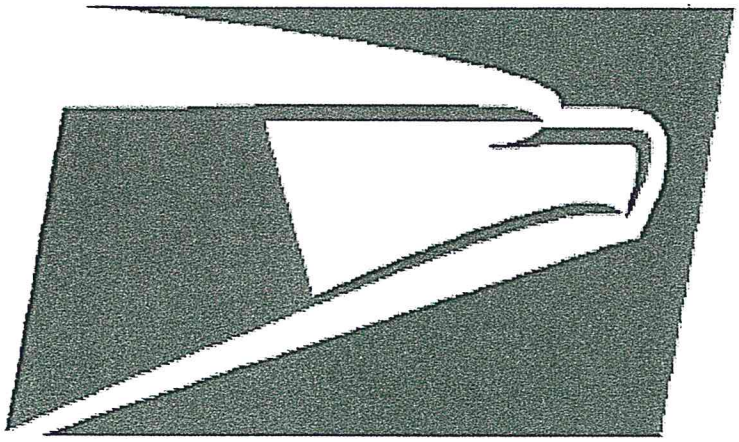
ARTICLE 30
GUIDELINES TO
LOCAL IMPLEMENTATION



UNITED STATES
POSTAL SERVICE ™

NATIONAL TRAINING PROGRAM
2006 NALC

I. GUIDE TO CONDUCTING LOCAL IMPLEMENTATION

NALC (22 Items):

Article 30.B provides for a local implementation period beginning October 1, 2007 and ending November 14, 2007. Either party may invoke the process. If neither party invokes the process, current LMU provisions, if not inconsistent or in conflict with new or amended provisions of the 2006 National Agreement, remain in effect. Management must take action to open local implementation if it wishes to make an in conflict/inconsistent challenge.

Issues that remain in dispute at the end of the local implementation period are identified in writing by each party. Initialed copies of this written statement and copies of all proposals and counter proposals are submitted by the appropriate local party to the Grievance Processing Center no later than November 29, 2007, with copies to the Postmaster, Local Union President and Union's Regional Representative. Area and Regional Union Representatives shall attempt to resolve such issues within 75 days of expiration of the local implementation period.

If the parties are unable to reach agreement at the Regional/Area level during the 75-day period, the issue(s) may be appealed to final and binding arbitration by the National Union President or the Vice President, Labor Relations within 21 days of the end of the 75-day period.

Where there is no agreement and the matter is not referred to the Grievance/Arbitration Processing Center or to arbitration, the provision(s), if any, of the former Local Memorandum of Understanding shall apply unless inconsistent with or in conflict with new or amended provisions the of 2006 National Agreement.

LMOU items existing prior to the 2001 local implementation period may not be challenged as inconsistent or in conflict, unless already subject to a pending arbitration appeal. The parties may challenge an LMOU item added or modified during a National Agreement's local implementation period as inconsistent or in

conflict only during the period of local implementation of the successor National Agreement.

The national parties will establish an impasse arbitration panel in each area for challenges to LMOU items as inconsistent or in conflict with the National Agreement or an unreasonable burden. A sufficient number of arbitrators will be selected so that all such appeals will be scheduled and heard within thirty (30) days of receipt of the appeal to arbitration. In those areas where the impasse backlog will not allow the parties to meet these time limits, it is understood that steps will be taken to process them as expeditiously as possible. Impasse appeals addressing whether an item is inconsistent or in conflict will be scheduled prior to unreasonable burden cases.

INFORMATION:

Article 30 of the National Agreement provides for local implementation of 22 specific items for the NALC. Management gained the right to the impasse procedures in the 1991 National Agreement. This right is limited to the following:

- Management may propose and, where agreement is not reached, impasse an item to arbitration where the pre-existing LMU did not contain a provision for that item or where an LMU did not exist;

- Management may invoke the impasse procedure when an item creates or presents an unreasonable burden.

(Remember that the union is the moving party and must initiate the impasse procedures when management declares an item to be inconsistent and/or in conflict with a new or amended provision of the 2006 National Agreement.)

The parties are contractually required to bargain only on the 22 enumerated items. Local management should listen to any other proposals that the unions may make, but should not bargain or reach agreement on any such new proposals. The local union representatives should be informed that the USPS is not required to and will not bargain over any proposal that is outside of the items enumerated in Article 30. The union should also be informed that no agreement will be reached on any item

that is inconsistent with or varies the terms of the National Agreement.

If you have any questions regarding these guidelines, contact your Area/District Labor Relations Office.

1. Effect of pre-existing memoranda of understanding.

   General: Written local memoranda of understanding previously bargained by the parties that are not inconsistent or in conflict with new or amended provisions of the 2006 National Agreement remain in effect. A thorough examination of these items must be made to determine whether or not the language presents (or will present over the life of the LMU) an unreasonable burden. If no unreasonable burden can be proven, the language will be continued, unless the parties mutually agree to delete it. However, if the language creates conditions whereby management is faced with an unreasonable burden, a negotiated change to the language should be sought. Except for provisions outside the 22enumerated items, management may pursue an unreasonable burden argument to impasse arbitration.

   Outside the 22items: If certain items contained in pre-existing memoranda of understanding are not among the items listed under Article 30, they may be discussed locally by the parties. They should not be re-bargained, changed or enlarged upon by either local management or the union. The only result of such discussions should be to mutually agree to declare these items completely null and void. In the event no such agreement is reached, such items ***(without any changes)*** shall remain in effect for the term of the National Agreement, unless they are declared inconsistent and/or in conflict with new or amended provisions of the 2006 National Agreement. The fact that a provision is outside the scope of the 22 items does not in and of itself make the provision inconsistent or in conflict with the National Agreement. ***Note: Neither side can contractually impasse a proposal which is outside the scope of the National Agreements.*** (See the Mittenthal award for Case H0C NA C 3, dated July 12, 1993.)

In conflict and/or inconsistent: Language in the 2006 National Agreement provides that management may only use this basis to challenge items that contain language in conflict/inconsistent with new or amended provisions of the 2006 National Agreement or that become in conflict/inconsistent based on mid-term changes or additions to the 2006 National Agreement.

The parties may challenge a provision(s) of an LMOU as inconsistent or in conflict with the National Agreement only under the following circumstances:

1. Any LMOU provision(s) added or modified during one local implementation period may be challenged as inconsistent or in conflict with the National Agreement only during the local implementation period of the successor National Agreement.

2. At any time a provision(s) of an LMOU becomes inconsistent or in conflict as the result of a new or modified provision(s) of the National Agreement.

3. At any time a provision(s) of an LMOU becomes inconsistent or in conflict as the result of the amendment or modification of the National Agreement subsequent to the local implementation period.

In such case, the party declaring a provision(s) inconsistent or in conflict must provide the other party a detailed written explanation of its position during the period of local implementation, but no later than seven (7) days prior to the expiration of that period. If the local parties are unable to resolve the issue(s) during the period of local implementation, the union may appeal the impasse to arbitration pursuant to the procedures outlined above. If appealed, a provision(s) of an LMOU declared inconsistent or in conflict will remain in effect unless modified or eliminated through arbitration decision or by mutual agreement.

In order to challenge a provision in the pre-existing LMU as being in conflict/inconsistent with new or amended provisions of the 2006 National Agreement, local management **must invoke local implementation.** If neither the union nor management opens local implementation, in conflict/inconsistent challenges to existing LMU provisions cannot be made unless a subsequent mid-term change or addition is made to the 2006 National Agreement.

Once management declares an item to be in conflict/inconsistent with a new or amended provision of the 2006 National Agreement during local implementation, the union is the moving party and must initiate the impasse procedures. If the union fails to initiate the impasse procedures, the language ceases to have effect at the end of the appeal period. However, if the union does initiate the impasse procedures, the disputed language remains in effect unless modified or eliminated through arbitration decision or by mutual agreement

For challenges resulting from mid-term changes or additions to the National Agreement, the disputed language remains in effect for 120 days from the date on which the union is notified in writing of management's challenge or the date of an arbitrator's award dealing with management's challenge, whichever is sooner.

If you have any questions regarding the pre-existing LMU provisions, please contact your Area/District labor relations department.

2. Scope of items to be locally implemented:

   a. Item 21 in the NALC Agreement covers other provisions in the craft article that are subject to local implementation. The appropriate sections of the craft articles and National Agreement are cited here for easy reference.

CRAFT ARTICLES
Local Bargaining References

NALC
Carrier Craft - Article 41

Section 1.A.3 "The existing local procedures for scheduling fixed or rotating non-work days and the existing local method of posting and of installation-wide or sectional bidding shall remain in effect unless changes are negotiated locally."

Section 1.A.5 "Whether or not a letter carrier route will be posted when there is a change of more than one (1) hour in starting time shall be negotiated locally."

Section 1.B.2 "Posting and bidding for duty assignments and/or permanent changes in fixed non-work days shall be installation-wide, unless local agreements or established past practice provide for sectional bidding or other local method currently in use."

Section 1.B.3 "The notice shall remain posted for 10 days, unless a different length for the posting period is established by local negotiations."

Section 1.C.4 "The successful bidder shall work the duty assignment as posted. Unanticipated circumstances may require a temporary change in assignment. This same rule shall apply to Carrier Technician assignments, unless the local agreement provides otherwise."

Section 3.O "The following provision without modification shall be made a part of a local agreement when requested by the local branch of the NALC during the period of local implementation; provided, however, that the local branch may on a one-time basis during the life of this Agreement elect to delete the provision from its local agreement:

"When a letter carrier route or full-time duty assignment, other than the letter carrier route(s) or full-time duty assignment(s) of the junior employee(s), is abolished at a delivery unit as a result of, but not limited to, route adjustments, highway, housing projects, all routes and full-time duty assignments at that unit held by letter carriers who are junior to the carrier(s) whose route(s) or full-time

duty assignment(s) was abolished shall be posted for bid in accordance with the posting procedures in this Article."

That provision may, at the local NALC Branch's request during local implementation, be made applicable (including the right to delete it) to selected delivery units within an installation. For purposes of applying that provision, a delivery unit shall be a postal station, branch or ZIP code area. Any letter carrier in a higher level craft position who loses his/her duty assignment due solely to the implementation of that provision shall be entitled to the protected salary rate provisions (Article 9, Section 7) of this Agreement."

Article 12.5.C.4 Reassignment Within an Installation of Employees Excess to the Needs of a Section

a. The identification of assignments comprising for this purpose a section shall be determined locally by local negotiations. If no sections are established immediately by local negotiations, the entire installation shall comprise the section.

The following guidelines have been developed to assist the management negotiators in arriving at a fair and equitable Local Memorandum of Understanding (LMU):

A. Request to Conduct Bargaining

Local bargaining meetings may be requested by either party, to be conducted during the time frame set forth in Article 30. In the usual case, the Union will request that bargaining be conducted. However, the local Union may be content to leave the current Local Memorandum of Understanding in effect, and thus may not initiate bargaining. In that case local management may initiate bargaining, particularly where there are provisions which ***management may want to impasse on the basis of unreasonable burden and/or where items that*** are considered inconsistent and/or in conflict with new or amended provisions of the 2006 National Agreement ***have been identified*** and should be discussed. ***Remember that under the terms of the 2006 National Agreements, local management must open local implementation in order to challenge an***

item as in conflict and/or inconsistent.

The following is a sample letter from management to the union notifying them of our interest. The letter may be used where language that is considered inconsistent and/or in conflict with new or amended provisions of the 2006 National Agreement (or a LMOU provision implemented during the 2001implementation period now determined to be in conflict or inconsistent with the N/A) or that creates an unreasonable burden upon management has been identified prior to bargaining. This letter would be useful whether or not the local Union has requested to bargain, but would be particularly useful in cases where the Union apparently does not wish to meet because it seeks to carry forward existing language.

UNITED STATES
POSTAL SERVICE

TO: Local Union President

Our review of the current Local Memorandum of Understanding reveals that there are provisions that management is interested in ***(changing and/or adding)***. In addition, in our judgment, there are provisions that are inconsistent and/or in conflict with new or amended provisions of the 2006 National Agreement. They are as follows:

(Enumerate here the inconsistent/in conflict provisions in the current LMU as well as those that create an unreasonable burden.)

There may be other provisions that you consider to require some discussion. It is management's sincere hope that we can discuss these provisions with open minds, and reach a mutual agreement.

While we will bargain in good faith toward achieving this end, it is only fair to inform you that management will not agree to continued inclusion of any provision which is impermissible by the terms of Article 30 of the National Agreement.

Article 30 of the National Agreement also contains provisions for binding arbitration of any impasse issues or proposals remaining in dispute. However, I am confident that our efforts in negotiations will result in a fair, reasonable and equitable Local Memorandum of Understanding.

In order for meetings to commence on these issues, or any other issues that are proper subjects for consideration under Article 30, it is important that we meet as soon as possible in order to establish ground rules for local implementation meetings. Management representatives are available to meet to establish ground rules on any of the following dates:

(list dates here)

Please advise as to which of the above date(s) is/are acceptable.

/s/ Installation Head

B. Establish Ground Rules

Where either party has requested bargaining, a meeting to discuss ground rules should be arranged. The ground rules meeting should cover the following:

1. Time and Place of Bargaining Meetings

   You may wish to schedule the first one or two sessions at this time and schedule remaining sessions as bargaining progresses. Time and location issues are discussed further in the section entitled "Bargaining in Good Faith" hereunder.

2. Size and Make-up of Bargaining Teams

   The number of team members should reflect an ability to facilitate sufficient input from respective operations managers. Agreement may be reached regarding a maximum number of team members for each side, including any necessary technical advisors. Remember, **Union bargainers will be off the clock. It is not a no loss, no gain situation. We do not have the right to dictate who will be on the Union team.** Similarly the Union cannot dictate the members of the management team.

3. Exchange of Proposals

   The method of exchanging proposals should be determined during the ground rules discussion if possible. It is advantageous to receive all Union proposals in the early stages of bargaining so that counter proposals can be prepared with a full understanding of all demands.

C. Bargaining in Good Faith

In local implementation, management and the Union are obligated to bargain in "good faith." Certain factors described below are relied on to ascertain whether the parties have bargained in good or bad faith. Any of these factors, standing alone, is usually insufficient, but their persuasiveness grows as the number of factors increases.

1. Surface bargaining - Going through the motions without a sincere or honest effort to reconcile differences and reach an agreement.

2. The making of misleading statements.

3. The withdrawing of concessions once they have been made.

4. Neither party has to agree to a proposal or make concessions. However, both sides should make a "good faith" effort to reach agreement. When a Union submits its demands, management is under no obligation to make counter proposals involving concessions; usually management must make some sort of counter proposal even though its offer does no more than set forth the present practice, policy or management position.

