfro was willing to do that. A chain of correspondence between them shows that attempts were made to set up a meeting. But the meeting never happened. The reasons why have been a bone of contention in these hearings. There is insufficient evidence to assign blame to either party. In the absence of such meeting Henry, who understandably had concern about his reputation, brought the matter to the attention of Executive Vice President Paul Barner and asked for some sort of investigation.

The charge asserts that Executive Vice President Barner conducted an investigation. Testimony at the hearing established that this is not accurate. Instead, Barner brought the matter to Director of Human Resources Ken Raker and asked him to do an investigation. We will return to the results of that investigation later.

This brings us to another cause of disagreement that emerged at the hearings. NALC has a policy prohibiting workplace harassment and discrimination. It was entered into the record as Jackson Exhibit 1. It is a comprehensive policy which covers conduct and procedures including reporting requirements.

"Supervisor/Manager Reporting Obligations: All supervisors and managers who receive a complaint or information about suspected harassment or discrimination, observe what may be harassing or discriminatory behavior or for any reason suspect that sexual harassment is occurring **are required** to report such conduct to Ken Raker Director of Human Resources."

At the hearing, the charging party pointed the panel to this clause as part of his argument that Renfroe had neglected his duties. At that point Renfroe objected on the basis that the charge made no mention of, or allegations that he had failed to follow the procedures in the policy. A recess was called for the panel to confer on this objection. We returned with the following procedural ruling:

"Evidence and arguments concerning the NALC policy on workplace harassment discrimination and sexual harassment is not relevant or material to Charge #2. This charge accuses Renfroe of circulating false and misleading statements about a NALC officer. Introducing matters pertaining to the NALC policy in this context is an unfair expansion of the charge as a matter of due process."

Beyond that, Renfroe asserts that while the prohibited behaviors in the policy apply to National Officers, the process for dealing with allegations of violations by national officers is different than that which the policy sets forth for at will employees. For example, he points to a clause in the policy which provides:

"Discipline: harassment and discrimination will not be tolerated. Any supervisor manager or employee who engages in harassing or discriminatory behavior and supervisors and managers who allow such conduct to continue **will** be subject to disciplinary action up to and including termination. (emphasis added)."

Renfroe insists that an allegation of any violation of the conduct proscribed in the policy, and investigation and or any discipline for that falls under the purview of Article 10 of the NALC Constitution.

Notwithstanding any of that an investigation by Director of Human Resources Ken Raker did ensue. Raker testified at the hearings. Under direct and cross examination and questioning from the panel the following salient points were established.

- Raker was asked by executive vice president Paul Barner to conduct his investigation.
- No formal complaint was made by the two female staffers, nor did they ask HR for an investigation.
- Rather Barner asked Raker to investigate the complaint of James Henry about the rumors and allegations made against him.
- Renfroe did not convey any direct allegations against Henry to Raker
- Raker did not investigate any actions by Renfroe.
- Renfroe was not involved in the mechanics of the investigation.
- Raker interviewed both female staffers.

Raker was questioned on what the two female staffers told him. Raker refused to provide the panel with that information claiming it was proscribed.

When asked what the conclusions of his investigation were, he replied "inconclusive" He testified that this is what he conveyed to Barner.

The panel thinks it noteworthy here that in the charging paper, Jackson claims that at a special meeting of the executive council" Barner informed the council that he had the matter fully investigated and there was no substance to the allegations. Obviously, this does not comport with the answer Raker gave us. Nor with what Barner told us about that in his testimony. We will return to this later.

Renfroe seeks to elicit certain points from Raker's testimony in further support of his contentions that he never made direct allegations about Henry to anyone. Rather that he was acting upon allegations of others brought to him.

Jackson on the other hand, maintains that Renfroe did make direct allegations against Henry. His argument is that this goes to Renfroe's intent.

Witnesses testified on this point at the hearings. Both Barner and Rolando said that they interpreted their conversation with Renfroe when he consulted with them as Renfroe making the allegations. But a number of others that Renfroe consulted with indicated in their testimony that they deemed it as Renfroe seeking advice on how to handle allegations made by others and any information they might have that might bear upon the credibility of such allegations.

