

American Postal Workers Union, AFL-CIO

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GUIDE TO LOCAL NEGOTIATIONS

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Collective Bargaining Report Special Issue 22-01

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Note: A copy of the *LMOU for Offices Without a Local Union Structure, February 10, 2022* was negotiated at the National Level, and is available on the APWU web site at <https://apwu.org/local-implementation> under “Resources from the Industrial Relations Department.”

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INTRODUCTION

Note: A copy of the *LMOU for Offices Without a Local Union Structure, February 10, 2022* was negotiated at the National Level, and is available on the APWU website at <https://apwu.org/local-implementation>

LOCAL IMPLEMENTATION TIMELINE

- **Not later than June 6, 2022** - Written notice of intent to negotiate must be provided.
- **Commencing on May 23, 2022, and ending July 22, 2022** - Negotiations occur for 30 consecutive days within a 60-day period.
- **Within the first 21 days of the 30 consecutive-day period** - Initial proposals must be exchanged.
- **July 22, 2022** - All negotiations end.
- **Not later than August 12, 2022** - Appeals to impasse must be filed.
 - APWU appeals must be sent to Labor Relations Service Center.
 - USPS appeals must be sent to the APWU Regional Coordinator.
- **September 28, 2022** - APWU Region/USPS area impasse discussions end.
- **No later than October 19, 2022** - Appeals to arbitration must be filed.

Dear Local Officer:

This February/March 2022 issue of the “Guide to Local Negotiations” contains a wealth of information and pointers to assist you in negotiating your local MOU for the 2021-2024 National Agreement. In preparing this issue, we’ve considered and made reference to changes in the National Agreement that may impact local negotiations. Negotiations at the local level will occur for a 30 consecutive day period between May 23, 2022 and July 22, 2022. Negotiations can encompass any and all of the twenty-two (22) items in Article 30. In addition, any other subject may be negotiated if both parties are willing. But, unless it is one of the twenty-two (22) items, it may not proceed through the impasse procedures (AIRS Case No. 22). And remember, any Local Memorandum of Understanding reached may not be inconsistent with or vary the terms of the 2021 National Agreement.

Before undertaking LMOU negotiations, one of the decisions a local must make is whether to request to open negotiations regarding pre-existing provisions in an LMOU or to attempt to carry forward pre-existing provisions. This decision is based primarily on whether the current language in the LMOU is or isn’t working well for the local; whether there are new provisions of the 2021 National Agreement that may conflict or be inconsistent with the local agreement; and whether the local is prepared to show in negotiations and later in arbitration, if there’s an impasse between the parties and the local decides to file an appeal, that changes in

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the local agreement are necessary and will work better than the current provisions. However, the local should make preparations even if it doesn't wish to open negotiations on any or some provisions in an LMOU, in the event management requests to open negotiations.

A section in the Guide on "Preparing for LMOU Negotiations" contains pointers that should be helpful in reviewing your LMOU and on initial steps to be taken, particularly for those locals without a current local agreement and for recently elected local officers who may be negotiating for the first time. Other sections include information on how to respond to management's challenges to union proposals, both on the basis of an unreasonable burden argument and in conflict and inconsistency with the National Agreement, and procedures and considerations for appealing impasses. In addition, the Guide contains extensive information on the 22 items that are mandatory items for negotiations under Article 30.

We have deliberately avoided instructions on what a local should negotiate because local negotiations should result in a contract that meets local needs, not any national agenda. Every local has unique local circumstances that may affect local negotiations such as different size installations, different management, and varying conditions.

At the beginning of each of the 22 Items listed in Article 30 we have provided "Director's Tips", which list the references in the CBA where you can find the authoritative language to discuss each Item. Also, in all sections of this Guide, we've provided references to "wins" and "losses" that local unions have experienced in arbitration to obtain new provisions for their LMOUs or to retain existing provisions in the LMOUs. Though we've cited failures in addition to successes, such examples aren't meant to discourage you but to make you aware of problems that can arise while attempting to improve upon or retain existing provisions in your local agreements and in presenting certain arguments.

References to AIRS (Arbitration Information Retrieval System) Case Numbers will allow locals to access the awards on APWU SEARCH or request particular arbitration awards that may be important to their local negotiation situation.

While local negotiations may prove difficult, we must continue our struggle to improve upon our local agreements and not give in to USPS attempts to remove what we have fought so hard to gain in the past at the local level.

Yours in Union Solidarity,



Mark Dimondstein
President



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The CBR is published by the Industrial Relations Department of the APWU.
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PREPARING FOR LMOU NEGOTIATIONS

Now that the National Agreement has been ratified, it's time for locals to immediately prepare to negotiate their Local Memorandums of Understanding. Such preparations should include:

1. Review your current LMOU, item by item.
2. Gather any necessary information.
3. Decide whether you wish to add, change or delete from your LMOU. If you decide not to make any changes, send a letter requesting to carry forward your current LMOU. (See page 5.)
4. Appoint or elect, as appropriate, a Negotiating Committee (all crafts should be included).
5. Select a chief spokesperson.
6. Set negotiation goals and priorities. Anticipate management's goals and prepare appropriately.
7. Send a notice to the postmaster that you intend to negotiate a new LMOU. (See page 4.)
8. Prepare proposals. (See page 7.)
9. Organize a record keeping system. (See page 10.)
10. Meet with management to set up ground rules. (See page 14.)
11. Review your goals, proposals, strategy, and the role of each member of the negotiating team, until all the team members feel comfortable.

Review Your Current LMOU, Item-By-Item

Has the particular provision worked well?

- a) Has the language been a source of disputes and grievances?
- b) What happened to any grievances filed?
- c) Does the number of grievances indicate a particular problem with an item?
- d) Have members or stewards complained about the language or suggested changes?
- e) Has the provision or a related topic come up at union meetings, labor-management meetings, etc.?
- f) Is the provision fair to everyone?

- g) If continued without change, would the provision meet the needs of the bargaining unit through 2021 and several months following September 20, 2024 until the next contract's LMOU negotiations end?
- h) Is the LMOU language consistent with new or amended provisions of the 2021 National Agreement that are different from the 2018 Agreement?
- i) Have any changes in the National Agreement affected your LMOU?
- j) How long has the language been in your LMOU?
- k) During the life of the 2015 Contract, were there changes (excessing, closing of a unit, transferring work, new building, etc.) that had an impact on your local memo?
It is anticipated that there will be changes during the life of the 2021 Contract (e.g., excessing, closing a unit or station, adding new units, changing schedules, removing part-time regulars and part-time flexibles, adding nontraditional full-time employees and postal support employees, etc.) that will affect your LMOU? For example, if NTFTs and/or PSEs will be working in a facility and/or PTFs and/or PTRs will be eliminated from certain crafts in that facility, will the presence of the NTFTs and/or PSEs or the absence of PTRs and/or PTFs impact on the number of employees eligible for vacations, or affect holiday and overtime schedules?

Gather Necessary Information

1) To assist in evaluating current situations: If your review of your current memo leaves you with questions about whether the language worked well, an Information Demand may help.

For example, you may know that there have been some difficulties with light duty requests. However, you may not know the extent of the problem or whether a change in the LMOU would solve the problem. The following information on each light duty request could resolve your questions:

- a) Type of request (temporary or permanent)
- b) Action taken (approved or denied)

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SAMPLE INFORMATION DEMAND LETTER

Today's Date, 2022

Local Postmaster
Anytown, USA

Dear Postmaster:

In accordance with the provisions of Article 31, Section 3 of the 2021 National Agreement, and in preparation for negotiation of a new LMOU, the Union requests the following information on each light duty request made in the previous 12 months:

- 1) Type of request (temporary or permanent)
- 2) Action taken (approved or denied)
- 3) If denied, reason for denial
- 4) If approved, list duties to which assigned
- 5) If denied, duration of any missed work
- 6) If approved, duration of light duty assignment

If you have any questions in regard to providing this information, we are prepared to discuss the matter.

Thanking you in advance for your prompt attention to this matter.

Sincerely Yours,
Local President

- c) If denied, reason for denial
- d) If approved, list duties to which assigned
- e) If denied, how much work was missed?
- f) If approved, what was duration of light duty?

The above information would probably take some time for management to compile. Therefore, your demand should be made early (well before negotiations begin) and only if necessary.

Remember, the employer may require the union to reimburse the USPS for any costs reasonably incurred in obtaining the information (Article 31, Sec. 3). See AS-353 Handbook, Section 4-6.5 for various fees.

2) To assist in justifying your proposal: You may already be convinced that you need to add, change or delete language in your LMOU. Is there information you can obtain from management, the National, other locals, other unions, or experts which would help you convince a reasonable person that:

a) The current language is not working well, or is causing a hardship, etc.

b) Your proposal is fair and will work well.

For example, you may know that last year management did not curtail operations at Station X when the furnace broke and temperatures plummeted. The situation was disastrous for employees who had to work or suffer discipline. But you may not know the age, general working condition and number of previous breakdowns of heating and air-conditioning units throughout the installation. A proposal would be more likely to succeed if you could show that breakdowns are common, and the age and general condition of units make future breakdowns likely.

Can you show that a particular temperature is a health hazard? Probably not. The health risks of working in hot or cold environments depend on many factors and vary by individual. A doctor or industrial hygienist could provide information on health risks and steps that could be taken to evaluate the situation and curtail operations to the extent demanded by any immediate health risks.

Information from other locals or the National might provide examples of language from other LMOUs and specifics on situations where the language worked well.

In this fashion, you can turn your conviction that the contract needs to be changed into a well-reasoned proposal with lots of persuasive arguments.

Provide Written Notification to Open Negotiations

If no party provides written notification of its intent to invoke the local implementation process prior to June 6, 2022, presently effective Memoranda of Understanding shall remain in effect during the term of the agreement. In other words, the LMOU is automatically carried forward. However, if either the union or the Postal Service notifies the other in writing of its intent to negotiate the parties are required to negotiate. In the event you decide to negotiate changes in your local agreement, a sample notification letter is printed on page 5.

Note: In the event a local decides to negotiate, a letter should be sent early so that initial ground rules can be set before formal negotiations begin

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during a thirty-day period between May 23, 2022 and July 22, 2022.

SAMPLE NOTIFICATION LETTER

Today's Date, 2022

Local Postmaster Any Town, USA

Dear Postmaster:

Pursuant to the provisions of Article 30, Section A and B of the 2021 National Agreement, it is the intention of the Local of the American Postal Workers Union, AFL-CIO, to enter into negotiations for the purpose of modifying our Local Memorandum(s) of Understanding with the Postal Service.

We request a meeting with you and the members of your staff on (date) at (time) to establish procedures to be utilized during the course of these negotiations.

Sincerely yours,
Local President

Carrying Forward Current LMOU without Change

After the June 6, 2022 deadline has passed and no party has sought to open negotiations, arrange a meeting for the re-signing of your LMOU. Please note, regardless of whether management agrees to sign your LMOU if written notification was not provided by the June 6, 2022, deadline, your current LMOU remains in effect and is automatically carried forward.

Suggested language carrying forward your LMOU could read as follows:

The presently effective Memorandum of Understanding is carried forward and shall remain in effect during the term of the 2021 Agreement.

_____/s/ _____/s/
For the Union For the USPS

On the other hand, if there is no signature copy of your LMOU, you may want to place the following language at the beginning of your LMOU so that

there is some reference in the document indicating that it is current and in effect.

Pursuant to the Local Implementation MOU, the presently effective Memorandum of Understanding (LMOU) shall remain in effect during the term of the 2021 National Agreement.

You may find yourself in a situation where management has declared several items to be an unreasonable burden and/or inconsistent or in conflict with new or amended provisions of the 2021 National Agreement, but otherwise wishes to carry forward the current Local Agreement.

Recommended language in these circumstances is as follows:

The presently effective Memorandum of Understanding is carried forward and remains in effect during the term of the 2021 National Agreement, with the exception of those items which the Postal Service maintains are an unreasonable burden pending resolution in impasse arbitration.

_____/s/ _____/s/
For the Union For the USPS

Note that it is not necessary to include items declared to be inconsistent or in conflict in the above provision since the MOU re: Local Implementation in the 2021 National Agreement provides that items declared to be inconsistent or in conflict remain in effect until four months from the conclusion of the local implementation period (November 21, 2022) or the date of an arbitration award, whichever is sooner.

Subjects for Negotiation

Matters which are included on the list of twenty-two (22) items for local negotiations in Article 30 are mandatory subjects of bargaining about which the Postal Service and union may not legally refuse to bargain in good faith at the local level.

Each party must in good faith listen to the other's proposals, and discuss and consider those proposals. If an opposing party is convinced that

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there is some merit in the other party's proposals, that party may wish to negotiate a settlement. However, if at the end of the negotiation period, a party remains unconvinced about the merit of a proposal, there is no requirement to reach an agreement.

Section 8(d) of the National Labor Relations Act provides that "to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, of any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. ..." According to a federal appeals court decision in *NLRB v. Highland Park Manufacturing Company*, 110 F.2d 632, p. 637 (4th Cir. 1940), the National Labor Relations Act "does not require that the parties agree; but it does require that they negotiate in good faith *with the view of reaching an agreement if possible*; and mere discussion with the representatives of employees, with a fixed resolve on the part of the employer not to enter into any agreement with them, even as to matters as to which there is no disagreement, does not satisfy its provisions." *The Developing Labor Law, Fifth Edition, Vol. 1* (2006), p. 826, indicates that while other circuit court decisions have elaborated on the *Highland Park* court's definition of good faith bargaining, "the basic requirement remains the same: the parties must negotiate with the purpose of trying to reach an agreement." However, the National Labor Relations Board has not established "per se standards for determining whether the parties have met their Section 8(d) obligation to meet, confer, and seek agreement in good faith," according to *Developing Labor Law*, p. 826. (Also see AIRS Case No. 32526 and 46484 where arbitrators discuss the meaning of good faith bargaining in relation to local negotiations).

Items which are outside the scope of the 22 items in Article 30 may be negotiated if both parties are willing. A national arbitration award by Arbitrator Mittenthal (USPS No. H8N-5L-C 10418/

N8-W-0406, Airs Case No. 22) established that provisions are not in conflict or inconsistent with the National Agreement merely because they are outside the scope of the 22 mandatory subjects of bargaining listed in Article 30. Accordingly, locals should feel free to bargain for any appropriate provision, bearing in mind that, if it is not within the scope of the 22 items listed in Article 30, the union may seek agreement but the employer is not required to negotiate about such a provision.

If agreement is not reached on matters which are included within the list of twenty-two items, the APWU can appeal the dispute to impasse arbitration pursuant to the Article 30 Local Implementation Memorandum. This point is explained by Arbitrator Mittenthal in USPS Case No. N8-W-0406 (AIRS Case No. 22). On the other hand, if a local proposes for inclusion in the Local Memorandum of Understanding a provision which is not within the list of twenty-two (22) items, the union may not appeal to impasse arbitration in an effort to obtain such a provision. (An example is the requirement that there be breaks for employees, which has been ruled to be outside of the 22 items, and therefore is not a proper subject for impasse arbitration (See AIRS Case Nos. 32538, 34361, and 32183).) The same is true for USPS proposals. If the Postal Service proposal is beyond the 22 items listed in Article 30, the Postal Service is not entitled to appeal the proposal through the impasse procedures.

If both parties at the local level wish to reach agreement on such a matter, however, it is permissible. If the parties reach a bargain on an item outside of the 22 items, an arbitrator may enforce the agreement. (See AIRS Case No. 38356 in which an impasse arbitrator ruled that the Postal Service was precluded from not abiding by an agreement that the parties reached on advance notification of overtime immediately after the LMOU was signed even if it is considered outside the 22 items; he rejected management's argument that the grievance was in arbitrable.) Also, it should be noted that the Postal Service is not permitted to go to impasse arbitration on pre-existing provisions concerning subject matter outside the twenty-two (22) items (See Arbitrator Mittenthal's award in USPS Case No. HOC-NA-C-3, AIRS Case No. 21683).

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In those situations where a pre-existing local memorandum covers an item enumerated in Article 30, not alleged to be inconsistent with the National Agreement; if management proposes a change in such an item and the parties cannot mutually agree to the change, management may on its own, move the matter to the impasse procedure. However, the USPS must demonstrate that the pre-existing provision poses an unreasonable burden.

In similar circumstances, if the union proposes a change in such an item and the parties cannot mutually agree to the change, the union has the option of moving the matter to the impasse procedure, or withdrawing its demand and allowing the pre-existing provision to remain in force and effect.

A number of things should be kept in mind:

- If there are some issues that remain in dispute, such areas of dispute should be noted in writing but the portions that have been agreed to will be signed off nevertheless.
- It is the position of the USPS that if it states that a pre-existing provision of a local memo is inconsistent with or in conflict with the National Agreement, and the Local disagrees with the position that the item is inconsistent - then the item is to be impassed. This is consistent with paragraph 7 of the Article 30 Impasse Memo. **Under these circumstances, the local should impasse the item which has been challenged as in conflict.**
- Language in the current contract provides that items that the Postal Service declares are inconsistent and in conflict shall remain in effect until four months have elapsed from the conclusion of the local implementation period under the 2021 National Agreement or until the date of an arbitrator's award, whichever is sooner. In addition, as stated previously, Article 30 provides that "[i]f local management refuses to abide by a local memorandum of understanding on 'inconsistent or in conflict' grounds and an arbitrator subsequently finds that local management had no reasonable basis for its claim, the arbitrator is empowered to issue an appropriate remedy." This language does not allow the Postal Service to nullify alleged inconsistent provisions outright and clarifies arbitrators' authority to issue



appropriate remedies in the event management does not meet its burden of proving the reasonableness of its inconsistency claim.

- If a pre-existing provision is carried forward, management doesn't have the right to argue that such an item is inconsistent or in conflict with the National Agreement except with respect to changed language covering such a provision in the 2021 National Agreement or with amendments to contract language made after the 2021 Agreement went into effect that apply to such a provision. However, if a local decides to make a change in pre-existing language and it is submitted to impasse arbitration, keep in mind that the Postal Service may argue that the changed language is inconsistent with longstanding provisions of the National Agreement.



Writing Proposals

There are two basic approaches to writing proposals. The first method is to set forth your proposal in the words you would print in the contract. This method provides specifics from the start of negotiations. However, it usually hinders negotiations by very quickly hardening positions of both parties. Arguments over specific words and language begin before any mutual identification of the problem and discussion of a variety of alternative solutions.

Negotiations should be a process in which information is exchanged at the "right" time and in such a manner as to persuade the other side and

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move them closer to your bottom line (which remains unknown to the other side). The proposal containing contract language will make this judicious exchange of information more difficult.

Instead of proposing specific agreement language, we recommend that you state your proposed changes in conceptual form. The proposal should identify a problem and suggest correcting the problem without spelling out the details of “how to” correct it.

Sample Proposal with Contract Language

Proposal: Change Article “X” of the LMOU to read:

“The Choice Vacation Period will begin June 15 of each year and end on Labor Day.”

Sample Proposal in Conceptual Form

Problem:

Parents with school age children even though they have ten years of seniority cannot get a vacation during the summer school break.

Proposal:

Vacation Period should be changed to accommodate the needs of employees.

With the sample proposal containing contract language, management is likely to respond:

“Why June 15, it could be the middle of the week?”

or

“That’s only 11 weeks; it’s ridiculous”

With the sample proposal in conceptual form, management is likely to respond:

“We need more information. What are the needs of employees?”

or

“Are you proposing a shorter period?”

In the first case, discussion centers on a date or the proposal gets instant rejection. In the second case, the proposal invites the Service to ask the “right” question. Discussion is likely to center on the

problem. Not knowing where you are headed management may agree that certain things do pose a problem. When management concedes there is a problem, although they still may not buy your solution, it will be hard for them to rationalize a refusal to do anything about the problem.

Another example of a sample proposal in conceptual form is as follows:

Sample Proposal in Conceptual Form

Union Proposal Number 10 Article 30 Item 2

Problem:

40% of the work force never gets a weekend off. All of the Monday through Friday schedules are in Customer Service and no one in Mail Processing has both Saturday and Sunday off.

Proposal:

The basic workweek schedules should be changed to provide better distribution of Monday through Friday schedules and the opportunity for everyone to have an occasional weekend off.

Proposals to Clarify Rights

Suppose as a matter of practice, you now have a five-minute wash-up period before lunch. You would like to spell it out in your local memo. *You must be careful.*

Violations of past practices as well as unilateral management actions to change or eliminate past practices can be grieved as violations of Article 5 of the National Agreement. If you can show that a practice is mutual (management and union know about the practice), long term (existed for some time) and consistent (always occurs without significant variation), then the practice probably has attained the status of a contract benefit which cannot be changed by unilateral action.

In this example you already have a five-minute wash-up before lunch. You do not need to negotiate this benefit. You have it already.

In fact, you could eliminate the five-minute wash-up by negotiations. Suppose you attempt to negotiate and do not succeed in adding specific language to the contract. If you grieved a subsequent violation based on practice, management might argue (and this argument works well in arbitration) that the five-minute wash-

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up is not a practice that has attained the status of a contract benefit. Otherwise, why did the union attempt to negotiate five-minute wash-ups into the LMOU? You don't ask for a benefit you already have. The specific language of your proposal would probably be characterized as an unachieved demand. In a rights arbitration the arbitrator will not award you a right which was an unachieved demand in local negotiations.

However, you might want to write your current benefits into the LMOU for a variety of reasons. If you so desire, your proposal must clearly state that the proposal is based upon existing benefits.

Sample Proposal Clarifying Existing Benefit

Problem:

Currently all employees receive five minutes of wash-up time before lunch. The LMOU does not spell out this benefit.

Proposal:

The union proposes to spell out the rights of employees to wash-up time, so the LMOU will reflect the parties' understanding on wash-up time.

Should the above proposal not be achieved in negotiations, the proposal should not weaken your case in the event management seeks to restrict wash-up time.

Clarity of Proposals

When entering into local negotiations an important point to remember is that the language of newly negotiated provisions ought to be as clear and precise as possible. "Clear and precise" means that the selected language should accurately reflect the parties' intention of the application of the language.

When parties to a collective bargaining agreement fail to clearly state the application of a contract provision, an impartial arbitrator will be called in to determine the meaning of any ambiguous language. The problem with this is that the parties who negotiated the provision and who were aware of the provision's intended meaning will be left with an uninvolved party, who is unfamiliar

with the background of the negotiation, to decide what the contracting parties intended at the time of negotiations. One of the consequences of failing to clearly state what the contract language means is that both parties can be left with a meaning and application decided by an arbitrator that neither party intended. The result will be that the parties have to wait until the next local contract negotiations to be able to once again attempt arriving at a clear meaning and understanding.

Another concern that the parties ought to take into consideration when negotiating contract language is that if a provision is left with an ambiguous meaning and an arbitrator is asked to determine how the provision should be applied, different arbitrators can give different meanings to the same contract language. Thus, if one arbitrator decides that the language of a provision should be applied one way, it is possible that another arbitrator will apply the language in another way. The bottom line is that locals are thus left with inconsistent decisions interpreting the same provision. An additional side effect of the failure of the parties to negotiate unambiguous terms into their agreement is that the resulting ambiguous language can be a catalyst for an increasing number of disputes.

Guidelines to Consider in Drafting Contract Language

A good source to refer to when entering into contract negotiations is *How Arbitration Works*, 7th Edition, Elkouri & Elkouri (2014). This reference can provide significant guidance on how to be clear and precise in the construction of contract language. This can serve as a means of avoiding the implementation of ambiguous contract language. The following are some general guidelines to consider:

- a) Because arbitrators will normally give words their ordinary and generally accepted meanings, parties to an agreement should specifically state if they intend for certain words or phrases to take on different meanings than would ordinarily be attributed to them. Absent any language indicating that the parties intended for a different meaning to be attributed to the work, arbitrators can use dictionary definitions to clear up ambiguities.

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- b) The collective bargaining agreement will be construed as a whole and arbitrators will construe ambiguous terms to be consistent with the rest of the agreement. If the parties intend for one provision to be an exception to other provisions, the parties should specifically state that intention.
- c) One way of interpreting the contract is that the expression of something in a contract provision will infer that the failure to express something else means that it has been excluded. For example, in Article 30 of the Collective Bargaining Agreement between the American Postal Workers Union and the Postal Service, the parties have specifically enumerated 22 items that are negotiable at the local level and which, if an impasse is reached, will proceed to arbitration. In AIRS Case No. 514, the arbitrator held he did not have jurisdiction to render a decision on the issue of advance notice of overtime since it was not among the 22 enumerated items of Article 30. A similar result was reached in AIRS Case No. 526.

Although the approach of “the expression of one is the exclusion of another” holds in some instances, the outcome of interpreting a provision that expresses some things but not others will in large part depend upon the arbitrator. For example, in AIRS Case No.

13036/37 one arbitrator held, consistent with Arbitrator Mittenthal’s decision in USPS Case Nos. H1C-NA-C 59 and H1N-NA-C-61, the subject of the percentage of employees off during the non-prime time period was not precluded from negotiation even if it was not specifically mentioned as one of the 22 items. The arbitrator’s reasoning was that because the proposal was neither inconsistent with nor did it vary the terms of the National Agreement, coupled with the fact that the parties made offers and counter offers during local negotiations and impasse was reached, the matter at hand was arbitrable.

Because one can’t be certain as to how an arbitrator will decide an ambiguity, the parties should simply remember to have the language of a contract provision reflect their intentions, to the clearest extent possible.



Organize a Record Keeping System

During negotiations you will need to keep track of:

- 1) What items were discussed
- 2) Where the discussion left off
- 3) Current status of each item
- 4) What items are scheduled for discussions and when

You will also need sufficient notes of discussions to tell if management has signaled that certain doors are open or closed. If management has made a concession you will want the type of notes that will keep them from retrieving their concession.

At the conclusion of negotiations, you will need records sufficient to:

- 1) Follow impasse procedures
- 2) Document the intent and meaning of language if a dispute arises
- 3) Help the next negotiating team by providing background material on proposals which may be resubmitted at later negotiations (e.g. management’s reasons for opposing proposal).

It is suggested that one person on your negotiating team take notes and keep records. That person’s only responsibility should be notes and record keeping. A person cannot take good notes if he/she is participating in the discussions.

The note taker should be on the team, knowledgeable about the issues so that important things are not missed. A secretary may well get 90% of all words spoken but not record the substance of what was said. You don’t need a transcript ten volumes thick. You need useful information in short concise form.

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We suggest that the note taker keep:

- 1) An agenda for each negotiation session.
- 2) A set of minutes/notes of each negotiation session.
- 3) A complete set of all union and employer proposals and counter-proposals, with carefully noted dates and times when the proposals were made
- 4) A status or summary sheet for each proposal (See sample sheet on the next page.).



REMEMBER

It is vital that there is a complete record of what happened in each negotiation session in case an item is sent to impasse. The notes from the sessions will be important to help participants in the negotiations recall what was discussed, how it was discussed, and what was presented. This is especially important if one of the negotiators is no longer available to participate or testify at the time of the impasse arbitration.

One of the most important members of the negotiations team will be your note taker. The note taker should be someone who is there exclusively for that task and not a negotiating participant. This allows them to be focused on taking accurate and detailed notes. It would be wise to include the attendance and roles of note takers in your ground rules.

On the following pages there are sample “status” sheets that can be utilized during your local negotiations. Fillable and printable PDFs are available for download at:

<https://apwu.org/local-implementation>

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SAMPLE UNION STATUS SHEET

LOCAL UNION NAME: _____

POSTAL INSTALLATION: _____

UNION PROPOSAL NUMBER: _____ TITLE: _____

INITIAL SUBMISSION DATE: _____ ARTICLE 30 ITEM: _____

UNION COUNTER PROPOSAL DATE(S): _____ NATIONAL AGREEMENT or
_____ HANDBOOK REFERENCES: _____

USPS COUNTER PROPOSAL DATE(S): _____ Article: _____ Section: _____

_____ Article: _____ Section: _____

DATE AGREED/SETTLED: _____ Handbook: _____

DATE WITHDRAWN: _____ LMOU Section: _____

IF UNRESOLVED, LAST DATE OF NEGOTIATIONS ON ITEM: _____

NOTES

DATE: _____ DETAILS: _____

DATE: _____ DETAILS: _____

DATE: _____ DETAILS: _____

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SAMPLE EMPLOYER PROPOSAL STATUS SHEET

LOCAL UNION NAME: _____

POSTAL INSTALLATION: _____

EMPLOYER PROPOSAL NUMBER: _____ TITLE: _____

INITIAL SUBMISSION DATE: _____ ARTICLE 30 ITEM: _____

COUNTER PROPOSAL DATE(S): _____ NATIONAL AGREEMENT or

HANDBOOK REFERENCES: _____

UNION COUNTER PROPOSAL DATE(S): _____ Article: _____ Section: _____

Article: _____ Section: _____

DATE AGREED/SETTLED: _____ Handbook: _____

DATE WITHDRAWN: _____ LMOU Section: _____

IF UNRESOLVED, LAST DATE OF NEGOTIATIONS ON ITEM: _____

NOTES

DATE: _____ DETAILS: _____

DATE: _____ DETAILS: _____

DATE: _____ DETAILS: _____

Setting Ground Rules

Ground rules should be set prior to the start of negotiations. You should include a statement requesting a meeting to set ground rules in your letter notifying management that you intend to negotiate (See page 5.). Keep ground rules simple.

There are various types of rules or procedures you may need to agree upon and follow. Keep in mind - If you don't need a rule, don't write one. (See Sample Rules on page 15-16.)

In order to have successful negotiations the parties need to talk to each other and exchange certain documents. This means you have to set dates, times and places for meetings. As a minimum, the ground rules must provide a meeting to open negotiations and a method for scheduling future meetings. One thing to consider in today's pandemic and electronic environment is whether or not you should include rules for ZOOM type meetings.

Ground rules do not have to be written and signed. However, written ground rules may be advisable depending on your relationship with management.

Locals should note that LMOUs should be negotiated within the period set out for local negotiations. If you negotiate outside the

negotiation period, the LMOU may later be declared to be null and void by the Postal Service. In a national level award, Arbitrator Mittenthal denied a grievance challenging such management action in the case of LMOUs negotiated by the Letter Carriers (USPS Case Nos. H7N-1F-C 39072, H7N-1F-C 39075, H7N-1F-C 39076).

However, note that in AIRS Case No. 27116, a regional arbitrator ruled that an addendum to an LMOU negotiated outside the local negotiations period, which addressed matters relating to a national MOU on Transitional Employees adopted after the negotiations period, was not null and void as argued by the Postal Service. In addition, another regional arbitrator in AIRS Case No. 40728 ruled that a memorandum of understanding entered into outside the local negotiations period, but related to the policy of overtime in the LMOU for the Bulk Mail Dock Clerk Section, could not be unilaterally vacated by management since the MOU was not intended by the parties to be a part of the LMOU at the time it was entered into. Moreover, since the parties understood that the MOU could be renegotiated during the following period of local negotiations and no renegotiation was undertaken during the 1999 or 2002 LMOU periods, the arbitrator ruled that it continued in full force and effect.



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SAMPLE RULES AND PROCEDURES FOR NEGOTIATIONS

Representative of the United States Postal Service and _____ local, American Postal Workers Union, AFL-CIO, agree to conduct joint negotiations for a Local Memorandum of Understanding in accordance with the following procedures

PLACE OF NEGOTIATING SESSIONS:

Negotiations will be held in Room _____, Building _____. Union negotiators will use Room _____ for caucus purposes. The parties may agree to utilizing ZOOM or other similar technology for meetings if necessary. Rules for those types of meetings will be set if it is found necessary to use the technology.

TIME SCHEDULE FOR NEGOTIATING SESSIONS

Negotiations will be conducted (day) through (day) during hours mutually agreed to by the parties. Changes in the time schedule may be made by mutual consent of the Union and Employer spokespersons. The parties agree that the time schedule should be kept flexible to achieve a productive level of negotiations. Negotiations shall commence on (date) at (time).

NEGOTIATING TEAMS

The negotiating team for each party will not exceed a total of _____ negotiators.

A. Negotiators for the parties will be:

Union Spokesperson _____

Members _____

Employer Spokesperson _____

Members _____

B. ALTERNATES. Either party may designate no more than _____ alternate negotiator(s) to serve in place of each regular negotiator. Alternates may be present at all negotiating sessions.

C. CHANGES OF NEGOTIATORS. If either party finds it necessary to change negotiator(s) or alternates, the spokesperson for either party shall notify the spokesperson for the other party of such change.

D. TECHNICIANS. Technicians may attend negotiating sessions at the discretion of either party.

SUBCOMMITTEES

By mutual consent the spokesperson for the parties may establish subcommittees, consisting of an equal number of representatives of each party, which may include negotiators, alternates and technicians. The spokespersons shall determine the purpose, scope, authority and operations of such committees.

RULES OF ORDER

The chief spokesperson for each party may speak at his/her own discretion. The other negotiators and technicians may speak when recognized by their respective chief spokesperson.

Negotiation sessions shall be chaired on an alternating basis by the spokesperson for either party.

ORDER OF BUSINESS

The regular order of business at any negotiating session should be as follows:

- a) Unfinished business from preceding session.
- b) Items on the agenda agreed upon by the parties at the preceding session.
- c) Establishing the agenda for the next session.
- d) Submission of additional proposals or counterproposals.

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RECESS

The spokesperson for either party may call a recess for the purpose of a caucus at any time. Negotiations shall resume upon mutual agreement.

MINUTES

No official minutes of the proceedings of the negotiating session should be made. However, either party should be allowed to prepare unofficial minutes for its own use.

AGREEMENT

When a proposal on a specific issue has been agreed upon, the parties should also agree to the effective date of the proposal, as well as any other factors affecting implementation.

IMPASSES

The 2021 Agreement local implementation period will commence on _____ (date during 60-day period commencing May 23, 2022) and terminate on _____ (no later than July 22, 2022). If issues remain in dispute after the implementation period the parties shall identify the issues in writing and submit initialed copies of all proposals and counterproposals pertaining to the issues in dispute no later than August 12, 2022 to the appropriate management official at the grievance/arbitration processing center, to the Postmaster, the Local Union President and the Union's National Business Agent.

The USPS Area Representative and the Union Regional Representative shall attempt to resolve the matters in dispute within 75-days after the expiration period of the 60-day local implementation period (July 22, 2022) with both representatives having full authority to resolve the issues in dispute. If unable to reach an agreement during the 75-day period, the issues may be appealed to final and binding arbitration by the National Union President or the Vice President, Labor Relations, no later than 21-days after the end of the 75-day period. If no agreement is reached and the matter is not referred to arbitration then the provision(s), if any, of the former LMOU shall apply.

CHANGES IN RULES AND PROCEDURES

After the commencement of negotiations, changes and additions to these rules and procedures for negotiations may be negotiated by the spokespersons for both parties.

MANAGEMENT'S RIGHT TO IMPASSE

Under contracts in effect between 1973 and 1990, if the Postal Service wanted to change or eliminate certain contract language it could bargain to agreement or impasse. Failing agreement, it used to be the union's option whether or not to appeal an impasse to arbitration. The Postal Service could not make an appeal. If the union decided to live with the current LMOU provision, the USPS had no alternative but to do the same. This union-only appeal right (in combination with a union agreement to limit local negotiations to only 22 items) was intended to limit the number of impasses. The last time the USPS had the right to appeal impasses (1971) there were more than 100,000 appeals to arbitration. The union-only appeal worked. It reduced impasse arbitration appeals to a manageable number.

During the 1990 negotiations and impasse arbitration, the USPS made a number of arguments in support of a USPS right to invoke the impasse procedures. Among other things, the USPS argued that a number of LMOU contract provisions had over time become an unreasonable burden on the USPS - but the unions were unwilling to voluntarily agree to a change. The USPS was short on specific examples. However, the Postal Service gave two general examples. First, the USPS contended there were cases where the union and management agreed to a fixed number of employees on vacation each week of the choice vacation period. The Service claimed that the fixed numbers may have been reasonable fifteen years ago when originally negotiated, but the fixed numbers were now an unreasonable

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burden on the USPS given the smaller workforce in an office.

Second, the USPS also gave the example of two or more stations or branches merging into a single building. Under the old LMOU each station was a section. Now in a single building, the USPS claimed it was an unreasonable burden to have to schedule overtime, holidays, etc. in the old separate sections rather than the whole building as a section. Again, it claimed the unions were generally unwilling to make a change.

Despite the shortage of proofs and union concerns about a flood of impasses, Arbitrator Mittenthal granted the Postal Service a “limited” right to impasse. The “limit” on USPS impasses was intended to favor the status quo and prevent a flood of impasses. Therefore, the USPS may only appeal an impasse to arbitration when it can demonstrate that the current LMOU provision imposes an “unreasonable burden” on the Service. Please note that Article 30 of the National Agreement *limits* the Postal Service to the following avenues when attempting to change contract language at the local level:

- 1) By claiming a pre-existing LMOU or provision in the LMOU poses an unreasonable burden, as long as the items challenged are within the list of 22 items in Article 30. In this situation, if the parties at the regional level are unable to reach agreement on the disputed provision(s), then management has the right to invoke the impasse procedure by appealing the dispute to impasse arbitration.
- 2) By challenging local contract (LMOU) language on the grounds that it is inconsistent or in conflict with the National Agreement *only* by making a reasonable claim that the language in the local agreement is inconsistent with *new or amended provisions* of the current National Agreement. In this situation, if management claims a provision of a local agreement is inconsistent or in conflict, and the parties at the regional level are unable to reach agreement on the disputed provision(s), then the union has to invoke the impasse procedure by appealing the dispute to impasse arbitration.

- 3) When installations are consolidated or when a new installation is established, the National Agreement provides that the parties shall conduct local negotiations, and that all proposals remaining in dispute may be submitted to impasse arbitration by either the Postal Service or the APWU. However, in the case of consolidation of installations, where management is seeking to change a provision from a local agreement which applied to one of the prior installations, management has the burden of establishing that continuing the existing provision would represent an unreasonable burden in the consolidated installation. And, where management is seeking a new provision on an item not covered in a previous LMOU of the prior installations, the union should argue that management must show that failure to include the provision it is seeking would result in an unreasonable burden on management.

Burden of Proof/Unreasonable Burden

When the USPS makes an appeal, the threshold question must be: “Can the Postal Service demonstrate that the current LMOU provision has proven to be an unreasonable burden?”

Only if the USPS can prove that the current provision poses an unreasonable burden should there be a hearing on what provision should replace the current provision.

As a preliminary matter at arbitration, the union should argue that there needs to be a threshold finding on whether the pre-existing provision places an unreasonable burden on the Postal Service before considering any USPS proposal to change the provision. This may prevent the arbitrator from being influenced by potential alternative proposals offered by the Postal Service that would change the current LMOU provision. When determining whether or not the continuation of the existing provision would represent an unreasonable burden to the Postal Service, the arbitrator should look at the current provision and look back to the history of the provision to see whether its application has imposed an unreasonable burden. The question before the arbitrator is not whether any USPS proposal is

more efficient, less costly or more reasonable. The question is whether continuation of the existing provision represents an unreasonable burden to the USPS. The “unreasonable burden” test must be met before consideration of any USPS proposal to change a pre-existing provision.

At least one arbitrator has accepted this argument. In AIRS Case No. 21668, the arbitrator ruled that the Postal Service must demonstrate that a current provision is an unreasonable burden before determining what alternative language would be appropriate. The arbitrator refused to consider the Postal Service’s proposal to change the percentage off during the choice vacation period from 14% to 10%. It should be noted, however, that several arbitrators have refused the union’s request to bifurcate a case to consider the argument of unreasonable burden in a first proceeding before considering the merits in a second proceeding (AIRS Case Nos. 20659 and 20493, 20494, and 20495, and 23385).

Failure to Raise Unreasonable Burden during Negotiations

The union should object to any Postal Service evidence or arguments introduced during arbitration that were not raised during negotiations. It should argue that if the Postal Service does not disclose all evidence and arguments during negotiations, it is precluded from submitting this evidence or these arguments during arbitration. The Postal Service may argue that Article 15 of the National Agreement does not apply to impasse arbitration proceedings. Arbitrator Bentz rejected this argument in AIRS Case No. 21365 and stated that this position “not only flies in the face of Section 8(a)(5) of the NLRA but also Article 31, Section 3 of the National Agreement.” He then refused to admit management exhibits on the issue of non-choice vacation on the basis that such documentation was not provided during negotiations.