5. Do not demand that Union waive all pending grievances.

6. Bargaining should be held at reasonable times at the request of either party; this includes meeting outside normal work hours. Since the Postal Service does not pay Union employees for time spent for bargaining, management should emphasize the policy regarding the time and place of bargaining. If employees of the Postal Service rather than paid Union agents are handling bargaining on the Union side, management cannot refuse a request to hold bargaining conferences outside working hours rather than during the work day. A request of this kind is a reasonable one, since the employee bargainers stand to lose pay if they have to take time off to attend bargaining sessions. Management may request to meet on certain days at certain hours. If the Union agrees to this initially, that agreement does not remove the obligation of management to be responsive to the Union's request for additional

meetings at a later date.

7. The selection of the location for implementation sessions must be by mutual agreement. The Postal Service in most cases can present a convincing argument to the Union that the place of bargaining should be at the postal facility. The facility can provide adequate meeting space, at no expense to the Union, and normally it is convenient for the employees on the Union bargaining committee. However, the Union may demand that the Postal Service meet at a Union office or a neutral meeting place. If this occurs, management and the Union must be reasonable and are expected to work out an arrangement satisfactory to both parties. A trade-off of meeting places can be made - one time at the Union office and the next time at the postal facility. If meetings are held on a neutral ground and there is a charge, each party would be responsible for half the cost.

8. Article 31 of the National Agreement requires the Postal Service to "make available for inspection by the Unions all relevant information necessary for collective bargaining, or the enforcement, administration or interpretation of this agreement..." Thus, the Postal Service is obligated by law and the contract to permit inspection of relevant and necessary records prior to and during local bargaining. At the national level, the Postal Service has taken a fairly conservative and firm position with the National Unions. We have required that any request for information demonstrate both why it is relevant and necessary to collective bargaining.

   Under Article 31 the Postal Service is permitted to charge a Union for reasonable costs incurred in providing the information. Consult the ASM for a description of these charges.

   There are also various types of privileged information to which the Union is not entitled. Examples include information involving the attorney-client privilege; information involving work product of attorneys; information concerning litigation with the Unions; and information which might involve personal privacy.

The information requested must be relevant and necessary to the dealings between the Postal Service and the Union in its capacity as representative of the employees. Management must exercise reasonable judgment as to the relevance of the information requested. If a question arises as to the relevance and/or necessity of the requested information, you should consult with your Area/District Labor Relations Office.

Once a valid good faith request is made for relevant and necessary information, it must be made available promptly and in a reasonably useful form. The information should not be provided in a manner so burdensome or time-consuming as to impede the process of bargaining, although it does not necessarily have to be provided in the form requested by the Union. If the Postal Service claims that compiling the data will be unduly burdensome, it must assert that claim at the time of the request for the information so that an arrangement can be made to lessen the burden. Where the Postal Service does allow the Union free access to records and fully cooperates with the Union in answering questions, it need not furnish information in a more organized form than that in which it keeps its own records.

9. Bargaining unit employees are not paid for time spent in bargaining. This principle also extends to the time spent by a bargaining team member or steward in reviewing and gathering information or records in preparation for bargaining.

10. The parties are required to engage in meaningful dialogue concerning the proposal before them.

D. Conducting Local Implementation

1. Items Subject to Local Implementation.

The Unions may request bargaining on items not identified in Article 30. If this happens, our position must be that we will only

bargain on the 22 items in Article 30 as provided for in the National Agreement. If a question arises as to whether or not a proposal is covered within the 22 items, consult with your Area/District Labor Relations Office.

2. Preparation for Local Implementation

   a. Select Management's Chief Spokesperson and bargaining committee.

      Responsibilities and qualifications for Chief Spokesperson and other team members:

      Chief Spokesperson

      - Authority to make decisions and reach agreement.
      - Respect and confidence.
      - Knowledge of the subject(s).
      - Adherence to management policy.
      - Cool-headed under pressure and provocation.
      - Sure of him/herself.
      - Imaginative and innovative.
      - Flexible.
      - Ability to listen.
      - Patience.
      - Ability to keep meeting under control.
      - Ability to determine what is going on; be aware.

      Other Team Members

      - Many of the same qualities as the Chief Spokesperson.
      - Suggest a minimum of two plus Chief Spokesperson.
      - Taking of minutes is a most important function. The team member assigned to take minutes should not record the discussions word for word, but the minutes should reflect the subject matter, important points from the discussion, the date, and any determination made.

b. Completely review and determine those items which management may want to change or eliminate. Include in your review present local memoranda of understanding, positions maintained in grievances, operating problems, cost effects, etc. Be aware of the requirement that management demonstrate that continuing the provision would represent an unreasonable burden to the Postal Service.

c. Review and determine management's positions on the items set forth in Article 30 so that you are prepared for any possible union proposals on those items. Include in your review present local memoranda of understanding, positions maintained in grievances, operating problems, cost effects, etc. Lack of individual or class grievances may be an indicator that present language is satisfactory.

d. All management committee members should completely familiarize themselves with the provisions of the applicable National Agreement and review all local memoranda provisions that may be in conflict or inconsistent with new or amended provisions of the 2006 National Agreement. In that regard, these individuals should be especially aware of any changes in the National Agreement that has just been negotiated. Contact your Area/District Labor Relations Office for a final determination as to those provisions of local memoranda which may be in conflict and/or inconsistent with the National Agreement.

e. Review and be prepared to discuss those anticipated issues unique to your local situation that may go beyond the listed items. Remember that the parties may agree either to continue or terminate a provision not in conflict or inconsistent with a new or amended provision of the 2006 National Agreement, but not to change it.

f. Develop and reduce management proposals to writing and thoroughly review, plan and discuss the rationale supportive of

management's position.

g. Anticipate any technical problems; review them with operating personnel to ascertain their effect on operations.

h. Select a suitable room (if possible, in the installation) in which to hold the bargaining sessions considering privacy, number of participants and caucus facilities. However, be prepared to have discussions at alternating sites if demanded by the Union.

i. Designate members of the management bargaining committee to be responsible for the taking of complete minutes during the bargaining sessions.

j. Make certain that the members of your bargaining committee thoroughly understand that they must be recognized by the Chief Spokesperson before speaking or commenting.

3. Conduct of Local Implementation Meetings

a. You are required to reasonably consider and discuss the Union's demands. The Union should reasonably consider and discuss management proposals. Neither party is required to agree to any demands. Where you determine that an item is inconsistent and/or in conflict, or outside the 22 items, you should explain the basis for your determination.

b. You are required to enter into the bargaining with the intent to bargain in good faith with the Union on all proposals in regard to the items listed under Article 30, and to give the Union's proposals reasonable consideration and comment, just as the Union should give your proposals reasonable consideration and comment.

c. You are required to make available for inspection by the Union's bargaining committee all existing and necessary information requested by the Union for collective bargaining. In the event

the material requested would be burdensome to gather or would involve excessive costs, contact the Area/District Labor Relations Office.

d. You are not required to provide information for inspection that is not directly related to the issues being bargained, but be reasonable.

e. The only demands that the parties are required to bargain over are those demands that directly and specifically relate to the items listed in Article 30.

f. You should not bargain changes in current Local Memoranda that are outside the items listed in Article 30. The only basis upon which these provisions may be discussed is:

   (1) complete elimination of the particular provision.

   (2) the particular provision will continue unchanged if not in conflict or inconsistent with a new or amended provision of the 2006 National Agreement.

g. At the onset of bargaining the unions should be notified of any provisions deemed inconsistent and/or in conflict with new or amended provisions of the 2006 National Agreement.

h. Members of the Union's bargaining team are not to be paid by the Postal Service for time spent in bargaining. However, an effort should be made by management to schedule these meetings at a time that will cause the minimum inconvenience to both parties.

i. All members of the management bargaining team should remember at all times that no useful purpose is served by losing one's temper or engaging in personal confrontations with Union bargaining representatives, nor should you condone such action on the part of the Union. Be firm but be fair at all times.

j. A sufficient number of bargaining meetings should be scheduled to permit full and meaningful discussions. You should plan ahead so that the 30 days allotted for implementation will be sufficient.

k. Do not use inability to pay as your argument in rejecting a Union proposal, because you may be forced to prove this position by supplying complete financial records. You can argue that granting a Union proposal would be impractical, costly, and/or inefficient or any other appropriate rational argument.

4. Record Keeping in Collective Bargaining

In the event an item is impassed to arbitration, you must be prepared to support your position. Maintaining a posture of reasonableness throughout bargaining will prove invaluable at any subsequent arbitration hearing. Additionally, as in all arbitrations, documentation is imperative. It may later be necessary to present evidence to an arbitrator or even to the National Labor Relations Board regarding the details of the local negotiations. It is critical, therefore, that a member of the management team be designated to keep the minutes and the records of the negotiations so that management's position can be properly presented to an arbitrator if and when it becomes necessary. The following information should be compiled during or immediately following each bargaining session:

a. The date, time and place of each meeting together with a listing of any participants.

b. Any written correspondence exchanged at the meeting or between meetings.

c. Copies of all proposals and counter-proposals exchanged and a summary of any relevant discussions.

d. Summaries of discussions in each session in factual form, not emotional arguments. Management, if not agreeable to the Union's demands, should justify reasons why. Point out fully the difficulties for operations or potential hidden costs. Present these arguments (with necessary proof) to the Union. This information must be reflected in management's minutes.

e. Word-for-word transcripts or tape recordings are not appropriate. However, the management member responsible for keeping the management minutes must make certain that each item of possible future importance is recorded. (Note facts, not editorial comments.) It is recommended that these management minutes be typed as soon as possible after each session. Other members of the management team should review the notes for additional input. Files should be kept orderly and neat. As bargaining progresses, files may become voluminous. With the passage of time, it might become impossible to decipher handwritten notes or to arrange loose files into orderly minutes.

5. Points to Consider

   a. Unions may be more demanding to make up for items not gained at the national level.

   b. Unions are now more knowledgeable on matters of labor law and procedure.

6. Elements of an effective meeting

   a. Start timely.

   b. Prompt completion where possible.

   c. Accurate and complete minutes of each session.

   d. Specific identification of any impasse items.

e. Bargain in good faith for the best possible document for the Postal Service, keeping dictum of "Firm but Fair" in mind.

7. Effective Date

Make certain provisions are effective upon signature of the parties, or later, ***not retroactively.***

8. Considerations and Techniques in Bargaining

Considerations

1. Negotiate for the future, keeping in mind planned changes (automation, etc.)

2. Each proposal from the Union should be evaluated on its merits. What is appropriate for one craft might not be so for another.

3. Success or failure depends to a great extent on the attitudes the parties bring to the table.

4. There is no magic formula for successful bargaining.

5. Attitude on one side contributes to the character and actions of the other side.

6. Bargain with a positive attitude rather than defensively against Union demands; make the Union bargain over your proposals.

7. Recognize the point of view of the Union; let them know you recognize their opinion and sincerity.

8. Figure out a means of presenting information and ideas that will get the Union to change.

9. Put the burden of proof on the Union.

10. Develop a dialogue that can't be answered with a yes or no; use questions such as "Why do you think this is so?"; "How do you think this would work in practice?"; "What is the reason for making this request?".

11. Bargainers at the table are equals.

12. Question, explore and explain each item proposed; listen, understand fully what people are talking about and why.

13. Watch out for "give-aways" or "sleepers"; understand fully how each item ties in elsewhere.

14. Understanding "how each item ties in elsewhere" requires particular knowledge of and attention to the National Agreement, and particularly proposals made at the national level by the National Unions, the Postal Service response to those proposals, and what contractual changes were made in the latest national negotiations.

15. Prior to agreement, know the costs (overtime, replacement costs, etc.) and the impact on operations.

16. Do not bargain away management rights; don't be misled by mutual consent clauses that give away our rights.

17. Don't bargain solely on Union demands.

18. Establish ground rules at the start of bargaining; these include naming the chief spokesperson, dates, times and place of meetings, provisions for caucuses and adjournments, the method of signifying tentative agreement, and the method of exchanging proposals.

19. Generally, don't "sign off" on any one item until you have an

agreement on the entire package.

20. Start bargaining easy proposals first. This aids in the establishment of a rapport between the parties.

21. If no headway is being made on one item, suggest switching to another and return to the difficult item later.

22. Bargain conservatively; don't offer your best right away.

23. Don't be intimidated; strong language and table-pounding can be part of bargaining.

24. Get value for value.

25. The chief spokesperson must keep the bargaining team informed of what is going on.

Techniques

1. Each bargainer or each team has its own style.

2. "Good guy vs. bad guy": one team member is amenable and easy to get along with; the "bad guy" has the responsibility of yelling and shouting and not wanting to agree to anything.

3. Threats of going to higher authority, either higher management or to the NLRB.

4. Calling of caucuses.

   (a) Desired review with fellow team members.

   (b) Desired review with other individuals not part of the negotiating team.

   (c) Provides for a cooling-off period.

(d) When caucuses are called, the parties should designate a time to reconvene.

9. Beware of What You Negotiate.

Once a provision enumerated in the 22 items is in the local memorandum, it can only be removed if one or more of the following occur:

1. Where there is mutual agreement of the parties;

2. Where an item has become inconsistent or in conflict with a new or amended provision of the 2006 National Agreement. Prior to determining an item to be inconsistent or in conflict, please review the section in this book entitled, **"Outside 22 Items, or inconsistent or in conflict"**

3. Where management can establish that the item causes or could cause an unreasonable burden.

E. Sample Opening Statement For Local Implementation

Management intends to bargain in good faith in a sincere attempt to reach agreement on appropriate provisions in a Local Memorandum of Understanding. We are confident that if both parties bargain with open minds and a realistic approach, we can reach an agreement that will be responsive both to the real needs of employees and the efficient operation of postal business.

As you know, we have had Local Memoranda of Understanding as far back as ***(YEAR.)*** During the early years, both parties were relatively inexperienced in bargaining labor-management agreements. As a consequence, our present Local Memorandum of Understanding contains certain provisions which were not so carefully drawn and, in our opinion, should not be continued in the Local Memorandum of Understanding.

As you are aware, Article 30 of the National Agreement prohibits inclusion of any provision in the Local Memorandum of Understanding that is inconsistent or is in conflict with a new or amended provision of the 2006 National Agreement. Our review of the current Local Memorandum of Understanding reveals that there are provisions which, in our judgment, are inconsistent and/or in conflict with new or amended provisions of the 2006 National Agreement. They are as follows:

(Enumerate here the inconsistent/in conflict provisions in the current LMU.)

There may be other provisions that the Union considers to fall in that same category. It is management's sincere hope that we can address, and discuss these issues and provisions with open minds, and reach a mutual agreement. While we will, as I have stated, bargain in good faith toward achieving this end, it is only fair to inform you that management does not intend, and will not be a party to, continued inclusion of any provision which is impermissible by the terms of Article 30 of the National Agreement.

Additionally, there are some provisions which management believes to be too costly in terms of dollars and/or have an adverse affect on the efficiency of postal operations. These provisions create an unreasonable burden. They are as follows:

(Enumerate here the items of the Local Memo that create or present an unreasonable burden.)

Article 30 of the National Agreement also contains certain provisions for binding arbitration of any proposals remaining in dispute. However, as spokesperson for the Postal Service, I am confident that our efforts, conducted with a realistic and business-like approach, will result in a fair, reasonable and equitable Local Memorandum of Understanding.