For the panel, all of this is a wash as to the weight of probative evidence on intent. We turn now to another important point. A principal argument of Renfroe is that the guilt or innocence of Henry with respect to the allegations is not an issue before this panel. Rather, whether or not he is guilty of circulating rumors and sharing confidential information in a manner that constitutes neglect of duty or a violation of the constitution.

Jackson on the other hand, stands adamantly by his argument that Henry's guilt or innocence is at issue. He points to the fact that his charge accuses Renfroe of circulating **false** or misleading statements. Thus, he argues, he should have the opportunity to prove Henry's innocence to show that such statements were indeed false. And so, naturally, Jackson attempted to use the hearings as a vehicle to bring that issue to" trial". Not only to prove falsity, but to give Brother Henry an opportunity to clear his name.

There are some fundamental problems for the panel with doing that.

First, Director of Human Resources Ken Raker represented that he conducted a thorough investigation. Raker is a highly experienced and well credentialed professional. He testified that he has conducted numerous investigations of alleged employee misconduct. As alluded to earlier Raker found the facts to be inconclusive.

Next, while something appears to have been lost in translation when Barner reported the results of the investigation to the council, it remains that the council did not see fit to take any action itself. Including apparently, acceding to Henry's demand for an apology.

Also, the nature of these administrative hearings does not find the accused directly

facing his accusers or the accusers directly facing whom they claim is the perpetrator.

In the face of all that, an exercise by the panel to determine Henry's guilt or innocence would almost certainly not be productive. We would still be left with the status quo, which unfortunately is a not uncommon, "she said-he said" situation.

Still, against some objections, the panel allowed both Brother Henry and the two female staffers the opportunity to testify along those lines. We felt that all of them have reputations and service to NALC that earned them the right to at the very least, have an opportunity to express themselves further for the record.

Brother Henry provided the panel with impassioned and obviously heartfelt testimony. He categorically denies engaging in the behaviors of which he was accused. So of course, he is embittered and indignant about this. He related the history and circumstances of his life and his long-time service to this union. He spoke of his service to our country in the military. His leadership and contributions to his community and numerous outside organizations. His love and devotion to his wife and family. None of this stands in dispute before us.

He expressed deep disappointment and regret about having to face anything like this in what is supposed to be the pinnacle of his career. His frustration with the indelible stain this all may paint on his reputation.

Henry did also provide some testimony and argument relevant to the panel's consideration of the charge. He argued that if it was true that Renfroe was only seeking advice from those he shared information about the allegations with, why did he disclose names.

He avers that the NALC President has an affirmative obligation to be fair. That even assuming the allegations were true, such fairness required the President to speak with him about all this first. And that his failure to do so was "gross negligence".

The two prominent female staffers also testified separately. They described the circumstances of their allegations. It serves no useful purpose to relate all of that in this report. Except to say that their testimony was emotional as well as would be expected in such circumstances. And that they were both firm in their insistence that the events they described actually occurred. It is, we think, worth saying that what they related would be best described as inappropriate, improper touching. Not sexual assault or ongoing sexual harassment of them by Henry.

Also noteworthy is that both testified that when Ken Raker spoke with them about the issue, he told them that, "it will not happen again". This is curious. Given Raker's testimony that the results of his investigation were inconclusive, what "it" was it that he meant would not happen again.

They also gave some testimony relevant to the panel's consideration of the charge. They confirmed that they went to President Renfroe with their (unofficial) complaints.

Which bears upon whether or not Renfroe just made this up or initiated the allegations.

Significantly, Renfroe argues that even assuming arguendo, that he had circulated statements as charged, he still should not be found guilty.

He points to the charging parties' invocation of Article 9 Section 11(e) (17) of the Constitution.

It reads in pertinent part:

*"the executive council shall have the power to investigate any branch or member of a branch who interferes in the work of the organization, or who circulates false or misleading statements **calculated to retard the officers in conducting the organization work.**" (emphasis added).*

He avers that the idea that he would concoct a plan designed to *retard* Henry in the performance of his duties, or otherwise denigrate, defame, or undermine Henry is non-sensical and absurd.

Renfroe testified that although he was the Executive Vice President at the time, he was heavily involved in former President Rolando's decision to appoint Henry as Vice President.