Also, in AIRS Case No. 21668, Arbitrator Abernathy held that “fundamental fairness” dictates that if the Postal Service had information available at the time of local negotiations, it should have presented such information to the union. He indicated that though he would not refuse to consider such evidence, he would not give it “as great a weight as if it had been presented to the Union earlier in

the procedure.” In addition, Arbitrator Klein declined to issue a ruling on the Postal Service’s unreasonable burden argument since management did not present cost information to support its argument during local negotiations. She said that “Article 15 requires full disclosure by parties, and Management only discussed their unreasonable burden argument in generalities as it pertained to administering the Standard Field Accounting.” (AIRS Case Nos. 26856-58) Another arbitrator ruled that management arguments that a provision was inconsistent and in conflict with the National Agreement were waived because they were never raised until the arbitration proceedings. (AIRS Case No. 27191).

In addition, in AIRS Case No. 48030, an arbitrator dismissed the Postal Service’s impasse appeal on the basis that the case was inarbitrable. The arbitrator found that unrefuted testimony established that “at no time during any negotiation session did the Postal Service claim an unreasonable burden concerning the existing language....” He found that while there were “sidebar discussions,” ... “no arguments, documentation or other evidence was set forth at the bargaining table with all negotiation team members present.” The arbitrator thus concluded that management’s presentation of an unreasonable burden argument “for the first time with its appeal to arbitration are waived.”

Arbitrator Pecklers barred the Postal Service from arguing unreasonable burden in arbitration because “...the Postal Service failed to appeal its Item 13 proposal to arbitration....” (See AIRS Case No. 61805).

Also, see AIRS Case No. 47722 in which an arbitrator found that while it isn’t “clear ... that the full disclosure language in Article 15, Section 2 of the Agreement applies to the local implementation process because Article 30 does not provide for such a requirement,” the JCIM (June 2007) states that “[i]f one party raises one or more listed items, the other must discuss it in good faith.” He stressed that “the spirit and intent of the parties’ Agreement requires full and timely arguments during negotiations for local implementation so that there be no surprises at final and binding arbitration.” (However, see AIRS Case Nos. 21035 and 36126 in which arbitrators rejected the union arguments that the Postal Service could not raise an issue not raised or submit evidence not previously exchanged during local negotiations.)

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The union should then emphasize to the arbitrator that the burden of proving that a pre-existing provision is an unreasonable burden should be squarely placed on the Postal Service. The union should not have to prove that the provision is not an unreasonable burden. The union should then define clearly what unreasonable burden means and what the arbitrator should look for. Arbitration awards on the issue have defined the term and made it clear that this standard, places a heavy burden of proof on the Service. In addition, factual support for the Service's case should be comprehensive and not based on generalities alone.

Definition of Unreasonable Burden

Arbitrators have looked to the definition of "unreasonable" and "burden" as it is found in *Webster's Ninth New Collegiate Dictionary* and in *Black's Law Dictionary*, Fifth Edition.

Webster's defines "unreasonable" as 1.a. not governed by or acting according to reason b: not comfortable to reason: absurd 2: exceeding the bounds of reason or moderation. *Black's* defines "unreasonable" as irrational; foolish; unwise; absurd; silly; preposterous; senseless; stupid; not reasonable; immoderate; exorbitant; capricious; arbitrary; confiscatory. *Webster's* then defines "burden" as 1.a.: something that is carried: load b: duty, responsibility 2: something oppressive or worrisome: encumbrance 3.a: the bearing of a load - usually used in the phrase beast of burden b: capacity for carrying cargo. *Black's* defines "burden" as: Capacity for carrying cargo. Something that is carried. Something oppressive or worrisome. A burden, as on interstate commerce, means anything that imposes either a restrictive or onerous load upon such commerce.

According to one arbitrator, the following criteria have to be applied to determine whether the Service met its burden of proving the existence of an unreasonable burden:

- (A) Does the provision create a substantial obstacle to, or prevent, the Service's accomplishment of its business purpose;
- (B) Does the provision have an inordinate negative impact on the health or safety of postal patrons or employees;
- (C) Does the provision have an undue negative impact on the financial and other resources of the facility or the Service;

- (D) What is the existence, nature, cost, and effectiveness of alternative means, other than the elimination or modification of existing LMOU provisions, of alleviating the alleged Undue Burden;
- (E) What change has occurred, or will occur during the LMOU term, in the operational conditions existing at the time the provision in question was agreed which has contributed, or will contribute, to the creation of the Unreasonable Burden?" (AIRS Case No. 20659)

Another arbitrator defined the appropriate definition of "unreasonable burden" in the context of the case as "something that is borne with an excessive, irrational or immoderate degree of difficulty" (AIRS Case No. 21668). He went on to emphasize that "'unreasonable burden' is clearly more than a mere 'burden'" and "a distinction must be made between a 'burden' imposed by a particular LMOU provision and an 'unreasonable burden.'"

A third arbitrator stated that "[t]he term 'unreasonable burden' is subjective, but any definition would, nonetheless, require demonstration of a substantial impact" (AIRS Case Nos. 20765 and 20766). He continued by saying that "[m]erely being an inconvenience would not be an unreasonable burden. Nor would some additional costs, slight delay in mail processing - dispatching and modest overtime satisfy the test." Also see AIRS Case No. 33542 for similar reasoning.

According to another arbitrator, "an appropriate definition of 'unreasonable burden' clearly requires more than just evidence that a 'burden exists, otherwise the word 'unreasonable' would not have been included in Section F of Article 30" (AIRS Case No. 22499). Also see AIRS Case No. 32509 for similar reasoning.

The union's argument that an unreasonable burden does not mean a "mere 'difficulty' or 'complication,'" was accepted by an arbitrator. He said that in order to change an item of an LMOU, "[t]he Service must show that the challenged LMOU provision constitutes an immoderate or exorbitant imposition, which reason cannot justify or excuse" (AIRS Case No. 20748).

Another arbitrator stressed that the burden of proof "lies with the Postal Service, under the clear new language of the National Agreement." He went on to say that "[n]either the Union, nor

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the Arbitrator in this interest arbitration, must establish that the existing provision is 'reasonable'... rather the union may simply argue it is not an "unreasonable burden," if the Employer has made at least some plausible arguments supportive of that assertion" (AIRS Case No. 20725). Also see AIRS Case No. 20724.

In addition, an arbitrator stated that in order to evaluate arguments under the unreasonable burden test, "it is not enough for the Agency to establish its proposed change is more meritorious than the existing language." Moreover, according to this arbitrator, "[n]or can the Agency meet the Section 30.F test by simply demonstrating that the present LMOU is burdensome in some fashion." "Instead," he said, "it must show not only that a burden is created, but that it is unreasonable" (AIRS Case Nos. 27697-98).

Another arbitrator said that since the language of the National Agreement does not afford an arbitrator "a definitive objective standard" regarding what constitutes an unreasonable burden, "the effect of Article 30 F is to favor the existing local contractual arrangements between the parties unless it can be shown that any such arrangement imposes an unreasonable burden upon the Employer." In addition, he stated that under Article 30.F of the National Agreement, "the Service must prove not only that a provision entails some burden, inefficiency or delay, but that the extent or nature of the burden is unreasonable" (AIRS Case No. 28291-92).

In a case in which the Postal Service was again challenging a provision that it had agreed to remain by virtue of prior settlements of impasse disputes, an arbitrator stated that these prior settlements must be considered to place "an even greater burden" on the Postal Service. "Because it has settled impasse disputes in the past and agreed to the current language which it now disputes, in order to prevail on the unreasonable burden question, the Service will have to demonstrate substantial facts that something has significantly changed since the last round of local negotiations which can now be considered as causing an unreasonable burden" (AIRS Case Nos. 27543 and 28327).

Postal Service Arguments

In making its case, the Postal Service will argue that every obligation is a burden and it only

has to prove that a provision is not fair rather than unreasonable. In addition, it may argue that the provision has a negative impact on service standards or a negative impact on the facilities' overall operations. It also may contend that there is a financial burden to the Postal Service, as measured by out-of-schedule overtime, night differential or other costs. It may assert that there is an administrative burden because overly cumbersome procedures make it difficult to comply with the contract. In addition, it may argue that anticipated changes will affect administration of the current provision or that changes have already affected administration of the provision. Only a few arbitrators have determined that the Postal Service met its burden of proving that an unreasonable burden existed (See AIRS Case Nos. 20730 and 20945 - provisions deleted because of administrative burdens they would have created; #20574 - provision deleted because clear financial burden was proven; #20548 -provision deleted because of demonstrated proof of reductions in staffing; #20380 - provision deleted because of proof that 40% or more of tractor-trailer operators have taken vacation during two pay periods; #20378 - provision deleted because of need to change from absolute number of employees off to percentage off; #20726 -provision deleted because it is inconsistent and in conflict with Agreement and therefore an unreasonable burden; #21258 -provision deleted because of need to comply with federal clean air act law; #20764 -provision deleted because of excessive cost; #26898 - provision deleted because it is inconsistent and in conflict with Agreement and due to unreasonable cost of two four minute wash-up periods daily; #26637 -provision deleted because of unreasonable administrative burden; #26724 - management's proposal to change existing provision because of unreasonable burden accepted by arbitrator).

Union Responses

Most arbitrators have rejected the above arguments for the following reasons:

- **An unreasonable burden is not just any burden**

One arbitrator ruled that even though the Service's case suggested that a pre-existing provision presented a burden, it was a burden "for which it has solutions." He said that the Service "may prefer to avoid any burden

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entirely but that is not enough to satisfy the contractual standard” (AIRS Case No. 20796).

Another arbitrator indicated that an unreasonable burden is a “heavy burden” and not the “normal” burden of showing a contract provision is burdensome or expensive or inconvenient.” He said that “it is closer to the burden of showing that a contract provision makes management of the operational nearly impossible” and “assumes that the Union and the employees gave up something to achieve a contract provision and should not be required to give up that negotiated gain except through negotiation -- unless conditions so change or implementation of the provision so changes that its continuation threatens the efficiency and profitability of the operation itself.” (AIRS Case No. 42763).

A third arbitrator has rejected management’s contention that fixed permanent and temporary light duty assignments for the Clerk Craft set at 12 assignments for Tour 1, 4 assignments for Tour 2 and 8 assignments for Tour 3 constituted an unreasonable burden. Evidence that new machinery reduced the number of positions on all tours and volumes processed on the Manual Primary Line where light duty employees are generally placed merely proved that management was inconvenienced, not that it was “severely taxed” by the required number of reserved assignments or prevented from maintaining efficiency of operations (AIRS Case No. 38738).

- **Provisions which affect management rights are not per se unreasonable burdens**

The Postal Service’s argument, that language in an LMOU which constrains management’s exclusive rights is, *per se*, an unreasonable burden, has been rejected. One arbitrator said that Article 3 gives the Postal Service “exclusive rights *subject to the provisions of this Agreement*.” Thus, rights “may be diminished or constrained where the Employer so agrees” as it did when it agreed to a pre-existing provision (AIRS Case No. 20722).

Management’s assertion, that “any limit on its discretion in assigning or scheduling PTF’s is an unreasonable burden” was rejected. The arbitrator ruled, that given permissive language in the memorandum stating that “[t]otal working hours within a pay period for part-time flexible clerks shall be as nearly equal as possible”, this provision did not constitute “an *unreasonable*

burden.” He went on to state that there were only six PTFs in the facility and during the ten years the item was in the LMOU, the parties experienced disputes on only three occasions and managed to resolve their differences on every occasion except one (AIRS Case No. 20379).

- **Proof of plan failure must be for more than an isolated period**

One arbitrator ruled that the Postal Service had not met its burden of proof that allowing 15% of each tour to be off during the choice vacation period constituted an unreasonable burden. He said that “evidence of one isolated period of plan failures during a one-week period in March 1991” was “just not enough evidence to support the unreasonable burden standard of proof which the National Agreement specifies” (AIRS Case Nos. 20493, 20494, and 20495).

- **Proof of future impact on facility should not be speculative**

One arbitrator said that management had not proven that a provision allowing 15% of employees per section to obtain vacation during the choice vacation period and limiting the period of choice vacation to 18 weeks constituted an unreasonable burden. He indicated that “[a] substantial element of the Service’s case concerned the future impact that automation may have within the facility.” “It may very well be that the two items the Service now seeks to modify in the LMOU will, after automation, place an unreasonable burden on their operation of the facility, but at this stage anything in this area is speculative” (AIRS Case Nos. 20765 and 20766).

Another arbitrator held that the Postal Service had not proven that an unreasonable burden existed due to a provision allowing that leave during the choice vacation period shall be by tour. He indicated that the Service had not proven that excessive overtime was used to fill manpower needs in the maintenance craft. In addition, the argument that increased automation in the Postal facility would increase demand for skills of the Electronic Technicians and Equipment Mechanics was “speculation” (AIRS Case No. 20929).

A third arbitrator ruled that the Postal Service failed to sustain its burden of showing that short notice leave requests or requests made less than a week before leave is taken,

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with the exception of same-day leave requests, constituted an unreasonable burden. He found that testimony of Postal Service witnesses, which failed to document specific problems with other than same day leave requests was “too general and speculative to meet the burden of proof” (AIRS Case No. 20722).

A fourth arbitrator refused to credit the Postal Service’s argument that projected automation, in the event the post office received a DBCS, was sufficient to prove the existence of an unreasonable burden in the case of a provision setting up sections for reassignment within an installation of employees excess to the needs of a section. He found that there wasn’t evidence that “tentatively-scheduled automation is certain to occur.” He continued that “[e]ven assuming arguendo that the DBCS would produce the unreasonable burden Management urges, it is very difficult to see how that burden would arise until the plans for the equipment become more definite” (AIRS Case No. 22010).

A fifth arbitrator rejected management’s assertion that anticipated staff reductions due to automation required modifying a provision allowing three clerks to be granted leave during the 22 weeks of the choice vacation period. He found that “[t]he problem as presented is that the exact facts of the reductions are anticipated but not certain” (AIRS Case No. 20658).

A sixth arbitrator found that the Postal Service failed to identify when automation or operational changes would actually occur, and thus did not prove that a leave provision which allowed a set percentage of 12% off during February through September, and 8% during October and November, for other than choice vacation periods constituted an unreasonable burden (AIRS Case No. 20726).

- **Cost considerations alone are insufficient**

An arbitrator held that the Postal Service did not establish that a provision allowing five minutes of wash-up time before lunch, as needed, and before the end of a tour of duty, as needed, to clerks, special delivery and maintenance craft employees was an unreasonable burden. The Postal Service merely presented cost data showing that 60 clerks use the equivalent of 10 hours per day at the straight-time rate for wash-up and that 60% of that time is being used for nonproductive purposes. He said that paid time for wash-up

can be viewed in a manner similar to breaks, sick leave and annual leave in that the Postal Service can handle any abuse or misuse of wash-up time through the disciplinary procedure. He found that the Postal Service did not demonstrate that it had taken any alternative measures to handle abuses, and therefore had not produced sufficient evidence to establish that an unreasonable burden existed (AIRS Case Nos. 22498 and 22499).

Another arbitrator ruled that the Postal Service’s claim, that a provision allowing five minutes of wash-up time for clerks both before lunch and at the end of a tour was an unreasonable burden, lacked support in the record. He indicated that the only evidence presented by management was that a substantial cost was involved since clerks receive 1354 hours of wash-up time per week which allegedly amounts to \$1,625,076 per year. The arbitrator found that it was significant that the fixed time for wash-up had been in effect for approximately 30 years. “To now argue that the wash-up time in effect well before 1970 represents an unreasonable cost burden on Management is not convincing,” he concluded (AIRS Case No. 32504).

The Postal Service’s argument that an overtime pecking order that required the use of ODL employees before part-time flexible and supplemental employees was costly because of unnecessary funds used on penalty overtime, was not found to be sufficient to prove the existence of an unreasonable burden. The arbitrator found that though management provided some evidence on overtime usage, it did not show how its costs would be affected if the pecking order were not in place. In addition, he indicated that evidence comparing overtime costs at this facility and other facilities that do not use an overtime pecking order was not persuasive since the facilities relied upon were not comparable in number of employees involved and mail volume (AIRS Case No. 32116).

- **General arguments rather than proof are insufficient**

The Postal Service’s general argument that the elimination of a holiday pecking order which allowed full-time regular volunteers to be worked before casuals or part-time flexible employees, would result in cost savings is insufficient. It contended that it needed the flexibility that greater use of casuals and PTFs could provide,

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and that scheme knowledge is no longer needed so that casuals are qualified to operate automated equipment. An arbitrator said that “in the absence of any data whatsoever which indicates what work was done, and by whom, how steady the volume of work was, whether the particular operations in question on the holidays were in fact of the nature that the PTFs or casuals could have performed them at a level such that there would be some clear cost savings, so that the continuation of the existing practice does in fact present a cost burden to the Employer which is of such magnitude as to be ‘unreasonable,’ no such finding can be made” (AIRS Case No. 20724). See also AIRS Case No. 20725.

A second arbitrator found that an argument that elimination of a holiday pecking order that allowed full-time regular volunteers to be worked before casuals or part-time flexibles, was not supported by sufficient evidence. He cited the fact that there was no documentary evidence to support a postmaster’s general claim that it was inefficient to have to accept a full-time volunteer who must be guaranteed eight hours when there is not that much work available (AIRS Case No. 20572).

Another arbitrator ruled that the Service had not met its burden of proving that a schedule allowing both fixed and rotating days off constituted an unreasonable burden. He stressed that “in the absence of any concrete evidence indicating substantial loss or efficiency or cost containment that would be produced by rotating days off, we are left with no more than speculation as to the resulting impact of the schedule that has never been experienced at this Post office” (AIRS Case No. 21048).

A fourth arbitrator ruled that the Postal Service’s evidence in support of its argument that a provision allowing non-choice vacation in certain set percentages was an unreasonable burden “was vague and not specific.” He found that the Postal Service failed to show that not including extended absences on sick leave, jury duty, military leave and LWOP in arriving at the percentages had resulted in specific “instances where difficulties were experienced in the past.” He indicated that the Service failed to provide evidence of plan failures, and other than one example, failed to provide “specific evidence” of excessive overtime attributed to extended sick leave, jury duty, military leave or LWOP (AIRS Case No. 20726).

A fifth arbitrator found that the Postal Service had not met its burden of proving that a

day-to-day seniority provision that was implemented as a result of a prior arbitration decision represented an unreasonable burden. He stressed that to make an unreasonable burden argument sufficient to nullify a proposal that was upheld by a prior arbitrator, the Postal Service must “clearly and convincingly show that the implementation has created such an unreasonable burden.” In this case, however, he found that testimony by one management official using a hypothetical example to show why this language resulted in a burden was “primarily based on supposition” and “little, if any, quantitative data [was] submitted. ...” The arbitrator stressed that “it is incumbent upon the Postal Service to show by actual illustrative situations of why this has caused such an unreasonable burden” (AIRS Case No. 27016).

Another arbitrator ruled that the Service had not met its burden of proving that changing the smaller administrative groupings for vacation usage purposes to larger “occupational groups” represented an unreasonable burden. Though he found that management’s proposal presented a reasonable approach to determining leave usage, the Postal Service had failed to show that existing leave groups created “excessive overtime, operational difficulties or other adverse consequences” (AIRS Case Nos. 27697-98).

A seventh arbitrator found that the Postal Service failed to provide “any objective evidence” of a burden imposed by an annual leave provision allowing two employees to be off during the month of August at a particular facility. The provision, without this section, would only allow one employee to be off at any time on annual leave. The arbitrator found that instead of “offering plausible estimates and analysis based on related existing data and from experience from its other operations,” all that the Postal Service presented “is a general observation about the type of problem that would result if two Clerks were off on leave simultaneously. ...” He indicated that this “falls short of proof of ‘unreasonable burden’” (AIRS Case Nos. 28291-92).

Another arbitrator ruled that the Postal Service failed to prove that an unreasonable burden existed because of a contract provision allowing 15% of employees to be off during the choice vacation period, with a minimum of one employee off per section, and the vacation calendar to remain open until it was filled by the allotted percentage. He found that the provisions had been in effect for 14 years and

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the Postal Service merely provided “anecdotal” evidence rather than “statistical information” to document the additional cost or disruption in getting out the mail as a result of alleged changed conditions (AIRS Case No. 38602).

A ninth arbitrator determined that a provision allowing for incidental leave of less than eight hours after consideration of the operational needs of a “given section”, did not constitute an unreasonable burden. The arbitrator found no merit in management’s argument that requiring incidental leave to be granted without considering the needs of service in other sections of the installation, could result in plan failures. He relied on the fact that management hadn’t shown that a single incident of plan failure was “directly attributable to the fact that it was compelled to grant incidental AL to one section when work remained in Manual Operations.” The arbitrator further concluded that management’s contention was “speculative” and though the provision may have created an “inconvenience” it did not create an unreasonable burden (AIRS Case No. 37376).

Another arbitrator rejected a management proposal to change an incidental leave provision to require that incidental leave on a day-to-day basis be calculated on the basis of the agreed upon percentage taking into account the “daily complement” within a section. The existing provision provided for calculation on the basis of the employee complement within a section as of February of every new leave year. Management maintained that such language didn’t account for daily fluctuations in staffing, and provided testimony relating to insufficient staffing on weekends in the FSM area and on Tour 2 as a result of the provision. The arbitrator ruled that the Postal Service failed to meet its burden of proving that the current contract provision resulted in an unreasonable burden since it didn’t offer evidence that continuation of the existing leave provision affected management in other sections on other tours (AIRS Case No. 42673).

An award upheld a pre-existing provision, setting up guarantees once overtime hours are scheduled, a “desire to be bypassed” policy, and payment to employees on the ODL if they do not remain on the list and their hours are below the list average by 10%. The arbitrator rejected management’s argument that the provision, which had been in effect since 1993, resulted in an unreasonable burden. The only evidence in support of this claim was that flexibility would be affected if overtime hours were guaranteed

when scheduled and it was difficult to find someone to work since management allegedly had to go through the entire overtime desired list, not just by tour, before it could require an employee to work overtime. The arbitrator found that a document prepared by management merely showed “assumed actions and potential costs, not actual costs that have been incurred” and therefore does not prove that an unreasonable burden existed. He noted also that there was testimony that until the impasse arbitration, there had never been a grievance by the union (AIRS Case No. 39064).

Also, another award found that an LMOU that contained a consolidated overtime desired list covering two facilities located 15 miles apart did not conflict with the National Agreement or constitute an unreasonable burden to management. The arbitrator determined that there is nothing in the National Agreement that precludes one consolidated overtime desired list being shared by two locations. In addition, he determined that although this arrangement may be inconvenient for the Postal Service, it has been working for many years at these facilities and therefore the Postal Service did not meet its burden of proving that the consolidated list created an unreasonable burden (AIRS Case No. 40182).

An arbitrator concluded that management did not demonstrate that continuing to grant a parking space to the senior clerk in a post office constituted an unreasonable burden. A management official testified that retaining the space resulted in insufficient space for customer parking, drop shipments, a snow plow and current delivery vehicles driven by carriers because they had become larger. The arbitrator found that her testimony was unsupported by “empirical evidence” or “hard facts that any of these issues have become problematic in the past” (AIRS Case No. 40703).

- **Grievance activity over pre-existing provision is not necessarily proof of unreasonable burden**

An arbitrator ruled that three grievances over a provision providing for equalization of PTF hours were not excessive enough to consider their impact as constituting an unreasonable burden (AIRS Case No. 20379).

Another arbitrator rejected management’s argument that numbers of light duty positions identified in the LMOU need to be reduced

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because of changed circumstances and grievances that would result from a suggestion of “employee rights” that do not exist (AIRS Case No. 21928). But, see the same arbitrator’s decision as to items 14 and 18 (overtime and reassignment) where he finds that pre-existing provisions constitute an unreasonable burden of financial liability, as well as liability in “increased grievance activity” and administrative burdens.

An arbitrator upheld a provision that an employee may request appropriate leave and should not be disciplined solely because of requesting leave during conditions when a traveler’s advisory exists. He rejected management’s argument that an unreasonable burden existed because employees perceived this provision as a method to receive administrative leave when it was not warranted and would file grievances. The arbitrator indicated that management has the right to deny a request for administrative leave and merely because there are grievances filed when administrative leave is rejected did not mean that an undue burden was created (AIRS Case No. 27191).

- **Inconvenience due to administrative changes does not constitute an unreasonable burden**

An arbitrator ruled that retaining a holiday scheduling provision that provided that full-time or part-time regular employees shall not be required to work on a holiday or day designated as such, unless all casuals and part-time flexibles are utilized to the maximum extent possible, even if the payment of overtime is required and unless all full-time and part-time regulars with the needed skills who wish to work on the holiday have been afforded the opportunity to do so, did not constitute an unreasonable burden. He held that the provision may result in “certain inconveniences and there was certain evidence presented concerning the requirement that at least the senior non-volunteer regular in each section, on each day, will not be required to work on a holiday or day designated holiday.” He continued that “certain prior planning and training should obviate any problems created by that type of provision” and “periodic inconveniences do not amount to ‘unreasonable burdens’” (AIRS Case No. 23385).

An arbitrator denied a Postal Service proposal to delete a provision requiring that

temporary assignments of full-time employees be done by juniority, according to required skills. The Service asserted that the provision unduly restricted its flexibility and impaired its efficiency. The arbitrator ruled that though some care must be exercised by both regular supervisors and 204Bs to ensure that they are in compliance with contractual requirements, “it cannot be said that the need to be aware of seniority lists or recent assignments creates an undue burden on these individuals” (AIRS Case No. 26726).

A third arbitrator rejected the Postal Service’s proposal to replace a multiple overtime desired list provision that set up five lists and a pecking order to follow since the existing provision did not represent an unreasonable burden. He found that management contentions, that administration of the item was burdensome because during the last three years grievances have caused the payment of \$2,709.09 plus 98 1/4 hours of makeup overtime, were not persuasive. He determined that grievance settlement costs “can hardly be deemed excessive” and the provision only resulted in a “minor administrative annoyance, not an unreasonable burden” (AIRS Case No. 32505).

A fourth arbitrator accepted a union’s proposal to add to Reposting – Clerk Craft “4. A change in the Principal Assignment Area, as listed on posted duty assignment” was accepted by an arbitrator. He rejected management’s arguments that the proposal was in conflict with management rights under Article 3 of the National Agreement and that it constituted an unreasonable burden. Management cited the administrative costs of reposting. He said that the record failed to show that the process was “any more burdensome than when reposting occurs for other reasons.” (AIRS Case No. 47722).

- **Flawed survey results cannot support finding of unreasonable burden**

An arbitrator ruled that the Postal Service did not meet its burden of proving that a provision allowing for wash-up time constituted an unreasonable burden. He found that the Service’s evidence, a wash-up time survey, was “so flawed” in “design, universe, and methods of data collection” that he could not “in good conscience give any validity to its results” (AIRS Case No. 21117).

- **Failure to prove that provision constituted direct cause of inefficient operations or increased costs**

An arbitrator ruled that the Service failed to prove the existence of an unreasonable burden due to leave provisions which did not count employees on union activities, on military leave, on jury duty, or attending state or national conventions as part of the number to be allowed annual leave during choice vacation periods and which did not permit management to count known or scheduled sick leave, LWOP or COP covering an entire day or week, vacancies created by retirement or termination of employment, court leave, and suspensions against allowable leave during the choice vacation period. The Service relied solely on evidence that there was a problem of delayed mail at the facility. The arbitrator held that there was “no showing that the annual leave provisions in issue have caused or even been a major contributing factor to the delay in mail ...” (AIRS Case No. 20561).

Another arbitrator held that an incidental leave provision allowing 15% off did not constitute an unreasonable burden. He held that there was a failure by the Postal Service to establish a “nexus between the 15% cap and delayed mail or [use of] overtime” (AIRS Case No. 21365). However, this arbitrator ruled that the Service had met its burden of proof with respect to same day leave requests. He ordered that the LMOU be amended to require that “same day leave requests that are not submitted within two hours of the employee’s reporting time will not be guaranteed and may be approved or disapproved based upon operational needs.”

A third arbitrator determined that the Postal Service did not show that an unreasonable burden existed due to a requirement that fractions be rounded upward for purposes of computing the guaranteed minimum percentage of employees to be allowed off on annual leave and the failure to require that FMLA leave and Dependent Care Sick Leave be included in calculations of that percentage. He indicated that he saw “no established correlation between the Service’s obligation to abide by the terms of ... [these items in the LMOU] and “the operational problems the Service claims it will experience if it is required to abide by those provisions. ...” (AIRS Case No. 26726).

“IN CONFLICT” CHALLENGES

Before the 2000 Agreement went into effect, one of the Postal Service’s main arguments against carryover or changes in Local Memoranda of Understanding had been that the provisions involved were in conflict and inconsistent with the National Agreement. Moreover, the Postal Service had often declared provisions of a local agreement null and void, claiming that the provisions were in conflict with the National Agreement. During contract negotiations for the 2000 National Agreement, one of the APWU’s main objectives was to negotiate protection for locals against such unilateral action by management. In the national contract arbitration award, APWU succeeded in obtaining significant restrictions on management’s right to challenge locally-negotiated contract language.

Under Article 30 of the National Agreement, local management may challenge local contract language on the grounds that it is inconsistent or in conflict with the National Agreement only by making a reasonable claim that the language in the local agreement is inconsistent or in conflict with new or amended provisions of the current National Agreement. This means that local management may only challenge an existing local provision on the grounds that it is inconsistent or in conflict with the National Agreement by making a reasonable claim that the provision in dispute is inconsistent or in conflict with provisions of the 2010 National Agreement that are different from the 2006 National Agreement, or with language that was amended after the 2006 Agreement went into effect. Therefore, for example, local management cannot challenge local wash-up provisions as being inconsistent or in conflict with the National Agreement since there have been no changes in the wash-up provisions of the National Agreement. Also, management cannot merely claim that an existing provision is in conflict and inconsistent with the National Agreement, but must also meet the higher standard of establishing that its claim is reasonable.

Moreover, these provisions also restrict local management’s opportunity to challenge provisions of a local agreement on the grounds that the language is inconsistent or in conflict with the National Agreement to the local implementation period. The only exception is when there has been a mid-term change in the National Agreement and in that case, local

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management may challenge a local agreement subsequent to the local implementation period by making a reasonable claim that the memorandum of understanding is inconsistent or in conflict with the changed provisions of the National Agreement. Article 30 further provides that items management declares inconsistent or in conflict with the National Agreement shall remain in effect until four months after the conclusion of local negotiations, or the date of an arbitrator's award dealing with management's challenge, whichever is sooner (or if there is a mid-term change in the agreement, 120 days from the date the union receives written notice of a challenge on the grounds that the language is inconsistent or in conflict).

In addition, "if local management refuses to abide by a local memorandum of understanding on inconsistent or in conflict grounds, and an arbitrator subsequently finds that local management had no reasonable basis for its claim, the arbitrator is empowered to issue an appropriate remedy." Though arbitrators have always been empowered to award an appropriate remedy, some arbitrators fail to take into account the unreasonableness of management's actions when they issue a remedy. Under Article 30, local management cannot simply claim that an item is inconsistent or in conflict, it has the burden of establishing that its claim is reasonable. This sets up a higher standard that management must meet. According to *Black's Law Dictionary*, Seventh Edition (1999), reasonable means "fair, proper or moderate under the circumstances." In addition, *Webster's Third New International Dictionary* (1986) defines reasonable as "having the faculty of reason: RATIONAL" and "possessing good sound judgment: well balanced: SENSIBLE." Thus, if local management refuses to abide by a disputed local provision (after the four-month period following local negotiations or a mid-term change in the National Agreement), and fails to meet its burden of showing that its claim of inconsistency is well-founded, under Article 30, an appropriate remedy should be granted.

Inconsistency Challenge Is Limited

As a result of these changes in Article 30, the Postal Service may no longer rely on Arbitrator Mittenenthal's national level decision in #H1C-NA-C 25 (AIRS Case No. 3857, August 1984). In that decision, the arbitrator denied the national union's

grievance in which the APWU contended that the Postal Service could not challenge any provision previously agreed to in local negotiations, unless a change in the National Agreement placed the pre-existing local agreement in conflict. Mittenenthal disagreed and held that the Postal Service could continue to challenge local provisions in conflict with the National Agreement. Given the current language of the National Agreement, arbitrators may no longer rely on this decision to find that the Service has the right to unilaterally cease abiding by LMOU provisions that it declares to be inconsistent and in conflict and that requested monetary remedies do not have to be considered because of such actions. An award in AIRS Case No. 35563, in which a local union filed grievances due to the Postal Service's unilateral decision to not comply with LMOU wash-up provisions and sought remedies to make the grievants whole, would be decided differently under the 2010 National Agreement. In addition, in another decision in AIRS Case No. 39103 an arbitrator rejected management's argument to delete an existing LMOU's provision requiring that full and part-time regular volunteers be scheduled to work a holiday ahead of casual and part-time flexible employees on the basis that the provision was inconsistent and in conflict with Article 11.6 of the National Agreement. The arbitrator ruled that since there was no showing that Article 11.6 had been amended subsequent to the effective date of the previous agreement, Article 30.C precludes the Postal Service from arguing that the Item 13 language, which has been included in the LMOU between the Parties for more than ten (10) years, is inconsistent or in conflict with the National Agreement.

Opposing "In Conflict" Challenges

If the Postal Service makes a reasonable claim that a local union's proposal for a change in existing language of its LMOU is inconsistent or in conflict with the 2021 National Agreement or an existing provision in an LMOU is inconsistent or in conflict with language of the 2021 National Agreement that is different from the 2018 Agreement, an impasse arbitrator may determine that the proposal or existing provision isn't valid. In order to prepare for such challenges, several factors should be considered:

- 1) The wording of the proposal or provision. Can it be read so that it corresponds with language in the 2021 National Agreement?

- 2) The application of the proposal or provision. In situations where the proposal or provision might apply, can it be applied without conflicting with a provision of the 2021 National Agreement? The more flexible provisions (i.e., normally, where practicable, etc.) survive this test much better than provisions that would not allow any deviation. In situations where the provision is being carried over from a previous LMOU it is important to show how past application was consistent with relevant provisions of the National Agreement and such provisions have not changed in the 2021 National Agreement.
- 3) The documentation to support a proposal or provision. This would include the past practices of the parties, among other things.
- 4) The particular provision of the National Agreement that allegedly is inconsistent with a pre-existing provision of the LMOU. Has National Agreement language actually been changed since 2010 and does it amount to a substantive change that would influence an arbitrator to delete the current LMOU language?

When “tradeoffs” are made during negotiations, these “tradeoffs” should be documented so that the USPS does not come back and argue that the agreed-upon provision is inconsistent or in conflict with the National Agreement. If the agreed-to provision is found inconsistent or in conflict during an interest arbitration, it will be lost and the provision that was traded off may also be lost. By documenting tradeoffs, however, you may persuade an arbitrator to rule in your favor. Also, it is clear that the mere fact that a proposal for “day-to-day seniority” or “wash-up” or a provision concerning these items in a particular LMOU may be found to be in conflict during impasse arbitration does not mean that similar proposals or provisions in another LMOU will be challenged and subsequently overturned. For example, Arbitrator Garrett declared a “day-to-day seniority” provision in conflict in AIRS Case Nos. 145 and 812 but upheld a provision calling for normal movement by seniority in AIRS Case No. 124.

Management Rights Argument

The Postal Service must point to a specific provision of the National Agreement which is violated or contravened by a proposal or a local memorandum provision to establish that the provision is in conflict or inconsistent with the 2021 National Agreement. However, the Postal Service will not be successful in arguing that provisions of local memoranda are in conflict or inconsistent with the 2021 National Agreement merely because they restrict management’s discretion in contravention of Article 3 of the National Agreement. Several national level cases reject this position.

In a national level award (USPS Case Nos. H1C-NA-C 59 and 61; AIRS Case No. 6931), Arbitrator Mittenthal overruled the USPS position that LMOU clauses (giving employees a right to “incidental leave”) were “inconsistent or in conflict with ...” Article 3 because they encroached upon the USPS’s “exclusive right” to “maintain the efficiency of the operations entrusted to it.” The USPS asserted that these LMOU clauses undermined efficiency by requiring management to grant certain leave requests, which in terms of certain cost/productivity factors, might have been denied. Mittenthal, ruling against this USPS position, stressed that “Article 3 rights are not absolute” and “are subject to the provisions of this [National] Agreement...”, in this case, the terms of Article 10, Sections 3 and 4 and Article 30.B.4. contemplate that local parties shall negotiate LMOU clauses regarding formulation of [a] local leave program. Mittenthal concluded that “when the local parties do what they are expressly authorized to do the resultant LMOU clauses can hardly be said to be inconsistent or in conflict with ...” Article 3.

In another national award (USPS Case Nos. H8N-5L-C 10418 or N8-W-0406; AIRS Case No. 22), Arbitrator Mittenthal rejected the USPS contention that a clause limiting relabeling work to particular employees was a violation of the management rights provision. The arbitrator emphasized that the exclusive right granted by Article 3 did not prevent management from contracting with the local union to limit assignment of particular work to particular employees. He reasoned that management’s argument assumed that it had no “right” to agree to the clause. However, “[o]ne who holds an exclusive right’ has a wide variety of options,” according to the arbitrator. Its decision to agree to such a clause “was simply one of the options

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available to it” and therefore “it can hardly be considered ‘inconsistent or in conflict with’ Article III rights,” Mittenthal said.

Outside Scope of 22 Items

The Postal Service might assert that any provision which is not within the scope of the twenty-two (22) items listed in Article 30 is in conflict or inconsistent with the National Agreement. However, the national arbitration award by Arbitrator Mittenthal in USPS Case No. H8N-5L-C 10418 or N8-W-0406 (AIRS Case No. 22) establishes that provisions are not in conflict or inconsistent with the National Agreement merely because they are outside the scope of the 22 mandatory subjects of bargaining listed in Article 30. Accordingly, locals should feel free to bargain for any appropriate provision, bearing in mind that:

- (1) If it is not within the scope of the twenty-two (22) items listed in Article 30, the union may seek agreement but the Postal Service may refuse to bargain about it; and
- (2) No provision which violates the 2021 National Agreement will be upheld regardless of whether it is included on the list of twenty-two (22) items.

Res Judicata

In the past, the Postal Service challenged pre-existing provisions on the ground of inconsistency even though they had been upheld in prior arbitration decisions. Although the language of Article 30 limits the Postal Service to challenging pre-existing provisions that are inconsistent with new or amended provisions of the 2021 National Agreement and should prevent continuous challenges to the same provision, there could be instances in which an arbitration award is issued in impasse proceedings on a pre-existing condition and the same matter might be the subject of rights arbitration on the issue of enforceability of the existing provision. Also, there could be occasions when management claims a second time that a pre-existing provision constitutes an unreasonable burden after this issue has been decided in prior impasse proceedings. Two regional arbitrators have ruled that the Postal Service was barred from challenging provisions on the basis of inconsistency because they were upheld by a prior arbitration award (AIRS Case No. 27016 and 33803). The arbitrators

reasoned that the legal principle of res judicata applied in these cases to make the prior rulings binding because they involved identical language, parties, the same postal facilities, and the same facts and claims as the current cases.

IMPASSES

IMPASSE EVALUATION

There are a number of very broad questions that a local must examine in deciding whether or not to impasse a particular proposal or item. It is important that a careful decision be made to avoid the uncertainties and the delay caused by an extended impasse dispute.

It is particularly important to make a good decision if management has offered a counterproposal that represents some improvement if not everything you want.

Can The Dispute Be Impassed?

There are four categories of items that can be impassed.

- 1) Union proposals attempting to establish or change anything with respect to the twenty-two (22) items listed in Article 30.
- 2) Any LMOU item within the list of twenty-two (22) which management refuses to carryover without change claiming it is in conflict or inconsistent with new or amended provisions of the 2021 National Agreement.
- 3) Any presently effective LMOU items within the twenty-two (22) items which the Postal Service asserts to be an unreasonable burden to the USPS. (Note that the Postal Service cannot impasse an item outside the twenty-two (22) items. See Arbitrator Mittenthal's award in USPS Case No. HOC-NA-C 3, AIRS Case No. 21683).
- 4) Any LMOU provision outside of the 22 items which management refuses to carryover on the grounds that it is in conflict or inconsistent with the new or amended provisions of the 2021 National Agreement.

One broad category of proposals that cannot be sent through the impasse procedure are new proposals (not carry-over items) or sections of new proposals that go beyond the scope of the twenty-two (22) items listed in Article 30.

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Locals should recall that the twenty-two (22) items listed in Article 30 are mandatory subjects of bargaining and can be impasse. Items that go beyond the twenty-two (22) and are now in the current LMOUs can be carried over and remain in effect during the term of the 2021 Agreement. Any other item may be negotiated but requires that both parties are willing to negotiate and ultimately reach agreement.