II. Management Initiated Impasses

After the local implementation period, all proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the National Union President or the Vice President Labor Relations. The request for arbitration must be submitted no later than January 28, 2008. However, where there is no agreement and the matter is not referred to arbitration, the provisions of the former Local Memorandum of Understanding shall apply, unless inconsistent or in conflict with new or amended provisions of the 2006 National Agreement.

Where the Postal Service, pursuant to Article 30, Section C, submits a proposal remaining in dispute to arbitration, which proposal seeks to change a presently-effective Local Memorandum of Understanding provision, the Postal Service shall have the burden of establishing that continuation of the existing provision would represent an unreasonable burden to the USPS.

There are two types of items which management can send to impasse.

a. Those arising under Article 30 Section C where the item in dispute does not exist in a presently effective LMU or where no LMU is in effect. The provision in dispute must be covered by one of the 22 enumerated items.

b. Those arising under Article 30 Section F where the item in dispute seeks to change a presently effective LMU provision. Items of this nature require that management establish that continuation of the existing provision would represent an unreasonable burden in order to change the existing provision.

A. *Definition of Unreasonable Burden*

Webster's Ninth New Collegiate Dictionary defines "reasonable" as 1. a: agreeable to reason b: not extreme or excessive c: moderate, fair d: inexpensive 2. a: having the faculty of reason b: possessing sound judgment.

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 Law Dictionary, Fifth Edition, defines "reasonable" as: Fair, proper, just, moderate, suitable under the circumstances. Fit and appropriate to the end in view. Having the faculty of reason; rational; governed by reason; under the influence of reason; agreeable to reason. Thinking, speaking, or acting according to the dictates of reason. Not immoderate or excessive, being synonymous with rational, honest, equitable, fair, suitable, moderate, tolerable.

Black's defines "unreasonable" as: Irrational; foolish; unwise; absurd; silly; preposterous; senseless; stupid; not reasonable; immoderate; exorbitant; capricious; arbitrary; confiscatory.

Webster's 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.

Webster's defines "encumbrance" as 1: weigh down, burden 2: to impede or hamper the function or activity of: hinder 3: to burden with a legal claim.

B. Factors to Consider

(1) Facts of Case

It is eminently clear that the phrase "unreasonable burden" cannot have significant meaning without an accompanying fact situation. To attempt to define this term of art in a vacuum is meaningless. The definition of "unreasonable burden" will turn on the facts of each individual case. Therefore it is impossible to set forth a formula that indicates when an "unreasonable burden" exists.

However, several factors should be taken into consideration when determining if an "unreasonable burden" exists :

(a) Impact on service standards

(b) Impact on the facility's overall operation

(c) Financial burden (cost) to the Postal Service. This may be measured as out-of-schedule premium, overtime, night differential, or any other type of cost.

(d) Administrative burden. This may involve overly cumbersome procedures that make it difficult to comply with the contract, e.g., overtime or holiday scheduling procedures.

(e.) Anticipated changes that will affect administration of the current provision (automation, etc.).

(f) History of provision. When was it inserted into the LMU and what changes have occurred that affect the administration of the provision?

These factors are listed as general considerations to be used in determining whether an existing provision will create an "unreasonable burden." This list is not meant to be all-inclusive as the determination must be made in light of the totality of the circumstances in which the dispute arose.

In the purest sense, establishing an "unreasonable burden" may be defined as a balancing of the interests of the parties. It is an exercise in which the arbitrator will accumulate all of the relevant facts, consider the interests of the parties and their respective needs, and determine if the existing language creates an "unreasonable burden."

(2) Undue Hardship

The phrase "undue hardship" is a term of art most often used in connection with a qualified handicapped individual's request for reasonable accommodation. The agency is required to provide reasonable accommodation up until the agency can demonstrate that the proposed accommodation would create an undue hardship. There is a significant body of law regarding the application of "undue hardship" and we should be prepared to distinguish "unreasonable burden" from "undue hardship" should the union attempt to change management's standard of proof.

Our position should be that establishing an "unreasonable burden" is significantly less onerous than establishing an "undue hardship." All hardships are burdens but not all burdens are hardships. "Undue" implies that an item is

improper, illegal or wrong. "Unreasonable" simply means outside the bounds of reason.

(3) Reasonable vs. Unreasonable

The union may take issue with our definition of unreasonable. They may argue that simply because something is not reasonable does not automatically make it unreasonable. There may arguably be some space between reasonable and unreasonable. We should be prepared to contest this as such a definition would create an additional burden on the Postal Service.

(4) Burdens

If we assume that every obligation contained in the contract is a burden then the word burden has diminished meaning. Such an interpretation could result in focusing solely on the issue of reasonableness. We should anticipate the union making strong arguments that the word "burden" has meaning as it appears in the contract. The union may argue that many obligations are for the long term good of the service (such as employee benefits) in that they promote the existence of a highly motivated quality work force.

C. *Unreasonable Burden Impasses - Documentation*

In advance of entering into local implementation, where management intends to challenge an issue as presenting an unreasonable burden, documentation should be gathered to assist in the discussions with the unions. **In fact, collection of such documentation should begin long before the beginning of the local implementation period; it should begin as soon as local management determines that an LMU provision has created an unreasonable burden.** During the course of negotiations,

additional documentation may be determined necessary and should be gathered. It is essential that by the time an issue is submitted into the impasse procedure, all documentation is developed and placed into some sensible order to support management's case. This will be crucial in the final determination as to whether management will certify the issue for arbitration under the impasse procedure. It is very doubtful that poorly documented files will be given serious consideration. If the issue is considered important, it should be treated as such and this should be reflected in the quality of the file prepared to advance the case.

D. *Arbitration History*

Several regional arbitration awards provide insight as to the manner in which arbitrators apply the "unreasonable burden" concept:

In Case No. E4C-2E-D 37382 decided on June 10, 1987, Arbitrator George Jacobs stated "...excessive absenteeism not only interferes with the day to day operation of the Postal Service, but it imposes an undue economic burden on them for it must pay fringes based on full time employment when the employee who has lost a great deal of work did not earn them as the others who did not have the excessive absenteeism."

In Case No. S1C-3U-C 26430 decided on November 12, 1985, Arbitrator Robert W. Foster stated, "This inherent authority (Article 3) includes the exercise of managerial discretion to issue policy and procedure statements directing the method and means by which the operations are to be conducted. Not only is this the right subject to be expressed, restrictive provisions of the Agreement, but must also be reasonably related to a legitimate business objective that does not visit an undue burden on the employees."

In Case No. N4N-1E-D 10985 decided on June 10, 1986, Arbitrator Harry Grossman stated, "I find that this deterioration (of the employee's attendance) necessarily caused an undue burden on the

grievant's supervisor to meet her responsibility to meet mail delivery requirements efficiently and within the manpower available to her."

In Case No. S4C-3T-C 14762 decided on June 23, 1986, Arbitrator James J. Sherman stated, "The decision with respect to whether management acted reasonably in any given case depends upon the circumstances."

In Case No. S1C-3W-C 39192 decided on February 16, 1985, Arbitrator Elvis C. Stephens stated, "Thus, there is a difference between working two hours continuous overtime and two hours split overtime. Therefore, it is not unreasonable to have a different arrangement for breaks in these two different situations."

Two common themes can be gleaned from the arbitration history in this area. First, any determination of reasonableness must depend on the circumstances. Second, any burden determination should be grounded in bona fide or legitimate business concerns.

III. GUIDELINES ON THE 22 ITEMS

Item 1. ***Additional or longer wash-up periods.***

Recommended Language: When an employee is assigned to perform dirty work or work with toxic materials, the employee will be allowed reasonable wash up time.

Strategies: Careful analysis must be made of each Union demand to determine to whom the wash-up period would apply. These periods as a general rule are not to be made applicable craft-wide but rather should be applicable to individuals, or particular job categories keeping in mind the degree of dirty or toxic work performed. (Review the specific language at Article 8, Section 9).

In the application of wash-up periods, consideration should include the locations of the wash-up areas and the degree of congestion, delay, etc.

Article 8, Section 9 of the National Agreement states: "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."

Although the language in Article 30 is clear regarding the local bargaining of "additional or longer wash-up periods" management may not successfully argue that no bargaining is proper where no wash-up time is currently permitted. In other words, the language does not mean that all that is proper is "additional or longer" wash-up periods. The bargaining of wash-up time is proper regardless of whether there has been wash-up time bargained in the past. This issue was addressed by Arbitrator Mittenthal in his Houston Impasse Award concerning APWU wash-up time dated June 24, 1974.

In order to properly address the bargaining of wash-up time one must realize that wash-up time is permissible only for "those employees who perform dirty work or work with toxic materials." Arbitrator Nolan addressed this issue in B98N-4B-I-01029365, 01029288 (NATIONAL AWARD) on July 25, 2004. Arbitrator Nolan concluded, "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. Local parties remain free to define the employees who satisfy those conditions."

Therefore, before determining who should be permitted wash-up time one must determine the definition of "dirty work." Arbitrator Larson in his New Orleans, Louisiana award dated January 28, 1980, dealing with wash-up time for Mail Handlers, answered this question by stating:

"I read the expression as referring to work that leaves a deposit of dirt, soil or grime on the person which requires some minutes to remove with water, soap and/or other cleaning agents. Dust, dirt or sweat may accumulate in the course of hard work, but if it can be washed off in a matter of several seconds, it is not the result of dirty work, within Article 8, Section 9."

In a further explanation of the term "dirty work" which requires wash-up time within the meaning of Article 8, Section 9, Arbitrator Larson stated in his Lubbock, Texas award dated August 26, 1979:

"The time necessary to wash up is a relevant consideration in determining whether work is 'dirty.' If the wash up reasonably required for lunch or for leaving the tour is time consuming, there is justification for regarding it as clock time (a part of the job). These principles seem to be implicit in Article 8, Section 9."

Arbitrator Larson further stated in this same decision:

"I do not consider that a blanket rule of five or ten minutes wash-up

time for everyone is justified. Most of the Clerks can wash up in a minute or two, and there is little difficulty in removing grime, dust, moisture or stickiness from the hands and face. The work is not 'dirty' in the sense used in Article 8, Section 9. The fact that clothing becomes soiled or dusty during a tour does not prove that 5-10 minutes are needed to wash hands and face. If, however, an employee needs appreciable time to clean himself in order to eat or to make himself presentable (without disagreeable characteristics) when he leaves his tour, wash-up time on-the-clock is justified."

"Any Clerk shall be allowed a reasonable amount of time to wash up before clocking out for lunch or at the end of his tour if five minutes or more are required to accomplish a clean condition."

In National Level Arbitration Award HOC-3W-C 4833, May 19, 1997, Arbitrator Carlton Snow considered the issue: Does the agreement between the parties require management, as a general rule, to provide LSM operators with wash-up time after they handle hazardous materials? He held, "Letter Sorting Machine Operators are not entitled to a general right to wash-up time pursuant to the parties National Agreement."

In some instances Unions have argued that employees are entitled to wash-up time not only because of grime and filth, but also because mail is laden with germs, etc. To this Union argument Arbitrator Syd N. Rose stated in an APWU case in Santa Ana, California dated January 21, 1980 the following:

"Section 9 provides for wash-up time for employees who 'work with toxic materials.' 'Toxic' means poisonous. There are certain strains of bacteria which produce toxins such as in tetanus, diphtheria and botulism. Since the National Agreement provides for wash-up time in event of contact with toxin causing bacteria, the Union proposal apparently refers to non/toxic bacteria."

"Although such proposal must be declined on the grounds of inconsistency with the terms of the National Agreement, it should

additionally be noted that the proposal could not accomplish its stated objective. The point can be illustrated by hypothetical walk-through of a Clerk at break time.

"He soaps and washes his dirty hands. He dries them. Then he exits from the washroom. He may turn a germ laden door knob or simply push on the germ covered door panel. He proceeds to the swing room. He digs into a germ crowded pocket and pulls out germ covered coins or a germ covered bill. He makes a selection from the vending machine, and removes the item by pulling on a germ laden door knob. Then he picks up a germ loaded magazine. And so on and on."

"Wash-up time does not appear to be a viable resolution of the question of germs on the mail. The Union suggested that the recent outbreak of influenza at the post office may have been caused by handling mail contaminated by influenza virus. That is an extremely remote possibility. The influenza virus is both contagious and infectious. It passes by contact and through the air. Outbreaks occur in schools, churches, libraries, factories, theaters and other locations not associated with the handling of mail."

Now, after having some idea of the definition of "dirty work" as it relates to the bargaining of wash-up time as outlined in Article 8, Section 9 it is obvious that all postal employees, regardless of craft, do not perform such dirty work. In acknowledging this fact Arbitrator Rose in the Santa Ana, California case stated:

"It may be acknowledged that all of the Clerks handling mail do get their hands dirty in the course of their work. If the parties intended that all Clerks handling mail were 'performing dirty work' and were, therefore, entitled to wash-up time, it is reasonable to conclude they would have so stated. There is no showing that the parties so contemplated."

Arbitrator Rose acknowledged that the National Union during 1978 National contract negotiations submitted a proposal for wash-up time for all employees craft wide which was subsequently withdrawn. In

his discussion concerning that withdrawal Arbitrator Rose stated:

"In the course of the contract bargaining, such proposal was withdrawn. The proposal had been submitted on behalf of all the Unions' members, and on behalf of all the local Unions, including the Chula Vista local. So too, when the proposal was withdrawn, it was withdrawn on behalf of the same constituency.

"With respect to contract administration, a local Union normally serves as agent for the National Union, the party to the contract. In this instance, there appears to be the incongruous situation wherein a proposal submitted and withdrawn by the principal, reemerges in slightly altered form as a proposal by the agent. It appears to the arbitrator that when the proposal for wash-up time for all employees was withdrawn in National Agreement negotiations, the specific issue was settled. This does not affect the right of the local Union to negotiate wash-up time for groups, individuals, classifications, and work assignments."

In an APWU case in Tampa, Florida the Union argued all members of all crafts were entitled to wash-up time based on its belief that "mail, by its very nature is dirty" and that "only work done by APWU bargaining unit employees is dirty work." Arbitrator Mittenthal in his decision of August 19, 1974, responded to that argument by pointing out that there were many APWU craft jobs which did not involve "dirty work". Arbitrator Mittenthal stated specifically:

"To give these employees a wash-up period before lunch, rest breaks and the end of the tour as a matter of contract right would be to provide them with the benefit they do not appear to need. Such a result would conflict with the plain language of Article 8, Section 9 which requires wash-up time to be granted only to employees 'who perform dirty work or work with toxic materials.' The arbitrator should, where possible, avoid such a conflict. For Article 30 states that 'no local memorandum of understanding may be inconsistent with or vary the terms of the 1973 National Agreement.'"

"Of course, the language in Article 30 remains the same. Consequently, wash-up time is not a craft wide situation but rather only for those employees "who perform dirty work or work with toxic materials."