Renfroe stated" he became VP because of me" with the notion that Rolando was giving great weight to Renfroe's opinions and desires given that Rolando knew he would be retiring and his expectation that Renfroe would succeed him.

Renfroe says that he communicated with Henry and shared his excitement about his appointment. And, that Henry ran for Vice President on Renfroe's slate during the 2022 election of National Officers.

Jackson argues that what occurred was intended to retard Henry. That it was a "malicious and vicious" plan to undermine him.

This brings us to the second component of Charge# 2: that Renfroe shared and referenced confidential information about an employee matter.

It is undisputed that Renfroe shared information about the allegations of the two female staff members with a number of past and present national officers and another staff member. That he named Henry, and in some cases, the two women.

As to the information being confidential.

Renfroe, as part of his contention that different procedures apply to national officers on these matters, suggested that he had a right to handle the matter the way he did.

Jackson points to a clause found in the NALC policy (Jackson Exhibit# 1) in Section 8 a on page 4 which provides in pertinent part, "NALC will keep the investigation confidential to the extent possible", and generally, laws about confidentiality.

Before we come to our conclusions on this charge, the panel makes some observations to the executive council for what we believe is the good of our organization.

What unfolded here, we believe, evidenced some ambiguities and gaps with respect to how allegations of this sort against national officers should be handled.

And that in this case, the process did a dis-service to both Brother Henry, and the two female staff members.

It left Henry in embarrassment and with a stain on his reputation. Setting aside guilt or innocence in this matter, we think Henry's otherwise long and honorable service to NALC has earned him better than that.

The two female staff members were never really provided with a clear and satisfactory response from the organization. We should all be instructed by the teachings of the "Me Too" movement on this issue.

We ask the council to consider what if any changes or clarification might be made so there is a clearer path for all involved. So that employees, supervisors, managers, and officers; and women in particular because women are overwhelmingly more likely to be victim, are disincentivized from reporting it. And understand the process for doing so.

Panel conclusions on Charge# 2:

The first piece to this charge is that *Renfroe* circulated false or misleading statements about James Henry.

It is undisputed that rumors about the allegations by the two female staff members against Henry circulated. For the reasons set forth in this report *supra*, we set aside whether or not the "statements" were false or misleading. We must judge whether Renfroe "circulated" them.

The panel agrees that even if the evidence led to a yes answer, in order for this to rise to the level of a charge that can be upheld under Article 10 of the NALC Constitution, it must also have been , pursuant to the clause the charging party himself invoked, Article 9 Section 11 (e) (17), be "calculated to retard the officers (in this case Henry) in conducting the organization work".

In this instance, one panel member dissents.

As to circulation, the most proximate dictionary definition in this context is:
: to become well-known or widespread

Example: "rumors *circulated* through the town

The panel majority does not believe the evidence shows that Renfroe had a plan to

circulate the information in that manner. Renfroe testified credibly and without refutation, that he asked all of the individuals he consulted with to keep the conversation confidential. All of those individuals told Weir in his investigation that they did not share it with anyone else.

Going to whether there was *intent* to retard, or worse yet, the charging party's contention that Renfroe did so" maliciously and viciously."

There is no probative evidence demonstrating that Renfroe had any animus towards Henry.

Henry and Jackson pointed to Renfroe removing some duties from Henry but that was well after and appears unrelated.

To the contrary, stands Renfroe's undisputed testimony that he played a major role in bringing Henry to headquarters as Vice President and that they shared their mutual excitement about this at the time.

Moreover, it is a fact that Henry ran for Vice President on Renfroe's slate in the 2022 election of national officers.

In light of all that, the panel majority believes it strains logic and credulity to conclude intent to retard.

The panel dissenter thinks otherwise. The dissent's conclusion is based on inferences. Respectfully, the majority cannot draw those inferences from what the panel knows with certainty.

Accordingly, it is the recommendation of the panel majority that the executive council find Renfroe not guilty on this portion of Charge #2.

Now as to sharing and referencing confidential information about an employee matter.

As stated earlier, there is no dispute that Renfroe shared such information. Or that the information was confidential as commonly understood.

And so, Renfroe is" guilty" of that. This again brings us to the question of whether or not that act rises to the level of neglect of duty or a violation of the constitution. All bad acts by an officer do not meet that standard.