If management or the union is unwilling to negotiate on items beyond the twenty-two (22) listed in Article 30, or if at the conclusion of negotiations, a mutual agreement has not been reached, the process comes to an end. Those items beyond the scope of the twenty-two (22) listed in Article 30 cannot be impasse (See AIRS Case No. 22).

However, what is truly beyond the scope of the 22 items may become a dispute that can be sent to Impasse. Regarding a union proposal the union will argue that the scope of each negotiable item is broad. Management can be expected to argue for a very narrow reading of the 22 items. The reverse may be true regarding a USPS proposal.

Can You Persuade an Arbitrator?

If you were to take a specific proposal to arbitration what would the likely outcome be? The particular type of arbitration involving impasses is called “interest” arbitration. The arbitrator considers the interest of both parties in the rules that will be set into the contract. This is distinguished from “rights” arbitration. In a “rights” arbitration the arbitrator looks at the rules already set into the contract to determine whether the rules have been violated. When considering various impasses, arbitrators will be asking themselves a key question: “What agreement should the parties have reached had negotiations been successful and not reached an impasse?” Obviously, this question is not easily answered, since the parties did reach an impasse. But it is not impossible to objectively determine what the likely outcome of successful negotiations should have been. There are a number of things an arbitrator will look at carefully.

1. Previous LMOU

The most important thing the arbitrator will look at is the previous LMOU. The previous agreement represents a successfully bargained agreement between the parties (either through

voluntary negotiations or previous impasse arbitration). An arbitrator is likely to assume that the parties would have reached a similar agreement in this set of negotiations unless strong reasons exist for changing the old language. This translates into a very heavy burden for the party that desires to change the status quo.

If the union desires to change the status quo, the union must be prepared to show:

- A) A need for a change - That means proving that the current provision is not working, causing hardship or denying desirable benefits to deserving employees. Arbitrators often identify this as “compelling reason(s)” in awards.
- B) Cost and benefits of the proposed change - Simply showing that the previous language does not work very well is not enough. The union must show that the union’s proposal will work better.

The mere fact that it may cost the Postal Service more will not cause an arbitrator to reject a proposal out-of-hand. But it will require that you show counterbalancing benefits. The benefits and costs can be incurred by either the employee or employer. You should make a list of the benefits and costs to both employee and employer.

An arbitrator does not take new contract language lightly. The arbitrator will want to know all of the potential ramifications of the new language.

2. Consistency with a Negotiation Pattern

It may not always be possible to show a pattern. However, if a pattern does exist it will usually prove to be most persuasive. For example, if in the 1994 LMOU you had two minutes of wash-up time, in the 1998 LMOU you went to three minutes, in the 2000 LMOU you went to four minutes and in the 2006 LMOU to five minutes, in each case arguing that complaints, grievances and denials of requests for reasonable wash-up time demonstrated that the previous amount of time was insufficient, you could now argue before the arbitrator that a pattern has been set. The pattern is as follows:

When the parties have found that the previous set minutes of wash-up time have not adequately met the need, they have increased the set amount of wash-up time. Thus, if the

union showed the inadequacy of the current LMOU's wash-up time, the arbitrator would have to assume that the parties would have again increased the set amount of wash-up time. The arbitrator would follow the pattern set by the parties when they successfully negotiated agreements in the past.

While less persuasive, patterns can also be shown by looking at other LMOUs and looking at what other unions have achieved in collective bargaining.

3. Consistency with the LMOU and the National Agreement

An arbitrator will be reluctant to write contract language that will cause disputes, that will clash with other items in the local memo, or that will clash with the National Agreement.

Even without considering the mandate that local agreements have to be consistent with the National Agreement, an arbitrator will not assume that the local parties would have reached an agreement that clashed with the National Agreement. An arbitrator will also not assume that the local parties would have agreed to a provision that would lead to further disputes.

4. Other LMOUs and Contracts

Besides looking at the previous agreement to determine what settlement the parties should have reached; an arbitrator will also look at other LMOUs as well as other contracts from other unions. However, the weight given to those other contracts will vary greatly depending on how relevant they are to the particular proposal.

For example, the existence of LMOU provisions and practices in other offices have not been given any weight by some arbitrators deciding impasses concerning wash-up periods. There is great potential for variances in the need for wash-up periods from section to section and from craft to craft. What one installation does regarding wash-up may bear little similarity to the need for wash-up in another facility.

By contrast, an arbitrator would probably be most interested in knowing how other installations deal with the problem of working in an excessively cold environment due to breakdown of a boiler or heating unit. If another facility successfully negotiated a provision dealing with such instances and the provision has worked well, an arbitrator may conclude that your facility (experiencing similar problems and

not having a successful method for dealing with those problems) should have reached an agreement similar to the one reached in the other installation.

5. The National Agreement

An arbitrator will try to determine if any language in the National Agreement points in the direction of a preferred contract provision. Impasse arbitrators may look at all the potential ramifications and potential applications of the particular proposal to determine if any of the potential applications might conflict with language in the National Agreement. If the potential exists, an arbitrator will be reluctant to grant the proposal. Thus, some things that other locals have achieved through successful negotiations may not be achieved through impasse arbitration.

Will You Get a Chance at Arbitration?

One essential point should always be kept in mind - this process is one of local negotiations. The process is intended to result in an agreement to accommodate local conditions and local needs. Your unique set of circumstances should determine your unique local agreement. Before an impasse ever gets to arbitration, it must first be appealed to the regional level. The impasse item will be discussed by a National Business Agent and/ or the Regional Coordinator with regional management. If the Business Agent does not know what local conditions are causing your local problems, what unique local circumstances justify a particular provision, the Business Agent may attempt to get the provision he/she feels is best. The Business Agent's opinion of what the "ideal" LMOU provision should be may not have relevance to your unique local circumstances.

The Business Agent and the Regional Coordinator have the authority to settle impasses before they go to arbitration. What the Business Agent considers an acceptable provision may not be what you want. The only way to avoid an undesirable settlement to your impasses is to provide the Business Agent with all of the justifications for your proposal. If there are acceptable alternatives the Business Agent will need to know them. Business Agents can do a much better job if the local provides them with the necessary ammunition. However, if the first time you communicate with your Business Agent concerning your local negotiation

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problems is when you send your appeal to the region, you may have already lost the best opportunity to use the talents of your Business Agent. During local negotiations a Business Agent may be able to give valuable advice, assist in compiling documentation and suggest alternatives you may not have considered. Then if you have to send your appeal to the region the Business Agent will have first-hand knowledge of your problems and goals.

By carefully considering all of the factors listed make an informed judgment concerning whether or not an impasse ought to be sent through the impasse procedure and ultimately to arbitration.

INSTRUCTIONS FOR FILING LMOU IMPASSES UNDER THE 2021 NATIONAL AGREEMENT


Under Section 2 of the Memorandum of Understanding following National Agreement Article 30, the parties are required to jointly identify the issue(s) in writing and submit initialed copies of all proposals and counterproposals pertaining to the issue(s) in dispute. The initialed copies of the proposals and counterproposals must be sent no later than **August 12, 2022** to:


a. **LR Service Center, United States Postal Service, ATTN: LMOU Appeals, P.O. Box 23788, Washington, D.C. 20026-3788**

b. Local Postmaster, and


c. APWU National Business Agent


Timeliness and Arbitrability of Impasses


 Note that timely appeals, complete with the information prescribed on the form, are important since arbitrators have refused to consider the merits of impasses that have not complied with requirements of the Memorandum of Understanding on Local Implementation (See AIRS Case Nos. 27101-02, 26955, 33160, 39579 and 47102 in which failures to comply with the MOU on Local Implementation resulted in findings that the appeals were not arbitrable).


 However, see AIRS Case No. 33670 in which an arbitrator found that an impasse appeal was arbitrable. The arbitrator rejected the Postal Service's contentions of inarbitrability

based on the union's alleged failure to submit timely notification of its intent to invoke the local implementation process, to engage in meaningful negotiations since they were conducted by mail instead of in face-to-face meetings, and to not complete the negotiations during the mandated time period. He indicated that those items that were not agreed to before the April 15, 1999 deadline were properly before him for a decision on the merits. See also AIRS Case No. 32464 in which an arbitrator found that an appeal was arbitrable, rejecting a USPS argument of inarbitrability based on the union's alleged failure to open negotiations and because the union also filed rights grievances over issues in dispute under Article 30. (However, see AIRS Case No. 39579 and 39955 which found impasses inarbitrable based on either the Postal Service's or union's failure to provide timely written notice to open negotiations.)

 In addition, in AIRS Case No. 32242 an arbitrator rejected the Postal Service's argument that an appeal was inarbitrable on the basis that the union cited the wrong item in its appeal. The arbitrator relied on the fact that the evidence showed that there was no confusion by management over what item was actually being appealed.

 Another arbitrator in AIRS Case No. 41921 ruled that the Postal Service's counter-proposal, that all LMOUs should only contain language provided in Article 8, Section 9 relating to wash-up, could not be considered as an issue being impasse since it had not been identified by management as an issue to be adjusted in arbitration.

 Moreover, see AIRS Case No. 39832 in which an arbitrator found no merit in the Postal Service's arguments that an impasse case was inarbitrable due to the union's alleged failure to provide timely written notice of its intent to open negotiations, its alleged failure to obtain a management official's initials on an area appeal form before submitting the form to the grievance-arbitration processing center, and its alleged failure to conduct negotiations with management.

 In AIRS Case No. 39540, an arbitrator rejected management's argument that the union could not put forward a separate proposal during local negotiations, which the Postal Service had opened, on the basis that the union had not

provided independent notification that it also desired to engage in the local negotiations process. The arbitrator found that when one party opens the door to negotiations, both parties are allowed to present proposals providing the proposals were exchanged within the first 21 days of the 30 consecutive-day local implementation period. In this case also, he found that the Postal Service waived any argument that the union had not submitted its own proposal during the first 21 days by agreeing to negotiate on both the union and management's other proposals.



In AIRS Case No. 41134, an arbitrator ruled that the Postal Service waived its argument that a case was inarbitrable on the basis that a union failed to exchange a proposal within the first 21 days of a local implementation period. He noted that management was a party to the jointly executed appeal form that indicated that the proposal was presented eight days prior to the end of the 21-day limitation period.



Moreover, in AIRS Case No. 48030, an arbitrator dismissed the Postal Service's impasse appeal on the basis that the case was inarbitrable. Management attempted to change an LMOU provision that set up overtime desired lists by crafts, several sections, and tours, on the basis that it constituted an unreasonable burden. The arbitrator found, however, that unrefuted testimony established that "at no time during any negotiation session did the Postal Service claim an unreasonable burden concerning the existing language" He found that while there were "side-bar discussions" during which management discussed overtime costs as a result of the Dock Clerk section, "no arguments, documentation or other evidence was set forth at the bargaining table with all negotiation team members present." The arbitrator thus concluded that management's presentation of an unreasonable burden argument "for the first time with its appeal to arbitration are waived."



But see AIRS Case No. 46399 in which an arbitrator denied a union's proposal in part because the "reason for the change" noted by the union in its proposal wasn't argued at the arbitration hearing and documentation presented by the union at arbitration hadn't been provided during local negotiations.

Union Appeals

To assist in complying with the above requirements, we have devised the attached Area Appeal Form, which should be filled out in a manner similar to that shown below.

1. Each impasse item must be identified and appealed separately, using the attached form. Either type the proposal(s) and counter proposal(s) in dispute on the form, OR attach a copy of the proposal(s) and counterproposal(s) to the back of the form. If attached, in Items 3, 4 and 5, merely type, "See attached proposal(s)/ language/ counter-proposal(s)."
2. Make sure that each proposal and counterproposal contains the exact language proposed and, if possible, the date that the proposal/counter-proposal was offered. Be sure to clearly identify the union's and management's final proposals.
3. In appealing carry-over items which cannot be identified with one of the 22 negotiable items, under Item 1, insert N/A (not applicable) and state on line 2, "Carry-over language deemed by the postmaster to be inconsistent and/or in conflict with the National Agreement." Each carry-over item should be appealed on a separate appeal form unless it deals with the same subject matter.
4. We recommend that each impasse be sent by certified mail to the Labor Relations Service Center (see page 32), as well as your Postmaster and APWU NBA. If more than one impasse is submitted under one certification number, make sure that you keep a record of each impasse sent under the certification number. A check-off list of the contents should accompany your appeals to the National Center, with a copy thereof retained at the local level.

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5. Make sure that the local's negotiator and management's chief negotiator initial the impasse form. This is a contractual requirement. Failure to obtain the initials may provide the Postal Service with an excuse to challenge the validity of the appeal. If management refuses to initial, please so note on the Appeal Form. The local's negotiator will also be asked to initial USPS prepared forms on any issue USPS is appealing.

The above information is all that the local is required to send to the appropriate management official at the grievance-arbitration processing center and the postmaster. However, in addition to the above information (which must also be submitted to the Postmaster and National Business Agent) we suggest that you send to the Business Agent, a copy of your current LMOU.

The Impasse Appeal form can be found on page 35. A fillable PDF version can be

downloaded at: <https://apwu.org/local-implementation>

Management Appeals

When the USPS invokes the impasse procedures, they should approach the local to request a joint identification of the issues the USPS wishes to impasse. The USPS may also request that certain documents be initialed. At this point you should obtain a copy of the USPS appeal.

You should add to the USPS appeal package your comments and proofs concerning:

- 1) The unreasonable burden test, and
- 2) The specific USPS proposals.

And then send the complete package to your APWU National Business Agent

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE AMERICAN POSTAL WORKERS UNION

Re: Arbitration Scheduling Procedures—(LMOU)

The parties agree to the following concerning the scheduling of Local Memorandum of Understanding (LMOU) impasse arbitration cases during the term of this agreement.

1. LMOU impasses from each installation will be heard by the same arbitrator to the extent possible.
2. It is expected that multiple impassed items from an LMOU will be heard on each arbitration date.

This agreement expires with the 2024 collective bargaining agreement.

NOTE: Locals should remember that the costs for arbitrating local impasse items are borne by the locals. This includes the costs for arbitration advocates and arbitrator's fees. Fees would include up to a \$1200 a day fee for travel, hearing the case, and writing the decision as well as travel costs and per diem for arbitrators.

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Appeal Form—2021 AGREEMENT LMOU IMPASSES

USE SEPARATE SHEET FOR EACH ITEM IMPASSED

LR Service Center
United States Postal Service
ATTN: LMOU Impasse Appeals
PO Box 23788
Washington, DC 20026-3788

Union Local: _____
Address: _____

Installation: _____

CERTIFIED MAIL NUMBER: _____ DATE: _____

1. IN DISPUTE: ARTICLE 30.B. _____ LMOU ARTICLE NUMBER: _____

2. TITLE: _____

3. LANGUAGE IN CURRENT LMOU (Exact language, if any, from old MOU): _____

4. *UNION PROPOSAL(S) (Exact language and date proposed to Management): _____

5. *MANAGEMENT COUNTERPROPOSAL(S) (Exact language and date proposed to Union): _____

6. UNION FINAL PROPOSAL: _____

7. MANAGEMENT FINAL PROPOSAL: _____

Name of Union Rep: _____ Name of Management Rep: _____

Union Rep Initials: _____ Management Rep Initials: _____

**Note: If there have been more than one proposal and counterproposal, list those proposals and counterproposals and the specific dates of each. Attach the additional proposal/counterproposals to this sheet in date order. Be sure you identify the Union's and Management's Final Proposals.*

cc: Local Postmaster
APWU National Business Agent

APPEALS MUST BE POSTMARKED BY: August 12, 2022

ARTICLE 30 NEGOTIATION ITEMS

The twenty-two (22) items, with some suggested areas of negotiation, are listed on the following pages.

Item 1. Additional or Longer Wash-Up Periods



DIRECTOR'S TIPS:

REFERENCES IN THE CBA:

Article 8. HOURS OF WORK

Section 9. Wash-up Time

Installation heads shall grant reasonable wash-up time to those employees who perform dirty work or work with toxic materials. The amount of wash-up time granted each employee shall be subject to the grievance procedure.

(Note: Statement at the end of Article 8: (The preceding Article, Article 8.9, shall apply to PSEs)

Article 14. SAFETY AND HEALTH

Section 1. Responsibilities

It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility...

OTHER REFERENCES & COMMENTS:

Note: As of this writing, the October 2001 anthrax wash-up protocol for employees on the workroom floor where mail is processed has not been rescinded.

Note: As of this writing, the Postal Service's Stand-Up Talk on Recognizing and Handling Suspicious Mail indicates that one of the steps to take when a suspicious package is found is for all employees in the area near the package to wash their hands and any other exposed skin with soap and water immediately, even if they don't touch the package or letter.

Locals may wish to explore the possibility of additional wash-up time for individuals, particular job categories, crafts or work locations, as well as "across the board" wash-up time for everyone where it can be justified. However, locals should be prepared for Postal Service arguments that proposed wash-up provisions are inconsistent and in conflict with the National Agreement. If a pre-existing wash-up provision is carried over, management does not have the right to argue that such an item is inconsistent or in conflict with the National Agreement since Article 8.9 has not been changed in the 2021 National Agreement. But if a local decides to make a change in pre-existing language and it is submitted to impasse arbitration, keep in mind that the Postal Service may argue that the changed language is inconsistent with longstanding provisions of the National Agreement.

Factors to Support Additional Wash-Up

In order to successfully negotiate a wash-up period, the local will have to show that the standards of Article 8, Section 9 are met.

Specifically, the local will have to demonstrate that the employees for whom wash-up time is sought perform dirty work or work with toxic material. This showing depends on the nature of the work, such as types of machinery and materials handled. For instance, it would be reasonable to negotiate longer wash-up for maintenance and motor vehicle employees who work in dirt or grease, or for clerks that work in a newspaper section. A separate demonstration, therefore, should be made for each craft and perhaps even sections or units within each craft.

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In addition, several other factors that should be taken into consideration to support a provision for additional wash-up include:

- a. The location of washrooms in relation to the work areas;
- b. the degree of congestion that might occur in the washroom at lunch time or at the end of a tour; and very importantly,
- c. any changes in any of the above during the life of the current Local Memo which now would justify more time than what might have been needed, and
- d. any grievances filed or complaints made about insufficient wash-up time or denial of wash-up time.

Also, local negotiations may explore the time at which wash-up is provided such as before lunch or end of tour.

One arbitrator has set out items that need to be considered in determining the reasonableness of wash-up periods including:

- a. the process required of employees who take wash-up time,
- b. the nature of the employees' wash-up activity,
- c. the relationship between the employees' work locations and the wash-up facilities,
- d. the availability of workable wash-up facilities,
- e. the number of employees who will use those facilities during a specific period of time,
- f. the nature of the wash-up needed, as determined by the nature of the employees' work and
- g. the nature of the post wash-up activity (AIRS Case No. 33153).

Inconsistent and In Conflict

In requesting additional or longer wash-up time, locals need to be prepared for Service arguments that the scope of the National Agreement was not intended to be broadened beyond granting reasonable wash-up for employees subjected to dirty or toxic conditions.

Though arbitrators have reached varying conclusions on this issue, an arbitration award has emphasized that there has been no definitive interpretation of Article 8.9 on a national level that prohibits LMOU provisions for a fixed wash-up period. Therefore, a claim of inconsistency must be assessed on the basis of record proof (AIRS Case No. 14655).



Also, arbitrators have found that by listing "additional" or "longer wash-up periods" as an item for local negotiation in Article 30, it was clear that negotiators did not intend that wash-up provided by Article 8.9 would be limited and could not extend to all employees (AIRS Case Nos. 13483, 22498, 22499, 21117, 28749-50, 27060).



In addition, an arbitrator has rejected the position that fixed wash-up periods are "per se, inconsistent and in conflict with the National Agreement" on the basis of national postal management's two decade acquiescence to the existence of local memoranda providing fixed wash-up periods as well as a national level arbitrator's recognition in AIRS Case No. 27077 that there is no "bar [to] a specific group of employees within a class or a job description from being granted wash-up time on a routine basis" (See AIRS No. 33153).



It should be noted that a 2004 national level award in a letter carrier case concerning fixed wash-up under Article 30 determined that "Section 8.9 and 30.B.1 prohibit negotiation of LMOU provisions that provide wash-up time to all employees without consideration of whether they perform dirty work or are exposed to toxic materials." Significantly, the APWU was not a party in that case and didn't participate in the proceedings. Therefore, the award isn't binding in APWU regional arbitration proceedings. Moreover, Arbitrator Nolan's primary reliance on NALC regional arbitration awards, and the absence of the APWU as a party would argue against giving any weight to the decision as it relates to APWU bargaining unit employees or the APWU contract. Though Nolan indicated that there was "near-consensus among the parties'

[regional] arbitrators” on the relationship between Article 8.9 and Article 30.B.1 that takes the Postal Service’s position, he relied on the fact that there was “an overwhelming majority of NALC regional arbitrators holding that locally negotiated fixed and general wash-up time proposals are inconsistent with Article 8.9 . . .” He further acknowledged that awards “interpreting even identical language from another contract carry less weight than decisions interpreting the same contract, because the meanings of the words often change in different contexts or different bargaining relationships.” Also, since Arbitrator Nolan specified that “[l]ocal parties remain free to define the employees who satisfy these conditions [i.e., performance of dirty work or exposure to toxic materials],” the union can stress that all of the employees covered by a fixed wash-up proposal perform dirty work or are exposed to toxic materials (See Case Nos. B98N-4B-I-01029365 and 29288; 7/25/2004).

Wash-up for All Employees

There is a split of opinion by regional arbitrators on the provision of fixed wash-up for all employees.



Many arbitrators have resisted granting required wash-up time for all employees because of the restrictions in Article 8, Section 9 (AIRS Case Nos. 4596, 6479, 6606, 6774, 6913, 6995, 20540, 20764, 20761, 26898, 32538, 32848 and 32869).



Provisions granting all employees a wash-up time of 3, 5 or 10 minutes have been rejected in a number of arbitrations (AIRS Case Nos. 4913, 4944, 5281, 5287, 6001, 6088, 6089, 6124, 20764, 21111, 27068-69, 27061, 26690-91, 33379). In addition, an effort to allow reasonable wash-up time for all employees was not accepted by one arbitrator (AIRS Case No. 6520).



On the other hand, one arbitrator ruled that local parties are permitted to fix wash-up periods in whatever amounts the parties agree to (AIRS Case No. 27944).



In addition, another arbitration award upheld fixed wash-up periods ranging from ten to fifteen minutes before lunch and twelve to fifteen minutes at the end of a tour for all APWU-represented crafts in the Manhattan and Bronx, N.Y. Post Offices (AIRS Case No. 33153). In that case, the arbitrator relied in part on the fact that the common dictionary definition of “period” for purposes Article 30.B.1 is “an event of fixed duration” and a definition in the dictionary of industrial relations defines “clean up period” as “that part of a work day before meals or at the end of the work shift allowed the employee to clean his person or clothing....” The arbitrator also indicated that the language “performs dirty work” and “works with toxic material” in Article 8.9 “does not contain any qualifying or limiting language on its general eligibility tests.” He thus rejected the Service’s argument that an employee’s eligibility for wash-up requires a determination of whether or not the employee actually becomes dirty from “dirty work”, performs such dirty work regularly or predictably, or performs such work immediately before being granted wash-up time.



Also, note that in a national level award, Arbitrator Snow said that the terms “performs dirty work” and “works with toxic material” “are open-ended terms” that “are subject to local definition and elaboration” and “[t]he content of the terms may change as new conditions arise requiring wash-up time or modified administrative regulations and managerial instructions authorize certain actions” (AIRS Case No. 27077).

In addition, an arbitrator ruled that the Postal Service could not meet its burden of proving the existence of an unreasonable burden by continuation of a wash-up period of five minutes prior to lunch and five minutes prior to ending of a tour for all employees and ten minutes before lunch and before ending a tour for maintenance employees. She found that merely establishing the cost of total wash-up for all employees as well as the amount of nonproductive wash-up did not satisfy its burden of proof (AIRS Case Nos. 22498, 22499).

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Another arbitrator upheld continuation of a wash-up period of two minutes before lunch for all clerks and maintenance employees on the basis that the Postal Service failed to show that they did not perform dirty and toxic work (AIRS Case No. 27944).



Since the anthrax exposure incidents in late 2001, there have been two arbitration awards that have relied at least in part on the need for fixed wash-up to protect against such potential hazards. In AIRS Case No. 38883, the local union sought a five-minute wash-up period every two hours “for all employees that perform any duties that cause them to have hands on and/or any involvement with any type of work at any postal facility or any duties involving postal procedures.” The union relied on a directive from Postal Headquarters Vice Presidents to field offices containing a mandatory safety talk on hand protection which said “wear your gloves, and wash your hands with soap and water every two hours during your tour, and other times as appropriate.” The arbitrator observed that “[t]he ... memo and instructions of the two senior Postal Service [officials] clearly enunciates the recognized safety problems faced by postal workers in the post 9/11 era.” He found also that the Postal Service failed to provide “valid proofs” to support its position that providing a five-minute wash-up every two hours would have a serious impact on the operations and distribution of the mail.



In AIRS Case No. 39691, an arbitrator upheld a union’s request to change its LMOU to provide employees performing any dirty work, including work with trays, letters or mail handling equipment, or work with toxic materials a five-minute period of wash up before lunch and before leaving the facility. He noted that the “Union has appropriately observed, ‘Anthrax and the threat of biohazard are now a fact of life in the Postal Service’ and “[i]n that regard every employee on the workroom floor should be required to wash their hands not just for their own safety but for the safety of the fellow employees.”” The arbitrator found also that

given the nature of the facility and number of employees assigned to it and the distance each employee has to travel to sinks, the time clock and the cafeteria, a five-minute time period for wash-up before lunch and departure from the facility is not excessive.



Even taking into account the anthrax exposure incidents, several arbitrators have denied requests for fixed wash-up for all employees. The APWU’s proposals covering 20 associate offices in Harrisburg, PA., to provide that all APWU employees be granted reasonable time to wash-up before lunch, at end of tour and at least every two hours or to include additional language where five-minute wash-up time currently existed to provide for such time at least every two hours, were rejected by an arbitrator in AIRS Case No. 41921. He found that evidence regarding 2001 management directives covering Capital Metro operations and the Harrisburg Performance Cluster in the aftermath of anthrax exposure, which provided that employees be encouraged to wear masks and gloves and wash their hands with soap and water every two hours, were not binding on other facilities. The arbitrator further reasoned that though employees may be at risk from biological agents like anthrax being shipped through the mails, they have the right to take as much time to wash their hands if they believe they have come into contact with a toxic substance. Moreover, he indicated that the issue of allowing for wash-up every two hours should be decided on a national basis, not on an installation by installation basis through regional arbitration.



In another award in AIRS Case No. 40576, an arbitrator rejected a local union’s request that all employees be granted five minutes of wash-up time every two hours. He was unpersuaded by the union’s argument that additional wash-up time was mandated because of health and safety concerns due to the increased presence of contaminants in the mail stream. The arbitrator determined that the union had failed to show that a five-minute wash-up period was warranted for all of its members due to “some

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actual and objective condition – not some hypothetical situation that may or may not develop.”



Another arbitrator rejected a union’s proposal that “[t]hose employees who perform dirty work, work with toxic materials, process the mail or support the processing of mail shall be granted reasonable wash-up time every two hours.” In AIRS Case No. 40651, the arbitrator refused to grant a fixed period for wash-up time since there was no evidence that management prevented employees from washing their hands when there was a need to do so, and there were procedures and policies in effect to ensure a “quick, effective response” to exposure to dangerous substances. She reasoned that the Postal Service is taking steps to provide a safe environment for employees including isolating contaminated mail, evacuating employees from potentially contaminated areas, and making sure that employees who have touched potentially contaminated mail wash their hands and any part of their body that may have come into contact with that mail.



In rejecting blanket provisions, arbitrators have noted that not all employees require a set period of wash-up time (AIRS Case Nos. 4862 and 6072, 26898), and that a limited benefit cannot be turned into a general benefit for all (AIRS Case Nos. 4867, 4871, 13017, 27068-69, 33379).



In addition, another arbitrator held that the Postal Service had met its burden of proving that an unreasonable burden existed because of a provision allowing five minutes of wash-up before lunch for all employees. He cited the excessive cost of all employees receiving the fixed wash-up time and the fact that employees use the time for smoking breaks, to fetch their lunch buckets, and to wait at the time clock (AIRS Case No 20764).



Finally, another arbitrator found that the cost of two four-minute wash-up periods daily for all employees regardless of a demonstration of

need constituted an unreasonable burden (AIRS Case No. 26898).

Maintenance and Motor Vehicle Employees



Demonstrating that members of the Maintenance and Motor Vehicle Craft perform dirty work has not generally proven to be difficult. (AIRS Case Nos. 502, 505, 507, 545, 556). Obtaining a wash-up time for these crafts has been relatively successful. Where it has been shown that employees, including members of the Clerk Craft, perform work involving toxic substances, a wash-up period may be granted or at least considered (AIRS Case Nos. 508, 525, 556).



However, see AIRS Case No. 40576, in which an arbitrator rejected the union’s argument that there be ten minutes of wash-up for all TTO and MVO drivers before lunch and ten minutes wash-up time for these drivers at the end of their tours. He relied on the 2004 national level award by Arbitrator Nolan dealing with letter carriers, and found that it could be applied to the APWU since both agreements contain similar language and the 22 items set forth in Article 30 appeared in the 1973 agreement when both the NALC and APWU bargaining together. However, he recognized that he was not bound by that award. The arbitrator then determined that the only way that “blanket wash-up” can be negotiated without conflicting with Article 8.9 of the National Agreement is when there is a showing that all MVS employees in the facility perform dirty work or work with toxic materials.


Clerk Craft Wash-Up




Efforts to show that Clerk Craft employees meet the “dirty work” standard of Article 8 have proven more difficult. In case after case, wash-up proposals involving fixed amounts of time for Clerk Craft employees have been rejected due to the arbitrators’ opinions that their work in the facility did not meet the dirty work standard (AIRS Case Nos. 175, 507, 523, 524, 525, 531, 534,34361). The standard applied by many


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arbitrators requires that the clerks perform work that would be “dirtier” than normal (i.e., what one would expect from distribution of ordinary letter mail).

 In several cases, arbitrators have found that the clerks met this “dirty work” standard and granted them a wash-up period. In one such case, an arbitrator made the following determination:


There is no doubt that the Chapel Hill Clerks’ work exposes them to dirty conditions at one time or another during the workday. The Mail Processors who work with bags and hampers are continually exposed to dirt which is unavoidably transferred to their hands, body and clothing. In addition, these Clerks handle newspapers, magazines, laboratory samples and a variety of materials which keeps them constantly exposed to dirt, printer’s ink (sic) and even toxic materials. The Window Clerks are continually exposed to the dirty, unsanitary and possibly toxic conditions inherent in dealing with mail and money in connection with over-the-counter postal transactions with the public (AIRS Case No. 566, p.3).

 In another case, an arbitrator held that the union had made the showing that all members of the bargaining unit routinely performed dirty work or work involving the handling of toxic materials. Its demonstration was essentially un rebutted. She upheld continuance of fixed wash-up times for all employees including clerks (wash-up of 10 minutes before lunch and at the end of a tour) (AIRS Case No. 14655).


 Moreover, another arbitrator concluded there was a need for continuing in effect the past practice of wash-up for all clerks before lunch and before the end of the tour of duty. He noted that the office was small with no mail handlers to unload trucks and perform the cancellation process (AIRS Case No. 13034).

 Also, an arbitrator upheld continuation of a five-minute wash-up period prior to lunch and at the end of a tour for the Clerk Craft in Kansas

City, Missouri. He rejected the Postal Service’s arguments that the wash-up provision was inconsistent with the National Agreement and constituted an unreasonable burden. In reaching this decision, he relied on a 1980 award that upheld the two five-minute wash-up periods at this facility on the basis that the local postmaster had determined that the Clerk Craft performed dirty work. In addition, he cited language from Arbitrator Snow’s award in USPS Case No. HOC-3W-C 4833 (AIRS Case No. 27077) that the terms in Article 8.9 “are subject to local definition and elaboration” and said that it is therefore necessary to look to “the conduct of the parties at the local level” in reaching a decision on whether to allow fixed wash-up periods for specific groups. Since the arbitrator found that the 1980 award was not “palpably erroneous in concluding that the Kansas City postmaster had determined the Clerk Craft performed dirty work,” he determined that the award’s acceptance of fixed wash-up for the Clerk Craft was not in conflict with the Agreement. The arbitrator further found that since there was no substantial difference between the amount of wash-up hours per week now and those at the time of 1980 award, the argument that the fixed wash-up times represented an unreasonable cost was not convincing (AIRS Case No. 32504).

 Moreover, one arbitrator held that there was sufficient evidence to support increasing the wash-up time for clerks at the Brooklyn GPO based on the large size of the facility, the long distances clerks must travel to wash-up facilities, and the demonstrated inadequacies of elevators and stairways (AIRS Case No. 504).

Support for Fixed Wash-Up

 Sometimes, arbitrators have refused to establish fixed wash-up periods where the facility already has a “wash-up as needed” policy (See, for example AIRS Case No. 13017, 20499, and 34360). Thus, the local must show that the “as needed” policy is insufficient and that the requested amount of time is necessary.

This may be done in several ways. One approach is to show that management has denied reasonable wash-up requests.



In many cases reviewed, however, locals requesting fixed wash-up periods either cannot cite any or cite very few grievances filed or complaints made. Often arbitrators point to the lack of grievances and complaints in their determinations that a current “as needed” policy is adequate (AIRS Case Nos. 1, 2, 529, 542, 565, 2943, and 34360). However, the lack of grievance activity during the time fixed wash-up time provisions are in effect may be a convincing argument to support continuation of the existing provisions (AIRS Case No. 33153).



A local may also demonstrate that granting a fixed wash-up period for a group of employees is more efficient than maintaining an “as needed” policy because the latter approach requires time by supervisors to deal with daily wash-up requests (AIRS Case No. 566).



Note that such an argument was persuasive in a case upholding fixed wash-up times for all employees. In that case, the arbitrator concluded that given “(a) the Service’s goal of maintaining the efficiency of its operation, (b) the mandatory obligation placed on Installation Heads by Section 8.9 to grant wash-up time, (c) the recognized subjective nature of the concept of dirty, (d) the complexity of applying the . . . criteria to determine the reasonableness of each employee’s request and for determining the time needed for wash-up in these varying conditions and circumstances, and (e) the number of impacted employees and resulting requests for wash-up time,” it would be reasonable to have a fixed wash-up period rather than to accept management’s proposal to deal with each employee’s specific request (AIRS Case No. 33153).

Facilities Argument



Still another approach involves proof that a fixed wash-up period is necessary since wash-up facilities are inadequate due to the employee/facility ratio, the inoperative condition of some

facilities, the geographical inconvenience either because an employee must travel a great distance to a wash-up facility and/or is delayed by faulty elevators or stairways (AIRS Case Nos. 502, 504). Such allegations are subject to proof and should not be made if they cannot be substantiated (AIRS Case Nos. 505, 542, 2287).



One local justified an increase in wash-up time over the previous LMOU by proving that workroom congestion made additional time necessary (AIRS Case No. 4447). The same demonstration would assist arguments for an initial grant of wash-up time in an LMOU.



On the other hand, reduction in wash-up time has been found justified on the basis of conditions such as the number of employees using washrooms, the location of the washrooms in relation to work areas, and the total number of washrooms (AIRS Case No. 13034).

Comparability and Time Studies



Locals should avoid comparing wash-up policies of one facility with those of another. First, the arbitrator may find that the comparisons are not valid. Second, for every comparison which the local makes to support its position, the Service can probably make one which does not (AIRS Case No. 542). Further, a local should be very circumspect in using calculations or time studies to support wash-up proposals. Such calculations may be invalidated if they fail to take into account the normal daily absences which reduce the size of the work force on any given day. Such calculations can also be invalidated if an actual demonstration contradicts them (AIRS Case No. 544).



However, locals should be prepared to discredit time studies performed by management in order to obtain additional or longer wash-up time. For example, an arbitrator ruled that “[t]he design, universe, and methods of data collection” in a management wash-up time survey were so “flawed” that he could not

“in good conscience give any validity to its results.” He credited testimony of the union’s industrial engineering experts that the survey findings had no usefulness in predicting wash-up time behavior and violated Article 34 of the National Agreement (AIRS Case No. 21117).



But, see AIRS Case No. 14562 where an arbitrator rejected carrying over a pre-existing wash-up provision on the basis of management time studies showing that only 41% of a sample of 188 employees used wash-up time over a two-week period and indicating that employees using wash-up consumed less time than required by the LMOU (AIRS Case No. 14562).

Past Practice of Fixed Wash-Up

Evidence that fixed wash-up time has been a *bona fide* past practice in a facility may support continuation of the policy in an LMOU. However, a local should avoid making the past practice argument unless it can actually be substantiated.



Unfortunately, some locals have been alleging a past practice where none was proven (AIRS Case Nos. 529 and 2943). One arbitrator has outlined the following criteria for a determination of the existence of such a past practice:

The past practice wash-up (must be) (1) unequivocal, (2) clearly enunciated and acted upon, (3) readily ascertainable practice accepted by both parties (AIRS Case No. 529, p.8).



On the other hand, several locals have been able to keep their five-minute wash-up times by proving that the wash-up periods had been long term practices at the facilities. In one case, an arbitrator stated that since the parties agreed to the five-minute wash-up period in the previous LMOU, it could be assumed that the provision

was required under the circumstances of the postal installation and that the parties had found it reasonable (AIRS Case No. 7862). Moreover, he held that there was no inconsistency with the National Agreement where the parties by their own long practice and continued agreement, fixed the terms of the wash-up time.



Another arbitrator found that a five-minute wash-up provision that had been in effect since 1949, and carried forward as an existing practice in the LMOU, was not inconsistent with the National Agreement (AIRS Case No. 13483).



However, locals should be aware that reliance on past practice or prior agreements as evidence of reasonableness may not be appropriate “in the face of objective evidence” that requires a decision to the contrary (AIRS Case No. 14562).

Increasing Wash-Up



Proposals for additional or longer wash-up periods may succeed if based upon facts showing that the requested change(s) is warranted (AIRS Case Nos. 504, 545). The local should demonstrate that the wash-up period initially granted did not provide enough time, or that changes during the life of the current LMOU now require more time (AIRS Case No. 545).

Finally, if management seems intractably opposed to a fixed wash-up period, there is an approach used by one arbitrator. He decided:

... clerks and maintenance employees were entitled to a reasonable wash-up time before lunch and at the end of the tour. However, clerks were allowed clock time only if 5 minutes or more were required to accomplish a clean condition... (AIRS Case No. 556).

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Item 2. The Establishment of a Regular Work Week of Five Days with Either Fixed or Rotating Days Off



DIRECTOR'S TIPS:

REFERENCES IN THE CBA

Article 8. HOURS OF WORK

Section 2. Work Schedules

A. The service week shall be a calendar week beginning at 12:01 a.m. Saturday and ending at 12 midnight the following Friday.

B. The service day is the calendar day on which the majority of work is scheduled. Where the work schedule is distributed evenly over two calendar days, the service day is the calendar day on which such work schedule begins.

C. The employee's normal work week is five (5) service days, each consisting of eight (8) hours, within ten (10) consecutive hours, except as provided in Section 1 of this Article. As far as practicable, the five (5) days shall be consecutive days within the service week.

D. In postal installations which have 200 or more workyears of employment in the regular workforce, career employees in mail processing operations, transportation and vehicle maintenance facility operations will have consecutive scheduled days off, unless otherwise agreed to by the parties at the Local Level.

Article 8. HOURS OF WORK

Section 3. Exceptions

The above shall not apply to part-time employees and PSEs.

...

PSEs will be scheduled in accordance with Section 2, A and B, of this Article.

OTHER REFERENCES & COMMENTS

Note: A. Applies for PSEs. See "Exceptions" and MOU, Appendix A

Note: B. Applies for PSEs. See "Exceptions" and MOU, Appendix A

Note: C. Does not apply for PSEs. See "Exceptions", Appendix A

Note: D. Does not apply for PSEs. See "Exceptions", Appendix A

Also XRef: **Postal Support Employees Memoranda, Appendix A,**

PSE's will be scheduled for work in accordance with Section 2, A and B of this Article.

If a local desires to change from its current basic work weeks to any combination of fixed and/ or rotating basic work weeks, the local should demand the necessary information from the Postal Service such as, complement figures, number of employees needed each day, present schedules, overtime information, etc.

To be successful in negotiations or arbitration you should be prepared to show:

- 1) That your proposal meets the Postal Service need for X number of employees with appropriate skills.
- 2) There is a need for a change.

- 3) The benefits of the proposal to both employees and employer.