Once it has been determined that an employee or a group of employees do in fact perform "dirty work" it is advisable to bargain language such as "any employee required to perform dirty work or involving the use of toxic materials will be granted a reasonable amount of wash-up time."

Again, many arbitrators have outlined language such as the above in their awards on this issue rather than a fixed time. Arbitrator Feldman in the Peoria, Illinois APWU case stated:

"All jobs do not lend themselves to a scientific formula for clean up time. A maintenance man may need ten minutes of wash-up time or 15 minutes of wash-up time while a Clerk at a letter sorting machine may accomplish that same task during the break period that individual is entitled to under the Methods Handbook."

Arbitrator Cushman in the Ashville, North Carolina Mail handler award stated:

"Basically, under the circumstances of this case, the arbitrator observes that there are variations as to each employee. The facts as to his or her situation, the specific area in which he or she works, the specific work task he or she performs in a specific area, the time at which the employee's tour ends, are normally relevant to a determination. Therefore, a provision for a reasonable wash-up period before lunch and at the end of the tour appears appropriate."

One must realize that the conditions which warrant a particular fixed time at the time of negotiation might change. For example, the number of employees in a specific area and the distance to available facilities, etc., are certainly subject to change throughout the life of the local memo. If those conditions do in fact change then the fixed time

may be too much time or in fact, not enough time.

In summary, the only language which can be bargained by either party is that which affords wash-up time only for those who "perform dirty work" or "work with toxic materials." Recognizing this fact, the language which can be considered for a local memo should be that which is reasonable and meets the objective, and causes the least amount of administrative problems.

Arbitrations: Nolan (B98N-4B-I-01029365), (B98N-4B-I-01029288, July 25, 2004) NATIONAL CASE – "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. Local parties remain free to define the employees who satisfy those conditions."

Rose (Impasse 31, February 5, 1980) "If the parties intended that all clerks handling mail were 'performing dirty work' and were therefore entitled to wash-up time, it is reasonable to conclude they would have so stated." He further set out a two-part test of a Union proposal on this issue: (1) merit, and (2) consistency with the National Agreement.

Holly (Impasse 62, October 16, 1979) "It is unrealistic to claim that all clerk work is so inherently dirty as to justify specific times for wash-up."

Dobranski (Impasse 54, March 4, 1980) "It (the Union) has not demonstrated any compelling need for a wash-up period of a specified length and a specified time for all carriers every day."

Holly (Impasse 74, March 30, 1978) "...The evidence shows that when such needs arise they are accommodated. Therefore, there is no logical basis for a requirement for predetermined wash-up times."

Rose (Impasse 36, December 29, 1979) also stated, "Wash-up time

does not appear to be a viable resolution to the question of germs on the mail."

Mittenthal (Impasse 87, January 1, 1976) "The fact is that exposure to dirty work is not necessarily a job-wide phenomenon. It is the individual carrier's situation which should determine when he is entitled to wash-up time."

Rubin (Impasse 89, July 6, 1977) "It appears...that the absence of fixed wash-up times has allowed a flexible and relaxed atmosphere regarding the taking of time by responsible and reasonable employees."

Nolan (S4C-3P-I 900005, July 1, 1985) "...This proposal would extend the same right equally to those who need it and those who do not."

Taylor (S4C-3A-I 900028, June 26, 1985) Allowed management's proposed reduction in wash-up time where 5 minutes had been allowed all employees, saying, "...USPS introduced evidence showing that all employees did not do dirty work or work with toxic materials and that the present practice was costing the USPS at El Paso $76,000 per year."

Nolan (S4C-3P-I 900020, July 3, 1985) "...5 minutes of wash-up time for all employees is inconsistent with Article 8 because it turns a limited benefit for certain employees into a general benefit for all."

Duncan (S4C-3R-I 900029, July 18, 1985) "...To set a fixed wash-up time to a particular class of employees would be in conflict with Article 8.9 of the National Agreement."

Naehring (S4C-3W-I 900084, August 31, 1985) "A provision in the LMU that would continue the blanket five-minute practice would be inconsistent and in conflict with the National Agreement."

Erbs (C4N-4E-I 99023, September 24, 1985)
"...Blanket...wash-up...may, depending on the installation, be reasonable, but...must be...to only those who perform 'dirty' or 'toxic' work."

Klein (C4C-4F-I 99063 September 30, 1985) "Granting wash-up time categorically to all employees is in conflict with the National Agreement."

Sirefman (Impasse 145, October 17, 1979) "No grievances have been filed by annex employees claiming insufficient wash-up time."

Duncan (S4N-3F-I 900165, October 9, 1985) "...To set a fixed wash-up time...would be in conflict with Article 8.9 of the National Agreement."

Eaton (Impasse 147, July 13, 1983) "...It was sufficient to define wash-up time in terms of reasonableness, rather than in terms of a fixed number of minutes."

Klein (C4C-4F-C 3793, January 3, 1986) "...The existing practice (of allowing set periods/times) is in conflict with Article 8.9 of the National Agreement."

Green (INS-81-47, November 18, 1985) "...This arbitrator will go along with the conventional wisdom expressed by Arbitrators Rose, Nolan, Powell and others in the majority who hold that wash-up time may only be granted to those who are shown to perform dirty work or work with toxic materials within the meaning of Article 8, Section 9, and not to all carriers."

Roumel (Impasse 129, January 31, 1985) "...The provisions concerning wash-up time contained in Article 8.9 of the National Agreement and (across the board provisions) of the LMU are inconsistent and in conflict."

Powell (Impasse 131; IA-E-81-172, March 22, 1985) "...What was

done here was to provide for identical wash-up time for everyone in the clerk craft and not those requiring additional or longer time. This is the inconsistency."

Larson (Impasse 14, January 11, 1980) "The listing of dirty and toxic job duties in the Union's proposal was a tacit admission that not all mail handlers' work was dirty or toxic."

Larson (Impasse 15, September 27, 1979) "My conclusion is that it (dirty work) is work which results in dirt (soil) on hands and/or face which can only be removed after time-consuming effort."

Caraway (Impasse 59, October 4, 1979) "There is no evidence that supervisors have been arbitrary or unjust in denying mail handlers (reasonable, as needed) wash-up time."

Nolan (S4C-3D-I 900016, July 9, 1985) "following the principle of arbitral consistency, I will put aside my own inclinations and follow the rulings of the many arbitrators who have previously dealt with this question. I conclude that the Union's proposal is inconsistent with Article 8, because it turns a limited benefit for certain employees into a general benefit for all."

Garrett (Impasse 119, December 17, 1974) "Determination of whether regular wash-up periods are warranted for given groups of employees under Article 30...properly can be made only on the specific facts of each case."

Duncan (S4N-3Q-I 900136, April 28, 1986) "The National Agreement does not allow a specific amount of wash-up time to be given to all employees and for this reason the LMU provision would be inconsistent."

Rimmel (Impasse; April 26, 1989) "Simply stated, I do not believe that specific, set wash-up time needs to be provided in this instance....Further, I believe that it is significant that no evidence was proffered to show that any employee has ever been refused

requested wash-up time under the parties' existing understanding."

Torres (N7M-1W-I 99039; March 17, 1989) "I am persuaded that at the national level the parties contemplated granting the benefit of wash-up time on an individual basis, to certain employees who qualify under Article 8, Section 9; specifically, those who do dirty work or come in contact with toxic materials. Arbitrators have held in recent cases that LMU clauses granting this benefit across the board to all employees in the bargaining unit are in conflict with the terms of the National Agreement. Rather, the duties of each individual employee and the particular work condition involved must be considered in the granting of the benefit."

Krider (COC-4A-I 99049; August 8, 1992) "Article 8 Section 9 provides that "reasonable wash-up time" be granted "to employees who perform dirty work or work with toxic materials." This provision has been consistently interpreted by arbitrators to indicate an intent by the parties at the national level to limit wash-up time in two ways:

(1) wash-up time must be limited only to employees who perform dirty work or work with toxic materials,

(2) a fixed period for wash-up time is unreasonable.

These were deliberate choices made by the national negotiators. Under this understanding a LMU may not grant wash-up time to other employees who do not perform dirty work and may not set a fixed period for wash-up time.

Abernathy (WOC-SR-I 90151, December 17, 1992) "As I have observed in other local impasse arbitrations dealing with wash-up time, the clear weight of the arbitral authority favors the conclusion that a provision of an LMU that establishes a fixed wash-up time or wash-up time for all employees is inconsistent and in conflict with the National Agreement. The rationale for this conclusion is that Article 8 Section 9 provides wash-up time for employees who perform dirty work or work with toxic materials. Had the National parties intended wash-up time for all employees, they would have so provided in the National Agreement. Arbitrators also have

observed that in the past the national Union submitted and later withdrew a proposal for wash-up time for all employees in the National Agreement. This, too, supports the conclusion that the language in the National Agreement is not intended to provide wash-up time for all employees whether or not they perform dirty work or work with toxic materials. Said differently, arbitrators have found that LMU provisions granting wash-up time for all employees are inconsistent with the National Agreement because the National Agreement does not contemplate that all employees perform dirty work or work with toxic materials.

Abernathy (WOC-5R-I 90165; November 25, 1992) "For example, Article 8 Section 9 states that installation heads "shall grant reasonable wash-up time." If the employee exercised his option under the Union's proposal to have wash-up time "before lunch" but the installation head found that to be unreasonable, the employee's choice apparently would have to be granted under the terms of the Union's proposal. Thus it would conflict with Article 8 Section 9 of the National Agreement in my judgment."

DiLeone-Kliem (Abington, PA; November 2, 1992) "Article 30.B.1. allows for "additional or longer wash-up time," not identical wash-up time regardless of the work performed. The arbitrator find that the Union's proposal providing 5 minutes of wash-up time for all clerks before lunch and before the end of their tour is inconsistent and in conflict with the National Agreement.

Liebowitz (N0C-1N-I 90184; June 22, 1992) "It is apparent that the Union's proposal would grant wash-up time to all employees and not only to those who perform dirty work or work with toxic materials; therefore, it is inconsistent or in conflict with the language of Article 8.9 of the National Agreement."

Benn (COC-4A-I 99052; July 25, 1992) "From a plain reading of the relevant language, because the LMU gives 'all employees' a five minute wash-up period and because Article 8.9 of the National Agreement limits only to' those employees who perform dirty work

or work with toxic materials', that portion of the LMU granting the fixed five minute wash-up period to 'all employees' is ' inconsistent with or in conflict with the 1990 National Agreement' and also 'varies the terms of the 1990 National Agreement' under the quoted provisions of Article 30."

Marx (NOC-1M-I 90141 & NOV-1M-I 90142; October 16, 1992) "The Arbitrator concludes that the specification of a precise number of minutes of wash-up is not warranted. This is because National Agreement Article 8.9 already provides for 'reasonable was-up time'. While the Union has described the current somewhat more adverse working conditions at the Queens GMF, it has not provide convincing evidence that the involved employees are denied sufficient wash-up time."

Freedman (B94C-4B-I 96050564; July 29, 1997) " The Post Office's language for item #1, 'When an employee performs dirty work or work with toxic materials, the employee will be allowed reasonable wash up time,' is accepted. However the Post Office's language re which facilities the employee must use for wash up is denied."

Kelley (A94C-4A-I 96054210/96051966; March 21, 1997) " That the language of existing Item 1 providing two five minute wash-up periods to all employees is to be deleted from the Local Memorandum of Understanding between the parties at the Smithtown, New York Post Office as being inconsistent with Article 8.9 of the National Agreement; as interpreted by the overwhelming majority of Regional Arbitrators."

Klein (I94C-1I-I 96052773; February 24, 1997) "The following language shall be included in the 1994 Local Memo: Any employee shall be granted such time as reasonable and necessary for washing up after performing dirty work and/or handling toxic material."

Zigman (F94N-4F-96-044477; December 11, 1997) "The Service did sustain its burden of proof in having established that the

language in the LMOU providing for wash-up time for personal needs is in conflict and inconsistent with Article 8.9 of the National Agreement."

Hales (F94N-4F-I 96044771; October 13, 1997) " The current provision at Article 8, Section 4 of the LMOU appears to contain language which is contrary to prevailing arbitral points of view concerning wash-up time. Thus, the current language of Article 8, Section 4 appears to cover all employees whether or not they work with dirty or toxic materials. Further, the wash-up time in the current language of Article 8, Section 4 does set a fixed period of wash-up time also contrary to the weight of arbitral authority."

Parent (F94N-4F-I 96044491; August 16, 1997) " There is no doubt in my mind that the constant handling of any material such as letters and flats might cause one's hands or fingers to acquire a certain amount of grime over and above that which an average person might accumulate during the course of a work day in some clerical occupation, for instance. But a reasonable person's awareness of the realities of the workplace would strongly invite a presumption that if an employee felt that his/her hands or fingers had become unduly soiled, the very next nature call to the restroom or break time or lunch break would certainly provide an opportunity to wash one's hands, even twice in one day if need be, no matter whether the carrier is casing mail or delivering it. So the Union's claim ALL employees work with such dirty material as to warrant specific wash-up times is found without merit."

Sharkey (A94N-4A-I 96040121/96040701; February 5, 1998) " The interpretation arrived at by the undersigned is that the parties to the negotiation of Article 30 felt that 'dirty and toxic material" were covered in Article 8.9 and decided to leave it to local facility managers and unions to determine what, if any, 'additional or longer' wash-up periods were appropriate. Article 30 does not mandate that LMOU's include 'additional or longer wash-up periods.' It only allows the parties to pursue their interest in the subject in the LMOU. The union may seek 'additional or longer'

wash-up time and the management may very well prevail in the negotiations or in arbitration that no such additional time is needed."

Dennis (A94N-4A-19604027/19604028; October 25, 1996) " There is no question in my mind that all concerned on the Union's side of this dispute understood on March 15 what items were impassed by both parties. It serves no purpose, nor is such a conclusion supportable by this record, to decide that because the NBA did not receive Management's Impasse items by mail, Management did not fulfill its obligation here."

Marx (A94C-4A-I 96055368; April 28, 1997) "The Holbrook Postal Station's unilateral statement that it would 'no longer honor' the Article II, Wash-up Policy, Item 1, of the Local Memorandum of Understanding was in violation of the National Agreement and must be rescinded."

Marx (A94CAI96053492, April 28; 1997) "There is insufficient justification to place formal language in the Local Memorandum of Understanding at Calverton concerning wash-up time, in view of the absence of any demonstrated current problem."

Angelo (F94C-4F-I 96057164; October 20, 1997) " The parties by practice have determined "all clerks and maintenance employees' are eligible for wash-up time prior to lunch and for a period of two minutes. The Agency has not produced any evidence to indicate the subject employees fail to meet the 'dirty and toxic' test"

Olson (F94N-4F-I 96044881; February 15, 1998) "The employer has established that Article 8 Section 4 of the LMOU is clearly in conflict and/or inconsistent with Article 8 Section 9 of the National Agreement. Equally important, this Arbitrator concludes that Article 8, Section 4 of the LMOU pertaining to a reasonable and necessary amount of time being granted for washing-up to a letter carrier who performs dirty work is not in conflict with or inconsistent with the National Agreement. However, that portion of

Article 8.4 dealing with wash-up time that is necessary or incidental to personal needs is in fact in conflict or inconsistent with Article 8, Section 9 of the National Agreement."