Renfroe believes as the President of the NALC he had a right to do what he did.

First, we look back to the NALC Policy Prohibiting Workplace Harassment and Discrimination and Sexual Harassment (Jackson Exhibit 1) specifically Section 8 a.:

"NALC will keep the investigation confidential to *the extent possible*" (emphasis added)

While the panel's procedural ruling prohibited the charging party from pursuing a case that Renfroe violated this policy, this provision does demonstrate that NALC as an institution, considers these matters to be confidential. But it also says that investigations should be kept confidential" to the extent possible".

So, there are exceptions.

Does, as Renfroe argues, the circumstances in this matter fall under a contemplated exception?

And if not, does it then rise to the level of neglect of duty?

Whether or not an exception applies here is beyond the province of this panel to decide. And it points to the plea we have made to the council to address certain ambiguities.

The panel majority believes that at the very least, Renfroe sharing the information in his efforts to get advice and guidance, even if well intended, was a very poor exercise of judgement. We think he should have realized that notwithstanding his urging of the individuals to keep this in confidence, there was a high likelihood that rumors would spread. And so, although the panel majority does not believe he intended to circulate rumors, his sharing of the information " lit the match" that eventually led to rumors being spread.

The damage to Henry's reputation and the emotional and psychological effects of this on him are obvious and regrettable.

That said, the panel majority does not think the conduct rises to the level of neglect of duty.

The panel dissenter believes there was neglect of duty, relying on the portion of the oath of office which reads.

"I will do everything in my power to promote the welfare of the National Association of letter carriers and its members."

The panel majority views that as too much of a stretch.

If a National Officer's actions are in violation of laws that have a nexus to NALC, this could be deemed as neglect of duty as contemplated by Article 10. But there is nothing before the panel which shows that in this matter.

Accordingly, and due to the aforementioned constraints on us, we cannot recommend to the council that it finds Renfroe guilty of this portion of the charge either.

Charge# 3: Impaired driving after hours in a NALC vehicle.

The record shows that on the night of September 12, 2018 President Renfroe was arrested and charged with Driving Under the Influence of alcohol while driving a vehicle leased and assigned to him by NALC. Both the Weir investigative report, and documents relating to the legal adjudication of this matter contained in Joint Exhibit 1, spell out what subsequently transpired.

Briefly, Renfroe pled guilty to D.U.I and entered into a court approved diversion program. After meeting the conditions of that program, Renfroe was allowed to withdraw his guilty plea.

Further, Renfroe may have the legal record of this matter expunged after a period of five years. Five years have since passed but it is unclear to the panel whether or not such expungement has yet occurred.

Renfroe argues that this matter was adjudicated through the judicial system and that with expungement in the eyes of the law this case never happened.

But as union representatives we all know far too well that regardless of the final disposition of a matter in the judicial system, including acquittal, the employer is not barred from taking separate administrative action. The panel believes that is so in the matter before us as well. In criminal proceedings the standard of proof is beyond a reasonable doubt. Here, applying arbitration standards, it is a preponderance of the evidence. To that point, at the hearing Renfroe professed that while he admitted to consuming some alcohol at dinner that evening, he did not, and still does not, believe he was impaired. But this is outweighed by the police report of Police Officer Possinger found at pages 52 and 53 of Joint Exhibit 1. That report states amongst other things that: Possinger observed Renfroe's vehicle swaying. Distinctly smelled alcohol on Renfroe's breath when he approached the vehicle and at the police station. Observed bloodshot eyes. Observed slurring of speech. These were the professional observations of a highly experienced and well-trained police officer. Beyond that the police report indicates that at the time, Renfroe admitted to the officer that he probably would not pass a field sobriety test and probably should not have driven home.

As such the weight of the evidence compels a conclusion that Renfroe was driving impaired in a NALC vehicle.

This again brings us to the question of whether or not such conduct constitutes neglect of duty or a violation of the constitution as contemplated by Article 10.

NALC has a relevant policy titled NALC owned Vehicle Use Policy found on pages 63 and 64 of Joint Exhibit 1. It provides in pertinent part:

- Driving under the influence of drugs or alcohol is prohibited
- Drivers must have a valid driver's license
- The person assigned to the vehicle will not use or permit the use of the vehicle in

- a negligent or improper manner or in violation of any law.
- All traffic violations and accidents whether at fault or not must be immediately reported to NALC human resources and if applicable a police report must be provided.