Note: In accordance with the Memorandum of Understanding re: Non-Traditional Full-Time (NTFT) Duty Assignments, "[e]mployees occupying FTR duty assignments (traditional and NTFT) in postal installations which have 200 or more man years of employment in the regular work force, career employees in mail processing operations, transportation (except as provided for under Paragraph 4 of the MOU re: Highway Contract Route (HCR) Limitation) and vehicle maintenance facility operations will have consecutive days off, unless otherwise agreed to by the parties at the local level. For

employees occupying NTFT duty assignments, if the NTFT schedule has 3 or more scheduled days off, at least 2 must be consecutive.”

Also, there are no part-time regular employees in the Clerk and Motor Vehicle Crafts. However, the Maintenance Craft retains part-time regular employees so references to part-time regulars should not be removed from LMOU provisions.

Fixed vs. Rotating


Fixed days off will usually allow more senior people to have weekends off. For example, if only 60% of the work force were needed on Saturday and Sunday, 40% of the most senior employees could get Monday through Friday schedules. If that happened, no one else would ever get Saturday or Sunday off. Rotating days off provide an opportunity for everyone to get an occasional weekend. In the above example, if everyone rotated each employee could get off 2 out of 5 weekends. However, even the most senior employee would have to work 3 out of 5 weekends.


Combinations of fixed and rotating can provide everyone an occasional weekend off and a number of Monday through Friday assignments.


Also, given the addition of non-traditional full-time duty assignments to the Clerk and Motor Vehicle Crafts, locals should consider whether these positions should have fixed or rotating days off. Though the MOU provides a guarantee of consecutive days off for both NTFTs and full-time regulars in many circumstances, as well as two consecutive off days for a NTFT with three or more non-scheduled days, there may be a desire that particular days off around a weekend such as Friday and Saturday, Saturday and Sunday, or Sunday and Monday off days be rotating in order to afford both NTFT and full-time regular employees an opportunity for that time off. In addition, the more varied schedules of NTFTs afford management increased flexibility to support a union proposal for either fixed or rotating days off.


Combinations of Fixed vs. Rotating


Claims by management that locals must negotiate for either fixed or rotating and no a combination of both are wrong.

 In a rights arbitration, Arbitrator Haber stated that a clause containing specified percentages of Monday through Friday, Tuesday through Saturday and rotating schedules would be consistent with the National Agreement (AIRS Case No. 278, grievance was denied for other reasons).

 In addition, a provision that called for a six-month trial period of a five-day work week with rotating days off for distribution clerks and then allowed the clerks to vote to either keep or reject the rotating schedule was upheld by an arbitrator. Arbitrator Foster held that the provision was not inconsistent with the National Agreement and did not present an unreasonable burden to the Postal Service (AIRS Case No. 21048 and 20392).

 Another arbitrator upheld a similar provision and found that a “mix” of fixed and rotating days off was not inconsistent with the National Agreement (AIRS Case Nos. 27132-33).


 Moreover, Arbitrator Fletcher found that a one-third to two-thirds ratio between positions with rotating days off and positions with fixed days off was reasonable and not inconsistent with the National Agreement (AIRS Case Nos. 28108-111).


 But, see AIRS Case No. 20574 in which Arbitrator Eyraud ruled that a provision allowing for a combination of fixed and rotating days off constituted an unreasonable financial burden and was inconsistent with the terms of the Agreement. In addition, an award by Arbitrator Helburn determined that a proposal seeking an increase by one or two in the number of Window Clerks with a fixed schedule of Saturday and Sunday off, rather than retaining them on a rotating schedule, would create an unreasonable burden. He relied on a supervisor’s testimony that a minimum of eight clerks were needed for the window and distribution work as well as data


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showing that if the union's proposal were in effect clerk staffing would have been at six or less during 69% of the Saturdays (AIRS Case No. 32252).


Management Rights


 Unfortunately, some arbitrators have rejected language that infringes on Management's right to fix the basic work week, as established by the conditional language of Article 8, Section 2.C; i.e. "[a]s far as practicable, the five days shall be consecutive days within the service week." (AIRS Case Nos. 4901, 4902, 13586).


 Moreover, one arbitrator held the subject of five consecutive work days was outside the negotiable items under Article 30, since Item Two did not indicate a work week was comprised of five consecutive days (AIRS Case No. 6414).


 In another award, an arbitrator held that Article 30.B.2 does not cover consecutive days off (AIRS Case No. 13586).


 However, see AIRS Case No. 33542 in which an arbitrator reasoned that management's right to schedule could be restricted in rejecting its proposed deletion of language that limited part-time regular employees to five work days with two fixed days off. The arbitrator determined both that the existing provision was not in conflict with the National Agreement and not an unreasonable burden.

 Language that is conditional and reserves management's right to determine the basic work week within reasonable bounds has been allowed. For example, in AIRS Case No.4909, an arbitrator held that an existing LMOU with the qualifier "subject to the needs of the Postal Service" was not in conflict or inconsistent with the National Agreement.

 Moreover, in AIRS Case No. 7579, an arbitrator upheld a provision with the phrase "to the maximum extent possible."

 Another arbitrator refused to disturb a provision that stated that "[e] very effort shall be made to provide the maximum number of Monday through Friday basic work weeks in each Section/Tour consistent with operational needs." (AIRS Case No. 20619)

 Also, an arbitrator concluded that Management failed to show with probative evidence that a provision establishing a mandatory work week of five consecutive days was inconsistent with the National Agreement, and therefore found that there was no reason for doing away with a provision that had been in existence for a length of time (AIRS Case No. 7022).


 However, see AIRS Case Nos. 20499, 20500 in which an arbitrator rejected the union's proposed language that "[t]o the maximum extent possible, all full-time and part-time regular positions in the clerk craft shall have consecutive days off."

Practicality of Proposal

Significantly, impasse arbitrations have relied heavily on the National Agreement provision in Article 8, Section 2.C:

"As far as practicable the five days shall be consecutive days within the service week."

Practicality then is a key issue. Webster's Dictionary defines "practicable" as "that which can be done or put into practice; feasible: as, a practicable plan."

 Proposals that are too restrictive will probably be rejected (AIRS Case Nos. 513 and 1443). For example, the arbitrators in Case Nos. 513 and 1443 rejected provisions that provided that all full-time regular positions in a facility shall have a regular work week of five consecutive days or a work week shall be five days with fixed days off of Saturday and Sunday, Sunday and Monday, or rotating days. (But see AIRS Case No. 20792 cited below for a different result.)

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Even though a proposal is practical in the sense that it will provide sufficient workers each day of the week, it may be rejected. For example, a local attempted to change its LMOU from providing that each full-time employee shall have a job with a fixed day off to all full-time clerks shall have a rotating day off. The arbitrator rejected the proposal because it would cause inefficiencies such as increased training costs (AIRS Case No. 2105). Also, see AIRS Case No. 42359 which had a similar result.

Showing of Need or Benefit



Additionally, arbitrators will consider the benefits of a proposal to an employer or employees (AIRS 2105 and 20921). Basic work schedules that have worked well over a long period will not be changed without a demonstration of a need or benefit to employees, or a demonstration of an impediment in the efficiency of the Postal Service (AIRS Case Nos. 2105, 4860, 6414, and 7892).



For example, in one case, an arbitrator refused to delete a provision providing that regular clerks shall have two consecutive days off, Saturday and Sunday, or Sunday and Monday. He found that there was no showing that unnecessary overtime would occur during weekends, holidays, and vacations (AIRS Case No. 20792).



A proposal that benefits only a small number of the employees at a facility may be rejected (AIRS Case No. 5291).



Moreover, a proposal that may benefit employees by providing rotating days to some clerks to allow them to spend more time with their families may require the Postal Service to hire more employees or reduce service. An arbitrator has rejected such a proposal on efficiency grounds (AIRS Case No. 4869).



Another arbitrator rejected a proposal for rotating days off on the basis that it would deprive a postmaster of the ability to schedule regular clerks when they are most needed and would result in additional expenses for cross-training and providing security for the stock of more employees with accountability (AIRS Case No. 20491).

Union Approval or Consultation



Provisions requiring union approval or consultation regarding the basic work week have been rejected in some cases (AIRS Case No. 6120, 6130, 6186, 13586), as well as provisions requiring Management to establish a five consecutive work day week for new job assignments or additional positions created (AIRS Case Nos. 4902 and 7501).



However, union consultation has been allowed by arbitrators in AIRS Case Nos. 13028 and 20619.

Item 3. Guidelines for the Curtailment or Termination of Postal Operations to Conform to Local Authorities or as Local Conditions Warrant Because of Emergency Conditions



DIRECTOR'S TIPS:

REFERENCES IN THE CBA

Articles 3. MANAGEMENT RIGHTS

Article 3 of the National Agreement gives management certain Rights. However, they are not unfettered rights. The first sentence reads that their rights are "*subject to the provisions of this Agreement and consistent with applicable laws and regulations*".

(Note: Statement at the end of Article 3: (The preceding Article, Article 3, shall apply to PSEs)

Article 5. PROHIBITION OF UNILATERAL ACTION

Article 5 of the National Agreement is a Prohibition of Unilateral Action by management for certain issues concerning wages, hours, and other terms and conditions of employment, as defined in Section 8(d) of the National Labor Relations Act... or are otherwise inconsistent with the employer's obligations under law.

(Note: Statement at the end of Article 5: "The preceding Article, Article 5, shall apply to PSEs)

Article 14, SAFETY AND HEALTH

Section 1. Responsibilities

It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility...

(Note: Statement at the end of Article 14: (The preceding Article, Article 14, shall apply to PSEs)

Article 19. HANDBOOKS AND MANUALS

Section 1. General

...

Article 19 shall apply in that those parts of all handbooks, manuals, and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to PSEs only to the extent consistent with other rights and characteristics of PSEs negotiated in this Agreement and otherwise as they apply to the supplemental work force. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to PSEs pursuant to the same standards and procedures found in Article 19 of this Agreement.

OTHER REFERENCES & COMMENTS

Note: The union's position is the safety of employees should be the main concern when determining whether to curtail operations.

XRef: **Postal Support Employees Memoranda, Appendix A**, lists Article 14 as applying to PSEs.

Management will strongly oppose giving up its right to determine when postal operations should be curtailed and administrative leave granted to employees who are prevented from reporting to work due to an "Act of God." However, every effort should be made to negotiate guidelines to cover such "Act of God"

situations, taking into consideration the resulting impact on employees, notification of employees, the safety and health of employees, the advice of local authorities, etc.

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In support of proposals seeking curtailment during weather emergencies, locals should note that a congressional committee in 2002 made recommendations that addressed curtailing postal operations in these circumstances (U.S. House of Representatives Report by the Committee on Appropriations attached to the Treasury, Postal Service, and General Government Appropriations Bill, 2002 (HR. 107-152)). Arising out of concern that the Postal Service placed the health and safety of employees at risk by not curtailing postal operations in a timely manner during several hurricanes, that report urged the Service to adopt a policy and practice of following the recommendations and directives of federal, state and local emergency management and weather authorities in all locations served by the U.S. Postal Service when weather emergencies arise. A restatement of this position may be used to formulate local union proposals. (For example, a proposal may provide in part as follows: To avoid placing the health and safety of postal employees at risk during weather emergency situations, the Postal Service shall follow the recommendations and directives of federal, state and local emergency management and weather authorities when emergencies arise).

In addition to “Acts of God” there are other local emergency conditions that can be negotiated, such as, responses to the discovery of explosives in the building, bomb threats, lack of heat or air-conditioning, or other environmental factors. Given the right set of circumstances all of these situations can become life threatening. In tackling these kinds of problems, the local negotiating team ought to consult with experts from the fire department and/ or police department concerning explosives and bomb threats.

In regard to working in excessively cold or hot conditions, an industrial hygienist could provide background information on health risks and common-sense actions that can be taken to avoid or reduce the risks. Examples of how such things were poorly handled in the past can be used to

justify the need for such provisions in the local memo.

In addition, events involving exposure to anthrax and subsequent termination of postal operations because of such events have raised the issue of an ongoing need to ensure that procedures are adequate in the event of emergencies related to biological or chemical agents. Provisions that set out guidelines that are acceptable to the union for closing facilities due to chemical or biological contamination or that allow the union input into developing such guidelines would be an appropriate matter for bargaining under Item 3. In addition, the union may present proposals that provide that employees can refuse to work in conditions that they reasonably believe would result in death or serious injury because of biological or chemical contamination without being subject to discipline and that they will be reassigned to work areas that they consider to be safe.

To support provisions addressing curtailment of operations due to explosives or biological and chemical contaminants in the mail, locals can point to the Postal Service’s January 7, 2011 Mandatory Stand-Up Talk on Recognizing and Handling Suspicious Mail as its recognition that termination of operations may be necessary to protect employees. That talk instructs employees that once a suspicious letter or package has been identified, a prompt response is necessary including clearing and cordoning off the area where the letter or package was found. However, the union can argue that further clarification of the Postal Service’s policy at the local level would be important.





Moreover, note that a U.S. Supreme Court ruling upheld OSHA’s regulation prohibiting discrimination against an employee who refuses to perform a task because of a reasonable apprehension of death or serious injury under circumstances where there is insufficient opportunity or time to obtain correction of the problem by the employer or assistance from the Occupational Safety and Health Administration. While this decision in *Whirlpool Corp. v. Marshall* (445 US 1, 1980) and the OSHA regulation in 29 CFR 1977.12 provides some

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protection for employees, it may be important to set out a local procedure to address such circumstances and to provide for alternatives such as administrative leave or reassignment that will be available to employees if they exercise the right of refusal after reporting an imminent danger to management and no corrective action has been taken. Also, examples of provisions that other unions have negotiated on some of these subjects are included at the end of this item.

Management Discretion

 Relying on Article 3 or ELM Sections 519.213 and 519.221, some arbitrators have rejected proposals that restrict management's discretion in granting administrative leave or in determining what constitutes an emergency (AIRS Case Nos. 6107, 6335, 6433, 7232, 7233, 7235, 27950, 32253). Examples of proposals rejected on these grounds have included provisions that require shutdown of a facility on the basis of hurricane warnings by the National Weather Service or when weather conditions prohibit delivery of mail or that require automatic evacuation of a facility after an alleged bomb threat.

 However, while an arbitrator denied language for an LMOU requiring managers at a Processing and Distribution Center to comply "when the weather bureau issues a hurricane warning or any severe weather warning and the mayor or city manager of the city in which employees live, informs people to stay off the streets," the arbitrator included language that would not delegate management's right to manage the facility. The language provided that:

"The decision for curtailment or termination of Postal Operations to conform to the orders of local authorities or as local conditions warrant because of emergency conditions shall be made by the installation head. When the decision has been reached to curtail Postal Operations, to the extent possible, management will notify and seek the cooperation of local radio and television stations to inform employees. This decision

will be made as promptly as possible with due consideration for the safety and welfare of the employees and the protection of their families and personal property." (AIRS Case No. 38348).



Some arbitrators have rejected detailed language that protects the health and safety of employees (See AIRS Case No. 7232, 21011, 21012, 21013). Also, one arbitrator has ruled that a broad definition of "emergency conditions" proposed by a local union contained circumstances that were beyond the scope of Article 30.B.3 (AIRS Case No. 33168). Another arbitrator rejected a proposal that provided that at any time Acts of God exist or the area is ordered to be evacuated by civil authorities, employees shall be granted approved leave or reassignment. Though the proposal provided that the type of leave to be granted would be determined by the Postal Service, the arbitrator ruled that the proposal extended beyond the scope of Article 30 when it proposed that leave should be granted. He said that the union's failure to make reference to Article 10 in its proposal, and defer to such leave regulations, could create conflicts that are inconsistent with the National Agreement (AIRS Case No. 39771).

Successful Provisions



However, several arbitration awards have accepted extensive union proposals. In AIRS Case No. 576 Arbitrator Dash added the following provisions to the LMOU:

In the event that a bomb threat occurs at either the Newark or Hackensack Postal Service locations, the Newark management's "Contingency Plan For Bomb Threats" (February 23, 1972) shall become immediately operative for that location, and a simplified written "plan" shall become operative at the Hackensack, New Jersey location. In both locations, the "Joint Labor-Management Safety and Health Committee" members at work at the time shall be consulted briefly by management before the "Plan" is initiated in connection with any bomb threat. All American Postal

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Workers' Union officers at both locations, shall be provided with written copies of the "Plan" by management.



If and when heating equipment at any subject location is deemed inoperable by management, and any possible offsetting steps taken by it fail to prevent the dropping of the inside temperature below 50 degrees for a full tour, the individual employees who fear to work under such conditions may request appropriate relief therefrom in the form of a temporary transfer to a nearby location or of a leave. The nature of such leave if requested, shall be determined by management, but a leave shall not be unreasonably withheld.



If and when air-conditioning or air-ventilation equipment at any subject location is deemed inoperable by management, and any possible offsetting steps taken by it fail to attain an inside temperature level below 95 degrees for a full tour, the individual employees who fear to work under such conditions may request appropriate relief therefrom in the form of a transfer to a nearby location or of a leave. The nature of such leave, if requested, shall be determined by management, but a leave shall not be unreasonably withheld.



In Airs Case No. 5554, an arbitrator rejected management's contention that the union was limited to proposing only those guidelines which may be operative after an employer has decided to curtail or terminate operations. He emphasized that it was well established that health and safety was a mandatory subject of bargaining and he accepted as modified proposals for curtailing operations in the event of a bomb or safety hazard and dealing with granting leave when conditions result in extremely high or low temperatures in a facility. This arbitrator added the following provisions to the LMOU:

In making a determination to curtail or terminate operations following an emergency, management will take into

account (a) the adverse effects, if any, on the normal operation of public transportation, (b) the closing of roads and highways in counties contiguous to Fulton County.

If management has reasonable grounds to believe that a bomb or other explosive device is within the installation and there is reasonable cause to believe that there is an imminent safety hazard, management shall curtail or terminate operations. Mere suspicion of the existence of a bomb or explosive device, standing alone, does not constitute grounds for curtailment.

If equipment failure is believed by management to be the proximate cause of extreme high temperature or extreme low temperature in the facility, and if such temperatures constitute a health hazard, management shall be lenient in granting leave or dismissing those employees whose health may be at risk. Mere assertion on the part of an employee that his health is at risk does not, standing alone, constitute sufficient basis for early dismissal.



Another arbitrator upheld these same provisions against another management challenge, but held that another provision requiring that leave be granted if the Department of Public Safety or another governmental body certifies or determines that conditions pose an imminent health or safety risk constituted an unreasonable burden (AIRS Case No. 20501).



However, Arbitrator Parkinson ruled that a provision allowing employees to request appropriate leave whenever a traveler's advisory exists and they believe conditions are so hazardous as to make it unsafe to drive did not constitute an unreasonable burden. The arbitrator rejected management's argument that this language created an impression with employees that they were entitled to administrative leave and caused them not to report to work. In addition, this arbitrator upheld provisions giving special delivery messengers the right to request curtailment of delivery of mail to comply with any emergency and allowing a

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handicapped employee confined to a wheelchair to request release during inclement weather through the appropriate chain of command or outside regular hours by calling the Labor Relations representative at his/her place of residence (AIRS Case No. 27191).



In AIRS Case No. 20617, an arbitrator added the following language to an LMOU that already provided for notification to the union of management's plan to curtail mail due to local emergency conditions:

"The Postal Service shall furnish to the Union a copy of its contingency plan concerning bomb threats except as to the personal telephone numbers of Postal officials and for limited use in accordance with the reasonable exercise of managerial discretion and responsibility."



This arbitrator, however, rejected language requiring management to give the union copies of contingency plans for heating equipment, air-conditioning, and waterworks failure and requiring notification and consultation with APWU stewards before a contingency plan is initiated. He also rejected language allowing employees who fear to work under conditions when there is a bomb threat or heating, air-conditioning, air-ventilation, or waterworks equipment failure to be granted relief in the form of temporary reassignment or leave.



In another award in AIRS Case No. 34360, an arbitrator rejected the union's proposal that in deciding whether to curtail operations, the Postal Service should take into account the advice of safety committee members as well as the needs of the Service and the advice and orders of local civil authorities. He determined, however, that since there is no substantial administrative burden in keeping employees informed under these circumstances, language requiring the Service to do so should be included in the LMOU. In addition, also on the basis that no substantial administrative burden would be involved, he accepted language proposed by the union regarding providing it with all emergency contingency plans that relate to the safety and

welfare of postal employees. The language that was ordered to be adopted is as follows:

"If Management is contemplating the possible curtailment or termination of operations, it shall keep the employees advised of the general state of those deliberations unless there is good cause (e.g. security considerations) to the contrary. Management shall ordinarily use a Local official or Safety Committee member for that purpose.

Management shall supply the union with a copy of all emergency contingency plans that relate to the safety and welfare of postal employees (i.e. bomb plans), except as to the personal telephone numbers of the Postal Officials, with updates as they become available."



Other arbitrators have allowed language that clarifies an employee's right to request leave when driving may be hazardous (AIRS Case No. 5231, 27191). Language calling for union notification in the event of a breakdown in air conditioning or heating also has been accepted (AIRS Case No. 6433). In addition, another arbitrator has added language to an LMOU that requires management to grant an employee appropriate leave if medical authorities determine they are too ill to work due to faulty heating and air-conditioning (AIRS Case No. 14258).

Leave for Acts of God

Impasse arbitrations show that most disputes arise when leave is in issue for "Acts of God."



For example, in AIRS Case No. 4906, the arbitrator rejected a union proposal that restricted the postmaster to granting only administrative leave in the case of employees affected by closing of businesses and curtailment of public transportation due to emergency conditions. Also rejected have been proposals to negotiate leave guidelines for emergency situations where there is no curtailment or termination of operations but some employees are unable to report (AIRS

Case Nos. 530, 568, 573). In addition, a provision requiring that administrative leave be granted when employees are prevented from reporting for work due to Acts of God, hazardous weather conditions, or emergency situations, and when dismissals are warranted due to orders of local authorities was rejected on the basis that it removed from management the right to make a judgment on the scope of emergencies and the granting of administrative leave (AIRS Case No. 20913).



An attempt to insert language that management must follow the provisions of the ELM was rejected because the regulations exist and violations can be grieved without adding to the LMOU (AIRS Case No. 535).



In AIRS Case Nos. 568 and 6090, the arbitrators made clear that it makes no sense to write new and additional contract language to correct management violations of current provisions. New language is no substitute for grievances and other attempts to police management violations.



However, grievances may demonstrate that new language is needed to correct a problem. In AIRS Case Nos. 8570, 8571 and 8574 (rejected on other grounds) the arbitrator stated additional protection of a specific clause in the LMOU would be appropriate where policies and regulations had not been followed by local management over a substantial period of time.

Examples of Other Union Contract Proposals on Safety

In determining what language to include in a provision, a review of other unions' proposals on the issues of safety and health and responses to accidents and emergencies may be useful. Of course, such language has to be refined so that it will be more applicable to a local union's circumstances. A provision in the contract between USWA and Bethlehem Steel, 1993-1999, addresses the situation of emergency responses: "... Employees shall be instructed in escape and emergency rescue procedures. A detailed outline of the training procedures shall

be included in the program: [The program shall include] posting of emergency escape procedures in areas of potential hazard; [There shall be] an emergency rescue program which shall include provisions for treatment of carbon monoxide exposures [can be changed to reflect the type of exposure that is involved, such as anthrax exposure], emergency rescue techniques for various parts of the plant, and appropriate rescue and recovery equipment including resuscitators. The program shall include identification of Employees trained in emergency rescue techniques."

Another example is a provision addressing the issue of not working under unsafe conditions in the ILWU and Pacific Maritime Association Agreement, 1993-1996: "Longshoreman shall not be required to work when in good faith they believe that to do so is to immediately endanger health and safety...."

The employer shall have the option of having the men raise a question of health and safety stand by until a decision is reached or 'working around' the situation until it can be resolved, and no further work shall be performed on that disputed operation until the health and safety issue is resolved." A provision concerning assigning an employee another job after he or she exercises a right of refusal is contained in the UAW and General Dynamics contract of 1991: "Employees who exercise ... right of refusal shall be assigned to other available work...either at the...rate of the job from which he/she was relieved or the rate of the job to which he/she is assigned, whichever is higher."

Besides Item 4, Items 5 through 12 deal with the local leave program.



Item 4. Formulation of Local Leave Program



DIRECTOR'S TIPS:

REFERENCES IN THE CBA

Article 19. HANDBOOKS AND MANUALS

Specifically, **Chapter 5** of the **Employee Labor Relations Manual (ELM)**.

Article 10. LEAVE

Section 2. Leave Regulations

A. The leave regulations in Subchapter 510 of the Employee and Labor Relations Manual, insofar as such regulations establish wages, hours and working conditions of employees covered by this Agreement, **other than PSEs**, shall remain in effect or the life of this Agreement.

B. Career employees will be given preference over non-career employees when scheduling annual leave. This preference will take into consideration that scheduling is done on a tour-by-tour basis and that employee skills are a determining factor in this decision.

Article 10. LEAVE

Section 3. Choice of Vacation Period

B. Care shall be exercised to assure that no employee is required to forfeit any part of such employee's annual leave.

Article 10. LEAVE

Section 4. Vacation Planning

The following general rules shall be observed in implementing the vacation planning program:

...

A. The Employer shall, no later than November 1, publicize on bulletin boards and by other appropriate means the beginning date of the new leave year, which shall begin with the first day of the first full pay period of the calendar year.

...

C. This provision allows locals to negotiate a procedure in each office for submission of applications for annual leave for periods other than the Choice Period (aka: Incidental Annual Leave)

D. All advance commitments for granting annual leave must be honored except in serious emergency situations.

OTHER REFERENCES & COMMENTS

XRef: **ELM, Chapter 5**

XRef: **Postal Support Employees Memoranda, Appendix A,
Section 2. Leave Regulations**

Item 4 gives the local an opportunity to tie all of the other items together into some logical leave program as well as to cover subjects not specifically covered elsewhere: such as, the sections for vacation choices; whether an employee coming from another section during the course of the year will keep his or her initial vacation selection or will have to select a new vacation in the new section; how employees cancel vacation; how empty choice vacation slots are filled as they become vacant during the course of the

year; the trading of vacation periods; the effect of military duty or illness on vacation periods; indicating the number or percentage of employees permitted off during non-choice periods. Remember to specifically address each craft separately in your LMOU leave provisions. Each craft has different needs for coverage and seniority selections.

Note also that sections for annual leave selection purposes don't have to be the same as for holiday and overtime scheduling (Items

13 and 14), and reassignment within an installation of employees excess to the needs of a section (Item 18). Locals should consider the advantages and disadvantages of defining a section a certain way in order to ensure seniority protection or other benefits for different categories of employees. In the case of Maintenance Craft employees, while it is not required to observe strict occupational group application for leave boards and selections, it is advisable to respect those distinctions. This is because employees of one occupational group cannot fill in for or act as relief for employees of another occupational group who are absent or on leave. To do so would violate Articles 38.7.C and/or 7.2. The typical considerations are by tour and by work location within an occupational group although there are certain opportunities where a combination of locations may prove beneficial.

It is advisable to define “tour” if it’s used in your LMOU especially given the addition of NTFT employees who have varying schedules. In order to reduce confusion, an agreement should be reached that tour is based on an employee’s begin tour time and should set out the specific hours for each tour. For example, 2200 (day before) – 0399 is Tour 1, 0400 – 1199 is Tour 2, 1200 – 2199 is Tour 3.

Remember also to include Postal Support Employees (PSEs) in the complement of employees eligible for annual leave selection. Locals need to consider also how to set up PSE bidding for vacation choices during rounds of bidding for such choices. Though the contract provides in part under Article 10.2.B that “[c]areer employees will be given preference over non-career employees when scheduling annual leave,” be mindful that PSEs, unlike casual employees, are part of the APWU bargaining unit and should be afforded annual leave opportunities.

In addition, there are no longer part-time regular employees in the Clerk and Motor Vehicle Crafts. However, the Maintenance Craft retains part-time regular employees so

references to part-time regulars should not be removed from LMOU provisions.

Inconsistent and In Conflict

The following examples are cases where impasse arbitrators have held specific provisions proposed as part of the local leave program to be inconsistent or in conflict with the National Agreement or not covered by Article 30:

- A minimum of two days bereavement leave (AIRS Case No. 4353). However, see MOU re: Bereavement Leave in 2021 National Agreement.
- Automatic approval of leave for weddings, graduations, military leave, funerals, Christmas Eve if the request is based on religious reasons, etc. (AIRS Case Nos. 4353, 6660, 6137, 7584)
- Automatic “Administrative Leave” when not able to report due to snow storm. (AIRS Case Nos. 2607 and 512)
- No denial of emergency annual leave so long as management receives notification of the nature of the emergency. (AIRS Case No. 6097)
- Removal of 204B from vacation schedule. (AIRS Case No. 2607).
- Automatic approval of requested time off for blood donations and provision of uniform amount of administrative leave for this purpose. (AIRS Case Nos. 574, 20913, 20915-20920). But see AIRS Case #20907 where an arbitrator has upheld such a provision.
- Prohibition against requiring a medical certificate for sick leave or LWOP requests of 3 days or less, or requirement to accept verbal certification of absences of 3 days or less. (AIRS Case Nos. 543, 6103, 7586).
- Automatic LWOP for Disapproved absences or charging of LWOP in all cases where employees don’t have annual leave or sick leave. (AIRS Case Nos. 6142, 7581, 7582, 20903). But see AIRS Case Nos. 20915-20920 where an arbitrator upheld a provision on granting requests for LWOP or LWOP in conjunction with sick or annual

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leave the same consideration as sick or annual leave requests.

Also see the MOU on LWOP in Lieu of SL/AL and pre-arbitration settlement Q9OC-4Q-C 95048663 on LWOP, CBR 99-03, pages 58-61.

- Maternity leave policy. (AIRS Case No. 20895, 21888).
- Automatic approval of any leave up to a minimum number of employees or a minimum percentage of employees. (AIRS Case No. 21888).
- Automatic LWOP to allow employees to retain earned leave at employee's option. (AIRS Case No. 21888).
- No denial of incidental annual leave due to managerial leave, craft employees detailed out of craft or loaned to another facility. (AIRS Case No. 21888, 21034).
- 48-hour time period to select choice vacation (bypassing choice vacation selection period. (AIRS Case Nos. 27030-34).
- Signing up for leave for less than a week during the choice vacation period. (AIRS Case No. 27195).
- Procedure for disapproving leave requests. (AIRS Case No. 7370)
- Employee to keep original choice vacation selection from old section when transferred to a new section. (AIRS Case No. 562, 34360).
- Employee to select another vacation period when ordered to military training during a selected vacation, and military leave not to be included as part of choice vacation leave. (AIRS Case No. 7366, 21888, and 22474).
- Documentation procedures for substantiation of absences. (AIRS Case No. 7583).
- Exchange of a choice vacation leave selection by mutual consent in the same craft and level. (AIRS Case No. 21888).
- Procedure for cancelling previously approved annual leave and posting the available leave. (AIRS Case Nos. 21888, 21034, 21871).
- Requests for granting LWOP to be given same consideration as applications for annual leave or sick leave. (AIRS Case Nos. 20915-20920).

Proper Items for Leave Programs


However, many items concerning administration of the leave program have been ruled proper (although not always meritorious), such as:


- Computations of the number allowed off during choice vacation period (Item 9) should be based on number of authorized positions rather than actual number working. (AIRS Case No. 4353).
- Time frame in which management must act upon incidental leave requests. (AIRS Case Nos. 512, 541, 549, 2955, 7585, 8470, 20892, 21034, 20915-20920).
- Time frame in which employees must make requests for leave for choice vacation period and for incidental leave. (AIRS Case Nos. 4662, 4861, 4953, 9686).
- LWOP may be granted where employee lacks leave to cover vacation choice. (AIRS Case Nos. 27397 and 34984).
- Procedure for vacation bidding by using calendar system. (AIRS Case No. 26731).
- Election to be wait-listed in seniority order for choice vacation that was disapproved or to select any open choice periods. (AIRS Case Nos. 27128-31).
- Leave used during employee's leave selection will be at employee's option (in 8-hour increments). (AIRS Case Nos. 27068-69).
- Reposting of vacation slots that have been withdrawn. (AIRS Case No. 34360).
- Orientation before annual leave sign-up. (AIRS Case No. 34360).
- Posting of leave vacancies of less than one week during the non-choice vacation period. (AIRS Case No. 34360).

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- Posting of an early out list for employees on the clock. (AIRS Case No. 33001).
- Procedure for holding a previously denied 3971 for consideration. (AIRS Case No. 33001).

Guaranteed Leave Quota

 Locals should note that impasse arbitrators have not in the past been sympathetic to proposals attempting to guarantee approval of annual leave requests within a specified quota. (AIRS Case Nos. 539, 577, 512, 6779, 6780).

 However, in a national level decision, Arbitrator Mittenthal ruled that LMOU provisions granting employees the right to take certain leave time on the basis of a consolidated percentage, fixed number or other comparable formula, are not inconsistent or in conflict with

the National Agreement. (See, AIRS No. 6931, January 1986).

Many locals have negotiated such agreements without needing to resort to impasse arbitration. Indeed, where the local has negotiated a guarantee, arbitrators deciding “rights” arbitrations have enforced the LMOU provisions despite challenges that the provisions are “in conflict.” (AIRS Case Nos. 594, 1444, 1984).

Note: Be aware that a provision in Article 10, Section 6 of the National Agreement provides for a “minimum charge for leave” (one hundredth of an hour) and for use of annual and sick leave in conjunction with LWOP. Also, the MOU on Paid Leave and LWOP in the National Agreement, the MOU on LWOP in lieu of SL/AL, and pre-arbitration settlement Q9OC-4Q-C 95048663 on LWOP (CBR 99-02, pages 58-61) address the issue of LWOP usage.



Item 5. Duration of the Choice Vacation Period



DIRECTOR'S TIPS:

REFERENCES IN THE CBA

Article 10. LEAVE

Section 3. Choice Vacation Period

C. The parties agree that the duration of the choice vacation period(s) in all postal installations shall be determined pursuant to local implementation procedures.

Article 10. LEAVE

Section 4. Vacation Planning

The following general rules shall be observed in implementing the vacation planning program:

...

B. The installation head shall meet with the representatives of the Union to review local service needs as soon after January 1 as practical. The installation head shall then:

1. Determine the amount of annual leave accrued to each employee's credit including that for the current year and the amount he/she expects to take in the current year.
2. Determine a final date for submission of applications for vacation period(s) of the employee's choice during the choice vacation period(s).

Provide official notice to each employee of the vacation schedule approved for each employee.



Impasse arbitrators have been favorable to both shortening or lengthening the Choice Vacation Period or alternately permitting more employees off (AIRS Case Nos. 503, 549, 551). All employees are entitled to a vacation within the choice vacation period (Article 10, Section 3.D). Note that if the choice vacation period is June through August more people will be off in a shorter period of time than if the choice vacation period is May through September. (See AIRS Case Nos. 26991-92 in which an arbitrator upheld a union proposal for limiting the choice vacation period to the summer months).



In AIRS Case No. 13045 the arbitrator held that a 20-week choice vacation period, beginning with Memorial Day, was a reasonable compromise of the union proposal for a 16-week period and a management proposal for a 24-week choice period. The arbitrator reasoned that a 20-week period would increase the number of employees off during the choice period at a given time by five and would still provide a choice during the desirable vacation season. There would also be little effect on the efficiency of mail operations since the volume of mail would not increase until after the 20-week period. In AIRS Case Nos. 20765 and 20766, an arbitrator ruled that the Postal Service had not met its burden of

proving that an unreasonable burden existed due to existing language that provided for a choice vacation period beginning on the last Sunday of May and lasting for 18 weeks. He rejected the Service's attempt to extend the choice period to 24 weeks on the basis that the alleged adverse impact from insufficient employees may be due to other factors than the length of the choice vacation window and the number of employees eligible for vacation.



Another arbitrator rejected management's proposal of a 38 consecutive week choice vacation period starting in January and instead accepted the union's proposal of a 26-week period starting in April (AIRS Case Nos. 28108-111). Moreover, an arbitrator rejected management's proposal to make the leave schedule the entire calendar year with the exception of the Christmas period. Instead, he accepted in part the union's proposal that it should run for 24 consecutive weeks beginning with the first full week in May and including the week in which Thanksgiving falls, or the week of Christmas if Christmas falls on Tuesday or earlier, the week after if it falls on Wednesday (AIRS Case No. 34360).

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Different locals take on different approaches to vacation planning. Some locals may negotiate an 11 or 12-month vacation period whereas others will negotiate different percentages or numbers of employees who may be scheduled on vacation at different times during the 11 or 12-month period.


The following is an example of a provision relating to the Motor Vehicle Division:

The maximum number of employees in each category as specified in each craft article of the Local Memorandum of Understanding shall be 10% each week of the prime vacation period.

In the Motor Vehicle Division, categories shall be occupational groups, sections, and tours.

A longer choice vacation period may accommodate the needs of employees better than a shorter choice vacation period. For example, a local with a large group of parents of school age might feel the summer months are preferable to meet their needs whereas a local with an older workforce might find the winter months preferable. A longer choice period may accommodate the needs for the entire workforce of the local. However, one arbitrator has determined that in the absence of proof of a compelling need for increasing a choice vacation period or an adverse effect on employees, he would not accept a local union's proposal to increase a choice vacation period from February through November to January through November and the last two weeks in December (AIRS Case No. 26967-68). He found that the current 43-week choice period was sufficient to preclude any forfeiture on the part of the nine clerks at the office.

Choice Vacation during Holiday Periods

 Some arbitrators have been reluctant to increase the choice vacation period to include

the Christmas to New Year's period, the week of Thanksgiving, or the period around Easter in the choice vacation period (AIRS Case Nos. 21888, 20504, 20904, 34361). Also, the addition of the month of November to the choice vacation period may be rejected because of the high volume of mail at that time (AIRS Case Nos. 27427-30).



Another arbitrator rejected the elimination of restrictions on assignment of the last week of December as a vacation period (AIRS Case No. 28647).



In addition, an arbitrator rejected a union's proposal to include clerk craft employees in a provision granting 5% of all employees within each section leave during the first full week of December through December 24th (AIRS Case No. 26788).



In smaller offices, an arbitrator may refuse to change an established practice so that clerks can select choice leave on weeks in which six holidays fall if it means that employees in one craft will be treated more favorably than employees in another craft (AIRS Case No. 20560).



Also, an arbitrator denied a union's proposal to include the entire month of December as part of the choice vacation period on the basis of evidence that the majority of offices in the district in which the facility was located granted leave for one week only during December and mail volume as well as customer usage of window service increases during this period of time. He found unconvincing union arguments that training additional staff for window work, reducing the numbers of clerks serving as acting supervisors, and considerations of equity justified giving clerks and maintenance employees an opportunity to select choice vacations during the entire month of December since carriers at the facility were granted such an opportunity (AIRS Case No. 39540).



See also AIRS Case No. 42763 in which an arbitrator rejected a union's proposal to include the period from the last Saturday in November

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through December 25th in the vacation leave year. The arbitrator found that there was no compelling reason to change the leave year language which already provided that the leave year extends from the fourth full service week in April and continues through the third full service week in April of the following year, with the exception of the time between the end of November and December 25th. He noted that the union had not made reference to local MOUs in which parties had agreed to extend the vacation period to include December, and sufficient staffing was necessary during the high-volume period surrounding Christmas.



However, see AIRS Case No. 28108-111 in which an arbitrator allowed the addition of the week of Thanksgiving and the period from December 25th through January 1st to be included in the choice vacation period (Also see AIRS Case Nos. 26728 and 34360). Moreover, another arbitrator included language in a local agreement that “[e]very effort will be made to allow the period of Christmas Day through December 31 as a vacation period in accordance with Item 12 of the LMOU” (AIRS Case No. 26811).



In addition, an arbitrator expanded the choice vacation period to start two days prior to the New Year’s Day holiday (December 30th through November 30th) while rejecting the union’s proposal that it start on December 25th (AIRS Case Nos. 27128-31).



Another arbitrator ordered that the choice leave period, which currently extended from the first full week of May through the last full week of September, also include the period between December 25th through January 1st. He found that there was no evidence showing that requiring management to grant leave within negotiated percentages would inhibit its ability to efficiently manage the facility during the holiday period. The arbitrator cited evidence that in the past during this same period of time management granted leave that exceeded existing percentages and made such decisions

arbitrarily and capriciously (AIRS Case No. 39925).



Similarly, another arbitrator accepted a proposal to add December 26th through December 31st to the choice vacation period, which extended from January through the last full week that includes November 30th. He was persuaded by evidence that employees are being given time off during this period anyway, but it is not being approved on an equitable basis. (AIRS Case No. 40576).