Gudenberg (A94T-1A-I 96050640; July 28, 1997) A Remote Encoding Center is different from a normal postal operation. No actual mail is processed at the center. The provisions of Article 8, Section 9 of the National Agreement cover the possible need for wash-up for maintenance employees at RECs.

Collins (A9C-4A-I 96051969; January 23, 1997) "The LMOU for the Lynbrook Post Office provided that all clerical employees would be granted 5 minutes wash-up time prior to leaving for lunch and 5 minutes prior to the end of their tour of duty…there is no persuasive evidence supporting the need for two daily 5 minute wash-up periods…the arbitrator will order that there be no provision for wash-up periods for all employees in the 1994-1998 LMOU."

Kelly (A94C-4A-I 96054210; March 21, 1997) "…That the language of existing Item 1 providing two five minute wash-up periods to all employees be deleted from the Local Memorandum of Understanding between the parties at the Smithtown, New York Post Office as being inconsistent with Article 8.9 of the National Agreement, as interpreted by the majority of Regional Arbitrators…."

Angelo (F94C-4F-I 96052251; December 21, 1997) The Arbitrator addresses a wash-up provision that specifies a set wash-up period for all employees. The Arbitrator finds "…In APWU and USPS – Vallejo, E94C-4F-I 96057164 (October 1997), I addressed this issue at some length an concluded there was no conflict with the National Agreement…."

Item 2. The establishment of a regular work week of five days with either fixed or rotating days off.

Recommended Language: This varies by craft and office. No recommended language.

Strategies: It is possible that a demand will be made and you must evaluate your operations to be prepared to defend your position that either fixed or rotating schedules are not feasible. Rotating schedules for clerks may cause excessive administrative and scheduling problems. Circumstances may exist where it may be beneficial to have rotating off days for city letter carriers and maintenance employees.

Arbitrations: Dworkin (Impasse 107, December 9, 1983) "The Union demonstrated that its proposal was not whimsical or unreasonable- that very real and significant benefits will be obtained by the work force if rotating schedules are implemented." (This was despite costs involved and based on Union's evidence that similar offices used rotating schedules.)

Howard (Impasse 49, November 2, 1983) "It becomes obvious there are problems of redundant manpower with particular skills on certain days, shortages of manpower with particular skills on other days, requirements for additional training within clerk classification and potential for greater amounts of assigned overtime."

Casselman (Impasse 80, October 7, 1977) "The contention that the carriers have had rotation for five years and therefore so should the clerks, ignores the fact that carriers are on a six-day operation and none of the inefficiencies and increased costs required to rotate clerk schedules has been shown to be applicable to carrier schedules."

Haber (C8C-4B-C 20933, August 26, 1982) "...The percentages of employees in the several work week phases (fixed or rotating) was not itself a matter agreed upon as a negotiated commitment."

Schroeder (S4C-3W-I 900006, June 29, 1985) "The Union, in proposing a change from a long-standing past practice, has the burden of proving the change to be practical and beneficial."

Marlatt (S4C-3U-I 900053, August 3, 1985) "...Since it (the Union's proposal of rotating schedules for clerks) would adversely impact on the efficiency of the Tomball Post Office...merely to accommodate this one employee, the Union has not sufficiently justified its proposal."

McAllister (C4C-4C-I 99100, November 8, 1985) "The proposal to eliminate the ability of management to determine the practicability of granting consecutive days off would directly conflict with the terms of the National Agreement."

Walsh (W1C-5D-C 8625, October 11, 1985) "If the Union's position were accepted, management would be precluded from ever changing the then presently constituted job assignments, regardless of changes which might be required or deemed proper under all the circumstances."

Foster (Fayetteville, NC Impasse Item; July 2, 1992) "While the Union does appear to recognize the basic right of management to set schedules for the work force, its proposed language changing 'practicable' to 'maximum extent possible' would reduce the level of management discretion in this regard below that called for by the National Agreement." In summation, he stated, "In summary, the Union's proposed language change to Item 2 of the LMU would unduly restrict the exercise of managerial discretion as established by the National Agreement.

Marlatt (SOC-3E-I 90050; June 27, 1992) "Not only does the proposal deprive the Postmaster of the ability to schedule his regular clerks when they are most needed, but it would almost inevitably result in additional expenses for cross-training and in providing security for the stock of more employees with

accountability."

Dennis (S0C-3B-I 90017; July 4, 1992) "Changes in work schedules should, for the most part, be negotiated and agreed upon by the parties. For an Arbitrator to award a change in a schedule is to force the parties to modify a major relationship that can have ramifications far beyond what appears on the surface or is presented to the Arbitrator."

Render (W0C-5R-I 90169; January 5, 1994) "Article 30 section 2 authorizes the local parties to negotiate about the establishment of a regular work week of five days with either fixed or rotating days off. This language is clearly broad enough to include the present proposal. Finally, the Arbitrator does not think that it can be said that the Union's proposal is bad because it seeks to have consecutive days off work for the part time employees. The National Agreement clearly states that 'as far as practicable the five days shall be consecutive days within a service week'. The Arbitrator sees no inherent conflict between the Union's proposal and the National Agreement."

Harvey (S0C-3E-I 900040, June 18, 1992) "The Service argues that nothing in the Agreement requires it to obey the orders given by any governmental unit. If for example, the Fulton County Health department issued an order finding an imminent health hazard in the BMC, the Service would be required to accept that (with nor form of hearing or protest procedure?) and grant leave or early dismissal for so long as the asserted imminent hazard continued to exist. Such is not a 'guideline' and existing as it does in its mandatory fashion, it creates a potentially 'unreasonable burden' on the Postal Service. Certainly, giving any Sate, County, or Municipal "governmental body" the authority to effectively close down a major Postal facility represents an unreasonable burden to the Postal Service's carrying out of its mission to the public.

Hardin (H94C-4H-I 96074134/136; May 14, 1997) "Article 30 will allow an LMOU, if agreed to by the parties, which provides fixed

days off for some positions and rotating days off for others."

Walt (I94N-4I-I 96040984; March 11, 1998) The arbitrator found that the Union proposal of having alternating Saturday and Monday off days was reasonable as it gave the employees more schedules with five consecutive work days.

Item 3. Guidelines for the curtailment or termination of postal operations to conform to orders of local authorities or as local conditions warrant because of emergency conditions.

Recommended Language: 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.

Strategies: You are not obligated to nor can you bargain as to whether or not management can or will curtail operations. However, if a management decision is made to curtail operations, then bargaining over what the impact will be or the results of the decision is proper. If guidelines are established, administrative leave pay is not to be bargained. Wages and hours have been established at the National level. Any guidelines established must be reasonable and consistent with the basic mission of the Postal Service as defined in the Postal Reorganization Act.

Usually, these procedures simply include such information as the proper radio station for employees to tune in to for reporting information and the procedure for providing notification to employees already at work, etc.

Remember, you are only to be bargain "guidelines." The decision as to whether to curtail or terminate operations must be retained by management.

Arbitrations: Collins (Impasse 63, November 16, 1979) "The limitation of such local bargaining to 'guidelines' strongly suggests that the basic question of when administrative leave may be granted is not locally

bargainable."

Jensen (Impasse 81, May 12, 1977) "...It must be held that the local Union's proposal regarding administrative leave is not negotiable."

Jensen (Impasse 82, May 12, 1977)"...It is not mandatory to include in the local agreement what is already covered in the National Agreement (to quote the ELM on administrative leave). In fact, an impasse over such would really not be arbitrable."

Schroeder (S4C-3W-I 900048, October 3, 1985) "The determination (on curtailment) cannot be delegated to an agency outside USPS."

Caraway (S4N-3Q-I 900129, November 15, 1985) "To give greater responsibility in the emergency area to local authority would contravene Article 3."

Rentfro (Impasse 128, March 27, 1984) "The proposal operates as a restriction on management's reasonable discretion to assign casuals, other crafts, and part-time flexible, and as such, does not constitute 'guidelines' and is beyond the scope of Article 30.B."

Sherman (S7C-3W-I 700014; July 11, 1988) "...(T)he National Agreement (Article 30, Section B, Item No. 3) recognizes the right of the parties at the local level to negotiate guidelines for the curtailment or termination of Postal Operations. However, the language in this item in no way suggests that the local negotiators may establish the criteria which sets in motion the procedure and justifies the curtailment of Postal Operations. Rather, the underlying assumption is that the event will be of such a nature that the parties can agree that Postal Operations must be curtailed.

Loeb (C94C-4C-I 9605708; April 23, 1997) " The union proposes to amend item 3 of the LMOU to include a provision which would require the Postal Service to transfer employees to another station or branch of the Woodbury, New Jersey Post Office or permit them

to use leave if the temperature in a building falls below 65 degrees or exceeds 85 degrees for more than 2 hours…The Union's proposal effectively forces the service to shut down a facility whenever management is unable to bring the temperature within the prescribed ranges…it is simply not feasible to transfer the mail on a short time basis…the union's proposal is rejected."

Olson (F94N-4F-I 96045276; December 8, 1997) The LMOU item 3 stated, "Management shall comply with all requests by local (city and county), state and federal personnel in regards to any emergency that may endanger the life or limb of the people affected in the area." The Postal Service argued that this provision was inconsistent and in conflict with the National Agreement. The arbitrator agreed as item 3 was limited to guidelines and the existing language was a mandate.

Collins (B94C-1B-C 96054190; February 24, 1997) "The prior 1991 LMOU provided that 'all annual leave requests made 46 or more hours in advance shall be granted to the maximum extent possible.' The union proposed substituting in the 1994 LMOU a requirement that leave requests made on at least seven days notice be granted subject to certain percentage limitations as to the number of employees that might be on leave in any week. The Arbitrator found that the prior language adequately served the interests of employees and management."

Item 4. ***Formulation of local leave program.***

Recommended Language: The installation head or designee shall meet with representatives of the ***(union fill in)*** to review local service needs as soon after January 1 as practicable. The installation head shall then determine a final date for submission of applications for vacation period(s), as provided for in Article 10 of the National Agreement. Choice Vacation shall be awarded as provided for as in Article 10 Section 3. D. 1, 2, 3 of the National Agreement and this LMU. Choice vacation leave is to be granted on a seniority basis as follows:

- City Letter Carriers by zones code or location. (Where you have multiple zones in a location you may want to split these by zones.)

Strategies: The responsibility for the administration of the leave program rests with local management; therefore, it is necessary that the criteria for scheduling leave be developed based on local operational needs. It must also consider the needs of the employees.

Arbitrations: Rose (Impasse 42, September 19, 1980) "The question of whether the choice vacation sign-up shall be on-the-clock is clearly a factor in the formulation of the local leave program and, as such, it is negotiable."

Gentile (Impasse 57, April 16, 1983) "The request for additional fringe benefits is not the 'formulation of the local leave program,' but a proposal to increase benefits."

Marx (Impasse 64, March 10, 1981) "There is no good cause of the USPS to be barred from reviewing leave matters by a higher level of supervision - provided, of course, that it meets the specified (locally agreed) two-day limit."

Di Leone (C4C-4H-I 99103, October 23, 1985) "If relief clerks were to schedule their annual leave separately from the branch, they would not be available to perform their relief duties in the branch location while the regular window clerk is absent."

Schedler (S7C-3B-I 700041, August 8, 1988) In this impasse the Employer maintained that a choice vacation list by seniority required too much time to complete and 3 lists by tour were more manageable. The Union contended that lists by tour would be unfair to the senior employees in the shop. I believe that a choice vacation planning schedule by tour would be fair to all the employees as well as more manageable for supervision.

Bickner (F94C-4F-I 96D57128; November 28, 1997)
The Postal Service argued that 2 clerks off on vacation during the month of August was an unreasonable burden. The arbitrator found that the Postal Service did not prove an unreasonable burden. "An unreasonable burden is not just any burden. Provisions affecting management rights are not per se unreasonable burdens. Proof of future impacts should not be speculative, and proof of plan failure must be for more than an isolated period. Neither cost considerations alone nor administrative inconvenience nor general argument than proof is sufficient to establish an unreasonable burden."

Vause (G94C-4G-I 96075241; January 19, 1997) Issue: Should Article 10 Section 4.B.1.b of the LMOU be modified to extend the Clerk Craft an entitlement to the choice vacation period from the first full week of December through December 24, subject to the same 5% minimum limitation applicable to other bargaining unit employees? The arbitrator held that management's concerns about the undue burden on operations are well justified.

Parent (F94N-4F-I 96045098; October 24, 1997) " ...But the Union's desire to secure, by contract language, a working condition which it feels is advantageous and which had been enjoyed as a

result of an oral understanding between it and the Employer, does not constitute, in this arbitrator's opinion, a compelling reason for him to grant the Union's demand. The arbitrator accepts as convincing the Employer's argument that, if the Union contends that the Employer's long-standing consent to the cancellation by letter carriers of partial-week annual leave and to the re-posting of such leave constitutes a past practice which cannot be changed by unilateral action, the proper method for the Union to obtain relief would be for it to file a grievance alleging a 'rights' violation...."

Zigman (F94N-4F-I 96044489; November 11, 1997) "...In this respect I found the service's reliance on arbitrator Abernathy and arbitrator Parent's awards as quite compelling. As for example, the evidence was undisputed that there has been no problem for carriers at the Danville station in getting incidental leave...."

Parent (F94N-4F-I 96044490; October 2, 1997) "...For the reasons stated above, I must find that the Union failed to prove its proposed changes to Item 4.J are necessary or would serve any useful purpose other than facilitating the obtention of incidental leave by letter carriers, a situation which has not been proven to be in need of correction...."

Olson Jr. (F94N-4F-I 96044846;849;852; September 11, 1997) "...Obviously, in the opinion of this Arbitrator the Union has failed to carry its burden of proof to prevail in this case. First, based upon the record, the Arbitrator concludes that the Employer did "bargain in good faith" regarding the three issues in dispute, based upon the criteria set forth by the NLRB. Second, the Union clearly failed to produce any evidence that the practices and procedures for granting "incidental annual leave" were unfair at the Northridge postal facility. The same is true for the other two issues in dispute in this case. Third, the Union failed to produce any evidence that employees had been denied requests for incidental annual leave to the extent they would have actually lost a part of their accrued annual leave. In addition, the union produced no evidence that supervisors were being 'hard nosed' or 'playing favorites' in

granting or denying requests for 'incidental leave.' Furthermore, the Union failed to establish that grievances had been filed over the three issues in dispute, except one incident dealing with 'incidental leave' which was subsequently withdrawn by the Union. In order for the Union to prevail in an interest arbitration dealing with 'impasse' issues, it must demonstrate that the Employer's actions in part, were either unfair or not equitable...."