It is worth mentioning here that no accident happened, and that no person or property was harmed. Also, that NALC officers who are assigned a NALC vehicle are required to maintain personal insurance to cover driving the vehicle during non-duty nonbusiness hours for personal use.

Panel conclusions on Charge# 3:

Clearly violations of this policy occurred in this case. As to failing to report, when the charging party pursued that at the hearing Renfroe objected on the basis that the charge made no mention of that. Once again, the panel recessed the hearing in order to confer. We returned with the following procedural ruling:

"Charge #3 makes no specific mention of failure to report a traffic violation or arrest to NALC. We do not read the charge to incorporate failure to report. As such, as a matter of due process it would be unfair to allow the charging party to prosecute this before us."

As to the item "driver must have a valid driver's license". This was not in the charge nor did the charging party originally pursue it. In his investigative report Weir dug into this sua sponte. The panel believes that he exceeded his province doing so. That said during his testimony and under questioning from the panel Renfroe admitted that his license was suspended for a period of time and that he drove the NALC vehicle occasionally during that period.

Renfroe did, however, violate the provision in the policy that prohibits driving under the influence of alcohol. And he used the vehicle in a negligent or improper manner and in violation of the law.

The panel also believes more generally, that when officers violate the law in a manner that has a nexus to their NALC employment and duties, this can be interpreted as neglect of duty. That was the case here. In addition, the oath that NALC officers take includes a promise and assurance that they will "guard all property placed in my charge".

Now, this matter occurred in 2018. So, for any trained NALC representative the question of timeliness would come to mind. We know that timeliness is one of the defenses to discipline. And our procedural ruling precludes Renfroe from being "convicted" on a charge of failing to report. However, it is undisputed that Renfroe did not report the incident officially or otherwise. Indeed, Fred Rolando who was NALC president at the time testified that he was unaware. And so, the failure to report is a consideration on the timeliness question. No one but Renfroe knew about this until

Brother Jackson came upon it during his preparation of the charges. So, it could not have been acted upon sooner. Therefore, there is no equitable estoppel in play here.

Accordingly, the panel recommends to the executive council that President Renfro be found guilty of this charge.

Charge# 4: Abandoned Position and Dereliction/Neglect of Duty

It is undisputed that President Renfro was scheduled to attend the 2023 Regional Training Sessions in Regions 1, 11 and 14. That his attendance was announced, and a significant period of time was set aside for him to speak to the attendees at each of these sessions. It is also undisputed that Renfro was a no show at each of these events. Further to the fact that the national business agents of these regions, who are responsible for running the sessions, were given only last-minute notice of Renfro's failure to appear. Renfro also admitted to using lies, misinformation, and deceptions in his communications to the national business agents and other leaders about this.

The charging party Brother Jackson presented a number of witnesses including Region 1 National Business Agent Keisha Lewis, to testify about the impact this all had on their region.

Lewis testified about the difficulty of last minute scrambling around to fill in the time which had been allotted for Renfro. She and other witnesses testified about their disappointment and that of the attendees, in not having their expectations of hearing from and interacting with the national president met. About the embarrassment and injury to NALC's reputation especially amongst first time attendees. They also pointed to the waste of branch financial resources which occurred due to the branches sending more members to the training than they otherwise would have with the announcement that the national president would be there.

In his defense Renfro again points to the behaviors that are common amongst individuals suffering from the disease of alcoholism including lying to and deceiving themselves and others. He maintains that at that time his condition had developed into a physical addiction to alcohol which exacerbated other related infirmities. And that this left him physically unable to attend and perform at these sessions, and so his absence was not "a choice". He drew an analogy that if this had been caused by another disease like cancer for example it would have been understood and forgiven. He testified that he has attended numerous regional trainings and other events in the field and that this is one of his favorite duties.

Renfro's presentation on this charge was in large part a mea culpa which acknowledged most of this.