The following is an example of a short choice vacation period:

The choice vacation period is designated as from the week in which Memorial Day falls through the week in which Labor Day falls.

The following is an example of a lengthy choice vacation period:

The choice vacation period shall begin the first full week of January and conclude the last full week of November. 10% of employees in each section will be permitted leave during the choice vacation period except during any full weeks in the months of May, June, July, August and September when 15% of employees in each section will be permitted leave. In addition, 15% of employees in each section will be permitted leave during the week in which Thanksgiving falls.

(Note that different percentages can be set for periods around holidays such as Thanksgiving and Christmas).



However, see AIRS Case No. 35332 where an arbitrator rejected a proposal to increase the percentages off during those times

Item 6. The Determination of the Beginning Day of an Employee's Vacation Period



**DIRECTOR'S TIPS:
REFERENCES IN THE CBA**

Article 10. LEAVE

Section 3. Choice of Vacation Period

...

E. The vacation period shall start on the first day of the employee's basic work week. Exceptions may be granted by agreement among the employee, the Union representative and the Employer.

OTHER REFERENCES & COMMENTS

Note: This provision allows for this start day to be a matter for local negotiations. Since each office is different, the needs of the employees in each office may also be different.

This item deals with whether an employee should start his or her vacation on the first day of the employee's basic work week, at the start of the service week which would be Saturday or at the start of the calendar week which is Monday. For example, if the vacation starts the day following an employee's two consecutive non-scheduled work days, then this employee with fixed off-days will enjoy nine days off on a week of vacation.

Locals should remember to take into account, however, that the beginning of the basic work week, especially in the case of non-traditional full-time employees, will vary and doesn't always correspond to a service week starting on a Saturday. In addition, they may have three non-scheduled days and only two of them will be consecutive. In order for them to obtain some weekend time, therefore, it may be desirable to make a proposal that they start their vacation on a Friday or Saturday. As an alternative, specifying that the beginning date of a vacation period for NTFTs follow non-scheduled days that are consecutive, since NTFTs may have three or more scheduled days off that aren't consecutive, should be considered.

Failing to negotiate otherwise, Article 10, Section 3.E of the National Agreement will control: "The vacation period shall start on the first day of the employee's basic work week." In AIRS Case No. 14264, the arbitrator upheld

management's proposal to have the employee's vacation start date as the first day of the employee's basic work week of the service week in which the employee is requesting a choice vacation selection.





Some of the cases reviewed dealt with union attempts to secure a start date following employees' non-scheduled work days. In resisting such proposals, management showed concern for extended use of overtime and the denial to other employees of their choice vacation period (AIRS Case Nos. 6654 and 8052).





However, in one case, an arbitrator upheld a provision that the vacation period shall start on the first day of the employee's basic work week and allowed employees to start their vacation days other than the first day of the basic work week, if they so desired (AIRS Cases No. 27697-98). He found that there was insufficient evidence to establish that there had been any significant scheduling or cost problems with the past operation of this clause. In another case, an arbitrator accepted a union's proposal to grant employee requests for choice vacation period for "the entire period of 12/25-1/1, regardless of days off, or inclusion of weekends." (AIRS Case No. 39925).


Start After Non-Scheduled Days

 Some proposals that have mandated a start date following non-scheduled work days have been rejected as inconsistent with Article 10, Section 3 (AIRS Case Nos. 6497, 6654, 8052). In addition, some proposals allowing employees to select their vacation start day have been rejected (AIRS Case Nos. 6144, 6548, 8625, and 14264). In AIRS Case No. 6548, the arbitrator noted Article 10, Section 3 states that exceptions to the first day can only be made by agreement among the employee, a union representative, and the employer. In AIRS Case No. 8625, the arbitrator stated that since no evidence was put forth that exceptions had ever been requested, there was no basis for changing the current arrangement.

 Also, where management policy has been to grant requests for start days following non-scheduled work days, a proposal requiring that such requests be granted was rejected on the reasoning that the existing policy kept a certain amount of management flexibility while accommodating employees (AIRS Case No. 8052).

 It has been much easier to get approval for proposals stating that employees would not be required to work non-scheduled work days and holidays that happen to fall in conjunction with vacation (AIRS Case Nos. 4941, 5232, and 20729). In AIRS Case No. 4941, the arbitrator stated the ability of an employee to plan vacation in conjunction with non-scheduled work days or holidays outweighed any inconvenience to the Postal Service in refraining from compelling the employee to work on these days. Also, see AIRS Case Nos. 28108-111 in which an arbitrator accepted the local union's proposal that non-scheduled days and holidays at the beginning and end of a vacation period will be considered as a part of the vacation period unless stipulated by the employee.

 However, see AIRS Case No. 40098 in which an arbitrator rejected the same provision on the basis that the union had not shown that any employee with Sunday-Monday off days who had pre-arranged a vacation surrounding one of the three-day holidays had to actually work Saturday as a holiday or designated holiday.

 Language requiring supervisors to avoid scheduling employees on non-scheduled work days and holidays immediately preceding or following vacation days has been allowed in order to avoid grievances (AIRS Case No. 5232).

Also, a local union has been successful in ensuring that part-time flexibles' vacation includes some weekend time. The arbitrator determined that it was fair to include a provision in the LMOU that choice annual leave shall begin on Sunday and extend through Saturday for part-time flexible employees (AIRS Case No. 26789-94).



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Item 7. Whether Employees at their Option May Request Two Selections During the Choice Vacation Period, in Units of Either five (5) or ten (10) Days.



DIRECTOR'S TIPS:

REFERENCES IN THE CBA

Article 10. LEAVE

Section 3. Choice Vacation Period

D. Annual leave shall be granted as follows:

3. The subject of whether an employee may at the employee's option request two (2) selections during the choice period(s), in units of either five (5) or ten (10) working days, the total not to exceed the ten (10) or fifteen (15) days above, may be determined pursuant to local implementation procedures.

OTHER REFERENCES & COMMENTS

Note: **Article 10, Section 3.D.1.** states that employees who earn 13 days annual leave per year are to be granted up to ten (10) days of continuous annual leave during the choice period.

Note: **Article 10, Section 3.D.2.** states that employees who earn 20- or 26-days annual leave per year are to be granted up to fifteen (15) days of continuous annual leave during the choice period.

XRef: ATTACHMENT A – POSTAL SUPPORT EMPLOYEE (PSE) ANNUAL LEAVE PROVISIONS

I. GENERAL

A. Purpose. Annual leave is provided to PSEs for rest, recreation, emergency purposes, and illness or injury.

1. Accrual of Annual Leave. PSEs earn annual leave based on the number of hours in which they are in a pay status in each pay period.

Rate of Accrual	Hours in Pay Status	Hours of Annual Leave Earned Per Pay Period
1 hour for each unit of 20 hours in pay status in each pay period	20	1
	40	2
	60	3
	80	4 (max)

Locals usually negotiate the option for employees to request up to 15 continuous days or two selections in the choice period in units of 5 or 10 days. This provides the employee with options. (See Article 10, Section 3.D.3).



However, it should be noted that Arbitrator Mittenthal limited these options when ruling that to the extent an LMOU allows an employee to make his initial selection within the non-choice period, such clause is inconsistent with the National Agreement (AIRS Case No. 6931, national level, January 1986).



Some locals have restricted the right to split the vacation and require that the choice be a continuous vacation. Their concern has usually been that splitting by senior employees leaves junior employees with far less attractive selections. Selection problems for junior employees may exist regardless. If the number and percentages of employees permitted off during the choice vacation period are larger than the minimum required, (See Item 9) junior employees will get better selections.

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Some locals have provisions far in excess of the minimum with the proviso that after the initial selection, any unused vacation slots are closed off and not available for any later selections. However, see AIRS Case No. 13023. In that case, the arbitrator held that the union's proposal to add a provision to the LMOU providing that employees could make additional selections during the choice vacation period as long as some slots were available, had merit and was not inconsistent with the National Agreement. He ordered that the following language be included in the LMOU:

“Requests for additional selections during the choice vacation period will not be unreasonably denied, providing there are available slots. Requests for such leave may only be made after March 1 and after the vacation schedule has been posted by February 15, as provided by Article 10.4.A.”



Locals should note a few reasons why split vacation choices have been rejected. First, proposals that imply guarantees of a choice vacation period in excess of the contractually prescribed limitations of Article 10, Section 3.D. may be rejected (AIRS Case Nos. 6434, 6435, 8581, 20539, 20493, 20494, 20495, and 36012). Language that allows a second round, but clearly makes reference to the limitation set forth in Article 10, have been found acceptable (AIRS Case Nos. 6434, 6435, and 20716, 26889, 27117-118).

Additionally, proposals that do not ensure the availability of sufficient employees to run a department; for example, a proposal for leave choices that groups employees by job classification, may be rejected (AIRS Case No. 6521).



Moreover, the local negotiating team should note that a proposal should be adequately supported by evidence, or risk being rejected because of lack of evidence showing a need for the provision (AIRS Case No. 6337). Similarly, management objections to a proposal have been dismissed because of lack of evidence as to why the provision should not be included. In AIRS Case No. 7338, the arbitrator rejected management's argument that a proposal for a two-round selection process was not necessary since management intended to follow the procedure anyway. Lacking substantive evidence against the proposal, the arbitrator concluded the LMOU served an educational purpose as well as defining the agreement of the parties, and therefore the provisions should be included.

Finally, locals should take into consideration NTFT workweeks. For example, you should consider whether splitting vacation choices could result in reduced choices if NTFT workweeks of three and four days are treated as the equivalent of five-day units. If this happens, periods may be blacked out that could have been selected by employees with five-day workweeks.

Item 8. Whether Jury Duty and Attendance at National or State Conventions Shall Be Charged to the Choice Vacation Period.



DIRECTOR'S TIPS: **REFERENCES IN THE CBA** **Article 10. LEAVE**

Section 3. Choice of Vacation Period

F. An employee who is called for jury duty during the employee's scheduled choice vacation period or who attends a National State or Regional Convention (Assembly) during the choice vacation period is eligible for another available period provided this does not deprive any other employee of first choice for scheduled vacation.

Union Conventions

The National Agreement Article 24, Section 2, and Article 10, Section 3.F, deal with leave for attendance at union conventions. If the leave request falls within the choice vacation period and is submitted before the choice vacation schedule is fixed, approval will be automatic. However, unless negotiated otherwise (see Item 20) it will be charged against the number of people permitted off during the choice vacation period. If the request is made after the choice vacation schedule has been fixed, approval is not guaranteed.

Article 10, Section 3.F grants the right of a delegate to make another selection during the choice vacation period in addition to any convention time during the choice period provided the additional selection does not deprive any other employee of first choice for scheduled vacation.



The negotiation of a provision that union convention time not be charged to the choice vacation period should eliminate the possibility of depriving someone of their choice selection (AIRS Case Nos. 6529, 7369, 8573). Also, an argument that the Mail Handlers Union obtained such a provision, coupled with the fact that no evidence showed that the provision burdened the Postal Service, persuaded an arbitrator to award inclusion of language that attendance at national and state union conventions will not be charged against the choice vacation period quota (AIRS Case No. 40576). In addition, a pre-existing provision that employees on jury duty, attending state or national conventions as actual delegates, or on military leave and union activities of two days or less will not affect the number of employees that can be allowed annual leave during the choice vacation period, has been upheld

against management's argument that it was an unreasonable burden (AIRS Case No. 20561). Also, see AIRS Case No. 33389 for a similar outcome.

The next National Convention will be in 2022, during this contract period. Remember that convention workshops, a Training Sessions and Division meetings are also scheduled on additional days close to the time of the convention. This should be kept in mind when negotiating any provision in regard to leave for union business.



Proposals on leave for union meetings or business have usually been rejected as outside the scope of mandatory bargaining (AIRS Case No. 7369, 21871) or inconsistent and in conflict with the National Agreement (AIRS Case Nos. 20560 and 21888).

Jury Duty

Choice vacation has already been selected. An employee is notified of jury duty during a choice vacation period already selected. How to handle this problem is a matter for negotiations. It seems only fair to the individual that another selection of vacation during the choice period be permitted.

Article 10, Section 3.F provides that the employee may make another selection, provided the additional selection does not deprive another employee of first choice for scheduled vacation. Negotiation of a provision that does not charge jury duty to choice vacation would reduce problems. The employee's original selection would be considered vacant and could be filled by someone else (See Item 4). The domino effect would increase selection options of the employee called to jury duty.

Item 9. Determination of the Maximum Number of Employees Who Shall Receive Leave Each Week During the Choice Vacation Period.

 **DIRECTOR'S TIPS:**

REFERENCES IN THE CBA

Article 10. LEAVE

Section 3. Choice of Vacation Period

- B. Care shall be exercised to assure that no employee is required to forfeit any part of such employee's annual leave.

Article 10. LEAVE

Section 4. Vacation Planning

The following general rules shall be observed in implementing the vacation planning program:

...

B. The installation head shall meet with the representatives of the Union to review local service needs as soon after January 1 as practical. The installation head shall then:

1. Determine the amount of annual leave accrued to each employee's credit including that for the current year and the amount he/she expects to take in the current year.

OTHER REFERENCES & COMMENTS

There are no minimum or maximum numbers or percentages of employees who can be scheduled off on annual leave during the choice vacation Period(s) listed in the National Agreement. This is where your Local Negotiations really kick in. Historically, APWU locals have attempted to increase the numbers or percentages of employees who are allowed off on annual leave, and historically, the employer has consistently attempted to reduce the number or percentages of employees allowed off at any one time.

NOTE: Ref: MOU, APWU Administration of Overtime, Choice Vacation Periods, and Holiday Work, which allows APWU locals representing Function 1, Function 3, and/or Function 4 activities to jointly opt to have the Union administer employees' choice of vacation periods pursuant to the guaranteed leave provision of the applicable LMU.

Minimum Number

Once the choice vacation period has been settled upon one can compute the minimum number of people required off on leave by:

- a. Multiplying the number of employees with less than 3 years of service by 2,
- b. Multiplying the number of employees with three years or more service by 3,
- c. Adding those two figures together,
- d. Divide the total by the number of weeks in the choice vacation period.

Remember to count PSEs as part of the complement figure since they are bargaining unit members. This becomes the minimum number of people that the employer must allow off during each week of the choice vacation period to accommodate the requirements of Article 10 of the National Agreement. Most locals attempt to improve upon this minimum number. While we refer to this computation as producing the "minimum" number, locals cannot assume that a lower number might not be awarded in arbitration (AIRS Case No. 2659). Arbitrators have pointed to specific facts in an installation showing that everyone did not take all of their entitled leave during the choice period. Consequently, even though the number allowed off by Item 9 of the

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LMOU was lower than the computed “minimum”, no violation of Article 10 occurred because no one who wanted their full entitlement was turned down.

If the choice period is so unattractive that employees leave “choice” slots empty and select outside the choice period or reserve their leave, the local should look at shortening, lengthening or splitting up the choice vacation period(s) to better match the demonstrated preferences of employees. Such demonstrated preferences will make a very persuasive argument for change in Item 5.


Note: Also, it is advisable to define “tour” if it’s used in your LMOU especially given the addition of NTFT employees who have varying schedules. In order to reduce confusion, an agreement should be reached that tour is based on an employee’s begin tour time and should set out the specific hours for each tour. For example, 2200 (day before) – 0399 is Tour 1, 0400 – 1199 is Tour 2, 1200 – 2199 is Tour 3.

Facility Size and Numbers Off

When determining how to select employees to be off during the prime vacation period, arbitrators will take different factors into consideration.

 For example, in AIRS Case No. 14272, the arbitrator rejected the union’s proposal that selection of vacation during the prime time should be on a seniority basis by craft. The reason for rejecting the proposal was because it would infringe on the efficiency of the Postal Service given the small size of the facility. The arbitrator thereby ordered that the following management proposals for items 4 and 9 be accepted:

- Item 4. Leave selection shall be by seniority of all crafts within the office, except rural carriers.
- Item 9. There shall be one employee off each week during the choice period with the exception of Item 8.

 However, an arbitrator in AIRS Case No. 13044 adopted the following language when

formulating the local leave policy with respect to the choice vacation period:

Requests for choice vacation periods shall be granted on the basis of seniority within the crafts and a separate quota by tour, section, and station. The LSM operation shall be defined as a section within each tour, as well as mail processors will be a section within each tour.



In addition, one arbitrator held that the maximum number of employees to be allowed off during the choice vacation period was not a discretionary decision for the Postal Service merely because of the size of the facility. In holding such, the arbitrator stated that Article 30 does not draw a distinction between small and large facilities nor do Article 3 concerns override the obligation to consider Article 30 negotiable items (AIRS Case No. 14273). Also see AIRS Case No. 37245 in which an arbitrator upheld a local union’s proposal that a maximum of one employee shall be granted leave during each week of the choice vacation period. He found unpersuasive the Postal Service’s argument that the current system allowing leave to be assigned at the discretion of management was necessary given the small size of the facility in which there was only one full-time regular clerk and one part-time flexible clerk. The arbitrator observed that the evidence showed that carrier craft employees, three of whom were senior to the full-time regular clerk, were assigned the first three choices of vacation.



In AIRS Case Nos. 61492 and 61599 the arbitrators found that the POSTPlan questions and answers dated October 30, 2014 addressed POSTPlan offices. The arbitrators held that the APO LMOU will apply to each office. For the purpose of numbers of employees off, the Postal Service wanted to consider all offices as “one unit” and apply the numbers collectively. However, the arbitrators rejected that argument and said the LMOU would apply in the “same manner; i.e. separately, rather than collectively....”

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However, arbitrators may take into account the efficiency needs of the Postal Service when determining the maximum number of employees to be permitted off during the choice vacation period.

In AIRS Case No. 13029, the arbitrator adopted the following language:

No more than 3 employees will be allowed off at one time during the choice vacation period, except as follows: If three employees have selected slots in each choice week and more slots are required under Article 10.3.D.2 of the National Agreement, a fourth employee may be off during the choice vacation period to meet this requirement.



In an attempt to meet the needs of the efficiency of the Postal Service, as well as to provide some benefit sought by the union, the arbitrator in AIRS Case No. 13025 determined that it was reasonable to limit the number of employees off during the choice period so as not to affect the efficiency of the Service. The following language was thereby adopted in accordance with this concern:

The maximum number of employees who shall receive leave each week during the choice vacation period shall be two, except as follows: If two employees have selected slots in each choice week, and more slots are required under Article 10.3.D.2 of the National Agreement, management will allow as many as three employees off at one time during the choice vacation period to meet this requirement.

Numbers Off by Occupational Groups and Sections

Also, the Postal Service may attempt to limit the number of employees permitted to take choice vacation on the basis of occupational group or skill.



Arbitrators have been reluctant to change a pre-existing provision that has worked well in the past. For example, in AIRS Case No. 20929, an arbitrator refused to change a

provision that allowed for 14% of maintenance employees to receive leave each week during the choice vacation by tour, by occupation to one that prescribed the 14% to be by occupational group alone. He indicated that the Service had not met its burden of proving that the provision resulting in three out of five Electronic Technicians off, one out of two General Mechanics off, or one out of two Building Equipment Mechanics off at any one time constituted an unreasonable burden. The evidence showed that the present language had worked effectively over the last 12 years and there was insufficient evidence to demonstrate that excessive overtime was used because of numbers of maintenance employees off.



In addition, in AIRS Case Nos. 20493, 20494, and 20495, an arbitrator held that designation of sections for taking leave during the choice vacation period as 1) window clerks, 2) the entire GMF workroom floor, 3) several stations, 4) maintenance, and 5) VMF did not constitute an unreasonable burden. He rejected the Service's assertion that sections needed to be broken down further into schemes for vacation selection. He found unpersuasive Postal Service evidence that plan failures occurred during a one-week period.



However, see AIRS Case No. 20382 in which an arbitrator held that the combining of two distinct titles for vacation purposes, i.e., Level 5 Motor Vehicle Operations and Level 6 Tractor Trailer Operators, resulted in an unreasonable burden to management. He ruled that the two occupational groups be separated for vacation purposes. Also, see Airs Case No. 34360 in which an arbitrator rejected a union proposal that leave be administered by principal assignment area only. Instead, he accepted management's proposal that leave be by shift as well as section.



Moreover, in AIRS Case No. 44499, an arbitrator rejected a union's proposal that for employees in the maintenance craft leave should be administered by building, by

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occupational group, with a minimum of one employee allowed off, by building, by occupational group. He found that if this proposal were accepted, the number of employees off on annual leave would double where there was a complement of 12 maintenance employees and such a result would be too high for management to meet its maintenance commitments. However, the arbitrator indicated that management's practice had been to allow additional employees to take choice vacation above the current provision that provided for one Electronic Technician and one non-Electronic Technician off each week during prime-time periods. Therefore, he ordered an amendment to the effect that consideration will be given to other leave requests depending on operational requirements.



In AIRS Case No. 38355, an arbitrator denied a union's proposal to change existing language providing that choice vacation leave shall be granted by seniority within pay location to provide that choice vacation leave shall be granted by seniority by tour and occupational group and level. The arbitrator indicated that he would not set aside a prior arbitrator's award in an impasse arbitration regarding the identical provision at this facility since there had been no substantive change in circumstances and the arbitrator had already considered arguments posed by the union. The union contended in both arbitrations that reliance on pay locations adversely affected the seniority rights of employees. However, in the prior award, an arbitrator determined that management's creation of new pay locations was within its Article 3 rights and in any event the use of new pay locations merely enhanced the value of seniority for some other employees in relation to lower graded, less senior employees in their pay location (AIRS Case No. 32312).



In another award, an arbitrator rejected a union proposal to create another section based on occupation for vacation selection purposes. The union argued that the existing LMOU provision created an unfair disparity since it contained a separate section for "office clerk" at

the main post office whereas no corresponding section designation existed for the other facility covered by the LMOU. The arbitrator found, however, that since the General Clerk position at the other facility didn't perform exclusively office work, there was no need for a separate "office clerk" section (AIRS Case No. 39019).



Another arbitrator accepted a change to an LMOU that affected one station of a P&DC and prescribed that scheduling for overtime, vacations, and holiday coverage be done by tour. He rejected the Postal Service's argument that due to the small number of personnel at the facility, which included four window clerks and two relief clerks, it was not practical to allow the change. The arbitrator found the language to be reasonable and not unduly burdensome on management's flexibility to assign staffing (AIRS Case No. 39602).

Advantages of Percentages

The length of the choice vacation period (Item 5) is often tied directly to the number of people or the percentage of people that are going to be allowed off during that period. What happens to one depends on what can be agreed to on the other.


Every effort should be made to provide for a maximum number of employees to be off each week during the choice vacation period. Note that varying percentages can be agreed to for each month during a choice vacation period. For example, see how this was accomplished in AIRS Case No. 50209.



Percentages usually turn out to be beneficial in this regard because they properly account for the changing size of various sections and the office as a whole (AIRS Case No. 4866). As an office grows, a percentage will permit an increasing number of employees leave, while a fixed number will become inadequate (AIRS Case No. 6101). While an arbitration is likely to grant an upward adjustment in a fixed number when the complement has increased (AIRS Case No. 7234), the union would have to wait until the next negotiation period to get an increase.


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In an office in which the complement fell between the period of negotiations and the date of the impasse arbitration hearing, the union argued that the higher complement existing during negotiations should be used in determining an appropriate fixed number of employees to be given leave. The arbitrator stated the percentage concept was warranted when determining the number of employees who should be granted annual leave during the choice and non-choice period because the percentage concept would accommodate any complement variations. This office had only one maintenance craft employee and one special delivery craft employee.

 The following language was adopted by the arbitrator for the purpose of determining the maximum number of employees to be off during the choice and non-choice period:

- A. A maximum of 16.67% of the employees in the Clerk Craft, one (1) employee in the Maintenance Craft, and one (1) employee in the Special Delivery Craft during the choice vacation period.
- B. A maximum of 10% of the employees in the Clerk Craft, one (1) employee in the maintenance Craft, and one (1) employee in the Special Delivery Craft during the non-choice vacation period. (AIRS Case No. 13016).

Problems with Percentages

 Locals should note a few problems in negotiating for a fixed percentage. Numbers that are unreasonable at the outset will be rejected (AIRS Case Nos. 4861, 8479, 6480). When a proposed percentage, combined with routine absences due to sick leave, jury duty, etc., could leave a section unable to perform its duties, it may be rejected (AIRS Case No. 8479). Also, absent a showing that a long-term provision giving management discretion to determine, by craft, the number of employees per week to grant leave, has resulted in employees forfeiting leave or in complaints or grievances, an arbitrator may determine that there is no

compelling need for a change to percentages (AIRS Case No. 32946).



Percentages also may be rejected where sections or offices are so small and staffed with senior employees that the selections of these senior employees while within the allotted percentages for the installation could leave the section or office unable to perform its duties (AIRS Case Nos. 4861 and 4866). One arbitrator solved this problem by holding that the total number of employees in a section or tour would determine the maximum number of slots available during the choice vacation period (AIRS Case No. 4947).



Also, a local must be sure to present sufficient evidence to substantiate its request for a fixed percentage. One arbitrator rejected a union proposal for a fixed percentage and used a fixed number instead, stating that absent a persuasive reason to do otherwise, a fixed number would be used because it was easier to administer (AIRS Case No. 7337).

PSEs and Percentages

Locals should also consider the impact of PSEs assigned to Annual Leave sections, especially when management assigns the PSEs to work in existing Annual Leave sections. Specific language to either count PSEs as part of the section or not should be negotiated into your LMOU.



In one case an arbitrator agreed that management was in violation of the National Agreement and the LMOU by refusing to honor the negotiated language applicable to prime time vacation leave percentages. Specifically, management had refused to include APWU bargaining unit PSEs in the percentage formula to establish the number of employees who shall be granted annual leave each week during the choice vacation period. (AIRS Case No. 58720).



However, another arbitrator ruled that the Postal Service did not violate the National Agreement or the LMOU by not including the PSEs when calculating the number of bargaining

unit employees permitted to take time off during the choice vacation period. (AIRS Case No. 58497).

Part-Time Flexibles and Percentages

Finally, locals should be careful of the impact part-time flexibles can have on a proposal for an increase in the fixed percentage.



One arbitrator allowed an increase because management recently had increased its number of PTFs (AIRS Case No. 7255).



Conversely, one arbitrator reasoned that increased reliance upon PTFs, due to larger numbers of more experienced senior clerks being off at the same time, could itself result in impairment to the efficiency or cost of operations which would justify rejection of a proposal for a higher fixed percentage (See AIRS Case No. 6114). Also, management can argue that the number of part-time flexible clerks has decreased in number and therefore, it has less flexibility to cover vacancies resulting from employees taking annual leave (AIRS Case No. 32538).

If you decide upon a percentage, you should consider the problem of rounding off. If the LMOU is silent, the standard method of rounding will probably be presumed (.5 or greater is rounded up to next highest integer, less than .5 is dropped). Most locals attempt to get an agreement to round upward any fraction (no matter how small) to the next highest integer. Some LMOUs drop all fractions.



Note that in a recent award in AIRS Case No. 32673 the arbitrator upheld a provision requiring that fractions be rounded up against management's argument that the provision constituted an unreasonable burden.



But see AIRS Case No. 39519 in which an arbitrator denied a local union's request to add language providing for a standard method of rounding on the basis that the parties have successfully worked out problems in the past and such language may create a potential of "internal conflict."

This discussion of Item 9 began with a minimum number formula. The justification for negotiating a number or a percentage that would permit more people off than the "minimum number" formula is to provide everyone with a decent vacation selection, even those choosing last.

Benefits to Management

There are advantages to management as well. There are peak periods and periods where the employer finds itself with too many employees. During periods of low volume, management should be willing to encourage people to take leave. Management can do so by having a larger number or percentage of people off during those particular weeks.

If a local has a history of people not choosing a full vacation during the vacation planning process, but reserving substantial amounts of leave for use during the course of the year, it should be pointed out to management that having an attractive vacation planning calendar with sufficient slots will encourage people to make vacation plans at the beginning of the year. Thus, management can plan for absences. If large banks of annual leave are being reserved, there will undoubtedly be time taken off with very little advance notice and very little opportunity for management to plan. Some locals have negotiated substantially larger numbers than necessary for the above reasons with an agreement that once the choice vacation planning has ended unused slots will be blocked off. Thus, management is relieved of further obligation to allow leave for that large number of employees.

Other locals have negotiated percentages or numbers that come very close to the minimum in exchange for a guarantee that should any of those slots go unfilled or become vacant during the course of the year anyone requesting those vacancies will get the time off. Such guaranteed "incidental leave" provisions have been determined by a national level arbitration to be consistent with the National Agreement (AIRS Case No. 6931).

Rebutting Management Arguments



Management's arguments concerning "excessive cost", "inefficiencies" and "staffing difficulties" do not always find a sympathetic ear in impasse arbitration (AIRS Case Nos. 263, 503, 549). Still the local must rebut those management allegations and show compelling reasons for the local union proposal (AIRS Case No. 4402, 26796-97, 27944). Also, locals should be prepared with data to show the eligibility (2 or 3 weeks) of each employee to a choice vacation selection (AIRS Case Nos. 263, 2659). It is advisable to show total leave that will be earned during a year plus any carry-over from a previous year.



Examples of some successes by local unions in rebutting management claims follow. In one case, a union showed that percentages off in the LMOU were not being adhered to for specific months, but rather were increased routinely, and no evidence was presented by management to show that granting an increase in the percentage for these months from 10% to 12% would harm the Service's operations (AIRS Case Nos. 27427-30). Also, another local union showed that an increase in the percentages of leave for Clerk Craft employees each week during the choice vacation period was warranted in order to prevent forfeiture of leave by employees who have earned a considerable amount of leave due to their length of service. The arbitrator said a 1% increase was justified due to the "undisputed age of the work force" and would not sacrifice productivity and efficiency of postal operations (AIRS Case No. 33490).



In addition, in AIRS Case No. 50209, a local union demonstrated that the percentages of BMC (now NDC) clerks off during each month of the leave year should be increased because they hadn't increased since 1987 while the age of the work force had increased along with the hours of annual leave they accrued, the current percentages didn't provide enough leave slots for vacation or annual leave in the largest section at the BMC (now NDC), and the alleged

need for continued efficiency wouldn't be affected because mail volume had dropped and was projected to continue to drop in the BMC (NDC) network, and the Washington NDC as a Tier 1 site was forecast to have a substantial reduction in work. The arbitrator determined that there was no basis for treating the BMC clerk employees differently from other clerks at the GMF or stations and branches, and thereby increased the percentages off during weeks in each month by up to 5%, with the exception of weeks during the month of July which were reduced by 1%. (Note that the choice vacation period in this case extended from April 1st each year to March 31st the following year, with an exclusion in December between 12/10 and 12/24).



But see AIRS Case No. 32538 in which an arbitrator denied a union's proposal to increase percentages of the active clerk complement on annual leave. He relied on evidence that there had been difficulties in dispatching mail on time given the present work complement and present annual leave percentages. The union had sought the increase in percentages off to benefit employees with a high level of seniority.

Note that arbitrators have indicated that the party seeking a change in an LMOU provision bears the burden of proving that the current provision does not work or presents a problem that needs to be corrected (AIRS Case Nos. 32242, 33424, 33379). For example, an arbitrator found that the union did not meet its burden of proving that a proposed increase from a maximum of one employee off to a maximum of 12% of the total number of each craft's employees was justified. He cited the fact that the existing LMOU provision on annual leave had only been in effect for one contract term, there had been no substantial changes in the circumstances existing at a facility under the existing provision, the facility was small, and the Service had shown that a substantial portion of the workforce would be off at any given time if the union's proposal were accepted (AIRS Case No. 33424).

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Also, another arbitrator rejected a local union's proposal to increase the number of CFS clerks that may be on annual leave during the choice period by one based on the fact that the number of CFS clerks had doubled since the existing provision was negotiated. Relying on evidence that showed that no CFS clerk was denied a request for vacation leave during the choice period for the 1999 leave year and the fact that no CFS clerk testified that he or she requested but was denied leave during that time, the arbitrator found that the union failed to show there was a problem with the existing provision. However, he warned the Postal Service that it was on notice that it could not rely on the LMOU provision to deny a clerk leave during the choice periods if he or she is entitled to leave under Article 10.3.D (AIRS Case No. 33379).



In addition, an arbitrator rejected a union's proposal to increase the percentage of employees allowed to vacation selections per week during the choice period from 15% to 20%. In AIRS Case No. 42673, the arbitrator relied on evidence that the current percentages appeared to be working adequately and employees were not losing annual leave opportunities necessarily. He found unconvincing the union's argument that the existing provision had only been in effect for one contract term, whereas a prior provision allowing 20% had been in effect since the late 1980s, and the reduced percentage was only the result of a concession to retain a general overtime desired list that is not in effect now. The arbitrator remarked that union attempts to obtain what has been given back does not constitute a basis for reinstating prior provisions.



Also, in AIRS Case No. 46484, another arbitrator denied a union's proposal to increase the percentage of employees allowed to be off during the prime vacation period from 16% to 20%, and from 8% to 11% during non-prime periods. He determined that the union didn't meet its burden of demonstrating that

employees were being deprived of choice vacations and that employees had to forfeit leave because their requests were denied during non-prime time periods. The arbitrator noted also that the evidence showed that open slots remained during the choice vacation period, and the percentage of employees off during non-prime time had been increased during the last negotiations period by 4%.

Moreover, locals should be prepared for Postal Service arguments that a presently effective provision now constitutes an unreasonable burden. It should be remembered that the Service has the burden of proof in these instances.



Arbitrators will not delete a pre-existing provision based on speculation as to anticipated automation or reductions in staff or undocumented or poorly documented cases (AIRS Case Nos. 20658, 20765, 20766, 21668, 28921-2, 32509, and 38602).



However, they will be persuaded by unrebutted evidence that staff losses will actually occur or a change from a number to a percentage of employees off is necessary to operate a small office (AIRS Case Nos. 20378, 20548, and 26724). But note that an argument may not be successful that seeks reduced numbers on leave because of additional employee absences as a result of requirements of the Family and Medical Leave Act, the Dependent Care Sick Leave provisions of the agreement, and more widely anticipated military reserve call-ups (AIRS Case Nos. 26686-88, 32673, and 39275).



Also, see AIRS Case No. 46853 in which an arbitrator ruled that it was unnecessary to consider a union proposal that "non-scheduled days at the beginning and/or end of an employee leave request shall not be included in the 14% limit" for choice vacation. He found that the National Agreement doesn't provide that non-scheduled days will be included in a vacation selection and therefore it was unnecessary to place this provision in the LMOU. However, he instructed management

that to include non-scheduled days in an annual leave request was contrary to “the spirit and intent of the National Agreement.”

Increases by Occupational Group and Section

In addition, while all employees are permitted time off during the choice vacation period, in some situations an arbitrator might decide that the maximum number of employees off in certain occupations should not be increased.



For example, in AIRS Case Nos. 500407 and 500408, the arbitrator held that Electronic Technicians had specialized knowledge and that current automation would require that more Electronic Technicians be available during the prime vacation period. Accordingly, the arbitrator denied the union’s proposal that the maximum number of Electronic Technicians allowed off during the prime period be changed from 1 to 3. The arbitrator found no merit in the union’s argument that since the number of Electronic Technicians increased the number permitted off should increase. There was also no evidence available to indicate that Electronic Technicians had been unreasonably denied time off during the prime vacation period. In another case, an arbitrator denied a union proposal to allow an increase from 10 to 15% off for customer services employees (AIRS Case No. 28417).



The Postal Service agreed to the 15% increase for mail processing employees, but refused it for customer services employees. The arbitrator found that implementation of the union’s proposal would result in excessive overtime, the need to hire new employees, and would adversely affect management’s ability to serve summer customers.



Also, see AIRS Case No. 34360 in which an arbitrator refused to allow more than 25% of scheme qualified employees to be off during the same leave week, rejecting the union’s proposal to allow 50% of clerks utilized on a particular scheme to be off at any one time. However, see AIRS Case No. 28544 in which an arbitrator increased the number of Electronic

Technicians off at any time during the choice vacation period from 1 to 3. He relied on the fact that there had been a dramatic increase in the numbers of ETs and they could not take all the leave to which they were entitled during the choice period because of the one person off limit.

Reductions by Occupational Group or Section



Other awards show that an arbitrator may reduce the number of employees off in certain occupations from a pre-existing provision. In AIRS Case No. 26724, management’s proposed change to an existing LMOU provision which limited the number of Maintenance Support Clerks off to two per week and the number of Electronic Technicians to one a week was considered reasonable. The Postal Service argued that the existing language of the LMOU created an unreasonable burden on management in seeking to cover positions with current staffing. It merely produced testimony of the Manager of Maintenance Operations that new computerized systems have resulted in twice as much work for Maintenance Support Clerks and ETs. The arbitrator noted that though there was not “strong documentary evidence” to support management’s assertions, she would rely on the manager’s testimony since he was credible and his statements about the need to deal with six new systems were unrefuted.



However, another arbitrator denied management’s proposal to change smaller administrative groups for vacation purposes to larger occupational groups (AIRS Case Nos. 27697-98). Though the Postal Service provided documentation to show that existing groups allowed more than the 10% minimum provided by the LMOU to be on leave at certain times and management’s proposal was found by the arbitrator to be a reasonable approach to determining leave usage, he determined that the Service had not met its burden of establishing that the pre-existing provision constituted an unreasonable burden. The arbitrator cited the

fact that there was no showing that when more than 10% of the employees were on leave excessive overtime, operational difficulties or other adverse consequences occurred. In another award, an arbitrator rejected management's proposal to reduce the percentages of Motor Vehicle employees that were allowed off during various periods of the choice vacation period. The arbitrator relied on the fact that no evidence was submitted to document any change in operating conditions since the time the existing language had been negotiated, with the exception that the MVS complement had been reduced in size. However, he noted that since leave was determined on the basis of a percentage, not a "static" number, the number of employees allowed off on annual leave would be reduced to the same extent as the reduction in complement (AIRS Case No. 43196).



It should be noted that an arbitrator will not necessarily be persuaded to increase the percentage of one craft off during the choice vacation period by an argument that another craft's percentages off had been increased. In AIRS Case No. 20989, an arbitrator refused to increase the percentage of Clerk Craft employees off during given periods to match what Maintenance Craft employees had been granted. He reasoned that the union had not established that a change was necessary since there was insufficient evidence to prove that craft employees that desired annual leave were not granted leave when they desired it.

Effects of Leave Carryover and Leave Sell-Back

There may be concerns that the allowance of 440 hours of carryover leave and the provision to allow 40 hours of annual leave to be sold back if an employee is at the maximum carryover ceiling will be used as a management excuse to deny more "incidental" leave and attempt to reduce the number of vacation slots. Such a rationale is without foundation. Employees who are well under the maximum carryover cannot be denied leave based solely on the fact that their leave balance is low. Similarly, employees are entitled to use all of their annual leave and are entitled to plan to use annual leave for vacations. No rules can be set that will force employees to build up their leave to the maximum carryover or sell it back.

The purpose of the carryover and sell back provisions is to avoid any loss of leave while permitting employees with special concerns to build-up a reserve. For example, a woman planning to have a child next year may build-up an annual leave reserve this year to provide additional paid leave during her maternity absence. An employee nearing retirement may build-up leave to increase his/her terminal leave payment to help fill the gap before regular annuity checks begin.

In short, there is no reason that the carryover and sell back provisions should affect local negotiations - short of a demonstration that large groups of employees intend to forgo vacation selections to build-up their leave balances. Even with such a demonstration, locals should remember they are negotiating for four leave years. The fact that an employee (or groups of employees) forgoes vacation in one year to build up a reserve does not mean that he/she will not need to take vacation in the other year.

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Remember

This LMOU will have to deal with leave years 2023 and 2024. The next LMOU negotiations will not affect 2022 vacation plans. Locals should be prepared also for the possibility that their LMOUs may cover leave for 2025, in the event the 2024 contract hasn't been finalized by the expiration of the 2021 agreement.

Item 10. The Issuance of Official Notices to Each Employee of Their Approved Vacation Schedule



DIRECTOR'S TIPS:

REFERENCES IN THE CBA

Article 10. LEAVE

Section 4. Vacation Planning

The following general rules shall be observed in implementing the vacation planning program:

...

B. The installation head shall meet with the representatives of the Union to review local service needs as soon after January 1 as practical. The installation head shall then:

...