Rappaport (A94N-4A-I 96040405; April 29, 1997) "...While it is undisputed that employees that employees on FMLA would be protected and would be able to pick another open slot during the choice vacation period. While it is undisputed that employees on FMLA would be protected, it is the posting of the relinquished slot which concerns the union. ...Upon review of the record, the Arbitrator finds that the Employer's intention not to post a relinquished vacation slot if an employee were on FMLA would be a violation of the LMOU. The LMOU states that when a choice vacation period is relinquished, it shall be posted for bid.

DiLauro (D94N-4D-I 96071672; August 20, 1997) "...Despite the Union advocates excellent presentation and arguments, there is no doubt that the Union's proposal is inconsistent and in conflict with the National Agreement to the extent that the granting of such leave could extend the maximum permitted 10 and 15 days of continuous leave set forth in Article 10.3.D.1 and 2."

Suardi (J94N-4J-I 96055862; J94N-4J-I 96042566; February 12, 1998) "...Here both sides have agreed to make 'every effort' to allow designated Union members off to attend Union activities without charging the time off to choice vacation periods. By agreement, these efforts take place 'upon request' but 'consistent with service needs.' To date the record does not disclose that any scheduling difficulties affecting the Union leadership have resulted in grievances, or that Management has breached either the above 'best effort' language or its duty to exercise discretion in good faith. All this causes the Arbitrator to conclude that no change in the existing language of Item 4 is appropriate." In regards to the

second issue the arbitrator concludes, "...At the hearing Supervisor Brooks could cite no problems that have occurred as a result of the first come, first served incidental leave policy. She went o to emphasize that such leave is greatly dependent upon working conditions at the time of a given request. It follows that the same discretion available to Management on whether to grant incidental leave should also apply in the face of simultaneous requests for leave. For this reason, the Arbitrator is unpersuaded that a seniority-based incidental leave policy would be appropriate."

Skelton (D94N-4D-I 96061448; 49; December 6, 1996) Regarding the first issue the Arbitrator found, "...Management must be allowed to take into consideration staffing requirements when making decisions on incidental leave requests...." In regard to the second issue the Arbitrator found,"...The percentages provide the required Management flexibility for choice vacation while providing the opportunity for up to four carriers to be off (one-sixth of the carrier complement) during July. These percentages are more consistent with the evidence and testimony than the Union desired 18%..."

Sharkey (A94N-4A-I 96040881; February 16, 1998) "Family Medical Leave time shall be excluded from the 'quota count' for eligible vacation time at anytime throughout the year..."

Klein (I94N-4I-I 96042439; May 15, 1997 "...While not all carriers availed themselves of the opportunity to select and be guaranteed a week of vacation outside the choice period in the past, the fact remains that for approximately 27 years the opportunity existed and those that desired to get away from the harsh winter weather conditions were able to do so." "...The award in this case provides no more than that which had previously been granted...."

Maher (B94N-4B-I 96040592; 594; 595; November 1, 1996) "...The Arbitrator finds the USPS simply did not present evidence and testimony to warrant such a wholesale change, or establish the current language is an unreasonable burden...."

Shea jr. (A94N-4A-I 96040106; March 10, 1997) "...A carrier using leave under the Family and Medical Leave Act will not have that leave counted against the number of carriers allowed leave during the Prime time and Non-Prime time vacation periods...."

Parkinson (D94C-4D-I 96070281; 96070283; April 24, 1997) "...it is my considered opinion that the language proposed by the Union is in conflict with Article 10, Section 3.D of the Agreement. This is not to say that the parties are precluded from negotiating a second sign-up during choice vacation, but this must be in accord with the permissible framework that the Postmaster an/or his designee would agree to. Therefore, it is my considered opinion that the language as proposed by the Union is in conflict with the Agreement at Article 10, Section D."

Collins (A94C-4A-I 96051969; 953; 973; January 23, 1997) "...However, the Arbitrator believes that there that there is a significant correlation between use of annual leave and delay of mail in the high-volume Christmas period. He is persuaded that there should be a restriction on taking annual leave in December. He will order that the 1994-1998 Local MOU provide that no annual leave may be taken in December...." Regarding Prime-time vacation percentage the Arbitrator finds, "The Arbitrator is not persuaded on the basis of the evidence that 12% is appropriate. He will order that the 1994-98 Local MOU continue to provide 16%."

Kelly (A94C-4A-I 96054966; March 21, 1997) "...That the language of existing Item 4, Section I., providing that the amount of leave used during the employee's leave will be at the employee's option is not inconsistent with the National Agreement and is to remain in the Local Memorandum of Understanding between the parties at the Smithtown, New York Post Office.

Collins (B94C-4B-I 96050506; April 14, 1997) "...The Postal Service is not arguing here that the Union's proposal for as of right non-prime time leave would be inconsistent with the Agreement. It

is arguing that the proposal is outside the scope of 30B and that management never agreed to bargain concerning that proposal...."
"...The clear implication of these provisions is that when the parties intended to provide for local negotiations as to as-of-right leaves they did so expressly and that having failed to do that in the case of non-prime time leaves they did not intend to require local negotiations as to that subject. While the Union argues that the proposal is encompassed within Article 30B4 the Arbitrator does not agree. If the parties had intended 30B4 to cover annual leave applications there would have been no reason to include 30 N9 and 12 in the Agreement. The Arbitrator finds the Union's proposal not to be arbitrable...."

Item 5. ***The duration of the choice vacation period.***

Recommended Language: Do to various size offices, operational needs, and the number of weeks bargaining unit employees are entitled to during choice vacation, there is no recommended language.

Strategies: Although this has been a long-established item for local implementation, many problems have arisen. Usually the Unions request a short period and management wants a much longer period.

Note that the percentage of employees off at one time must be taken into consideration, together with other operating and scheduling needs, when management's position as to length of the choice vacation period is formulated.

Installation heads know how many full-time employees are required to maintain efficiency. Likewise, they know the number of required replacement employees to cover sick, annual, military and court leave. When the choice vacation period is compressed, the need for replacement work hours increases in relation thereto. We do not hire career employees to cover short-term replacement work hours, so the only substitute is through overtime (probably mandatory) and/or a supplemental work force. Both of these alternatives are contrary to Union philosophy. Based upon the annual leave guarantees of Article 10, Section 3 of the Agreements, plus the actual number of full-time positions, management should be able to cost out the necessary replacement work hours for both overtime and a supplemental work force. Historically, the use of such replacement options have proven unsatisfactory to both parties. Normally, with an extended choice vacation period, replacement work hours can be absorbed by the regular work force which results in reduced costs and increased efficiency. Graphs and charts should be prepared to demonstrate the impact of various lengths of the choice vacation period. Further, an extended choice vacation period offers a much wider range of options for vacation planning by the work force. Generally, younger

employees with school age children prefer off the summer months when school is out, while there are those who prefer to be off in the fall when hunting season is open.

A good argument can be made that an extended choice vacation period is beneficial to both parties. It would provide a longer time frame within which employees could make their choice vacation period selections through use of their seniority, while at the same time eliminating the "compression" of annual leave that would result from a short choice vacation period. If the issue goes to arbitration, be prepared to prove that a relatively short choice period would cause excessive costs and inefficiency. Additionally, calculations should include utilizing authorized supplemental work force employees.

Proof for arbitration may be developed in the following manner:

The local office should compare statistical information concerning overtime, curtailed and delayed mail, customer complaints, etc. that occurred during a popular (choice) vacation week which involved a holiday (i.e, Memorial Day, Independence Day, Labor Day and Thanksgiving Day) in which the maximum number of employees had been allowed off and compare it to another "less popular week" during the choice period. These comparisons should show a decrease in services and an increase in costs.

Determine the choice annual leave entitlements for the employees in the local office (Article 10.3.D.1 and 2). Calculate the percentage of employees who would be off each week under both the Union's and Management's choice vacation period proposals.

Review the grievance activity during the life of the prior contract to determine if there were problems with any employees in obtaining leave during the choice (and non choice) periods.

Review prior vacation scheduling charts to determine how actual utilization compares with negotiated number of employees allowed off. You may be able to show that the current choice period is

adequate.

The duration of the choice vacation period should largely be determined by the number or percentage of employees who are to receive choice vacation each week, since Article 10, Section 3 of the National Agreement provides each employee with the opportunity to select 10 to 15 days (2 or 3 weeks) of choice vacation. Once the maximum number off is established (Item 9/H) the duration needed to satisfy the National Agreement provisions can be established mathematically.

Example: 100 craft employees.

50 earn 13 days and granted up to 10
50 earn 20/26 days and granted up to 15

50 x 2 weeks = 100 weeks
50 x 3 weeks = 150 weeks

TOTAL 250 choice weeks needed

If maximum number off each week is 14%, then the minimum duration needed would be 18 weeks. 250 divided by 14 equals 18 (rounded). The beginning and ending dates would then need to be established. Therefore, Item 9/H should be bargained first.

All leave/vacation should be bargained as one package.

NOTE: A percentage rather than a number is preferable and provides greater flexibility.

Arbitrations: Young (Impasse 70, September 10, 1980) Decision on calculating the duration of the choice vacation period. "The duration of the choice vacation period for the clerks shall be 17 consecutive weeks starting with the last service week in May which includes Memorial Day. Sixteen percent (16%) per week of the Clerical Craft Compliment shall be allowed off each week during the choice vacation period, a fractional percentage shall create another

employee off."

Lurie (S0N-3W-I 90011; December 5, 1992) "There is no doubt that the Service's Christmas mail volume is decreasing. It is also possible that the recent economic recession has had a further depressing effect upon that long term trend. Nonetheless, the Christmas season is still a high-volume period, and the inclusion of the holiday season in the choice vacation period, in the judgment of the Arbitrator, remains unwise."

Baldovin (H94-C-4H-I 96074073; April 14, 1997) The union sought to have the entire year as the choice vacation period. "As the party making the demand for changing an existing provision of an LMOU the Union must show a compelling need for that change…it appears that the 43 week choice vacation period is sufficient to preclude any forfeiture of annual leave…the union's contention that the Letter Carrier's LMOU provides for a 12 month choice vacation period and therefor the clerks should also have the 12 months is without merit."

Parent (F96N-4F-I 96045311; F96N-4F-I 96045313; October 1, 1977) The Union proposed a year-round vacation period. The arbitrator denied the Union's proposal in the following manner, "…The arbitrator accepts as valid the employer's argument that the Union has failed to demonstrate that a problem exists with the language of the LMOU that would be solved by the adoption of its proposal.

Hales (F94N-4F-I 9604660; October 31, 1997) "…it is found in this matter that the deletion of item 12(f) from the LMOU will solve the problem in this case by permitting vacation leave during the Christmas period, and it will eliminate an inequity that exists with other postal stations in the Mojave, California area.

Klein (I94N-4I-I 96040910; March 9, 1998) In this case, the Union requested a year-round choice vacation period including Christmas week. The Arbitrator found, "There was testimony to establish that

the percentage of employees off in December is 6%. This amounts to the availability of three slots for vacation during the week in which Christmas falls. This is not excessive in view of the fact that even without the Union's proposal, annual leave is granted when practicable during the Christmas week."

Goldstein (C94N-4C-I 96050824; 825; February 22, 1998) "...Management attempted to establish unreasonable burden factors as its rationale for wanting to expand the choice leave period. Based on the totality of the evidence presented, there was inconclusive proof that maintaining the existing choice period would cause an excessive or unreasonable burden. Nevertheless, there was also evidence that the Union, during negotiations, had also requested a one (1) week expansion, specifically during 'hunting week.'"

Fletcher (I94C-4I-I 96054793; January 26, 1998) "...In his matter we have the Union seeking to modify a provision it agreed to within the recent past, a provision that resulted from a grievance settlement...." "...The language that APWU now wants removed from the LMOU places special restrictions on requests and assignment of the last week in December as a vacation period. What APWU seeks is to have this week treated the same as all other weeks of the prime vacation period. By any measure December is a special month in the Postal Service...."

Item 6. The determination of the beginning day of an employee's vacation period.

Recommended Language: The beginning day of the employee's choice vacation period shall be the first day of the employee's basic workweek.

Strategies: The issue in this item is basically whether employees should start their vacation on the first day of their basic work week or at the start of the service week. Management's position on this item depends on what the operation requires. Consider how many employees will be permitted off during a particular period of time and the length of choice vacation period, and utilize charts or graphs, if needed, to make your points.

Be aware that the language agreed to in establishing the beginning day of an employee's vacation may allow, in certain circumstances, the days of the leave weeks of employees with different schedules to overlap. This result should be avoided, or in the alternative, it should be made clear to the Union that the maximum percentage off will be strictly applied to include these overlap situations. The "maximum" allowed off is specifically what is proper under Item 9/H, and should be strictly applied.

Arbitrations: Marlatt (S4C-3T-I 900086, August 31, 1985) The arbitrator determined the Union's request to insure employees would not be required to work their non-scheduled days and holidays falling in conjunction with vacations was negotiable at the local level and was not in conflict with the National Agreement. The arbitrator stated "The ability of an employee to plan for his vacation in conjunction with nonscheduled days is of significant importance to him or her. By contrast, the inconvenience to the Postal Service ... is minimal."

McAllister (C7C-4H-I 99451; June 17, 1988) "Under item 6, the Union proposed to change the beginning day of an employee's vacation, which is the first day of the employee's basic work week.

This would be accomplished by considering day(s) off and holidays as being part of the vacation period. Without rebuttal, local management explained that inclusion of such a proposal could result in twice the number of employees being off on a holiday. This result seems obviously possible since the BMC would be barred from working an employee on a holiday before one's scheduled vacation began. Clearly, in the peak vacation periods, management would have a lesser pool of employees to draw upon for holiday work. The Union presented no probative evidence to bolster its reasons for requesting such a change."

Caraway (H94C-4H-C- I 9607281/96074125; February 19, 1997) The arbitrator ruled it reasonable for PTF vacations to include week ends and changed the local memo to read, "Choice annual leave shall begin on Sunday and extend through Saturday for Part-time flexible employees." The union proposed under item 14 that before tour, after tour and non-scheduled day overtime desired lists be established. The arbitrator rejected this, "Article 30 in paragraph 14 limits the question of overtime desired lists to section and/or tour. The union proposal would modify this adding three specified categories. This would be in violation of the National Agreement."

Item 7. Whether employees at their option may request two selections during the choice vacation period, in units of either 5 or 10 days.

Recommended Language: Employees may request two selections during the choice vacation period in units of five (5) or ten (10) days. The total leave approved can not exceed the number of days authorized in Article 10 Section 3. D. 1, 2, or 3 as appropriate.

Strategies: This subject must be coordinated with your overall vacation planning period.

Any new language agreed to must not be inconsistent or in conflict with Article 10, Section 1, 2, or 3 of the National Agreement. In other words, employees should only be granted up to their maximum entitlement of either 10 or 15 days annual leave during the choice vacation period, depending on their leave earning category.