Panel Conclusions on Charge# 4:

First the panel recommends that the executive council set aside the element of

the charge, abandonment of position. The circumstances here do not meet the commonly understood definitions and use of the term in employment settings. Which is when employees do not report for work as scheduled and have no intention of returning to their job but do not notify the employer of their intention to quit.

Turning to whether Renfroe's conduct was neglect of duty as contemplated by Article 10. Two members of this panel were national business agents, and one was a regional administrative assistant. And so, we understand very well the gravity and impact of the national president failing to fulfill their commitment to attend a regional training. We would be in a position to take 'judicial notice' of this even in the absence of the undisputed evidence which was presented to us at the hearing. This is grave. And in our judgment a neglect of duty.

There is no evidence refuting Renfro's claim that he was physically unable to attend the regional training sessions. So arguably, he should not be punished for his absence.

We have previously alluded to lies, misinformation and deceptions being common behaviors associated with alcoholism. In this instance Renfro's lies and deceptions led to last minute notice that he would not be at the sessions. We have also noted that in employment matters alcoholics are not absolved or extricated from misconduct just because it flowed from their alcoholism. The leaders and attendees at these regional trainings had a right to expect and receive reasonable advance notice. On a matter of this magnitude Renfroe must be held accountable for the severe impositions this lack of reasonable advance notice caused.

Accordingly, it is the recommendation of the panel that the executive council find Renfro guilty of charge.

PANEL RECOMMENDATIONS TO EXECUTIVE COUNCIL ON CONSEQUENCES

As to consequences relating to a guilty finding on Charges numbers 3 and 4: It is commonly understood and accepted that misconduct caused by or related to alcoholism is not required to be expunged, erased, or excused by an employer for that reason.

This is so even under the Americans with Disabilities Act. (see U.S. Commission on Civil Rights ADA paper: Jackson Exhibit 2). We also recognize that principle under article 35 of the national agreement. Instead, any penalties for such conduct are entitled to consideration for mitigation.

The panel believes there is another mitigating factor in play. Of course, ultimately alcoholics are responsible for their own behavior and for getting the help they need. But it is commonly accepted that when individuals or organizations engage in enabling behavior, that can be a factor when considering mitigation of consequences.

We believe the record is replete with instances of that. The record shows , and former president Rolando admitted in his testimony that he was aware of a number of incidents of alcohol related misbehavior going back as far as at least 2018. When questioned by the panel about how it was that this was not adequately addressed given that Renfroe was being groomed to succeed him, he declared " perhaps I should have done more"

This was true of a number of other officers and staff members who had red flags waving brightly in front of them. And, we note that a number of current national officers who had seen enough to know or should have known, that Renfroe's drinking was problematic, ran with Renfroe on his slate in the last election of national officers. This is not meant to be a condemnation of any individuals. The absence of intervention with alcoholics is not uncommon for a myriad of reasons. But it is arguable that in some sense the organization failed him.

With that premise in place what should the consequences be here? The first obvious question is do the charges Renfro is found guilty of, either individually or collectively, warrant removal from office. The panel thinks not. Removal is the harshest measure available. We believe it should be reserved for the most serious offenses (fraud, theft, certain sexual misconduct, certain violations of law etc.). This is particularly so in light of the nature of a national officer's position. They gain it by virtue of election by the membership. The NALC and its members place great value on its democratic principles and processes. As such the overturning of a decision by the membership to elect an officer should be rare and carefully and critically considered.

If not removal, then what? What is an appropriate and fitting penalty for the type and manner of neglect of duty before us? One which is reasonably related and proportional to the offenses under these uncommon circumstances. And one which will not be perceived as a slap on the wrist or a sweeping under the rug.

After much consideration and deliberation, the panel recommends that the executive council impose a formal written reprimand. Reprimand is defined as "an expression of severe disapproval especially in a formal statement". "A public judgment involving condemnation".

It produces a permanent stain on reputation and legacy. It is a factor which voters can consider if he seeks reelection.

*In order to effectuate the intent of this reprimand we further recommend that the council have it promulgated within NALC by announcement in:
The Postal Record*

NALC Bulletin
On NALC Website

The panel wishes to express our appreciation for the opportunity to contribute to the well-being of this beloved organization.

Barry Weiner Chairperson

Myra Warren Committee Member

Brian Hellman Committee Member

March 25th, 2024