3. Provide official notice to each employee of the vacation schedule approved for each employee.

In addition to the schedule posted on the bulletin board, locals have negotiated for the employee to receive some sort of notice, such as a duplicate copy of the vacation selection request with an approval signature, a Form 3971 with an approval signature, or a copy of the actual posting of the vacation schedule. It is advisable to require that notice be provided by a duplicate copy of a Form 3971 with an approval signature, rather than merely relying on notice by a posted schedule, since individual notice is more effective to reach all employees and is easier to enforce.



In AIRS Case No. 7349, Arbitrator Snow added the following provision to the LMOU, ensuring notice to both the employee and his or her supervisor of the employee's reserved annual leave:

The Union and Employer are agreed that once the vacation assignment sheets have been completed, the employee shall prepare Form 3971 in duplicate for each reserved period on the assignment sheet. Each employee will present a form to his or her immediate supervisor for signature and verification. The duplicate copy will become the employee's receipt that his or her supervisor has been advised of the employee's reserved annual leave.



Local unions should note that where there already exists a method of notification, the arbitrator may reject an additional method of notification, such as a vacation chart or calendar system, as unreasonable (AIRS Case Nos. 7348, 27427-30).

However, locals should make sure that a standard practice, such as notification by Form 3971, is clearly stated to be the medium of communication in the LMOU (AIRS Case No. 7348).

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Item 11. Determination of the Date and Means of Notifying Employees of the Beginning of the New Leave Year



DIRECTOR'S TIPS: **REFERENCES IN THE CBA**

Article 10. LEAVE

Section 4. Vacation Planning

The following general rules shall be observed in implementing the vacation planning program:

A. The Employer shall, no later than November 1, publicize on bulletin boards and by other appropriate means the beginning date of the new leave year, which shall begin with the first day of the first full pay period of the calendar year.

A number of Local Memos require the posting of a notice on the bulletin board or in the local Post Office newsletter. Some locals have required written notice to the individual employee. Aside from the Local Memorandum of Understanding, locals have used their own publications to inform employees about

upcoming vacation planning: when it will take place, when the leave year will start, the specific dates and weeks in which holidays fall, etc. Such efforts by the local remind employees that they enjoy their vacation as a result of the efforts of their national and local union.

LEAVE YEAR CALENDAR DATES

Leave Year	<u>Begins</u>	<u>Ends</u>
2022	PP 02-2022 Jan. 1, 2022	PP 02-2023 Jan. 13, 2023
2023	PP 03-2023 Jan. 14, 2023	PP 02-2024 Jan. 12, 2024
2024	PP 03-2024 Jan. 13, 2024	PP 01-2025 Jan. 10, 2025
2025	PP 02-2025 Jan. 11, 2025	PP 01-2026 Jan. 9, 2026



Item 12. The Procedures for Submission of Applications for Annual Leave During Other Than the Choice Vacation Period



DIRECTOR'S TIPS:

REFERENCES IN THE CBA

Article 10. LEAVE

Section 3. Choice of Vacation Period

D. Annual leave shall be granted as follows:

3. The remainder of the employee's annual leave may be granted at other times during the year, as requested by the employee.

Article 10. LEAVE

Section 4. Vacation Planning

The following general rules shall be observed in implementing the vacation planning program:

...

C. A procedure in each office for submission of applications for annual leave for periods other than the choice period may be established pursuant to the implementation procedure above.

OTHER REFERENCES & COMMENTS

Note: This Item is commonly referred to as the *Incidental Annual Leave* provisions in the Local Memorandum of Understanding.

Note: This provides that, after the selections of either ten (10) or fifteen (15) days during the choice vacation period(s), the remainder of the employee's Annual Leave may be granted at other times during the year, as requested by the employee.

This item gives the local the opportunity to negotiate a procedure for granting of annual leave during other than the choice vacation period. This item usually ties in with Item 4 as a way to formulate a complete local leave program. There are generally two methods that most locals have negotiated.

1. Seniority - The mechanisms here are a little more difficult to administer. Usually the method calls for all leave requests to be held until "x" number of days prior to the particular week at which point the senior employee having submitted a request will be granted the additional leave.
2. First come, first served - meaning that the first person to submit a Form 3971 (after the beginning of the leave year) or some other request form will be granted the leave.



While it is usually preferred to do things by seniority, it certainly is much easier to administer first come, first served. It is common under both methods to specify a response time in which management must notify the employee concerning the disposition of the request (AIRS Case Nos. 512, 541, 549, 572, 2955).

Locals should take into account that nontraditional full-time employees in the Clerk and Motor Vehicle Crafts will have varying schedules of greater or less than five days which may affect the types of procedures set up for non-choice leave, including how much advance notice will be allowed in different circumstances and whether percentages setting the minimum number of employees off on such leave are established or become a subject of challenge by management.

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The following is an impasse resolution on this particular item:

Application for leave outside choice period and vacant periods during the choice period shall be on appropriate form in duplicate with original to be returned to the employee within three (3) days providing application is submitted at least seven (7) days prior to the first day of approved leave. Such leave, if approved, will be granted on a first come, first serve basis (Central Region Impasse Resolution).



It should be noted that in a national level award, Arbitrator Mittenthal ruled that provisions allowing for initial selection of annual leave during the non-choice period are inconsistent with the National Agreement (AIRS No. 6931). Also, see a recent award in AIRS Case No. 36126 which relies on this award as well as the language of Article 10 in rejecting a union's proposal to allow annual leave requests to be submitted for the non-choice period first.

Advance Notice

Attempts to reduce the amount of advance notice that must be given by an employee when requesting incidental leave, as well as reducing the time period within which management must respond have met with limited success.



Arbitrators have generally held as unworkable LMOU procedures which require the Postal Service to respond to employee requests within twenty-four hours or forty-eight hours. Arbitrators have emphasized that such provisions unduly restrict the Postal Service's discretionary rights in granting incidental leave under Article 10, Sections 3 and 4 (AIRS Case Nos. 6115, 6778, 8469, and 20892).



Moreover, an arbitrator rejected a union's proposal to require that incidental leave on a day-to-day basis be automatically granted up to agreed-upon percentages (15%) upon no less than 48 hours' notice prior to the time of the

requested leave. He reasoned that there was "no inherent right to last minute annual leave." Instead, he found that the existing requirement based on five calendar day advance notice was reasonable given the needs of management to manage its operations. (AIRS Case No. 42673)



However, several arbitrators have approved provisions allowing applications for incidental leave with twenty-four hours advance notice, and requiring the Postal Service to approve or deny the request within twenty-four hours (AIRS Case Nos. 4904, and 20915, 20916, 20917, 20918, 20919, 20920).



In addition, in one of these cases, the arbitrator also upheld a provision allowing for applications of annual leave of six hours or less to be given with one hour of advance notice and requiring the Service to approve the leave not less than 30 minutes prior to the effective time of the requested leave (AIRS Case Nos. 20915, 20916, 20917, 20918, 20919, 20920).



These provisions also provided that management's failure to notify the employee would be considered automatic approval (AIRS Case Nos. 20915, 20916, 20917, 20918, 20919, 20920).



Another arbitrator adopted a union's proposal to require that employees be notified of the disposition of requests for annual leave in increments of less than 40 hours within 48 hours, and lack of notification within that time constitutes "automatic approval." He indicated that it is good management/labor relations to process requests in a timely manner and 48 hours is not an unreasonable amount of time to do that. (AIRS Case No. 39752).



Another arbitrator accepted a provision that if no action is taken by the end of an employee's tour prior to the day of requested incidental leave, such leave shall be approved. He ruled specifically that the provision for automatic approval of incidental annual leave when the time periods to approve or disapprove are not met is not inconsistent or in conflict with the National Agreement (AIRS Case No. 27080).

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In addition, see AIRS Case Nos. 28108-111 in which an arbitrator placed a provision in a LMOU that provided that automatic approval would occur if an employee was not notified 14 days in advance of the first day of the leave requested.



However, see AIRS Case Nos. 20892, 20894 and 34360 in which provisions allowing for automatic approval after a limited period of time were rejected.



Locals may expect greater success with a seventy-two-hour time period limitation. In AIRS Case Nos. 7599 and 21034, the arbitrators granted demands for automatic approval of leave requests after seventy-two hours from submission. In the first of these two cases, if the immediate supervisor did not act upon the request within the first twenty-four hours of the 72-hour period, the employee had the right to go to a higher level of supervision.

Also see AIRS Case No. 32538 in which an arbitrator accepted a union's proposal that supervisors process all PS Forms 3971 within 72 hours. In addition, an arbitrator in AIRS Case No. 34984 determined that a provision requiring that management approve applications for leave in units of less than one week or a full week so long as the maximum allowed number of employees were not on leave constituted an unreasonable burden to the Postal Service due to scheduling problems caused by last minute call-ins and the claimed right to submit a 3971 during the course of a tour and then leave work. He reasoned that there was a right to incidental leave but it was subject to advance notice and then directed that the language be amended to require approval upon submission of an application within 72 hours prior to the beginning of the tour of the requested leave date.



However, see AIRS Case No. 32242 where an arbitrator rejected a proposal seeking a change in a provision to require that if the Postal Service fails to return a copy of a signed request to an employee indicating that it is approved or disapproved within 72 hours of submission, the leave shall be considered approved. The

arbitrator ruled that the union failed to meet its burden of proving that the change was necessary to remedy a significant problem that needed correcting. For example, the union argued that the current system subjected employees to hardships because of supervisors' failure to approve leave requests in a timely manner but failed to provide witnesses' testimony to describe hardships such as missed vacation opportunities, inability to care for sick relatives, or forfeited annual leave.



Also see AIRS Case No. 42763 in which an arbitrator denied a union proposal to reduce the amount of time within which a supervisor has to deny a request for incidental annual leave of a fraction of a day or more from five calendar days to 48 hours. The arbitrator relied on the fact that the union had not shown that there were actual problems involving individuals that were handicapped or prejudiced by existing procedures.



Moreover, in AIRS Case No. 40576 an arbitrator rejected a union proposal to change a provision limiting submission of leave requests to Tuesday of the week prior to the desired leave and requiring that they be answered by Thursday of that week or they will be considered approved. The arbitrator determined that the union's proposal, that leave requests not answered within three days of submission will be considered approved, should not be granted since there was no "real evidence" that existing language was not working and the evidence showed that work schedules are made up on Wednesday of each preceding week.



In another case, AIRS Case No. 20722, an arbitrator upheld a short notice leave provision against management's assertion that it created an unreasonable burden.



However, he held that same day requests constituted an unreasonable burden. In addition, an attempt to require that leave requests submitted 30-60 days in advance be granted on a first-come, first-served basis has been rejected by an arbitrator as infringing on management's discretion under Article 10.3.D.4 (AIRS Case Nos. 27030-34).

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Also, a proposal that employees will be allowed to select guaranteed time off, up to the amount credited for the coming year on their pay checks, following the choice sign up during the period of non-choice leave was rejected because it infringed on management's discretion to approve leave and was not supported by a preponderance of the evidence (AIRS Case No. 28182).



Moreover, see AIRS Case No. 26756 in which an arbitrator disapproved of a union's proposal that leave requests made with at least seven days' notice be granted subject to certain percentage limitations that might be on leave in any week.



Also, note that in AIRS Case No. 39833 an arbitrator rejected a union's proposal to require that an installation head honor all requests for vacant weeks that are submitted seven days in advance of the leave period, and to provide that management make every effort to grant requests for vacant weeks submitted less than seven days in advance of the leave period. The arbitrator found that there was no evidence presented to show that the current provision caused an undue hardship on bargaining unit members; i.e., by showing unreasonable denials of incidental leave or actual leave forfeiture by employees.



However, an arbitrator denied a management proposal to prohibit an employee from making an annual leave request "no earlier than 60 days in advance and no later than the Tuesday prior to the service week in which annual leave is desired." She found the proposal was unworkable because requests for leave may occur at the last minute as in the case of home or car repairs and requests in advance of 60 days prior to taking leave should be helpful to management (AIRS Case No. 26977).



Also see AIRS Case No. 38359 in which an arbitrator added language requiring that Forms 3971 for incidental leave be submitted not more than 21 days nor less than three days before posting of the following week's schedule in an

existing LMOU which already contained the provision that "any request not acted upon within 48 hours shall be considered 'guaranteed approved leave.'"



In addition, a proposal to increase the "window" period in which a supervisor is required to consider an application for incidental leave from 15 to 60 days before the first day of leave requested has been allowed as an addition to existing language that requests will be approved or disapproved by a supervisor within three days (AIRS Case No. 27128-31).



But see AIRS Case No. 26795 in which an arbitrator rejected a union proposal to extend the period for requesting incidental leave from not more than 31 days to not more than 90 days in advance.



Also, see AIRS Case No. 46853 in which an arbitrator rejected a union proposal to extend the period for requesting incidental leave from within 30 days of the first day of the requested leave to at least 30 days prior to the first day of the requested leave. The arbitrator noted that the union's proposal was a "dramatic departure" from what appeared to be a typographical error in the existing provision; i.e. use of "with" instead of within 30 days.


Percentages Permitted


In conjunction with Item 4 many locals have successfully negotiated a number or percentage of employees permitted leave during the non-choice period. Although some impasse arbitrators have approved such proposals, locals are more likely to gain such a provision in direct negotiations.





The Postal Service has declared many LMOUs that provide for "guaranteed" approval of leave requests up to the number or percentage established to be "in conflict" with the National Agreement. Earlier attempts to achieve a "guarantee" provision through impasse arbitration did not meet with much success. (AIRS Case Nos. 512, 539 and 577).


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 However, in a national level case decided in 1986 (AIRS Case No. 6931) the arbitrator found that such non-choice vacation period clauses or incidental leave clauses are not “inconsistent or in conflict” with the National Agreement. Because this is a national level arbitration, this interpretation is binding on regional level arbitrators.


 In AIRS Case No. 13036, a regional level arbitrator, relying on the national award by Arbitrator Mittenthal, ruled that the proposal for a percentage of employees to be allowed off during the non-prime time was both arbitrable and negotiable. The arbitrator summarized Mittenthal’s award as meaning that the subject of the percentage of employees off during the non-prime time period was not precluded from negotiation even if it was not specifically mentioned as one of the 22 items. The union’s proposal addressed an issue that was neither inconsistent with nor varied the terms of the National Agreement. Because the parties had made offers and counter offers during local negotiations and reached impasse, the matter at hand was arbitrable.


 In addition, see AIRS Case No. 26733-36 in which an arbitrator ruled that a proposal to allow a fixed percentage of employees off on incidental leave was within the scope of negotiable items and thus was arbitrable. He then accepted the proposal on the basis that it had been implemented effectively at other facilities in the region.


 Also, see AIRS Case No. 32561 where an arbitrator ruled that percentages of employees off during the non-choice vacation period “belongs as an integral part of Item 12 negotiations.” He rejected the Service’s argument that this item was limited to how applications are submitted since “[t]he intention of the contract was to permit the local parties to negotiate meaningful non-choice leave provisions.”

 In addition, locals achieving “guarantee” provisions have successfully enforced such provisions in rights arbitration (AIRS Case Nos. 594, 1444 and 1984).


 But, several recent awards in AIRS Case Nos. 33168 and 32409 determined that proposals requiring a minimum of 12% of employees to be allowed off during the non-choice period for each pay location were outside the scope of negotiable items in Article 30.B.4.12.


 In several cases, the union has been successful in obtaining, retaining, and increasing fixed percentages of employees allowed to be off during the non-choice period. In AIRS Case No. 14677, the arbitrator held that the union’s request to change the incidental leave policy so that it would be more congruous with the choice vacation period policy had merit. In looking at other LMOUs that addressed this concern, the arbitrator held that 11% of employees could be off for incidental leave and that employees should provide management with advance notice of the requested leave in order to adjust schedules based on the absence of employees on leave. The notice to be provided was two days advance notice.


 In AIRS Case No. 20623, the union’s proposal to increase the percentage of clerks off on annual leave during the non-choice period from 11% to 13% was granted by an arbitrator. The arbitrator held that the union had clearly established a need for its proposal not only to provide additional employees time off, but to provide employees with “additional control over and predictability of their use of annual leave.”


 Then, in AIRS Case No. 21365, an arbitrator upheld a provision requiring the Service to allow 15% of employees off for non-choice leave against management’s attempt to prove that it created an unreasonable burden. He found that the evidence was too inconclusive to show that the 15% guaranteed leave provisions were the cause of delayed mail and use of overtime at the facility.


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 The arbitrator in AIRS Case No. 26725 granted a provision that provided that the percentage of employees to be granted annual leave outside of the choice vacation period should be no less than 12%. She found that though there was a need to accommodate supervision in its scheduling problems, this should not be done to the disadvantage of members of the workforce. The arbitrator also indicated that the union's proposal would expand the options available to employees for vacation leave outside the choice period and thereby reduce the number of leaves that would be taken during each week of the choice period. In addition, the arbitrator ruled that the union's proposal was not inconsistent with the National Agreement.


 An arbitrator in AIRS Case No. 32561 determined that 3% of the employees at the facility, that equals one person's hours, should be allowed to be on annual leave during the non-choice period.


 However, he rejected the union's proposal that 6% of the employees, or two people, should be allowed off despite a union contention that in the past there had been no problem with two employees being on leave at the same time. He found that a reduction in the workforce and a change in mail operations had occurred, and therefore circumstances were no longer the same and it would amount to speculation as to whether two people could be off at one time without affecting operations.


 In AIRS Case No. 41167, another arbitrator accepted a union's proposal to allow that "8% of the clerk force will be granted leave out of prime time. Using the 8% formula, anytime it reaches .4 or more of an employee, and additional clerk will be granted leave." He determined that the proposals were necessary to more clearly define matters in the leave program and appeared to be reasonable.

 However, in AIRS Case No. 46484, another arbitrator denied a union's proposal to increase the percentage of employees allowed to be off

during the prime vacation period from 16% to 20%, and from 8% to 11% during non-prime periods. He determined that the union didn't meet the burden of demonstrating that employees were being deprived of choice vacations and the employees had to forfeit leave because their requests were denied during non-prime time periods. The arbitrator noted also that the evidence showed that open slots remained during the choice vacation period, and the percentage of employees off during non-prime time had increased during the last negotiations by 4%.

 In addition, an arbitrator in AIRS Case No. 46853 rejected a union's proposal to allow an absolute 14% of employees to be entitled to incidental leave after vacation requests are approved. The existing provision merely allowed for up to 14% for incidental leave. The arbitrator said that Article 10.3.D.4 "makes the granting of incidental leave discretionary." However, he said that while he won't impose "leave on demand", management is on notice that that they shouldn't abuse their discretion in denying incidental annual leave requests.

 In other cases, arbitrators approved a provision allowing a minimum of one clerk craft employee leave outside the choice vacation period subject to operational needs of the Service (AIRS Case No. 20622), and provisions requiring that the number of employees off during the non-choice period be measured as a percentage of the complement rather than by numbers of employees (AIRS Case No. 13016, and 21871).

 Moreover, while another arbitrator rejected a provision to increase the number of maintenance employees on incidental leave by administering it on the basis of building as well as occupational group, he added language to the LMOU to the effect that "[c]onsideration will be given to other leave requests depending on occupational requirements." (AIRS Case No. 44499).

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Also, in a rights arbitration, an arbitrator determined that a Step 2 settlement that prescribed that percentages used for leave during choice periods applied to non-choice periods was binding even though the union did not pursue its proposal to incorporate this language into a subsequently negotiated LMOU. (AIRS Case No. 34914).

Problems with Percentages



There have been cases in which the union has been unsuccessful in obtaining fixed percentages or numbers of employees off during the non-choice period because of the burden it would cause in a post office, and the restriction it places on the Postal Service's rights to schedule employees. In cases such as these, arbitrators have cited the absence of evidence to show that employees were denied leave or forfeited leave and the absence of evidence to show an abuse of management's authority. Several arbitrators have also found persuasive management arguments that it may refuse to negotiate provisions with fixed percentages off (AIRS Case Nos. 20904, 21034).



In AIRS No. 500559, the arbitrator held that permitting 8% of the employee's annual leave during the non-prime period would burden the efficient operation of the Postal Service. In addition, the union in this case failed to show that management was abusing its discretion in granting leave during the non-prime vacation period so as to require this fixed percentage guarantee. Annual leave during non-prime time was to be based on mail volume, the needs of the Service and the skills required to meet those needs.



Another arbitrator rejected a union proposal to provide that up to 8% of employees be granted incidental leave on the basis that such a percentage was unusually high and there was no showing that grievances had been filed due to incidental leave requests being denied under the existing provision. The union argued that

management had not even abided by the requirement that a request be acted upon within 48 hours or otherwise be considered "guaranteed approved leave" and this resulted in unpredictability that was disruptive in employees' lives. In response to the union's concerns, the arbitrator added language to the provision requiring that "[a]ny request shall be denied only if Management has good reason to believe, at the time the Request is made that, with the absence of the requesting employee, sufficient personnel will not be available (regardless of the cause of their unavailability) to permit the Greenville installation to operate in a reasonably timely, efficient and cost-effective manner" (AIRS Case No. 38359).



The arbitrator in AIRS Case No. 13031 rejected the union's proposal to grant 12% of the employees a right to vacation in the non-prime time period. In so holding, the arbitrator stated that the union failed to establish any inference that under the present contract language employees were unreasonably being denied leave during the non-prime time period. Absent any evidence to indicate that supervisors were arbitrarily rejecting leave requests during the non-prime time vacation period, as well as the absence of any violations of ELM 512.61, the arbitrator ruled against the establishment of a new rule (See also AIRS Cases No. 546 and 20550).




In AIRS Case No. 21034, the arbitrator found that a proposal requiring incidental leave for up to one employee or 16% of employees would place an unreasonable burden on management of the small installation. In AIRS Cases No. 20321 and 20325, the arbitrator rejected proposals for fixed percentages of incidental leave up to 10% and 7% on the basis of their effect on management's right to approve and disapprove leave requests.




In AIRS Case No. 26867, the arbitrator determined that the union failed to meet its burden of proof that the advantages of a proposal to provide that unscheduled annual leave requests be granted up to 10% of the


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employee complement outweighed its disadvantages. He found unconvincing the union's arguments that the implementation of a percentage for annual leave should be granted as a matter of convenience to employees and has worked at other facilities. He also indicated that the union did not show concrete evidence that any employees had actually forfeited leave. On the other hand, the arbitrator was convinced by management's arguments that adoption of the union's proposal would increase overtime and would be unworkable during certain weeks because of additional employees that would be off.


 An arbitrator in AIRS Case No. 27062 denied a union's proposal to require that a minimum of one clerk be allowed annual leave during the non-choice period. He cited the fact that the union did not demonstrate any instances of abuse or disparate treatment in granting requests for incidental leave. Another arbitrator rejected a proposal to increase the number of "personal days" of choice that are guaranteed from two to four days. He found convincing Postal Service arguments that doubling guaranteed personal leave days would "erode" flexibility needed for scheduling, and that there was an insufficient showing that the current provision presented problems. (AIRS Case No. 39150)


There are also cases in which the union has not been successful in obtaining percentages because arbitrators have ruled that the negotiation of percentages exceeds the scope of Item 12.

 In AIRS Case No. 27066, an arbitrator determined that a local union's proposal for a fixed percentage of employees to be off during non-prime time did not fall within the scope of the 22 items that are mandatory subjects of negotiation under Article 30. In addition, he ruled that there wasn't persuasive evidence to support a finding that a fixed percentage was necessary at the installation.

 Another arbitrator ruled that it is not mandatory that management negotiate a percentage of employees that must be allowed annual non-choice leave and it is therefore under no obligation to demonstrate the basis for its rejection of a union proposal for a fixed percentage (AIRS Case No. 26977).

Also, for other awards that determine that proposals seeking percentages off for non-choice leave periods fall within the scope of Article 30, see the section above on percentages permitted.

 Locals should also be aware that provisions have been upheld that require the inclusion of leave for military purposes, sick leave scheduled in advance, unscheduled absences (i.e.: AWOL, emergency annual and administrative leave) in calculating the maximum percentage to allow off on incidental leave (AIRS Case No. 31926).

 Moreover, one arbitrator found that a local union didn't meet its burden of proving that a change needed to be made to existing language by deleting sick leave from the calculation of 14% off on incidental leave. The provision allowed for such leave as well as all other "known leave", with the exception of jury duty, military leave, and convention leave, to be included in the percentage count. (AIRS Case No. 38599).



Miscellaneous Procedures



In other circumstances involving procedures for granting annual leave other than during the choice vacation period, an arbitrator rejected management's argument that an existing provision requiring that incidental leave of less than eight hours be granted after considering "the operational needs of a given section" constituted an unreasonable burden. He found unpersuasive the contention that limiting management to considering the needs of one section, rather than the giving it the flexibility to consider the needs for service in other sections as well, had resulted in plan failures. The arbitrator reasoned that the evidence showed that management had not had major disruption to its operations during the two years the provision was in effect and it failed to establish that any plan failure was "directly attributable" to its granting of incidental annual leave. (AIRS Case No. 37376).



Another arbitrator rejected a management proposal to change an incidental leave provision to require that incidental leave on a day-to-day basis be calculated on the basis of the agreed-upon percentage taking into account the "daily complement" within a section. The existing provision provided for calculation on the basis of the employee complement within a section as of

February of every new leave year. Management maintained that such language didn't account for daily fluctuations in staffing, and provided testimony relating to insufficient staffing on weekends in the FSM area and on Tour 2 as a result of the provision. The arbitrator ruled that the Postal Service failed to meet its burden of proving that the current contract provision resulted in an unreasonable burden since it didn't offer evidence that continuation of the existing leave provision affected management in other sections on other tours. (AIRS Case No. 42673).



In another award, an arbitrator rejected a local union's proposal to require that annual leave requests for bereavement, wedding, anniversaries, and/or the employee's birthday will be given priority consideration over other requests, when submitted in advance. He said that such a benefit has not been included in the National Agreement. Moreover, he denied a proposal that approved rescheduled annual leave requests shall not be cancelled or rescinded by management. The arbitrator indicated that the provision would prevent management from scheduling during emergency situations or from placing an employee on LWOP if he/she finds out following approval of leave that the employee's leave balance wasn't sufficient. (AIRS Case No. 39752).

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Item 13. The Method of Selecting Employees to Work on a Holiday



DIRECTOR'S TIPS:

REFERENCES IN THE CBA

Article 11. HOLIDAYS

Section 6. Holiday Schedule

A. The Employer will determine the number and categories of employees needed for holiday work and a schedule shall be posted as of the Tuesday preceding the service week in which the holiday falls.

...

B. As many full-time and part-time regular schedule employees as can be spared will be excused from duty on a holiday or day designated as their holiday. Such employees will not be required to work on a holiday or day designated as their holiday unless all PSEs and part-time flexibles (in Level 20 and below post offices) are utilized to the maximum extent possible even if the payment of overtime is required, and unless all full-time and part-time regulars with the needed skills who wish to work on the holiday have been afforded an opportunity to do so.

...

D. Postal Support Employees

PSEs will be scheduled for work on a holiday or designated holiday after all full-time volunteers are scheduled to work on their holiday or designated holiday. They will be scheduled, to the extent possible, prior to any full-time volunteers or non-volunteers being scheduled to work a non-scheduled day or any full-time non-volunteers being required to work their holiday or designated holiday. If the parties have locally negotiated a pecking order that would schedule full-time volunteers on a non-scheduled day, the Local Memorandum of Understanding will apply.

Article 11. HOLIDAYS

Section 8. Holiday Postal Support Employee (New Language) - XRef: Postal Support Employees Memoranda, Appendix A, Article 11, Holidays

A. PSEs will receive holiday leave pay for the following six holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

B. The number of hours of holiday leave pay for PSEs will be based on the following:

- 200 Work Year offices – 8 hours
- POSTPlan offices – 4 hours
- All other offices – 6 hours

PSEs who work on a holiday may, at their option, elect to have their annual leave balance credited with 4, 6, or 8 hours (as applicable) of annual leave in lieu of receiving holiday leave pay.

OTHER REFERENCES & COMMENTS

NOTE: Ref: MOU, APWU Administration of Overtime, Choice Vacation Periods, and Holiday Work, which allows APWU locals representing Function 1, Function 3, and/or Function 4 activities to jointly opt to have the Union administer the system for selecting employees for holiday work. In this case, the Employer shall inform the Union of its determination of its needs for holiday work, including how many employees with what skills are needed. The Union will identify to the Employer the qualified and available employees who meet the Employer's needs and also notify the employees who are to work.

ARTICLE 11 - HOLIDAYS

XRef: **Postal Support Employees Memoranda, Appendix A,**

Note: The "pecking order" of employees scheduled to work on the Holiday is established here.

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Also Ref: **NTFT MOU, OVERTIME RULES FOR NON-TRADITIONAL FULL-TIME (NTFT) DUTY ASSIGNMENTS**

3. The exception to requiring employees in NTFT duty assignments to work overtime will be that Holiday scheduling is accomplished under Article 11 and the LMOU pecking order.

XRef: **PSE MOU, Appendix A, Holiday Scheduling**

Thus, the Normal Pecking Order for Holiday Work is:

- 1. FT volunteers for their holiday or designated holiday**
- 2. PSEs**
- 3. FT volunteers or FT non-volunteers for their day off, or**
- 4. FT non-volunteers for their holiday or designated holiday**

Note: However, if the parties have locally negotiated a pecking order that would schedule Full-time volunteers on non-scheduled day, the LMU will apply.

In previous National Agreements, Article 11, Section 6.B stated that management should schedule casuals and part-time flexibles even while they are on overtime before requiring a full-time regular to work on a holiday or day designated as his/her holiday. However, there are no longer casual employees, and the reference to casuals in Article 11.6.B has been changed to PSEs in the 2010 National Agreement. In addition, Article 11.6.D provided in recent past contracts that transitional employees would be scheduled to work on a holiday or designated holiday after all full-time volunteers were scheduled to work on their holiday or designated holiday. It also provided that TEs would be scheduled to the extent possible, before any full-time volunteers and non-volunteers being scheduled to work a non-scheduled day or any full-time non-volunteers being required to work their holiday or designated holiday. However, the parties could locally negotiate a pecking order that would schedule full-time volunteers on a non-scheduled day. Though transitional employees have also been eliminated (with the exception of the remaining REC Sites), PSEs are the category of non-career bargaining unit employees that are included in Article 11.6.D.

In the 2010 National Agreement, there were also changes in the categories of career employees. There are still three categories of career employees, but facilities will have different

combinations of these categories. These include part-time flexibles (but in the Clerk Craft, they will no longer be in Function 1 or in post offices Level 21 and above, and they were eliminated in the Motor Vehicle craft), part-time regulars (but only in the Maintenance craft), and full-time regulars (which include a category of non-traditional full-time employees (NTFTs)).

Locals should look at their current LMOUs and consider changes in the work force when considering whether to renegotiate a holiday scheduling provision. As in the past, they should take into account that in each category there are those who may wish to volunteer and those who do not want to work. In addition, in each one of those categories there are those who would be working the holiday or the designated holiday at straight-time and those who would be working on overtime. All of these categories and subcategories can be arranged in almost any fashion to suit local needs. Establishing sections for Holiday Scheduling (i.e., craft, tour, pay location, occupational group, skill, scheme, unit, etc.) should be considered. (See AIRS Case No. 528 where the crafts adopted different procedures for holiday scheduling within each craft).

While a local may wish to establish uniform sections for vacation planning, holiday scheduling, overtime desired lists and excessing, it is not necessary. Sections can vary with their purpose. Even though the term

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“categories of employees” in Article 11.6.A refers to the status of employees and not to the occupational groups, locals may determine that a holiday section using occupational groups is a good idea.

Also, it is advisable to define “tour” if it’s used in your LMOU especially given the addition of NTFT employees who have varying schedules. In order to reduce confusion, an agreement should be reached that tour is based on an employee’s begin tour time and should set out the specific hours for each tour. For example, 2200 (day before) – 0399 is Tour 1, 0400 – 1199 is Tour 2, 1200 – 2199 is Tour 3.

Moreover, considering Postal Support Employees (PSEs), locals may wish to renegotiate the pecking orders in their LMOUs. However, a local may not want to open negotiations when changes are merely housekeeping matters such as substitution of the old terms “casual” and “transitional employee” for PSE. The local can point to the fact that the MOU in the 2010, 2015, and now the 2021 National Agreements, state that all references to casuals, transitional employees and supplemental workforce should be replaced with PSE, and should be applied to the local agreement. But the union should obtain a written stipulation from the Postal Service to that effect.

Postal Support Employees

Also, Article 11.6.D provides that Postal Support employees (PSEs) will be scheduled for work on a holiday or designated holiday after all full-time volunteers are scheduled to work on their holiday or designated holiday. This provision further states that PSEs will be scheduled, to the extent possible, prior to any full-time volunteers or non-volunteers being scheduled to work a non-scheduled day or any full-time non-volunteers being required to work their holiday or designated holiday.

However, if the parties have locally negotiated a pecking order that would schedule full-time volunteers on a non-scheduled day, the Local Memorandum will apply. (Note that the 2010 National Agreement added Postal Support

Employees in place of Transitional Employees to Article 11.6.D so prior arbitration awards interpreting this section of the contract make reference to transitional employees. However, the reasoning in those awards may now be applied to PSEs and holiday scheduling.)



Based on language in Article 11.6.D when it applied to scheduling transitional employees under a prior contract, one arbitrator rejected a union proposal to schedule transitional employees after all full-time volunteer regulars have been scheduled and instead accepted a Postal Service provision to schedule transitional employees after full-time employees who have volunteered to work on their holiday or designated holiday but before full-time volunteer employees whose scheduled non-work day falls on the holiday (AIRS Case No. 28749). The arbitrator stressed however, that local negotiators may agree to override the expressed preference of placing TEs in the pecking order ahead of non-scheduled day volunteers.

Also see AIRS Case No. 27116 in which an arbitrator upheld a holiday pecking order in which Transitional Employees would be scheduled to work after full-time regular volunteers. In addition, see AIRS Case No. 33136 in which an arbitrator rejected the union’s proposal to change the pecking order to place volunteers from employees with needed skills on a non-scheduled work day by seniority ahead of transitional employees. He based his decision on the fact that the current approach was effective, grievance-free and working.

Full-Time Volunteers before PSEs and PTFs



Several recent arbitration awards have upheld provisions that schedule full-time volunteers first. In AIRS Case No. 500626, an arbitrator has found that a provision scheduling full-time volunteers before part-time flexibles and casuals was not inconsistent and in conflict with Article 11, Section 6. He disagreed with the Postal Service’s arguments that the language of

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Article 11 barred regular employees from working until all others have been scheduled and the union's pecking order would violate management's obligation to maintain the Service's efficiency by increasing costs. The arbitrator indicated that volunteer regulars are "not prohibited from working on a holiday until all casuals and part-time flexibles are utilized; rather they are part of the group who must precede non-volunteer regulars prior to those non-volunteers being forced [to work]." (Also, see AIRS Cases No. 39582, 59751 and 60010 for similar reasoning).



In addition, in another decision in AIRS Case No. 39103 an arbitrator rejected management's argument to delete an existing LMOU's provision requiring that full and part-time regular volunteers be scheduled to work a holiday ahead of casual and part-time flexible employees on the basis that the provision was inconsistent and in conflict with Article 11.6 of the National Agreement. The arbitrator ruled that since there was no showing that Article 11.6 had been amended subsequent to the effective date of the previous agreement, Article 30.C "precludes the Postal Service from arguing that the Item 13 language, which has been included in the LMOU between the Parties for more than ten (10) years, is inconsistent or in conflict with the National Agreement."



Two other arbitration awards, AIRS Case Nos. 20724 and 20725, found that pecking orders which gave first priority to full-time regular volunteers were consistent with the National Agreement. In addition, the arbitrator in these decisions ruled that management had not met its burden of proving that pre-existing provisions setting forth this priority constituted an unreasonable burden. He found that general arguments that elimination of this practice would result in cost savings were insufficient to prove its case.



In another award, AIRS Case Nos. 32848 and 32869, an arbitrator found that the Postal Service had not proven that a provision scheduling full-time regular volunteers first was

an unreasonable burden. He held that the need for greater flexibility and cost savings from using PTFs to cover holidays constituted insufficient evidence to prove its case. See also AIRS Case Nos. 20489, 20490 and 41919 which also upheld a provision allowing full-time and part-time regular volunteers priority in holiday scheduling.



However, some attempts to schedule full-time volunteers before casuals (PSEs in the 2010, 2015, and 2021 National Agreements) and part-time flexibles have been rejected in several impasse arbitrations as contrary to the intent of Article 11, Section 6 (AIRS Case Nos. 528, 6005, 6131, 6141 and 6143, 33308, and 46409).



In addition, in AIRS Case Nos. 27092 and 42763, arbitrators determined that provisions to schedule regular volunteers ahead of PTFs and casuals were consistent with the National Agreement, but they then rejected the proposed language on the basis that the union failed to meet its burden of proving that the change should be made.



Also, see AIRS Case Nos. 27132-33 in which an arbitrator rejected a local union's proposal to have regular volunteers scheduled before casuals and part-time flexibles on the basis that the existing agreement functioned moderately well and the proposed change was costly.



In addition, in AIRS Case Nos. 27030-34 and 34113, the arbitrators found that adoption of a proposal for scheduling regular volunteers before casuals and part-time flexibles was an unreasonable burden.



Moreover, in AIRS Case No. 33264, an arbitrator found that while Article 11, Section 6 does not prohibit changing the pecking order in local negotiations, the union failed to meet its burden of proving that there was a problem that warranted changing the local provision to require that full and part-time regular employee volunteers be scheduled by seniority ahead of casuals and part-time flexible employees.



In addition, in AIRS No. 46409 the arbitrator found that scheduling casuals ahead of regular volunteers wasn't inconsistent with language in Article 8.5.H of the 2006 National Agreement that full-time employees on the overtime desired list shall be given priority scheduling for overtime work prior to casual employees doing overtime work. He found that the union's argument that casuals would be placed in an overtime status before allowing clerks to work was "speculative at best" and in any event using regular volunteers on overtime would not be in the "best interest of the Service" given "current economic times."



In AIRS Case No. 46402, an arbitrator also rejected the union's argument that scheduling casuals ahead of regular volunteers conflicted with Article 8.5.H. She stressed that the overtime desired list isn't applicable in the case of holiday scheduling for designated holidays, and nothing in Article 8.5.H "entitles regular volunteers to holiday work in preference to casuals or PTFs."



Moreover, in a contract arbitration case, an arbitrator held that where there is an established past practice of soliciting full-time volunteers before scheduling casual or part-time flexible employees, the Postal Service could not circumvent the practice for the purpose of avoiding its obligation to pay full-time volunteers holiday premium pay (AIRS Case No. 11334).



In addition, in an impasse arbitration, the arbitrator accepted the union's proposed language that a full-time regular volunteer within a section with necessary skills may be selected to replace a part-time flexible if there is no need to draft any full-time or part-time regulars for the specific holiday schedule. He found convincing the fact that the union's proposal did not require, but merely allowed the Service to use a full-time regular volunteer rather than a PTF (AIRS Case No. 34360).

Pecking Orders, Sections

Separate holiday "pecking orders" can be negotiated for each craft (AIRS Case No. 528).



However, a pecking order requiring that only casuals and part-time flexibles be used if only one tour works on a holiday has been found to be an unreasonable restriction on management rights (AIRS Case No. 500,309). The arbitrator also indicated that requiring casuals and part-time flexibles to work back-to-back on two tours would "clearly" not be in the "best interests of safety and employee health."



On the other hand, another arbitrator in AIRS Case No. 39970 accepted a union's proposal to delete language from a holiday scheduling provision that limited scheduling of casuals and part-time flexibles with needed skills to the same tour as the holiday opportunity. The union argued that its proposal would require management to maximize the use of PTFs and casuals, and minimize the number of full and part-time regular volunteers that are required to work a holiday or designated holiday. The arbitrator rejected management's arguments that there was no need for the change and the change would cause a violation of the Fair Labor Standards Act on the basis that the FLSA work week is established when PTFs and casuals are first assigned a tour and starting time. She found that the union proved that a problem existed but management failed to provide proof for its assertions, and did not show that the proposed language was unworkable.



The fact that a particular pecking order would increase Postal Service costs does not make the proposal an improper matter for local negotiations (AIRS Case No. 528). In addition, the fact that a proposal relies on seniority in holiday scheduling for volunteers and non-volunteers and does not include a requirement that employees working on a holiday must possess skills needed for available assignments does not render it inconsistent with the National Agreement (AIRS Case Nos. 21002, 21003, and 21004).

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Also, a provision to schedule regular employees who volunteer to work their holiday, designated holiday or non-scheduled day or days in other units prior to forcing employees to work who do not wish to work has been found to be consistent with the National Agreement and upheld as needed at a facility (AIRS Case No. 27682).