Arbitrations: Klein (C4C-4E-I 99059, November 18, 1985) "The arbitrator finds that the reference to the 'second round' with selections not to exceed 2 weeks is in conflict with Article 10 of the National Agreement." This terminology could be construed to mean that an employee who earns 20 days of annual leave could be granted a 10 day period of continuous annual leave during the choice vacation period, and then on a second round, he/she could select another continuous 10 day period, thereby exceeding the limits provided by Article 10.

Odom (H94C-4H-I 96075352; April 11, 1997) "Issue of whether Item 7 of the LMOU conflicts with the National Agreement not arbitrable because the Postal Service did not follow processing requirements set out in National Memorandum of Understanding regarding local implementation."

Parent (F94N-4F-I 96045115; December 23, 1997) "...Arbitrator DeLeone Klein's sound reasoning in that case was based on a finding that the Union's language could, in fact, cause an employee

to be guaranteed more continuous annual leave in the first round than was permitted by the Agreement under Article 10. The Union's proposed language in the instant case is found to have the same possible effect...."

Gold (B94N-4B-I 96040113; March 14, 1997) "...Steward Daniel Fusco acknowledged that that requests for both periods were handled at the same Union meeting, but said that a calendar or Forms 3971's were passed for the selection of nonprime time vacation after "first-round" prime time vacation dates had been selected on a seniority basis. Generally, the parties, if they desire, may allow a longer period to elapse in the two phases of the selection process, but I find nothing in the National Agreement or in the cited Mittenthal award that bars selection of the two on the same date, so long as the proper sequence is followed...."

Devine (B94N-4B-I 96040902; June 9, 1997) In this case, the union proposed a third choice vacation selection for incidental annual leave usage. Management raised the issue of 'res judicata' since in prior LMOU negotiation the Union's proposal was rejected by Management and lost at arbitration by the Union and that the proposal was in conflict and/or inconsistent with the National Agreement. The Arbitrator found that the Union proposal was in conflict and/or inconsistent with the National Agreement. On the issue of 'res judicata', the arbitrator indicated the following, "...However, this proceeding involves an item that was proposed during 1996 negotiations. If I were to dismiss this claim based on res judicata, the Union would be prevented from ever proposing issued in subsequent negotiations that it had lost in previous impasse determinations. As pointed out by the Union, if it had not gained a wage increase in 1992 negotiations, it would be barred from issuing a proposal for wage increases in 1996. Such a condition would defeat the entire concept of negotiations.

Liebowitz, M. (B94N-4B-I 96040903; March 27, 1997) "...Furthermore, in my view the second paragraph of Item 7 of the LMOU does not 'create an additional right' which is inconsistent or

in conflict with the two-selection limitation in Article 30, Section B, Item 7. The two-selection limitation is clearly expressed in paragraph one of item 7 of the LMOU…."

Item 8. Whether jury duty and attendance at National or State Conventions shall be charged to the choice vacation period.

Recommended Language: Jury Duty and attendance at National and State Conventions shall be charged to the choice vacation period. The leave for National and State conventions shall be blocked off to insure the delegates may be granted leave in accordance with Article 24, Section 2. B. of the National Agreement.

Strategies: There is often very little advance notice regarding jury duty, so this proposal must be given careful consideration. The same may hold true for the National or State Union Conventions. A major consideration for conventions would, of course, be how many delegates from your office will be attending these conventions. It is preferable to limit the number of delegates not charged and to prescribe some method of advance notice. Do not bargain away your right to have enough people on the job to meet the USPS mandate of efficiency. If you are willing to make a concession in this area, be sure that your choice vacation period is of sufficient length and that you have enough flexibility in the number of employees permitted off each week.

Arbitrations: Rappaport (B94N-4B-I 96040214; 96040929; February 28, 1997) "...Nevertheless, the Arbitrator is entitled to look at other LMOUs to the extent that she concludes that Fredonia was not the first postal facility to initiate the idea that attendance at Union conventions not be charged to the choice vacation period of the unit...." "...After due consideration of the issues submitted, the Arbitrator awards that the Union's final proposal be included in Article 10, section 9 of the Local Memorandum of Understanding, that is, as stated by the Union, that the quota not be charged for the Union delegate to attend the National Convention, which means only every other year...."

Item 9. Determination of the maximum number of employees who shall receive leave each week during the choice vacation period.

Recommended Language: When requested, __% of the employees will be granted leave in accordance with Item 4 of this memorandum. The __% will include extended OWCP, extended LWOP, extended Sick Leave, Military Leave, leave to attend conventions and Annual Leave. When applying the __% requirement, any fraction of 0.50 or more will be rounded to the next higher number. Any fraction less than 0.50 will be rounded to the next lower number.

Strategies: Carefully consider this item in view of other forms of leave which may be taken during the choice vacation period. It is suggested that you bargain this number in the form of a ***percentage*** in conjunction with all other items affecting the choice vacation period.

Remember, Items 5, 6, 7, 8, 9 and 20 are interrelated, and any or all can directly impact operations. Again, it is preferable to derive a number through application of a percentage, and be careful to bargain a maximum rather than a minimum.

Arbitrations: McConnell (E1C-2B-C 3044, October 1983) "There is an excess of prime vacation time available for selection, but crowding additional annual leave into this period may not be in the best interest of efficient operations."

Williams, PM (Impasse 72, April 24, 1983) "...(The Union) wants to set a minimum number of employees who shall receive leave each week in that period of time. It seems to the undersigned that were he to grant the Union's request his award would be invalid because it would not be in keeping with the provisions of Article 30.B.9 of the National Agreement."

Nolan (S4C-3D-I 900015, July 31, 1985) "The use of a percentage maximum is better than an absolute number because it adapts automatically to an increase or decrease in the work force."

Klein (C4C-4E-I 99062, November 18, 1985) "The reduction of the complement does not cause item 9 (which established a number instead of percentage) of the 1981 LMU to be in conflict with the National Agreement."

Lurie (S0N-3V-I 900167, November 28, 1992) "Instead, the Arbitrator deems it relevant to weigh the particular benefit to be derived, against the burden to the Service of providing that benefit. In Richmond, the addition of a third carrier to the number who can be absent on annual leave simultaneously will result in near certain overtime in an amount equal to the annual leave of that third carrier. This is a substantial economic burden. Weighing the certain and substantial economic burden which the Union's proposal would entail for the Service, against the constraint of choice which has been imposed upon the carriers, the Arbitrator concludes that the burden is greater than the benefit to be derived therefrom. Accordingly, he directs that the existing provision of the LMU should be retained without modification."

Angelo (F94C-4F-I 960557; September 6, 1997) "The agency proposed a provision that would have FMLA leave automatically assigned to all unoccupied leave slots during a calendar year…Based on the expressed intent and operation of the Agency's proposal it provides a reasonable method of planning for business demands in the event of unexpected leave requirements during the year…The first question to be addressed is the nature of the burden of proof and whether one party has a greater burden than the other does. I agree with the employer that the burden is shared equally by the parties, each having the obligation to demonstrate its position is the more reasonable. This is the first MOU between the local parties and therefore no prior history to serve as guide for resolving the dispute…A leave program which anticipates FMLA leave does no more than recognize the need to address the operational impact

of the law on daily operations."

Levak (E94T-4E –I 96052337; January 3, 1998) Management had agreed to increase the % off for leave for mail processing employees from 10 to 15%. The union sought the same increase for window clerks. The arbitrator rejected the union's proposal, "It is well established, first, that the party proposing new language bears the burden of persuading an arbitrator that legitimate and bona fide objective reasons exist for the proposal, particularly where the current language has proved workable; and second, that the new language cannot be directed where there are compelling reasons against the change, such as excess costs, an adverse impact on services or an unreasonable burden on management…the union has failed to come forward with persuasive evidence that the current language has proved unworkable."

Gold (H94C-4H-I 96072792; February 16, 1997)
The LMOU provided for 14% of the employees to be off on leave, including all categories of leave. The Union desired to delete the provision including all categories of leave. The arbitrator held that the Union did no meet its burden of proving that the terms of the LMOU are unreasonable or onerous.

Plant (H90C-1H-C 95036450; June 14, 1997) A LMOU provision regarding the number of employees off on annual leave was a percentage that included those on military leave or jury duty. The union desired to delete the provision concerning military leave and jury duty. The arbitrator agreed, misapplying an unreasonable burden standard to the Postal Service on a Union initiated impasse.

Gundenberg (B94N-4B-I 96040211; April 28, 1997) The union desired to change the LMOU to include, "When a carrier cancels any part of a week of annual leave then the rights to any days within the week revert to date of application. If more than one carrier submitted for annual leave on the same date, the senior carrier will receive preference." The arbitrator held, "The Union's current

proposal does not meet the necessary test of reasonableness nor does the Union's position outweigh the Service's contention that such a change would be an administrative morass."

Gudenberg (B94N-I 96040700; January 9, 1997) The arbitrator decided the percentage of employees to be allowed off during non-choice vacation period would be10% in lieu of the 13% Union proposal with the following explanation, " ...Employees should have some idea of when they can take vacation during the non-prime period. Management should be allowed to schedule for prompt delivery of the mail."

Zigman (F94N-4F-I 96044488; November 11, 1997) "...In the absence of any evidence demonstrating that carriers had problems getting vacation slots during applicable time periods, I found the Service's arguments persuasive that the Union failed to meet it's burden of proof in establishing that a problem existed requiring the proposed language. In point of fact, it appears that the Union's proposal represented a generic decision to increase the percentage under this local memorandum of understanding because the percentage in Danville is lower than in most other agreements.

Klein (J94N-4J-I 96040952; September 23, 1997) "...Under the facts of this case, it is clear that overtime usage is high, however, the use of annual leave at a rate of 12% during the choice vacation period cannot be isolated as the primary cause; in view of the fact that overtime usage is high in non-choice periods when fewer employees are on annual leave, the Arbitrator cannot find that the 12% provision of the prior LMOU should be reduced as requested by Management; the requirement of establishing an unreasonable burden should the provision be continued has not been met.

Sharkey (B94N-4B-I 96040928; April 18, 1988) "...Since there has been no record that the discretion exercised by Management at Orchard Park in granting and/or denying requests for annual leave during non-prime time periods has been abused, the request that a guarantee of 5% of the carriers in the installation be granted annual

leave during non-prime time periods is denied."

Suardi (J94N-4J-I 96039815; April 16, 1997) "...For all these reasons, the Arbitrator concludes that inclusion of the Union's final proposal on Item B.9 to allow two (2) carriers to take off within any one (1) week of the twenty-one (21) weeks provided in Item B.5 of the Plymouth LMOU would not have an excessive effect or impose an unreasonable burden on the Postal Service...."

Collins (B94C-4B-I 96050505; April 14, 1997) In this case the Union sought to increase the percentage of employees off during Prime-time vacation. The Arbitrator found, "...Not only is there no evidence demonstrating any need for the proposed language, but the language of the prior Local MOU was entirely adequate. Furthermore, in the present MOU still agreed to extend the prime time vacation period by three weeks...."

Zobrak (C94C-4C-I 96065677; 5680; April 24, 1997) "...The Union seeks changes to the Local Memorandum of Understanding (LMOU) which would reduce the choice vacation period and allow more employees to take vacation during the shortened choice vacation period. Placing those changes in effect in 1997 would cause an undue hardship due to current staffing at this facility. The LMOU is to be changed to grant the members of this bargaining unit the same choice vacation period and percentage of employees, including a two employee minimum, as provided letter carriers at this facility, effective with the 1998 calendar year. This will allow the Postal Service sufficient time to make determinations on staffing during the vacation periods...."

Cossack (F94T-4F-I 96052308; March 4, 1998) At issue is a Management impasse which the Union alleges they did not receive as required. The Union contended that the issue was therefore not arbitrable. The arbitrator found, "Subject matter arbitrability properly raised for the first time at the hearing. Impasse appeal not arbitrable. Appeal was not initialed or signed by Union representative; testimony uncontradicted that appeal never received

by Union local officials until day before arbitration hearing...."

Angelo (F4C-1F-I 96057108; 96057239; September 16, 1997) "...For the reasons set forth below the impasse shall be resolved as follows. Management's proposal shall be adopted regarding the maximum number of employees entitled to leave during the choice vacation period. The Union's proposal to continue the 1985 policy regarding leave usage shall be adopted. Finally, existing administrative groupings shall continue for leave purposes because the Agency has not shown the arrangement constitutes an 'unreasonable burden' notwithstanding the reasonableness of the Agency's proposal...."

Hauck (E94C-1E-I 96057212; November 3, 1997) "...Second because it has proposed a change to the LMOU and is the moving party, the Arbitrator places the burden of proof on the Union. In one corner, the Union submits direct and circumstantial evidence to document the non-choice scheduling problems faced by its membership some of whom are very senior...." "...In the opposite corner, the Service asserts with equal zeal and its own good faith investigation provided no evidence of a widespread problem as described by the Union...." "...Faced with this dilemma regarding the precise nature of the situation encountered by the parties, the Arbitrator must resolve doubt in favor of the Service. The Arbitrator rules that the Union has not presented a preponderance of evidence in support of its proposed change to Article 10, Section 3, Paragraph E of the 1994-1998 LMOU...."

Klein (D94C-4D-I 96070300; March 21, 1997) "...The Union's proposal conflicts with Article 10, Section 3.D.4 of the National Agreement in that the 'remainder' of an employee's leave 'may be granted' at other times during the year as requested by the employee. This provision is permissive in nature and has been interpreted by numerous arbitrators to mean that Management has the discretion to grant or deny such leave. Section E. of the proposal even conflicts with the LMOU provision providing for only 7% guarantee for time not chosen during the February

selection process. The Arbitrator is of the opinion that once an employee cancels his/her previously scheduled annual leave, the days at issue due to the cancellation become part of the time available for incidental annual leave which is approved/disapproved at Management's discretion based upon operational considerations and reasonableness...."

Fletcher (I94C-4I-I 96052767; May 10, 1997) "...APWU's proposed language to provide for automatic approval of incidental annual leave when the time periods to approve or disapprove are not met is not in conflict or inconsistent with the National Agreement...."

Odom Jr. (H94C-4H-I 96074393; May 21, 1997) "...It is obvious that adding TE's enlarges the numbers of the groups used in the formula to determine the number of employees allowed off and that this proposed language would be of benefit to the union. There is no clear evidence that the addition would be an unreasonable burden to the Postal Service. On the other hand, there has been no showing that the existing make-up of the formula is causing a problem—that a hardship exists that the proposed language would cure...." "...No, I conclude that the Union has not met the burden of showing the proposed language is necessary. It shall not be included in the LMOU...."

Item 10. The issuance of official notices to each employee of the vacation schedule approved for such employee.

Recommended Language: Requests for choice vacation periods will be submitted using duplicate PS Form 3971. If approved, a copy of the PS Form 3971 will be returned to the employee.

Strategies: You should ensure that the mechanism developed is neither cumbersome nor costly, depending on local conditions. This could be through an approved PS Form 3971 or through some posted vacation schedule.