Management may not pass over an employee who would be working on penalty pay, if Article 11 Section 6 or the LMOU pecking order would require the scheduling of that employee ahead of other employees who could work at lower premiums (AIRS Case No. 10374).

Union Review

LMOU provisions requiring management to provide the numbers and categories of employees needed to work on any given holiday and to meet with the local union about the numbers and category of employees that will be needed have been upheld (AIRS Case No. 20537). In addition, a provision allowing the president of a local or his designee to review the holiday schedules prior to them being posted has been upheld (AIRS Case No. 20537).



However, note that an arbitrator rejected a union's request to amend a provision requiring management to "sit down and review" the holiday schedule with the union after it is finalized and posted, to add that the process should occur five days prior to posting the schedule. She relied on evidence that management already has provided the union with sufficient time to review the schedule and provide input prior to posting, and the union failed to establish a need for its proposed modification of the LMOU. (AIRS Case No. 46402).



Provisions limiting the type of maintenance craft employees who could be worked on a holiday to coverage of mail processing operations and the building have been found to be inconsistent with management's right to schedule (AIRS Case No. 20537).



However, a provision that employees detailed to a non-bargaining unit position for 40 hours shall not be allowed to volunteer for a holiday schedule unless all non-volunteers are required to work, was upheld (AIRS Case No. 20537).



Arbitrators have found that it is proper to change the words "casual" or "transitional employees" to "PSE" or "Postal Support Employees" in current holiday pecking orders. Arbitrators have ruled that the parties at the national level anticipated different pecking orders than what is found in Article 11.6 of the National Agreement and can be negotiated. (See AIRS Cases 61403 and 61805).

Limits of Item 13

It is important for locals to remember that the scope of Item 13 is limited to the subject matter of holiday scheduling. Impasse arbitrators have frequently held that Item 13 may not be used for securing items which provide that:

- No employee will be required to work more than one day of any three-day holiday weekend. This has been rejected as either inconsistent with the Agreement or beyond the scope of Item 13, for it includes the selection of other (weekend) days in addition to the holiday (AIRS Case Nos. 6005, 6141, 6143, 8493 and 20537).
- A stated percentage of employees will be allowed to observe their holiday or day designated as their holiday. Item 13 concerns the method of selecting employees to work, not take, a holiday (AIRS Case Nos. 6141, 6143 and 8493).
- Employees required to work their holiday or designated holiday will be scheduled within the employee's regular work schedule. Item 13 concerns the method of selecting employees to work a holiday, not the selection of hours (AIRS Case Nos. 5422, 8352, 8491, and 22515).

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- Employees on either limited duty or light duty may volunteer to work their holiday provided such work is within their restrictions. Item 13 is only concerned with holiday scheduling, not limited or light duty assignments (AIRS Case No. 8522). However, see AIRS Case No. 34360 in which an arbitrator found that Item 13 may cover references to including light/limited duty employees in holiday schedules if the work is within their limitations.
- No employees will be worked in a non-bargaining unit position while there are non-volunteers scheduled to work any day during a holiday period (AIRS Case No. 20537).



But see AIRS Case No. 26859-60 in which an arbitrator found that it was proper to negotiate an item that an employee having leave the day before or the day after a holiday should be exempt from holiday scheduling. Then turning to the merits, however, she determined that a practice in existence at this facility to allow employees on leave to be exempt from holiday scheduling was not a binding past practice since it was limited to one tour and management should be allowed the discretion to implement a policy fair to employees while allowing for operational flexibility.



Note also that in AIRS Cases No. 33264, an arbitrator indicated that a provision that employees who are scheduled for annual leave during a holiday week will not be subject to reporting for work on a holiday could be negotiated, but determined that the union did not meet its burden of proving that a problem existed with the current language that did not contain such a guarantee. In addition, another arbitrator accepted a union's proposal that no full-time or part-time regular employee shall be scheduled to work on his/her holiday in conjunction with scheduled annual leave unless he/she volunteers by signing the holiday list (AIRS Case No. 34360).



Moreover, a union's proposal to modify Item 13 of its LMOU by adding a provision that placed the time period for volunteering to work a holiday no later than 14 days before the week of the actual holiday or closer to the holiday time than the existing provision was considered in AIRS Case No. 33264. However, the arbitrator denied this proposal because of a lack of evidence showing that a hardship existed.



Item 14. Whether Overtime Desired List in Article 8 Shall be by Section and/or Tour



DIRECTOR'S TIPS:

REFERENCES IN THE CBA

Article 8. HOURS OF WORK

Section 3. Exceptions

The above shall not apply to part-time employees and PSEs.

...

PSEs will be scheduled in accordance with Section 2, A and B, of this Article.

Article 8. HOURS OF WORK

Section 4. Overtime Work

G. Overtime Work PSE Employees

PSEs shall be paid overtime for work performed in excess of forty (40) work hours in any one service week. Overtime pay for PSEs is to be paid at the rate of one and one-half (1 ½) times the basic hourly straight-time rate.

When an opportunity exists for overtime for qualified and available full-time employees, doing similar work in the work location where the employees regularly work, prior to utilizing a PSE in excess of eight (8) work hours in a service day, such qualified and available full-time employees on the appropriate Overtime Desired List will be selected to perform such work in order of their seniority on a rotating basis.

Article 8. HOURS OF WORK

Section 5. Overtime Assignments

When needed, overtime work for regular full-time employees shall be scheduled among qualified employees doing similar work in the work location where the employees regularly work in accordance with the following:

A. Two weeks prior to the start of each calendar quarter, full-time regular employees desiring to work overtime during that quarter shall place their names on an "Overtime Desired" list.

B. Lists will be established by craft, section, or tour in accordance with Article 30, Local Implementation.

C. 1. a. When during the quarter the need for overtime arises, employees with the necessary skills having listed their names will be selected in order of their seniority on a rotating basis.

b. those absent or on leave shall be passed over.

D. If the voluntary "Overtime Desired" list does not provide sufficient qualified people, qualified full-time regular employees not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee.

OTHER REFERENCES & COMMENTS

Ref: **Postal Support Employees Memoranda, Appendix A,**

PSEs will be scheduled for work in accordance with Section 2, A and B of Article 8

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Ref: **Appendix B, OVERTIME RULES FOR NON-TRADITIONAL FULL-TIME (NTFT) DUTY ASSIGNMENTS MOU**

(New Language): 1. Full-time career clerk craft and motor vehicle craft employees who are not on the Overtime Desired List and are in the same **facility with employees working in NTFT duty assignments of less than 40 hours** in the same Functional area **and overtime section(s), as defined in the Local Memorandum of Understanding**, will not be required to work overtime except in an emergency, **as defined in Article 3, Section F.**

Locals should carefully consider whether they will use sections or whether they will use tours. Generally smaller offices will go by tour while larger offices will divide into many sections within a tour.

In selecting sections careful attention should be paid to such things as:

- 1) Starting times. If varied starting times in a section are placed on one Overtime Desired List then a strict rotation through the list may result in one starting time continuously missing opportunities while another starting time works all the opportunities.
- 2) Qualifications. If there are a wide variety of qualifications within a section disparities can occur where a number of people are skipped to get to a qualified person.

Note: While a local may establish uniform sections for vacation planning, holiday scheduling, overtime desired lists and excessing, it is not necessary. Sections can vary with their purpose. Locals should consider the advantages and disadvantages of defining a section a certain way in order to ensure seniority protection or in order to take into consideration other factors.

Moreover, considering Postal Support Employees (PSEs), locals may wish to renegotiate the pecking orders in their LMOUs. However, a local may not want to open negotiations when changes are merely housekeeping matters such as substitution of the old terms “casual” and “transitional employee” for PSE. The local can point to the fact that the MOUs in the 2010, 2015, and 2021 National Agreements state that all references to casuals, transitional employees and supplemental workforce should be replaced with PSE, and should be applied to the local agreement. It is important that if local management

agrees, the union should obtain a written stipulation from the Postal Service to that effect.

Also, NTFTs will be eligible to sign the Overtime Desired List(s). Locals should remember, however, that “[o]vertime built into a non-traditional full-time assignment (exceeding 40 hours a week) will be FLSA overtime and not subject to Article 8.5, OTDL, or LMOU scheduling rules.”

Note also that PSEs cannot sign the Overtime Desired List.

In addition, it’s advisable to define “tour” if it’s used in your LMOU especially given the addition of NTFT employees who have varying schedules. In order to reduce confusion, an agreement should be reached that tour is based on an employee’s begin tour time and should set out the specific hours for each tour. For example, 2000 (day before) – 0399 is Tour 1, 0400 – 1199 is Tour 2, 1200 – 2199 is Tour 3.

Some locals have developed multiple Overtime Desired Lists (ODL) having separate lists for before tour, after tour and non-scheduled days. Others have accomplished the same thing using an annotated single list.

Locals should note that the 1984 Memorandum of Understanding on Article 8 provides for a designation on the ODL for those people wishing to work more than ten hours on a regularly scheduled day.



In a few circumstances, locals have negotiated a procedure that allows for an ODL in particular sections and a tour ODL. When a particular section ODL has been exhausted, volunteers from outside of that section on the tour ODL will be selected before forcing people within the section to work. Several arbitrators have held, however, that ODLs by tour and sections are in conflict with Article 8, Section 5 (AIRS Case Nos. 4863, and 6593).

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In at least one case, an arbitrator has ruled that overtime desired lists by tours and position descriptions for motor vehicle employees was acceptable (AIRS Case No. 20621).



In the Maintenance Craft the concept of “occupational group and level” applies to overtime desired lists. Article 38, Section 7(B) provides that an overtime desired list shall be established for each occupational group and level. As a result of this provision, the union team can negotiate for sectional and/or tour OTDLs for maintenance craft workers but these OTDLs must, as required by Article 38, also be established for each occupational and group level. Note that language previously stating that overtime desired lists should be established for each occupational group and level “showing special qualifications where necessary” was changed in the 2010 National Agreement with the deletion of “showing special qualifications where necessary.” If that provision is still in an LMOU, a local should ensure that it is deleted since there are no “special qualifications” for an employee presently in a particular occupational group. For example, the JCIM on Article 38.6 provides in part that “[w]hen selection is made from the preferred assignment register (PAR), employees in the same occupational group and level as the vacancy are considered qualified and no additional training can be required prior to selection.” It is normally a prudent idea also to negotiate that the ODL, which is already required to be by occupational group, is further specified as “by tour” and/or “by station/branch” (or other applicable facility or unit). This is critical if your LMOU contemplates using a before tour, after tour and/or off-day administration of the ODL. Ensuring that the ODL is by facility establishes whether, for instance, custodians working at a station get overtime first or whether such would be provided by the senior available custodian wherever they may work.

Management has attempted not to honor or to declare inconsistent and in conflict some of the more elaborate local provisions on this item. Therefore, the local negotiation team should pay careful attention to Article 8 and the

Memorandum on Article 8 to make sure that their proposals and their LMOU language are consistent with all of the provisions.

In pre-1985 LMOU impasses, many arbitrators declined to implement multiple overtime desired lists. However, since the 1984 contract there have been a number of successes in implementing these procedures.

Multiple Overtime Desired Lists



A case that reversed the trend came from the Daytona Beach Area Local, where a proposal to establish multiple Overtime Desired Lists for before and after tours and off days was held consistent with the National Agreement. The arbitrator found that no provision expressly prohibits establishment of multiple lists or “clearly implies” that such lists are not permitted (AIRS Case No. 6628).

Other awards that have accepted provisions setting up different types of lists include:

- provisions requiring three lists for ODLs so that an employee can volunteer to report prior to and/or after his/her regular reporting time and/or on his/her non-scheduled days were accepted (AIRS Case Nos. 4896, 5280, 7026, 6015, 8350-8356, 20621, 26890, 34667);
- a provision requiring that overtime lists include overtime before the beginning of a tour, at the end of a tour, on an off day only, and in excess of 10 hours (AIRS Case No. 4851);
- a provision for off-day and workday overtime (AIRS Case No. 5289, 27339-40, 26866). But see AIRS Case Nos. 27353, 27063 and 26854 in which arbitrators rejected such a provision.
- a provision requiring overtime lists for off-day and workday overtime as well as overtime on any day of the service week and overtime before and after a regular scheduled workday (AIRS Case No. 27538).

Arbitrators also have accepted provisions that define tour hours and start times in AIRS Case Nos. 20621 and 22515.

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Since the 1987 National Agreement went into effect, there have been mixed results with regard to acceptance of multiple overtime desired lists.



One well-reasoned award indicated that to prohibit multiple overtime desired lists would frustrate the parties' intent under Article 8, Section 5 which is to reduce forced overtime (AIRS No. 14652). In that award, the arbitrator accepted the union's proposal to carry-over a provision for daily overtime and one for scheduled days off. Other awards under the 1987 Agreement which upheld similar provisions include AIRS 13438 and 13033.



In an award under the 2000 Agreement, an arbitrator ruled that Article 8 and/or Article 30 don't prohibit multiple overtime desired lists, "those Articles mandate discussion of multiple OTDLs" such as those allowing before tour, after tour, and off days overtime lists. He found that if local negotiations were not allowed to cover multiple overtime desired lists, Article 30.B.14 merely would be redundant and have no meaning since Article 8.5.B also provides that ODLs be established by tour and section. Moreover, the arbitrator cited an April 16, 1985 letter signed by the then-Assistant Postmaster General and APWU national president that indicated that "local offices may discuss multiple overtime desired lists during the current local implementation process with a view toward local resolution of the issue." He reasoned that this letter is evidence that multiple overtime desired lists fall within the parameters of Article 30.B.14. Finally, the arbitrator concluded that management failed to show support for its claim that multiple ODLs would increase costs because of the potential for increases in grievances that are filed over their use (AIRS Case No. 38868).



In an award under the 1990 Agreement, an arbitrator determined that a multiple overtime desired list proposal had merit in "concept" but determined that it should not be included in the LMOU because of its lack of "completeness and clarity" (AIRS Case No. 21005). This award indicates the importance of clearly delineating the number and type of lists desired.



Another award denied the union's proposal to create multiple overtime desired lists for pre-tour and post-tour overtime, and scheduled days off for maintenance employees on the basis that this proposal was "overly broad, ambiguous and not specifically tailored to ensure a smooth transition which would mutually balance the needs of both parties." The arbitrator found convincing management's contention that there would be an administrative burden on management in using the three lists, due to possible mistakes and the potential for additional grievances, even though management currently had a policy in place of 10- and 12-hour overtime lists (AIRS Case No. 39465).



Another award under the 1998 Agreement found that multiple overtime desired lists fall within the scope of Item 14 thereby rejecting the Postal Service's argument that the union's proposal was not arbitrable (AIRS Case No. 32777). However, the arbitrator determined that the union failed to provide sufficient proof that three lists were needed and there was no evidence of the reasons why the union previously gave up the three-list system during negotiations under a prior local agreement between the parties.



Also, an arbitrator upheld a multiple overtime desired list, which created a pecking order providing that if employees on the section overtime desired list are not sufficient, employees in a non-ODL section should be assigned overtime by seniority followed by employees on the ODL of a tour and finally employees not on an overtime desired list by tour. He found that the provision was not inconsistent with the National Agreement and did not represent an unreasonable burden on management (AIRS Case No. 32505).



Moreover, an award determined that a multiple overtime desired list by non-scheduled day, before tour, and after tour for three buildings did not result in an unreasonable burden to management. The arbitrator found that though employees had to travel between buildings, the

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Service did not show that this factor caused any problems (AIRS Case No. 34667).



Awards rejecting multiple overtime desired lists include AIRS Case Nos. 13047, 13104, 13019, 14251, and 500309-500315, 26789-94, 35332, and 46582. In AIRS Case No. 46582, the arbitrator found that there is agreement that multiple overtime desired lists aren't in conflict with the National Agreement, but the union has to prove that there is sufficient justification for including them in an LMOU. She found that in this case, the union failed to refute management's evidence that overtime needs at the facility are "currently being met so as to allow employees flexibility without having to draft employees." In addition, the arbitrator stressed that evidence that other installations have adopted multiple ODLs is "not determinative" because there was no showing that adoption of multiple ODLs at other installations increased the number of persons on the ODLs at those facilities so as to warrant a change in existing language.



An award under the 2000 National Agreement accepted a union's proposal for three overtime desired lists, before tour, after tour, and scheduled off days. However, he found that additional proposals would result in unwarranted administrative obligations. These included allowing employees on the before and after tour lists to have the option of choosing two and/or four hours of overtime, and to provide that the scheduled off day list have a separate rotation for each of the seven calendar days. (AIRS Case No. 40576).

Advance Notice of Overtime



Some arbitrators have ruled that proposals calling for advance notice of overtime are beyond the scope of Item 14 (AIRS Case Nos. 506, 514, 526).



However, several locals have successfully obtained advance notice of overtime. (AIRS Case Nos. 5198, 5213, 6003, 7024, 8051, 20621, and 38356).



If the advance notice provision is so stringent as to give the employee an unqualified right to refuse the overtime, the provision may be found in conflict with the right of the Service to carry out its mission and the right to require overtime (AIRS Case No. 5199, 6184, 6792, 7989, 20381, and 39925). Examples of these types of provisions are ones that provide that management "shall" or "will" provide one or two hours' notice (AIRS Case Nos. 5199, 7989), those explicitly giving employees the option of refusing overtime "without reprisal" if circumstances prevent one hour's notice (AIRS Case No. 6003), and those requiring 24 hours advance notice before requiring work on a non-scheduled work day (AIRS Case No. 5199).



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The following is an example of a negotiated advance notice provision:

Employees in the Clerk Craft shall normally be given 2 hours advance notice when the Postal Service schedules overtime work, but may receive less notice if unusual conditions are found by the Director of Mail Processing or his designee. Employees receiving less than 2 hours' notice who state that they do not want to work overtime on a given day will not be so required if they state that they are unable to do so for equitable reasons (e.g., anniversaries, birthdays, illness and death). Acceptable evidence may be required to substantiate such employee claims and may be provided within three (3) working days following the date of the employee's return to work.

Employees receiving two (2) hours or more notice of overtime who state that they do not want to work overtime on a given day will be given consideration in exceptional cases based on equity (e.g., anniversaries, birthdays, illness and death).

Note: As with many advance notice agreements, this does not appear in the LMOU, but is rather a local policy statement.

- a prohibition on scheduling employees for overtime work who have medical restrictions (AIRS Case No. 6105).
- allowing employees who have medical appointments or who are faced with emergency situations to be excused from overtime (AIRS Case No. 6515).
- specifics as to time of the overtime distribution, when and how overtime lists will be prepared, and how an employee signs the list (AIRS Case No. 7580).
- a policy allowing part-time flexibles who are converted to part-time regular or full-time flexible during a quarter to place their names on the ODL within ten days of their conversion (AIRS Case No. 8503. But see AIRS #20621 discussed on p. 81).
- a requirement that if a supervisor is unable to contact an employee for the purpose of offering overtime, the missed overtime shall not be counted as an opportunity for overtime (AIRS Case No. 8511).
- a requirement that an employee on an ODL may be excused from overtime for any reason eight times without having his or her name removed from the Overtime Desired List (AIRS Case No. 27950).
- a requirement that breaks be allowed at specified intervals during overtime (AIRS Case Nos. 26883-887). But note that new provisions on NTFT assignments provide that where they comprise more than nine hours in a service day, they will have a 3rd break excluding lunch. (See page 187 of the 2021-2024 Tentative National Agreement booklet).

Scope of Item 14

Proposals that go beyond the scope of setting up ODLs may be rejected in impasse arbitration. Examples of proposals that have been determined by arbitrators to be outside the scope of negotiation for this item are as follows:

- a "telephone policy" allowing employees to use the phone to make arrangements when overtime is called (AIRS Case No. 506).
- an exception from mandatory overtime for employees who have not qualified on a scheme (AIRS Case No. 555).



Another provision that has been held to be inconsistent and in conflict with the National Agreement, and an unreasonable burden is a provision that allowed employees to volunteer for overtime when additional overtime is needed. An arbitrator ruled that this language was inconsistent with the need to sign the Overtime Desired List two weeks before the start of each calendar quarter. In addition, the efforts necessary for

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management to find volunteers created an administrative burden and excessive cost if employees are not contacted (AIRS Case No. 20730).



Also see AIRS Case No. 28749 in which an arbitrator found that a provision was inconsistent and in conflict with the National Agreement because it required that volunteers who are not on the Overtime Desired List be worked before calling non-volunteers if there are an insufficient number of personnel on the ODL to cover the needs of the Service.



In addition, a provision that established an overtime desired list by installation was held to be an unreasonable burden. The arbitrator ruled that a section-based list was necessary in view of the need to assign overtime to employees who are qualified to perform it (AIRS Case No. 20748).



Another arbitrator held that a provision setting up overtime desired lists by section or tour was outdated because work units had been moved around due to automation. Therefore, he held that it constituted an unreasonable burden (AIRS Case No. 21928).



Another arbitrator accepted a change to an LMOU that affected one station of a P&DC and prescribed that scheduling for overtime, vacations, and holiday coverage be done by tour. He rejected the Postal Service's argument that due to the small number of personnel at the facility, which included four window clerks and two relief clerks, it was not practical to allow the change. The arbitrator found the language to be reasonable and not unduly burdensome on management's flexibility to assign staffing. (AIRS Case No. 39602).



Another arbitrator ruled that management does not have to negotiate over the definition of section contained in Item 14 and could determine that a section was equivalent to a pay location in accordance with its rights under Article 3. In this case, four new pay locations had been developed and maintenance craft employees were placed in sections according to their prior training so that a section could include

employees from different occupational groups and levels. The union argued that the use of pay locations rather than occupational groups denied the seniority rights of the employees and caused significant hardship. The arbitrator rejected the union's proposal that overtime desired lists shall be by tour, section, occupational group, and level (AIRS Case No. 32312).




However, see Article 38, Section 7(B) which establishes that overtime by occupational group and level should apply in cases such as this one.



A provision that prohibited craft employees detailed to non-bargaining unit positions from working overtime in a bargaining unit position was rejected as inconsistent with management's right to schedule overtime (AIRS Case No. 20621).



However, an arbitrator held that it would be advisable for management to accept a provision requiring that additions to the overtime desired list can be made in the case of part-time flexibles converted to full time; when a successful bidder goes to a different tour, different facility, different position descriptions, different craft; and because of absences during the solicitation

period (AIRS Case No. 20621).  Another arbitrator determined that a letter of clarification for the implementation of the off-day and extended overtime desired list, which mandated that employees work overtime in their bid assignments and allowed them to leave if they desired while on extended tour, was consistent with the National Agreement. He reasoned that the reference to bid assignment addressed the issue of section and tour raised by Item 14 and that voluntary departures by employees on overtime did not constitute a violation of the National Agreement since there is no obligation by the Service to pay guaranteed overtime in these circumstances (AIRS Case No. 32508).

Pecking Order



In addition, LMOU provisions for two locals which assigned a pecking order for overtime which placed part-time flexibles and casuals after ODL employees were upheld. The arbitrator found that these provisions were not inconsistent or in conflict with the National Agreement (AIRS Case Nos. 27104 and 27486, and AIRS Case Nos. 27543 and 28327).



Also, in one of the cases (AIRS Case Nos. 27543 and 28327), the arbitrator determined that in order to prevail on an unreasonable burden argument in the future, the Service will have to show through substantial facts that something has significantly changed since the last round of local negotiations which can now be considered as representing an unreasonable burden. He cited the fact that the Service had repeatedly agreed to the provision in question during prior impasse proceedings.

It should be noted also that the National Agreement contains a provision in Article 8.4.G that “[w]hen an opportunity exists for overtime for qualified and available full-time employees, doing similar work in the work location where the employees regularly work, prior to utilizing a PSE employee in excess of eight (8) work hours in a service day, such qualified and available full-time employees on the appropriate Overtime Desired List will be selected to perform such work in order of their seniority on a rotating basis.”



In another award, an LMOU provision that established a pecking order for overtime placing part-time flexibles along with part-time regulars and transitional employees after full-time regular employees was upheld. The arbitrator determined that the item, even though it was outside the scope of the 22 items in Article 30, was valid. He also ruled that it was not inconsistent and in conflict with the National Agreement and that the Postal Service did not prove that the pecking order created an unreasonable burden. The arbitrator reasoned that the Postal Service’s failure to show that overtime usage would have been reduced if the pecking order was not in place, did not allow him to make an informed

judgment that the system was burdensome (AIRS Case No. 32116).



But see AIRS Case No. 16924 and USPS #N1C-1J-C 15443, contract cases in which arbitrators found that LMOU provisions giving a preference to full-time regulars on the ODL before PTFs were inconsistent and in conflict with the Agreement.





Also, a local’s proposal that provided that management would use employees from sections associated with an affected section before requiring non-ODL employees to work overtime was accepted by an arbitrator (AIRS Case No. 2688326887). He found unpersuasive management arguments that the provision would create an overtime pecking order outside the scope of Article 30 and would conflict with Article 8.5. He indicated that the proposal served the purpose of ODLs which is to provide overtime opportunities to individuals that desire the work and bypass individuals that do not desire the extra work.



Moreover, another arbitrator upheld a provision setting up a pecking order requiring in part that non-ODL volunteers from an appropriate section and then from other sections on a tour be scheduled for overtime ahead of non-volunteers from the appropriate section and then from other sections on the tour. The Postal Service argued that the provision was inconsistent with the National Agreement. However, the arbitrator reasoned that “[u]nless there is something specific in the National Agreement outlining, or restricting, a pecking order, it is difficult to perceive how retention of a previously agreed upon pecking order would be inconsistent or in conflict with the National Agreement.” In addition, he cited a prior contract arbitration award that upheld the same pecking order at this facility and the fact that management did not make any assertions during negotiations that the challenged language was unworkable or placed an undue burden on it (AIRS Case No. 27538).


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 Another award upheld a pre-existing provision, setting up guarantees once overtime hours are scheduled, a “desire to be bypassed” policy, and payment to employees on the ODL if they do not remain on the list and their hours are below the list average by 10%. The arbitrator rejected management’s argument that the provision, which had been in effect since 1993, resulted in an unreasonable burden. The only evidence in support of this claim was that flexibility would be affected if overtime hours were guaranteed when scheduled and it was difficult to find someone to work since management allegedly had to go through the entire overtime desired list, not just by tour, before it could require an employee to work overtime. The arbitrator found that a document prepared by management merely showed “assumed actions and potential costs, not actual costs that have been incurred” and therefore does not prove that an unreasonable burden existed. He noted also that there was testimony that until the impasse arbitration, there had never been a grievance by the union (AIRS Case No. 39064).

 Also, an award found that an LMOU that contained a consolidated overtime desired list covering two facilities located 15 miles apart did not conflict with the National Agreement or constitute an unreasonable burden to management. The arbitrator determined that there is nothing in the National Agreement that precludes one consolidated overtime desired list being shared by two locations. In addition, he determined that although this arrangement may be inconvenient for the Postal Service, it has been working for many years at these facilities and therefore the Postal Service did not meet its burden of proving that the consolidated list created an unreasonable burden. (AIRS Case No. 40182).

Note: The Overtime Section where employees sign an ODL should be defined by Locals.

However, locals should be aware that the 2020 Joint Contract Interpretation Manual (Article 8, page 7) specifies that “relief and pool clerks will only be permitted to place their name on the overtime desired list of the pay location where domiciled; when relief and pool clerks are assigned to units (stations, branches, or other installations) other than where their name is on the Overtime Desired List, they may be offered overtime, if available, after the Overtime Desired List is exhausted in that unit; they may not place their name on that Overtime Desired List.”

 An arbitrator upheld a local’s proposal to change its LMOU to require that Pool and Relief Clerks can only sign the overtime desired list in the pay location where domiciled, and when assigned to units other than where their name is, may be offered overtime, if available, after the overtime desired list is exhausted in that unit. (AIRS Case No. 26899). Relying on a Step 4 settlement in H8C-3W-C 22961, he ruled that the existing provision which did not contain this restriction was in conflict and inconsistent with the National Agreement.



Item 15. The Number of Duty Assignments Within Each Craft or Occupational Group to be Reserved for Temporary or Permanent Light Duty Assignment

Item 16. The Method to be Used in Reserving Light Duty Assignments So That No Regularly Assigned Member of the Regular Workforce Will be Adversely Affected

Item 17. The Identification of Assignments That Are to be Considered Light Duty Within Each Craft Represented in the Office



DIRECTOR'S TIPS:

REFERENCES IN THE CBA

Article 13. ASSIGNMENT OF ILL OR INJURED REGULAR WORKFORCE EMPLOYEES

Section 3. Local Implementation

Due to varied size installations and conditions within installations, the following important items having a direct bearing on these reassignment procedures (establishment of light duty assignments) should be determined by local negotiations.

A. Through local negotiations, each office will establish the assignments that are to be considered light duty within each craft represented in the office. These negotiations should explore ways and means to make adjustments in normal assignments, to convert them to light duty assignments without seriously affecting the production of the assignment.

B. Light duty assignments may be established from part-time hours, to consist of 8 hours or less in a service day and 40 hours or less in a service week. The establishment of such assignment does not guarantee any hours to a part-time flexible employee.

C. Number of Light Duty Assignments. The number of assignments within each craft that may be reserved for temporary or permanent light duty assignments, consistent with good business practices, shall be determined by past experience as to the number of reassignments that can be expected during each year, and the method used in reserving these assignments to ensure that no assigned full-time regular employee will be adversely affected, will be defined through local negotiations. The light duty employee's tour hours, work location and basic work week shall be those of the light duty assignment and the needs of the service, whether or not the same as for the employee's previous duty assignment.

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Article 13. ASSIGNMENT OF ILL OR INJURED REGULAR WORKFORCE EMPLOYEES

Section 4. General Policy Procedures

A. Every effort shall be made to reassign the concerned employee within the employee's present craft or occupational group, even if such assignment reduces the number of hours of work for PSEs.

OTHER REFERENCES & COMMENTS

Ref: **Postal Support Employees Memoranda, Appendix A**

3. Other Provisions

A. Light Duty

Article 13 does not apply to PSE employees. However, Article 13 does not prohibit the assignment of PSE employees to light duty.

These three items are almost always dealt with as if they were a single item because they are so closely interrelated and tied together. Article 13, Section 3 of the National Agreement addresses each of these items in more detail. In order to formulate proposals, a request for specific information from management should be made. Information such as the average number of employees on temporary or permanent light duty, the average duration of the light duty assignments, the type and nature of the physical restrictions, etc., should be obtained.

Once some idea of the number and type of assignments that are needed is known the National Agreement suggests that light duty assignments may be created from part-time hours, adjustments to normal assignments or reserving certain assignments as may be established through local negotiations to accommodate the local needs. Locals should ensure, however, that any work hours comprising 30 or more hours should be posted for bid. If light duty employees cannot be reasonably accommodated in their bid jobs, the union's approach should be to ensure that such employees are afforded the opportunity to be placed in residual assignments that could otherwise be offered to PSEs. This is consistent with Article 13.4.A which provides in part that "[e]very effort shall be made to reassign the concerned employee within the employee's present craft or occupational group, even if such assignment reduces the number of hours of work for Postal Support Employees (PSEs)."

The National Agreement implies that actual duty assignments can be established and reserved for deserving light duty personnel. Locals may be reluctant to reserve "x" number of light duty assignments and there is an inherent danger in this approach. As an example, if 10 assignments are reserved, this means that 10 assignments may be exempt from the bidding process. In addition, if and when the eleventh person requested light duty, management might decline the request if all 10 positions were filled.

Reserving Assignments

Some locals have elected not to negotiate into their LMOU a fixed number of reserved light-duty assignments or have relied on past practice. Despite the risks, failure to negotiate reserved assignments may cause a deserving employee to be denied a light duty assignment. It is not uncommon for management to simply state, "This office has no light duty work."

A two-pronged approach may be taken. For example, reserving specific assignments in some number, and providing a method to be used to accommodate additional requests beyond the reserved assignments, or to accommodate employees whose physical imitations would not allow them to work the reserved assignments. In addition, locals may negotiate specific duties within prescribed tours for light duty, as long as these duties exceed what can be included in bid positions of 30 or more hours and efforts have been made by management to accommodate the employee in his/her regular duty assignment.

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In a small office, setting up a fixed number of light duty assignments may be difficult.



One arbitrator has held that seasonal demands as well as the irregular flow of mail in such a setting would vary thereby affecting the work availability for light duty employees (AIRS Case No. 5295).



On the other hand, another arbitrator has accepted a provision setting up reserved light duty positions for a percentage (3%) of employees (AIRS Case No. 6092).



Moreover, in response to a claim that an unreasonable burden resulted from an existing provision's requirement that six light duty positions be available within the Motor Vehicle Craft, a third arbitrator found that use of a percentage approach would respond to management's concern that there had been reductions in the Motor Vehicle workforce. He ordered that the appropriate percentage be calculated on the basis of the total MVS complement in 1998 (the date of the previous LMOU), divided by six positions, and that this percentage be frozen during the term of the 2002 LMOU. (AIRS Case No. 43196).



A fourth arbitrator has rejected management's contention that fixed permanent and temporary light duty assignments for the Clerk Craft set at 12 assignments for Tour 1, 4 assignments for Tour 2 and 8 assignments for Tour 3 constituted an unreasonable burden. Evidence that new machinery reduced the number of positions on all tours and volumes processed on the Manual Primary Line where light duty employees are generally placed merely proved that management was inconvenienced, not that it was "severely taxed" by the required number of reserved assignments or prevented from maintaining efficiency of operations. (AIRS Case No. 38738) In cases where a fixed percentage for light duty assignments is sought, however, a local union bears the burden of showing how it arrived at the percentage.



An arbitrator rejected a union's proposal to reserve the number of light duty positions at 5% of all APWU-represented positions on the basis that the union had failed to offer any data on the number of light duty employees in the facility at any given time and the characteristics of jobs to be designated as light duty. He stressed that if a number is set too low, deserving candidates could be denied accommodation if the parties considered it a negotiated cap or if it is too high, too many assignments would have been designated which could adversely affect regular employees. (AIRS Case No. 39159).



Also note that an arbitrator accepted the union's argument that language requiring that consideration be given to using employees on light duty at 1% per tour was inconsistent with management's obligation to provide light duty assignments to the extent possible (AIRS Case No. 33264).



Another award has accepted the union's proposal prescribing a number of positions per tour in the maintenance craft in an effort to ensure that maintenance employees on light duty would be accommodated (AIRS Case No. 20990). It should be noted that any increases in light duty positions have to be justified by increases in the number of employees per facility (AIRS Case No. 21295).



Moreover, several arbitrators have accepted provisions that prescribe non-bid duties that can be performed by light duty employees (AIRS Case No. 6092, 7578). In one of these cases, the provision specified that employees on light duty could perform duties related to Nixie/tearup mail, light duty casework, facing mail, work in the label room, mail counting work, and incidental assignments within the employee's physical limitations (AIRS Case No. 6092).



However, see AIRS Case Nos. 26789-94 in which one arbitrator rejected a local union's proposal which recognized certain duties by craft as light duty assignments. The arbitrator reasoned that there was no need for the proposed listing and it would unduly restrict the

desired flexibility needed by management to make light duty assignments.



Arbitrators have deleted provisions that have set up specific criteria for obtaining a light duty assignment, such as lifting and standing requirements, as being unnecessarily restrictive on an employee's right to be considered for light duty assignments on an individual basis (AIRS Case Nos. 20743 and 20717).

Cross-Craft Light Duty Assignments



Maintaining light duty assignments within a certain craft, thereby preventing the crossing of craft lines, has been rejected (AIRS Case No. 8481).



In addition, giving employees represented by the APWU the superior claim to duty assignments that are recognized as belonging to crafts of the APWU has been determined by an arbitrator to be outside the scope of Item 17 (AIRS Case No. 26722).



Another arbitrator also held that a provision assigning employees from other crafts to work certain tours was impermissible. He relied on the fact that it infringed on another union's negotiating authority without its consent (AIRS Case No. 553).



Moreover, language in an LMOU prohibiting non-APWU bargaining unit employees from being assigned work on Tour Two to the detriment of any APWU bargaining unit bid position, light duty assignment or other temporary assignment was ruled to be inconsistent with the National Agreement (AIRS Case No. 26756).



A provision defining light duty assignments as including assistance to other carriers has been rejected; the APWU cannot bargain for NALC duties (AIRS Case No. 6132).

However, note that the National Agreement provides that "[m]anagement will give the local union president advance written notification when it is proposed to reassign an ill or injured light or limited duty employee in a cross-craft

assignment into an APWU represented craft." (Article 13.4.M) In addition, an arbitrator accepted a provision that requires employees not represented by the American Postal Workers Union assigned to APWU work to perform work during the tour APWU employees normally perform such work (AIRS Case No. 5283).

Other Provisions

Local agreements may repeat language from Article 13 of the National Agreement to show the scope of management's obligation to consider light duty requests. It may prove fruitful to attempt to write language similar to ELM 546.142 (changing references from "limited duty" to "light duty") into the Local Memorandum of Understanding. Locals should also consider putting language in their LMOU that specifies that employees reinstated under the Rehabilitation Program should be assigned to one of the reserved light duty assignments or a residual vacancy. This would help protect against management creating special preferred jobs for Rehab employees, while still protecting the Rehab employee.



Note that management may object to language used that is not identical to language contained in the National Agreement. For example, see AIRS Case No. 14656 in which an arbitrator ruled that a provision addressing limited duty employees was outside the scope of Article 30.B.17.

Moreover, an attempt by management to declare as inconsistent a provision using the language "maximum effort" instead of "greatest consideration" was rejected by an arbitrator (AIRS Case No. 27682).



In addition, management's objection to a union proposal to require that work will be provided to the extent possible at the plant or elsewhere in an installation if it is unavailable at the stations, was rejected on the basis that the proposal was consistent with Article 13 (AIRS Case No. 33264).




It should be noted that an attempt by a local to add a provision setting up a union-


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management light duty committee that has the specific duty of reviewing requests for light duty hasn't been successful (AIRS Case Nos. 22575, 22576, 22577, and 22578).


In addition, some arbitrators may be reluctant to continue an LMOU provision providing for a union/management light duty committee if there is no showing that it has ever met or been an effective committee (AIRS Case No. 32848 and 32869).

Moreover, a provision that "mandates" a light duty committee to find work within the medical restrictions for an employee within the employee's tour of duty has been held to be in conflict with the National Agreement (AIRS Case No. 23385).


 However, a proposal that temporary, transitional and loaned/borrowed employees shall be included in the expression "supplemental work force" for the purposes of creating hours for light duty positions in Article 13.4.A was allowed to be added to one local agreement (AIRS Case Nos. 22575, 22576, 22577, and 22578).


 In addition, a provision that states management's obligation to make all reasonable efforts to reassign employees even though presently identified light duty assignments are filled by disabled employees was accepted by an arbitrator (AIRS Case Nos. 22575, 22576, 22577, and 22578).


 Another arbitrator also has upheld a provision that reasonable efforts shall be made to assign an employee to light duty within the employee's craft or occupational group and "to keep the hours of light duty as close as possible to the employee's regular schedule" (AIRS Case No. 21102).

 However, a provision providing that except where operationally impossible, all light/limited duty assignments shall maintain an employee's bid or other assigned hours and non-scheduled days has been found to be inconsistent with Article 13 (AIRS Case No. 26758). The arbitrator determined that use of the terms "operationally impossible" was an absolute requirement which

was incompatible with language which allowed the Postal Service some discretion in assigning such work.

 Also, a provision addressing limited duty employees has been ruled to be outside the scope of Article 30.B.17 (AIRS Case No. 14656).

 Moreover, a provision establishing a part-time permanent light duty position has not been allowed (AIRS Case No. 527). The proposal was considered to be inequitable since it did not address the needs of temporary light duty employees and the needs of a permanent light duty employee to work full-time.

 Furthermore, a provision that the union be given notice of when a light duty request is received, and of each denial of light duty was determined to be beyond the scope of Article 13 which only requires that concerned employees be notified in writing of the reasons why an employee cannot be reassigned. Additional language regarding medically defined work limitations and tolerances, the ability of an employee to perform work of his own job, modifications to other jobs, and a requirement that duties assigned to casuals, TEs (now PSEs since the 2010 CBA) and PTFs be modified for light duty when production is not impacted were considered to be burdensome procedures in circumstances where the union had not shown that there was a problem with existing language. The arbitrator urged the parties to merely "fulfill the bargain" they made when they negotiated the provision requiring that when a deserving employee seeks light duty work the president of the local union and installation head "shall establish the light duty assignment by consultation" in accordance with Article 13.3. (AIRS Case No. 39159).



Note: The 1987 negotiations resulted in the deletion of language in Article 8, Section 5.C.1.b., which prohibited employees on light duty from performing overtime work. The intent of this change was to allow light duty employees to work overtime - within their physical limitations. This change in language was not intended to disrupt any local memorandum which requires management to call people in on their off day when overtime is available.

Item 18. The Identification of Assignments Comprising a Section when it is Proposed to Reassign within an Installation Employees Excessed to the Needs of a Section

 **DIRECTOR'S TIPS:**

REFERENCES IN THE CBA

Article 12. PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS

Section 5. Reassignments

C. Special Provisions on Reassignments

4. Reassignment Within an Installation of Employees Excess to the Needs of a Section

It should be noted that if no Sections are established by local negotiations, the entire installation shall comprise the Section.

5. Reduction in the Number of Employees in an Installation Other Than by Attrition

- a. Reassignments within installation. When for any reason an installation must reduce the number of employees more rapidly than is possible by normal attrition, that installation:
...
- b. (2) Shall, to the extent possible, minimize the impact on regular workforce employees by separation of all PSEs...

OTHER REFERENCES & COMMENTS

Also, for consideration of identifying which Section(s) PSEs are assigned to for excessing purposes, note:

Article 12. PRINCIPLES OF SENIORITY, POSTING AND REASSIGNMENTS

Section 5. Reassignments

B. Principles and Requirements

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2. The Vice President, Area Operations shall give full consideration to withholding sufficient full-time and part-time flexible positions within the area for full-time and part-time flexible employees who may be involuntarily reassigned. Management shall identify duty assignments within the appropriate radius held by PSEs which shall be made available for the reassignment of excess career employees. When positions are withheld, local management will periodically review the continuing need for withholding such positions and discuss with the union the results of such review.

XRef: **New Language - MOU, Appendix B, EXCESSING IN THE CLERK CRAFT WITHOUT REGARD TO LEVELS.**

XRef: **New Language - MOU, Appendix B, REVISIONS TO THE APWU-USPS JOINT CONTRACT INTERPRETATION MANUAL, 38.3.K Excess Employees.**

Locals of any size should negotiate sections for the purpose of protecting seniority in the event management determines that it is necessary to reduce the number of employees on a tour or within a unit in the installation. Sections may be determined through local negotiations for the purpose of excessing employees of a section as outlined in Article 12, Section 5.C.4. Note that sections for reassignment within an installation of employees excess to the needs of a section don't have to be the same as for annual leave selection purposes (Items 4-12), and holiday and overtime scheduling (Items 13 and 14). Sections can vary depending on their purpose. Locals should consider the advantages and disadvantages of defining a section a certain way in order to ensure seniority protection. Also, it is important to be aware that in-section bidding in the NTFT MOU (in-section bidding for reposting of full-time regular duty assignments as non-traditional full-time assignments) and in the PSE MOU (for reposting for bid within the section when hours worked by a PSE on the window demonstrate the need for a full-time preferred duty assignment) do not have to be the same as sections set out for Item 18 purposes since bidding under those MOUs is not Article 12 "in-section" bidding.

As an example, if your office had three Window Clerks and management decided to abolish the senior Window Clerk's position, if sections are not defined the senior excessed Window Clerk becomes an unassigned regular and will be required to bid on any vacant duty assignment within the installation without retreat

rights back into the window unit. On the other hand, if the window unit had been negotiated as a section, the senior Window Clerk would have remained in the section and the junior clerk would have been excessed and declared an unassigned regular. The junior clerk would have retained retreat rights to the first residual vacancy in the window unit. The principle of seniority is protected since the senior clerk whose job was abolished had the right to remain in the window section. The job vacated by the junior clerk would be filled by section bidding, which means that if the number two employee did not desire the vacated position, the senior regular would be assigned to the position vacated by the excessing of the junior employee.


Defining sections not only by particular work units but also by levels and skills within a unit may be desirable. If the Window Unit also contained Scheme Distribution Clerks who did not have fixed credits or window training and contained Window Clerks that did not have the scheme, then distinguishing the two skills as separate sections might prevent the assignment of a senior Window Clerk who remains in the section to the Junior Scheme Clerk's position, thus forcing the senior clerk to learn the scheme or vice versa, the Scheme Clerk to qualify on the window.



In addition, it is recommended that for the Maintenance Craft, each occupational group by tour should be identified as separate sections. This will prevent management from making reassignments across tours. (See AIRS Case

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No. 39693 in which an arbitrator accepted the union's proposal to add "and tour" to existing language for the Maintenance Craft stating "section will be by occupational group and level."


 However, in AIRS Case No. 26783 an arbitrator rejected a local union's proposal to add occupational group to tour in four sections set out for Maintenance Craft employees.) Article 38.3.K.1 states, "Installation seniority governs in identifying excess employees within an occupational group and level." In addition to making the determination of which seniority is applicable for Article 12 purposes, this ties into Article 12.5.C.4, which references the excessing of employees by occupational group.


It is very important to recognize that locally identified sections under Item 18 of an LMOU are only for the purpose of implementing Article 12.4.C.4 which is reassignments across-section and staying within the same craft and installation. These locally identified sections do not come into play when excessing occurs under Article 12.5.C.5 or the other Article 12 provisions.


Also, it is advisable to define "tour" if it's used in your LMOU especially given the addition of NTFT employees who have varying schedules. In order to reduce confusion, an agreement should be reached that tour is based on an employee's begin tour time and should set out the specific hours for each tour. For example, 2200 (day before) – 0399 is Tour 1, 0400 – 1199 is Tour 2, 1200 – 2199 is Tour 3.

Several awards on reassignment show how arbitrators approach the identification of section under different circumstances.

 In one case, an arbitrator added tour of duty and work units and skills to the identification of assignments comprising a section. The prior section was defined as an entire installation. The union argued successfully that the current LMOU did not adequately protect senior employees and should indicate that a section was comprised of a tour of duty. The Service argued that the union's proposal would disrupt operations (AIRS Case No. 20518).

 A similar case involved another union proposal to change a provision on reassignment sections from installation wide/one section to sections by tour (AIRS Case No. 32364). The arbitrator accepted the proposed change on the basis that an installation-wide section was detrimental to seniority considerations.

 In AIRS Case No. 22010, an arbitrator ruled that the Service had not met its burden of proving that a pre-existing provision establishing section by tour and LSM, FSM operations constituted an unreasonable burden. The Postal Service argued that projected automation made it necessary to excess employees by scheme combination. The union opposed the change, arguing that excessing could result in senior employees losing their tour of duty. The arbitrator ruled that management's argument was purely speculative since the evidence did not permit a finding that tentatively-scheduled automation was certain to occur (AIRS Case No. 22010).

 However, in a fourth award, an arbitrator denied the local union's proposal to change an existing LMOU identifying sections by 41 pay locations and by tour (AIRS Case No. 26721). The union sought to identify sections as all full-time employees by salary level and by tour, with each best qualified position and salary level in a separate category (one section per position for the entire installation). It asserted that the current language imposed a hardship because the Postal Service could target a pay location for extinction and decide which employees would be assigned to that location, and as a result senior employees could become unassigned regulars while junior employees would receive preferable assignments. The union also argued that the language is in conflict with Article 37.3.A.7.d and its proposal would protect seniority rights of employees. The arbitrator determined that the union had not met its burden of proving that the current language, which had been in effect since 1987, was unworkable throughout prior excessing or that any grievances had been brought alleging a violation of Article 37.3.A.7.d.



Another arbitrator rejected a local union's proposal to add language to its provision on sections for reassignment that "all part-time regulars will be declared excess to the needs of a section by juniority before full-time regulars are declared excess." The arbitrator indicated that the language of Article 12.5.c.4.a states that the identification of assignments comprising for this purpose a section shall be determined locally by local negotiations, but does not say that all part-time regulars may constitute a section. He also said that since 12.5.C.4.b merely indicates that

"full time employees, excess to the needs of the section . . . shall be reassigned outside the section" and does not specifically say that this should be accomplished after excessing part-time regulars, the addition of this language would be inconsistent with the pecking order set out by negotiators at the national level. This arbitrator said he is "reluctant to state that the part time regular employees were inadvertently left out of a 'pecking order' established either for the removal from a section or reassignment within a section or reassignment from an installation" (AIRS Case No. 22515).

Item 19. The Assignment of Employee Parking Spaces



DIRECTOR'S TIPS:

REFERENCES IN THE CBA

Article 20. PARKING

Section 2. Security

Recognizing the need for adequate security for employees in parking areas, and while en route to and from parking areas, the Employer will take reasonable steps, based on the specific needs of the individual location, to safeguard employee security, including, but not limited to, establishing liaison with local police authorities, requesting the assignment of additional uniformed police in the area, improving lighting and fencing, and, where available, utilizing mobile security force patrols

Article 20. PARKING

Section 3. Labor-Management Committee

Parking is a proper subject for discussion at Local Labor-Management Committee meetings. The location of new, additional, or improved parking facilities; the number of parking spaces; security and lighting in the parking areas as well as similar subjects are proper agenda items for such meetings. The local Labor-Management Committee may make recommendations to the installation head concerning such subjects.

(Note: Statement at the end of Article 20: (The preceding Article, Article 20, shall apply to PSEs)

OTHER REFERENCES & COMMENTS


XRef: **Postal Support Employees Memoranda, Appendix A**, lists Article 20 as applying to PSEs.


Also Ref: **Article 14, SAFETY AND HEALTH**, regarding safeguarding employee security


XRef: **Postal Support Employees Memoranda, Appendix A** lists Article 14 as applying to PSEs.


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Parking facilities are usually very limited and negotiations in this area may be difficult. Management has been instructed to only negotiate on the allocation of existing parking spaces in excess to the needs of the Postal Service. Locals may wish to reserve parking spaces for the local APWU officers and/or stewards. Many locals have successfully negotiated reserved spots for the union.


 In reserving spots, arbitrators have allowed parking to include spots for Directors of the Clerk, Maintenance, and Motor Vehicle Crafts, in addition to the President of a local, in order that the union may conduct its business properly (AIRS Case Nos. 21006, 21007, 21008).


 In addition, in a case where a set number of spots was reserved by craft for employees in the Letter Carrier Craft and the Clerk Craft, an arbitrator allowed a change to a LMOU provision to provide for parking space allocation on the basis of proportionality of the number of employees in each craft thereby allowing Clerk Craft employees to receive 10 of the 14 spots allotted for employees (AIRS Case No. 20624).


 In another case, a local union representing 22 employees in a facility with only 10 parking spaces for APWU and NALC employees was able to obtain a reserved parking space for a SSPC technician, an APWU representative, two APWU bargaining unit members, and a handicapped employee without regard to union affiliation. The arbitrator reached this decision after balancing the interests of the NALC that had 98 employees at the facility with those of the APWU (AIRS Case No. 27246).

 In a case in which management had only 40 parking spaces available following closure of a parking garage and five of those spaces were permanently assigned to carriers with drive-out agreements and an ODIS clerk, an arbitrator found that management acted fairly in assigning parking spaces on a combined seniority basis including both letter carriers and clerks. He rejected the letter carrier union's proposal to assign parking on a proportional basis by craft on the basis that letter carriers constituted

approximately 70% of the employees at the facility. The arbitrator found that use of a combined seniority list for parking would ensure that members of both unions' bargaining units "are treated equitably in this very limited employee asset of free parking." Note that in this case, the APWU had intervened in an impasse arbitration involving the NALC and USPS. (AIRS

Case No. 39584).  In another NALC impasse arbitration over parking in which the APWU intervened, the NALC argued that the existing provision on parking disfavored carriers because 39 have no free parking while clerks who make up 35% of the workforce at the facility all have free parking. It sought at a minimum, an additional 11 parking spaces for carriers. The arbitrator found that he couldn't open the APWU LMOU containing this provision since "[m]odification can only be obtained by an agreement of the parties to the Agreements." In addition, he determined that the NALC failed to provide factual data regarding "alternatives, costs, and options" and therefore he didn't have "an understanding of [the proposal's] operational and financial impact" so he couldn't decide whether benefits or potential harm would result from the change. (AIRS Case No. 46732)

 However, when parking is already inadequate, an impasse arbitrator will be reluctant to reserve spaces for the union (AIRS Case No. 500). In one case the arbitrator did not feel that Item 19 envisioned reserving spots for the union (AIRS Case No. 500 and 5420), yet another arbitrator rejected the Postal Service's argument that the National Agreement does not require management to negotiate on the subject of reserved parking spaces for union officials (AIRS Case No. 33168).

 In any event, a parking program administered on a first come, first serve basis may be acceptable (AIRS Case Nos. 4945, 6008, 6565, 7162, 7380, 8484 and 20752). Also, an arbitrator has required preferred parking for certain vehicles in response to Clean Air Act legislation (AIRS Case No. 21258).

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In another case, the arbitrator held that the Postal Service could unilaterally take back management spaces which the union had been allowed to use. The arbitrator stated that this was not a binding contractual provision, but merely a concession granted by the Postal Service (AIRS Case No. 10231).



In addition, an arbitrator has rejected a union proposal to restrict reserved parking used by management employees by only allowing reserve parking for the handicapped, the postmaster, and APWU craft designees (AIRS Case No. 26883-887). The local had sought this provision in order to increase the number of first-come, first-served parking spots for bargaining unit employees.



Also, a proposal to allow parking for maintenance employees that is similar to supervisors' parking was rejected. The arbitrator determined that the union's desire to ensure that parking spaces would be available closer to where the maintenance employees worked was outweighed by cost considerations of management (AIRS Case No. 33804).



Moreover, a proposal to increase the number of parking spaces by reestablishing spaces that had been taken out of use due to construction was rejected by an arbitrator as outside the scope of Item 19 (AIRS Case No. 27513). The arbitrator ruled that Article 30, Item 19 only covers the assignment of parking spaces, not the creation of parking spaces. He also denied a proposal for permit parking on the basis that there was no evidence showing that employees were disadvantaged by the present system of first-come first-served parking.



On the other hand, locals have been successful against the Postal Service's efforts to argue that pre-existing provisions represent an unreasonable burden. For example, a parking program in effect for eight years, which included four parking spaces on postal premises for employees, was upheld by an arbitrator despite attempts by the Postal Service to reduce available spots for employees to one. The

arbitrator ruled that the pre-existing parking provision did not constitute an unreasonable burden since it did not "substantially interfere with the Service's primary operation, the safety of postal patrons or employees, or lessen the Service's competitive position in the market of delivery of services." In addition, the arbitrator found that the Postal Service failed to show that alternatives available to correct an inadequacy in patron parking would be "ineffective or prohibitively costly in terms of financial or other resources of the Service" (AIRS Case No. 20659).



In addition, an arbitrator in another case ruled that the Postal Service did not meet its burden of proving that continuation of a parking program which allowed for five unassigned parking spaces and parking on a first-come first-serve basis constituted an unreasonable burden. Though there was evidence that there had been an increase in the number of vehicles assigned to the facility, vehicles were larger than predecessor jeeps, and there were more vehicles than spaces, the arbitrator found that there was no showing that the congestion negatively impacted the operation and safety of the post office (AIRS Case No. 32367).



A third arbitrator concluded that management did not demonstrate that continuing to grant a parking space to the senior clerk in a post office constituted an unreasonable burden. A management official testified that retaining the space resulted in insufficient space for customer parking, drop shipments, a snow plow and current delivery vehicles driven by carriers because they had become larger. The arbitrator found that her testimony was unsupported by "empirical evidence" or "hard facts that any of these issues have become problematic in the past." (AIRS Case No. 40703)

Parking Security

Article 20, Section 2 of the National Agreement addresses Parking Security. While this section does not call for local negotiations (in fact, management takes the position that it is not subject to local negotiations) some locals have been successful in negotiating provisions for parking lot security; such as lighting and fencing.

Arbitrator Mittenthal's national interpretative award (AIRS Case No. 22) makes clear there is definitely no prohibition against negotiating anything during the local negotiation process that is not in conflict or inconsistent with the National Agreement. However, the local may not take through the impasse procedure anything but the specific twenty-two (22) items.

Subject for Labor-Management Meetings

Significantly, the National Agreement provides that parking is a proper subject for discussion at local Labor-Management meetings. Agenda items for such meetings may include the location of new, additional, or improved parking facilities; the number of parking spaces; security and lighting in the parking areas, as well as similar subjects. The local Labor-Management Committee may make recommendations to the installation head concerning such subjects.

Enforcement of Parking Rules

Locals must also remember that the Postal Service may both prescribe and enforce parking rules and regulations. In several cases, arbitrators have held that when adequate notice of such rules have been given, the Postal Service may issue tickets and/or have cars towed parked in reserved or restricted spaces (AIRS Case Nos. 9672-9678, 9385-9392, 10070 and 10929-10931).



Item 20. The Determination as To Whether Annual Leave To Attend Union Activities Requested Prior To Determination Of The Choice Vacation Schedule Is To Be Part Of The Choice Vacation Plan

 **DIRECTOR'S TIPS:**

REFERENCES IN THE CBA

Article 24. EMPLOYEES ON LEAVE WITH REGARD TO UNION BUSINESS

Section 2. Leave for Union Conventions

This Section allows full or part-time employees to attend National, State, and Regional Union conventions on annual leave or LWOP, provided that a request for leave has been submitted by the employee as soon as practicable and provided that approval of such leave does not seriously adversely affect the service needs of the installation. Although Article 24 states that such leave will be considered part of the total choice vacation plan for the installation, it also states "unless agreed to the contrary at the local level". Thus, it is a proper subject for discussion during LMU negotiations.


(Note: Statement at the end of Article 24: (The preceding Article, Article 24, shall apply to PSEs)


OTHER REFERENCES & COMMENTS


XRef: **Postal Support Employees Memoranda, Appendix A**, lists Article 20 as applying to PSEs.

Locals should be aware that Item 20 is also related to Item 8, and both should be considered when formulating local leave policies.


Unless the local negotiates differently, the time an officer, steward or delegate takes leave for union activities such as a convention will be charged to the choice vacation period.

 An example where a local has been able to successfully negotiate otherwise is AIRS Case No. 7334. In that case, the arbitrator accepted a proposal, whereby leave granted to attend union conventions would not be charged to an employee's choice vacation period, as long as no other employee is prevented from obtaining his/her first choice for vacation.

 Also, see AIRS Case No. 33389 in which an arbitrator upheld a pre-existing provision that leave for state or national conventions shall not count towards choice vacation period numbers.

 However, proposals on leave for union meetings or business have usually been rejected as outside the scope of mandatory

bargaining or inconsistent with the National Agreement (AIRS Case Nos. 7369, 21111, 21871 and 21888). For example, a provision requiring that all union leave be automatically approved for meetings, hearings, and arbitrations was found to be inconsistent with the Postal Service's right to manage (AIRS Case No. 21111).

 In addition, a provision requiring that leave to attend official union functions and activities not be considered part of the choice vacation period and allowing it to be charged to annual leave or leave without pay at the employee's option was rejected. The arbitrator indicated that the issue of the type of leave to be granted to attend union activities is outside the scope of Article 30; however, he noted that the issue of appropriate leave to be charged for state and national conventions is addressed in Article 24. He also determined that the reference to union activities and functions resulted in a proposal that is too broad to uphold since management would be required to accommodate any function or activity the union determined to be official. The arbitrator noted that the union defined union activities and functions to include union training

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classes, and the Clerk Craft and President Conferences, for example (AIRS Case No. 39753).



Moreover, a provision requiring that union representatives working on union business be

granted leave immediately or if not possible, within two hours after such a request 95% of the time was held to be in conflict with Articles 17.3 and 24.2 of the Agreement (AIRS Case No. 21888).



Item 21. Those Other Items which are Subject to Local Negotiations as Provided in the Craft Supplemental Agreements



DIRECTOR'S TIPS:

REFERENCES IN THE CBA

Article 17. REPRESENTATION

Section 5. Joint Labor-Management Committee Meetings

A. The APWU through its designated agent shall be entitled at the ... local levels, and at such other intermediate levels as may be appropriate, to participate in regularly scheduled Joint Labor Management Committee meetings for the purpose of discussing, exploring, and considering with management matters of mutual concern; provided neither party shall attempt to change, add to, or vary the terms of the Collective Bargaining Agreement. The local Joint Labor-Management Committee will meet as needed, but not less than once every quarter unless otherwise provided in the parties' local memorandum of understanding.

Article 17. REPRESENTATION

Section 6. Union Participation in New Employee Orientation

During the course of any employment orientation program for new career or non-career employees, or in the event a current postal employee is reassigned to an APWU bargaining unit, a representative of the Union representing the craft or occupational group to which the new or current employees are assigned shall be provided ample opportunity to address such new employees, provided that this provision does not preclude the Employer from addressing employees concerning the same subject. In addition, at the time any non-career employees become eligible for health insurance, the APWU will be provided ample opportunity to address such employees on this subject.

Health benefit enrollment information and forms will not be provided during orientation until such time as a representative of the Union has had an opportunity to address such new employees.

(Note: Statement at the end of Article 17.6: (The preceding Article, Article 17.6, shall apply to PSEs)

Article 22. BULLETIN BOARDS

This Article allows for the furnishing and placement of APWU Bulletin Boards and Literature Racks in the Swing Rooms. This is also an important issue during our LMU Negotiations.

(Note: Statement at the end of Article 22: (The preceding Article, Article 22, shall apply to PSEs)

OTHER REFERENCES & COMMENTS

Note: Although Article 17, Section 5 is not specifically listed in the Articles that apply to PSEs in either the CBA or the **Postal Support Employees Memoranda, Appendix A**, it does not bar PSE issues from being discussed during local Labor-Management meetings

Note: Article 17.6 shall apply to PSE Employees.

XRef: **Postal Support Employees Memoranda, Appendix A**, which lists Article 17, Sections 2, 3, 4, 6 and 7 as applying to PSEs

This is an important issue which should be restated in the Local Memorandum of Understanding for each office. Such Orientation of New Employees involves an introduction into the APWU itself, as well as the APWU Health Plan.

Note: Article 22 shall apply to PSE Employees.

XRef: **Postal Support Employees Memoranda, Appendix A**, lists Article 22 as applying to PSEs.

Item 22. Local Implementation of this Agreement Relating to Seniority, Reassignments, and Posting



DIRECTOR'S TIPS:
REFERENCES IN THE CBA

REPOSTING ASSIGNMENTS

The determination of what constitutes a sufficient change of Duties, Principal Assignment Area, or Scheme Knowledge Requirements to cause the Duty Assignment to be Reposted, is established in each Craft Article, and is negotiable during LMU Negotiations.

- **CLERK CRAFT:** Article 37, Section 3.A.4
 - **MAINTENANCE CRAFT:** Article 38, Section 4.A.5
 - **MVS CRAFT:** Article 39, Section 2.A.3 & 4
- Also see Article 39, Section 2.A.6 & 7 regarding calendar year repostings

THE LENGTH OF TIME THAT BID NOTICES SHALL REMAIN POSTED

This is established in each Craft Article, unless a different length for the posting period is established by LMU Negotiations.

- **CLERK CRAFT:** Article 37, Section 3.D - 10 days
- **MAINTENANCE CRAFT:** Article 38, Section 4.A.1 - 7 calendar days
- **MVS CRAFT:** Article 39, Section 2.C - 10 calendar days

THE PLACEMENT OF THE SUCCESSFUL BIDDER INTO THE NEW ASSIGNMENT

This subject is also established in each Craft Article, unless a different length of time is established by LMU Negotiations:

- **CLERK CRAFT:** Article 37, Section 3.F.2 – Within 28 days, except in December
- **MAINTENANCE CRAFT:** Article 38, Section 5.C.2 – Within 14 days after the announcement of the successful applicant.
- **MVS CRAFT:** Article 39, Section 2.E.2 – Within 21 days, except in December

SENIORITY LISTS PROVIDED TO THE UNION

- **Article 37. CLERK CRAFT**
Section 2. Seniority
C. Responsibility

... The installation head shall post and furnish a copy of an updated seniority list to the local union on a semi-annual basis, unless otherwise negotiated locally. The application of this Article shall be open to negotiation at the installation level with the designated official of the Union.

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- **Article 38. MAINTENANCE CRAFT**
Section 3. Seniority
D. Seniority Lists

A current seniority list shall be posted in each installation. A copy of an updated seniority list shall be furnished quarterly to the local Union. For each employee, it shall show:

1. Service seniority.
2. Seniority for preferred assignments.
3. Installation Seniority.

- **Article 39. MOTOR VEHICLE CRAFT**
Section 1. Seniority
F. Seniority List

A current seniority list shall be posted in each installation. A copy of the updated seniority list shall be made available to the local Union. For each employee, it shall show:

1. Service Seniority
2. Seniority for preferred assignments

DAY-TO-DAY SENIORITY

- **Article 37. CLERK CRAFT**
Section 2. Seniority
C. Responsibility

The Employer is responsible for day-to-day application of the seniority provisions of this Article... The application of this Article shall be open to negotiation at the installation level with the designated official of the Union.

- **Article 38. MAINTENANCE CRAFT**
Section 2.F.2 for Installation Seniority,
Sections 2.G.1 & 2, for Seniority for Preferred Assignments
Also, Section 3. Seniority
C. Responsibility

The installation head is responsible for day-to-day administration of seniority. The application of this Article shall be open to negotiations at the installation level with the designated agent of the Union.

- **Article 39. MOTOR VEHICLE CRAFT**
Section 1. Seniority
E. Responsibility

The installation head is responsible for day-to-day administration of seniority. The application of this Article shall be open to negotiation at the installation level with the Union.

OTHER REFERENCES & COMMENTS

Re: Day to Day Seniority

X-Ref the 5/9/02 Q&A's to the **Mail Processing Clerk MOU**, specifically:

1. Does this allow management to assign employees to other-mail processing areas?

Yes. Management may assign employees in accordance with operational needs and the employee's qualifications. However, if there is more than one employee working in a principal assignment area with the necessary skills, management may move employees out of the principal assignment area as needed by juniority.

NOTE: The only exception to this rule is if an employee with a scheme in his/her duty assignment has not reached the current minimum 30-hour sortation requirement in an AP. In that instance, a more senior employee may be moved out of the principal assignment area.

...

4. What does day-today seniority mean for this application?

It means that when the employer determines a need to assign an employee or a number of employees outside of their principal assignment area, the employees are moved by juniority (with the noted exception in number 1). As an example, there are two employees with the same skills in their duty assignment and same principal assignment area and management determines it needs one to work outside the principal assignment area. When moving the employee, management will take the junior employee with the necessary skills.

Items 21 and 22 cover a wide variety of items many of which overlap because most of the local implementation of seniority, reassignments and postings are also specific items in the local craft supplemental agreements that call for local negotiations.

APPLICATION OF SENIORITY

In general, the Postal Service will instruct local management not to negotiate day-to-day application of seniority, allegedly because it is beyond the scope of local negotiations. To the contrary, the negotiated provisions of the above-referenced craft articles, clearly provide that the day-to-day application of seniority is open to negotiations at the local level. Some locals have been successful in negotiating day-to-day application of seniority provisions. However, locals should be aware of the difficulties involved in negotiating some kind of movement from assignment to assignment by seniority.

Day-To-Day Seniority

Arbitrator Garrett in three different cases laid-out the guidelines for evaluating "day-to-day seniority" provisions (AIRS Case Nos. 124, 145 and 812, AIRS Case No. 145 was decided under 1971 Contract before the list of 22 items was placed in Article 30). The following three numbered sections are points he made:



Garrett Case #1: Proposals concerning "day-to-day seniority" are mandatory subjects for bargaining under Item 22. Impasses reached are arbitrable. In AIRS Case No. 812, Arbitrator Garrett found that the union's proposal was inconsistent with the National Agreement, but nonetheless negotiable. He provided a 60-day period for further negotiations. He reasoned as follows:

It is common knowledge that many initial proposals in collective bargaining are unsound, impractical, and sometimes even frivolous or unlawful, yet such proposals may sometimes be so modified through negotiations as to

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eliminate objectionable features. A local proposal which may seem to seek a result in conflict with the National Agreement - but which nonetheless seeks to deal with a genuine problem within the scope of Article XXX - accordingly still may provide a basis for good faith negotiation. In any such negotiation, of course, either party may and should resist agreement upon any compromise or alternate solution which would conflict with the National Agreement.

Nothing in the present Article XXX authorizes a refusal to negotiate concerning a local proposal, on one of the subjects delineated in Paragraph B thereof (AIRS Case No. 812, pp.36 and 37).



Also, see AIRS Case No. 32366 in which an arbitrator ruled that a 1977 Central Region Agreement rendered a union's appeal of the Postal Service's proposal to delete a LMOU provision allowing day-to-day seniority inarbitrable at impasse arbitration. The arbitrator relied on the 1977 document, that barred the union from arbitrating grievances or impasse matters on the issue of day-to-day seniority, in spite of findings in the Garrett award and 1995 Joint Questions and Responses on Article 37 that recognized the validity and enforceability of day-to-day seniority provisions. She said that the regional agreement still is controlling since there has been no action to "void or abrogate" the agreement. Note that this award was issued in the case of a local located in the Central Region, and cannot be applied to agreements of locals in other regions. Also, see AIRS Case Nos. 6347 and 6558 for similar reasoning.

Consistency of Day-To-Day Seniority



Garrett Case #2: Proposals that locally implement specific seniority provisions of the National Agreement, even when the proposals call for movement by seniority, are consistent with the National Agreement.

The Postal Service challenged the following provisions contained in the Boston LMOU:
Temporary Reassignments: Normally management will recognize the application of seniority in the daily reassignment of workers from section to section except recognized stewards of the APWU who shall remain in the bid section during such reassignments.

In AIRS Case No. 124 Arbitrator Garrett explained that the Boston LMOU provision is consistent with the National Agreement:

The present case arose under the 1975 National Agreement where Article XXX also contemplates that a local memorandum may be negotiated to provide "Local implementation of this Agreement relating to seniority, reassignments, and posting." (Item 22 in Article XXX) Article XII, Section 3-B of the National Agreement also notes that "specific provisions for posting for each craft are contained in the craft posting provision of this Agreement." Article XXXVII of the National Agreement applies to the Clerk Craft. Its Section 2-E-5 requires that: "Normally, the successful bidder shall work the duty assignment as posted." Given this contractual context the heart issue here is simply whether the local Article XII-B reasonably "implements" Article XXXVII, Section 2-E-5. Unlike either Union proposal in the two earlier cases, this local provision does not require strict application of seniority in making within tour reassignments. It contemplates only that seniority "normally" will be observed. This word of limitation is exactly the same as that which introduces Article XXXVIII, Section 2-E-5.

Article XXXVII, Section 2-E-5 in itself reasonably would seem to provide some limitation upon the full exercise of Management discretion under Articles III and VI in reassigning employees within tours. At the least, it would mean that casuals, flexibles or other employees not holding bid assignments within the Section "normally" would be moved out first. To the

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extent that the local Article XII-B seeks to provide additional detail as to the circumstances under which a successful bidder (in a section) is entitled to “work the duty assignment” which was posted for bid, it hardly would appear to conflict with any provision in the National Agreement. It only applies “normally” and as the evidence in this record amply demonstrates - there are many circumstances under which a “normal” guide cannot control because efficiency would be impaired, or too little time might be available to consider relative seniority under the given circumstances. On this record, therefore, it must be held that Article XII-B of the Local Memorandum represents a legitimate effort to “implement” a seniority provision of the National Agreement, within the meaning of Item 22 of Article XXX. It thus is valid and enforceable in accordance with its terms (AIRS Case No. 124, pp. 19-21).

For similar proposals upheld as legitimate implementations of the National Agreement, see AIRS Case Nos. 5197 and 6607.



Also see cases where day-to-day seniority proposals have been upheld as consistent with the National Agreement: AIRS Case Nos. 4905, 7236, 20736, and 27016. In addition, in AIRS Case No. 27016 an arbitrator found the Postal Service had not met its burden of proving that a day-to-day seniority provision was an unreasonable burden. Moreover, in AIRS Case No. 26726, an arbitrator upheld a provision, requiring that temporary assignments of full-time employees from one section to another be done by juniority according to required skills, and found that management did not prove it was inconsistent with the National Agreement or represented an unreasonable burden.



For proposals held invalid as going beyond mere implementation, see AIRS Case Nos. 5236, 5237, 6098, 7584 and 7594. In addition, see AIRS Case Nos. 26789-94 in which an arbitrator rejected provisions to normally recognize the application of seniority in the daily work schedules of Motor Vehicle Craft

mechanics on a rotating basis, to normally recognize the application of seniority in the daily assignment of work orders and schedules of Maintenance Craft employees on a rotating basis, and to normally recognize the application of seniority in the daily reassignment of workers from one section to another section. Note that a union’s proposal that “[n]ormally, custodial laborers will choose from among available job picks by seniority on a daily basis” was rejected by an arbitrator. He found that with the consolidation of Level 1 cleaners, and Level 2 custodial employees into the Level 3 custodial laborer position, the practice of daily selection of available assignments by seniority within the custodial laborer classification ceased.

The arbitrator also accepted management’s argument that such a practice has not been in place at this facility for ten or more years, and the union exchanged specific duty assignments for such positions for the upgrade of all employees to Level 3 custodial laborers. The arbitrator then concluded that because the current text of the LMOU relating to the Maintenance Craft has been in existence for thirty years without change and there has been an absence of grievances on job assignments since the time the three labor grades were consolidated and daily picks were eliminated, it is not convincing to maintain that the existing LMOU is inadequate for this facility (AIRS Case No. 41134).

Seniority as Exclusive Rule



Garrett Case #3: In AIRS Case Nos. 145 and 812 Arbitrator Garrett ruled that proposals calling for strict movement of employees by seniority in every instance when workload fluctuations require reassignment to be inconsistent with the National Agreement. He rationalized that proposals which removed any management flexibility in dealing with reassignments would conflict with Article 3 and would go beyond the intended scope of local negotiations. Proposals requiring that “seniority be the rule” when effecting reassignments have been consistently rejected by impasse arbitrators (AIRS Case Nos. 5239, 5290, 6188, 7261, 7264, 8502, and 21222).

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For cases where such proposals have been found to be inconsistent, also see AIRS Case Nos. 4903, 6187, 6776, 7261, 7265, 20922, and 20795.



In another case, a union proposed to add language to the LMOU to provide that when positions become temporarily vacant, notices will be posted for qualified craft employees to apply with the awarding of the bid to the senior-qualified applicant. The arbitrator ruled that the union's proposal would place an unreasonable burden on the Postal Service. He indicated that management would be prevented from taking steps to assure efficient operations and would be faced with a domino effect in having to fill a series of vacancies brought about by the bidding process (AIRS Case No. 26637).



In addition, a provision that "temporary details will be posted for bid and shall not exceed thirty days without the Union's concurrence" was ruled to be inconsistent with the National Agreement (AIRS Case No. 26670-72). Despite union witnesses' testimony that posted for bid was intended to mean posted for bid within the meaning of Article 25.4 of the National Agreement, the arbitrator stated that the language would require the Service to post all temporary assignments on a city-wide basis because posting was defined in that way by the previously existing provision in the LMOU. He stated that this meaning would be inconsistent with Articles 25.4, 37.2.D.6.e, 13.2.C and 13.4, 37.3.C, 38.B, 39.2.B, 39.3.E, 38.6.A.6 and 39.3.J of the 1994 National Agreement. In addition, he found that the 30-day length of the details would be inconsistent with the Service's right to assign employees to training programs which may exceed 30 days.



Also, an arbitrator ruled that a union's proposal on reassignment of part-time flexibles did not fall within the scope of Item 22 of Article 30 and was inconsistent with the National Agreement. The provision called for reassignment to be done by qualified volunteers first and then if more reassignments were necessary, by inverse seniority, in circumstances

where it is necessary to reassign part-time flexibles to another tour or facility. The arbitrator reasoned that the language of this provision did not serve to implement National Agreement provisions in Article 7.2.B and 12.5.B.8 that were cited by the union as some of the foundation for its proposal (AIRS Case No. 34355).



However, see AIRS Case No. 33490 in which an arbitrator accepted a union's proposal to carry forward a provision that allowed Special Delivery Messengers the opportunity to replace other Clerk/ Messengers on temporary details and required that selection for these details be made on the basis of seniority.

It is suggested that locals negotiating movement by seniority should try to write a provision that calls for normal movement by seniority. Your proposal will be more likely to survive an "in conflict" challenge if:

- a) It specifies certain circumstances in which seniority might not prevail.
- b) You can cite specific seniority provision(s) of the National Agreement that your proposal is attempting to implement.

It would be helpful to point to one or more provisions in the National Agreement that are more specific than Article 30.B.22 or the Application of Seniority provisions for the individual crafts.

POSTING AND BIDDING - CLERK CRAFT

Article 37 has many provisions that directly or indirectly relate to posting and bidding. You should review the provisions of Article 37 and your LMOU to ensure that you are utilizing its terms and application properly. For example, the terms as defined in Section 1 of Article 37 (e.g. duty assignment, bid, abolishment, reposting) have very specific meanings.

Article 37, Section 3.A.4.b, Reposting

Care should be made to prevent minor changes from resulting in reposting. However, such changes as the addition or deletion of

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schemes, changes in the principal assignment area are of major consideration to employees when a duty assignment is posted initially. Care should also be taken to protect the rights of the entire bargaining unit, when negotiating provisions that would determine when a duty assignment should be reposted. Provisions which allow the incumbent the option to keep a duty assignment when changes are substantial should be avoided. They invite game playing and may circumvent the seniority rights of others.

Some locals have negotiated provisions which allow the union the sole right to determine whether the duty assignment is reposted. This approach requires the local to administer these reposting rules fairly and equitably. It is better to negotiate concrete rules on repostings which are not discretionary.



Note that in AIRS Case No. 47722, a union's proposal to add to Reposting – Clerk Craft "4. A change in the Principal Assignment Area, as listed on posted duty assignment" was accepted by an arbitrator. He rejected management's arguments that the proposal was in conflict with management rights under Article 3 of the National Agreement and that it constituted an unreasonable burden. He said that the record didn't show that the process was "any more burdensome than when reposting occurs for other reasons."

Article 37, Section 3.A.4.c

Some locals have negotiated provisions allowing incumbents to retain the duty assignment when there is a time change in excess of one hour, subject to the approval of the local union. While some locals have negotiated provisions allowing the incumbent the option of following the duty assignment regardless of time change. It is recommended that the option of accepting a new reporting time be restricted to as short a time frame as possible and subject to the concurrence of the union. This would eliminate game playing and give senior employees more opportunities to bid. Keep in mind that reporting times are also a major

consideration to employees when bidding on duty assignments.



Note that in AIRS Case No. 41329 an arbitrator denied a union's proposal to change existing language, that "[a] position shall not be posted for bid when reporting time is changed more than one hour. Management must consult with the Union President prior to change." The union proposed that the provision state instead that "[a] position shall be posted for bid when reporting time is changed more than one hour. Management must consult with the Union President prior to change." The arbitrator determined that the union failed to present a "convincing need" to change the existing practice, since it didn't present testimony of employees who had been adversely affected by changing starting times or show that any of the employees affected filed grievances.

If this provision is not negotiated, the incumbent shall not have the option of accepting this new starting time. This is a very important issue that should not be overlooked.

It should be noted that the reporting time relevant to this provision for purposes of cumulative changes is that which was effective on March 10, 2020.

Note that the local union can negotiate provisions also when hours or reporting times change for any given day.

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO**

Re: Timeline for Local Implementation

The parties agree to the deadlines for appeal and discussion of impasse items, establishing the following timeline for the local implementation period should either party desire to open discussions:

- Negotiations Occur for 30 Consecutive-Days within a 60-Day Period

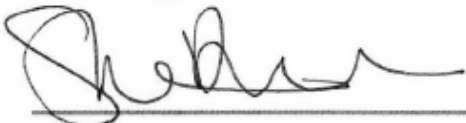
Commencing: **May 23, 2022**
And Ending: **July 22, 2022**

- Written Notice of Intent to Negotiate: No Later Than **June 6, 2022**
- Initial Proposals Must be Exchanged: within the first 21 days of the 30 consecutive day implementation period.
- All Negotiations End: **July 22, 2022**
- Appeal Impasse: Not Later than **August 12, 2022**

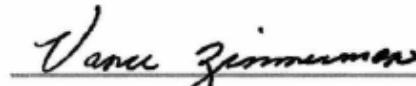
(APWU to Labor Relations Service Center)

(USPS to APWU Regional Coordinator)

- APWU Region/USPS Area Impasse Discussions End: **September 28, 2022**
- Appeals to Arbitration: No Later Than **October 19, 2022**



Shannon Richardson
Director, Contract Administration
(APWU)
United States Postal Service



Vance Zimmerman
Director Industrial Relations
American Postal Workers Union, AFL-CIO

Date: January 28, 2022

Date: January 28, 2022

NOTES

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