Arbitrations: McAllister (I94C-1I-I 96052661; July 1, 1997)
The arbitrator inserted into the item 10 provisions of a LMOU, the following provision, "An employee who has no leave to cover his/her vacation pick/choice during the choice vacation period may be granted LWOP to cover the absence. The granting of LWOP is a matter of administrative discretion."

Vause (G94C-4G-C 96075246; March 6, 1997; Issue: Should the LMOU include a provision under item 10 providing that unscheduled annual requests for leave shall be granted up to ten percent of the employee complement? The arbitrator held that the union has the burden of proof and has failed to show that the benefits of its proposal outweigh the disadvantages.

Klein (D94C-4D-I 96069915; March 21, 1997) "...the Arbitrator finds that Management was unable to show that the change set forth in its proposal was appropriate or necessary. The Brynn Marr Annex and Jacksonville Main Office have been grouped together since 1993 and no specific problems with that situation were documented; there was no evidence to suggest that leave requests could not be approved or that approved leave had been cancelled. Furthermore, there was no evidence to indicate that all Brynn Marr clerks chose the same week or weeks to take their earned leave...."

"…There was also merit to the Union's argument that the proposal of Management would adversely impact seniority…." "…The Arbitrator finds the proposal of the Union regarding leave sections shall be included in the 1994-1998 LMOU…."

Item 11. Determination of the date and means of notifying employees of the beginning of the new leave year.

Recommended Language: A notice shall be posted on the official bulletin board not later than November 1st notifying the employees of the beginning of the new leave year.

Strategies: The strategies provided for Item 10 above will also apply here.

Arbitrations: None.

Item 12. The procedures for submission of applications for annual leave during other than the choice vacation period.

Recommended Language: Requests for incidental Annual Leave will be submitted on duplicate PS Form 3971 no earlier than 60 days in advance and no later than the Tuesday prior to the service week in which the Annual Leave is desired. Approval or denial of the request for Annual Leave will be given no later than the Wednesday preceding the Service Week for which the leave is requested.

Strategies: This applies to "procedures for submission" only. Article 10, Section 3.D.4. gives management the right to approve or disapprove annual leave in periods other than the choice vacation period. This discretion most properly rests with the supervisor responsible for the daily staffing and efficiency of the operation. Be careful not to include language that would grant incidental annual leave on an "across the board" basis through application of a percentage or any other method.

Such incidental annual leave language, if included in an LMU, will not be deemed inconsistent or in conflict, since it was merely the method agreed to by local management for applying its discretion. (National Arbitration Award, Mittenthal H1C-NA-C 59, January 20, 1986, Page 14.)

Following Arbitrator Mittenthal's Award it has been debatable whether across the board "Incidental Leave" is a mandatory item to be discussed pursuant to Article 30 of the National Agreement. The Postal Service has argued successfully that the scheduling of vacations during the non choice period and the establishment of standards as to when an employee has a right to take incidental leave, diminished the discretion granted to the service by Article 10.3.D.4. Arbitrator Mittenthal's Award did provide for exceptions to his determination that such items dealing with incidental leave were valid. He found that provisions which permit employees to select from the

non choice period before selecting from the choice period were inconsistent with the National Agreement. Arbitrator Mittenthal also made it clear that any commitment to grant annual leave is subject to cancellation for serious emergency situations. Further, his award clearly left open management's option of challenging an across the board or automatic incidental annual leave provision on the basis of unreasonable burden.

Since the Mittenthal award, there have been several regional awards in which the arbitrators found that the Mittenthal award did not require that such provisions be inserted into LMOUs that did not already contain them.

If continuation of such provisions would place an unreasonable burden on management, they may be considered as potential impasse items in APWU/ local implementation. The comments of Arbitrator Mittenthal in Case No. H1C-NA-C 59/61 are instructive: "It may be that a particular LMU clause will, due to the poor judgment of the negotiators, permit too many employees to be on leave at one time or permit employees to take leave on too short a notice. It may be that these arrangements will cause inefficiencies. But such matters can presumably be corrected through local negotiations or, if necessary, through arbitration of local impasses."

Arbitrations: Mittenthal (H1C-NA-C 59, January 29, 1986) NATIONAL CASE - "To the extent to which local memoranda of understanding provisions on leave time during the non-choice vacation periods allow employees to ignore the choice period and make their initial selection of leave from the non-choice period, such provisions are 'inconsistent or in conflict with' the National Agreement. In all other respects, these non-choice vacation period clauses or incidental leave clauses are not 'inconsistent or in conflict' with the National Agreement."

NOTE: Here, Mittenthal put to rest Management's contentions that existing language in local memoranda of understanding which led

to automatic approval of incidental annual leave was inconsistent and/or in conflict with Article 10.3.D.4 of the National Agreement. Mittenthal's basic reasoning was that local management did exercise its discretion, but did so on a broad basis when the language was agreed to during local implementation. If you have no such language in your LMU, it should by all means be avoided during negotiations. In the interest of operational efficiency, it would be better for discretion on incidental annual leave to be dispensed by the supervisor responsible for staffing the unit on a daily basis.

McConnell (Impasse 132, IA-E-81-331, March 19, 1985) "The wording of neither the National Agreement in Article 30.B.12 and Article 10.3.D.4 nor Section 510 of the ELM precludes the parties at the local level from setting a time frame within which application for non-prime time leave must be submitted and approval or disapproval given."

Howard (Impasse 134, IA-E81-338, April 9, 1985) "It cannot be said that the negotiation of time limits on the making and communicating of such decisions (on leave approval or disapproval) is in violation or inconsistent with the Agreement, provided it be clearly understood that such requests do not encompass requests for a choice vacation period."

Caraway (S4M-3U-I 900105, February 10, 1986) "It is well known that, in many instances, the USPS does not know whether the incidental leave can be granted up to the last minute of the leave request. Incidental leave is not a regularly scheduled and planned leave such as a vacation."

Schedler (S7C-3A-I 700036, June 11, 1988) In my opinion, the Union's request was reasonable. I noted that the Letter Carriers were allowed to have 10% of the Letter Carrier Craft off on incidental annual leave. I see no compelling reason to distinguish between the NALC and the APWU.

Schedler (S7C-3A-I 700023, June 16, 1988) The Employer agreed

that choice vacation can be enforced up to 13% of the employees on annual leave during the week and I find no contractual basis for refusing enforcement of 10% of the employees off on non-choice annual leave.

Marlatt (S7C-3W-I 700027; July 14, 1988) "An arbitrator is not free to ignore contract language, and I must give some meaning to the words 'up to' rather than dismissing these words as meaningless or surplusage. The only meaning I can attach to the words is that the parties have negotiated a limit on the length of time that any employee can be off on vacation, i.e., two or three weeks, as the case may be, during the choice vacation period. I would defeat this purpose if an employee had a right under the LMU to extend his or her vacation by taking incidental leave immediately before or after the vacation."

Caraway (S7C-3C-I 700044; July 19, 1988) The efficiency of the Post Office requires that the supervisor, knowing his manpower requirements, grant or deny the request for annual leave based upon 'the needs of the service.' The Arbitrator believes that this is a sound and reasonable principle for the granting of annual leave other than the choice vacation period.

Sherman (S7C-3W-I 700007; July 11, 1988) "The Union proposed that management be obligated to grant the use of annual leave so long as the schedule indicates that the percentage off at that time would not exceed 15 percent. The Arbitrator agrees in principle that management's decision should be based upon criteria such as a percentage figure, rather than pure discretion."

Marlatt (S7C-3V-I 700024; May 20, 1988) "On the basis of the Mittenthal award, I find that the provisions in the 1984 LMU at College Station which permitted a 10% incidental leave rate are not inconsistent with the National Agreement."

Massey (S7C-3V-I 700056; February 22, 1989) "Short notice leave is far more difficult to administer and this Award, based largely on

Mittenthal's decision has added some guarantees for short term incidental leave."

McAllister (C7C-4H-I 99448; June 17, 1988) "...(T)he Union would have management agree that at all times other than choice period up to 15% could be allowed off. (Under item 5, the Union proposes to extend choice period to approximately 51 weeks per year.) Clearly, in combination, the Union seeks to maximize the number of employees off in units of 5, 10, or 15 days as well as on a daily or incidental basis. This arbitrator must conclude there is simply no objective evidence to support the Union's proposal to extend the choice vacation period as proposed in item 5 or to grant annual leave, other than the choice vacation period, on a first come, first call basis. Therefore, such proposals...are denied."

Witney (C7N-4L-I 99502; May 9, 1989) "In other words, Management has the discretion to approve leave requests for the non-choice period. Though Management should seriously and in good faith consider such employees' requests, it nonetheless retains the authority to approve or disapprove. Nothing in Arbitrator Mittenthal's award deals with the requirement of Management to negotiate such a clause as contained in the Union's proposal subject of this proceeding. He did not rule or even infer such a proposal must or should be placed in an LMU. The only binding precedent of his decision is that once Management uses its discretion to agree to such a clause, it may not be removed on the grounds of inconsistency or conflict with the National Agreement."

Torres (N7C-1N-I 99012; April 24, 1989) "The record shows that one clerk is guaranteed time off during the choice vacation period, with certain exceptions. To guarantee that one employee will also be allowed time off during non-prime time seems to go against the parties' express agreement in Article 10, Section 3 'to establish a nationwide program for vacation planning for employees in the regular work force with emphasis upon the choice vacation period...' and is not in keeping with Arbitrator Mittenthal's award referred to in the 'arbitrability' portion of the award."

Klein (C7C-4K-I 99285; December 2, 1988) "This arbitrator views the Mittenthal award as upholding the validity of local agreements which address the matter of percentages of employees who can take annual leave outside the prime vacation period. However, if there has never been such a provision in a LMU, the Mittenthal award does not require management to acquiesce to a proposal which will result in inefficiency."

Bennett (S7N-3S-I 700072; June 24, 1989) "Management envisions employees walking in and announcing that they are going home on leave in view of the fact that the required percentages have not been met. Clearly, such a situation is unacceptable. Management must have advance notice of leave to plan for proper staffing."

Talmadge (Newark, NJ; Impasse Items) "The provisions of the National Agreement make it manifest that the granting of leave is optional - and not mandatory. It is clear that the language of the National Agreement provides for the right of the parties to negotiate local procedure which must be consistent with the National Agreement. The Arbitrator can not mandate restrictive language which prescribes a fixed percentage of employees off. In the final analysis the requests must be considered on a case-by-case basis with proper concern for the individual merits."

Carey (NIN-1N-C 37253, November 4, 1987) "The right of the Parties to negotiate local procedures for annual leave consistent with the National Agreement is clearly permitted. However, the fact the language of Article X Section D 4 provides that the remainder of an employee's annual leave 'may be granted at other times' makes the granting of such leave by the Service optional and not mandatory."

Terrill (Wilson, NC Impasse; May 18, 1992) "It is also critically important to remember that the wording of an LMU cannot conflict with the National Agreement, and it must be harmonious with

Postal Service manuals. The proposed change in wording fails on both counts. It would drastically reduce Management's discretion in its handling of incidental leave. That obviously conflicts with the meaning of Article 10.D.4. "May" is permissive. The Union's proposed wording for Item 12 does not allow for management discretion up to at least 10 percent of the clerk craft who have requested incidental leave. The change in wording proposed by the Union also conflicts."

Helburn (S0N-3R-I 900124, July 2, 1992) "Furthermore, the parties agree that if the board is signed for either choice or incidental leave, it is automatically granted. Article 10.3.D.4 of the National Agreement states that leave requests outside the choice period 'may be granted.' The regional awards introduced by Management all note that the language gives Management discretion in granting incidental leave. Item 12.A now removes that discretion."

Gold (H94C-4H-I 96073747; June 13, 1997)
"One Union witness suggested that his real concern is that should Management change in Brooksville, there will be no guarantee that decisions will be made fairly. That concern is speculative at best. The National Agreement places the onus on the party seeking a change to prove that there are problems in existing procedures that should be rectified. The Union simply has not met its burden in this instance."

Marx (A94-CA-I 96054212; May 9, 1997) The union proposed that there shall be a minimum of one clerk allowed annual leave during the non-choice period. The arbitrator rejected the proposal, "On the assumption that most vacation will be selected during the choice period, there is clearly not a monumental problem for mutual accommodation as to the remaining non-choice vacation."

Byars (H94C-1H-I 96076232; January 22, 1997) The arbitrator found that an incidental leave provision was arbitrable and placed

such clause in the local memo.

Fragnoli (G94C-1G-I 96075965; March 26, 1997) " The language of item 12 calls for the negotiation of procedures. The concept associated with procedures equates to a methodology. This methodology may include the use of percentages as one option, among many alternatives, for determining how the submission of incidental leave should be accomplished. Given the myriad of cases which have been cited in this arbitration, it is clear that the option of negotiating a procedure that includes percentages has been utilized in many LMOUs. However, it is not that incidental leave percentages are non-negotiable, as the union characterizes management's position, but that management elected not to negotiate percentages as part of the procedures for submission of applications for incidental annual leave...such election is within their purview given that the mandatory subject of bargaining is procedures not the permissive subject of percentages."

Gold (H94C-4H-I 9607280/6284; February 16, 1997) The union proposed to extend the submission date for annual leave in other than the choice vacation period from 31 to 90 days. The arbitrator held that the Union did not demonstrate that the current language had adversely affected employees.

Gold (H94C-4H-I 96075519; January 23, 1997)
The arbitrator added a requirement in the LMOU that 12% of employees should be allowed off work outside the choice vacation period.

Hellburn (H94C-4H-C 96073978: March 7, 1997)
" While the Postal Service is not precluded from negotiating over LMOU items which are outside of those listed in Article 30, it is not compelled to do so."

Shea (A94C- 1A-I 9605193; January 13, 1997) "It is not enough to indicate simply a desire for change to support a modification in a LMOU. A need for the proposed change must be established. The

record in this matter does not contain sufficient evidence to support a finding that the percent of employees currently eligible for annual leave during the various segments of the choice period has prevented the Service from providing employees with the amount of choice annual leave guaranteed by Article 10 of the National Agreement."

Zigman (F94N-4F-I 9604443; May 5, 1997) "...While Teves agreed to the principle of timely responses he did not wish to be tied down to a rigid formula of three days as, in his view, all responses cannot necessarily be made within that time frame...." "...In modifying the Union's proposal, I note that one would ordinarily refer a reasonable period of time to reply to requests. Therefore the inclusion of this 'reasonable response time" language will simply give more weight to that inference; thus reminding supervisors of their obligations...."

Klein (J94N-4J-I 96039762; March 4, 1997) "...In the Arbitrator's opinion, the existence of such an unreasonable policy demonstrates a compelling need to include a specific provision for granting annual leave outside the non-choice period. Requiring an employee to wait at home until morning call ins are received is arbitrary in nature and abusive of the discretionary authority to grant leave pursuant to Article 10.3.D.4 and Article 10.4.C...." "...The Union's proposal to allow one carrier to be on annual leave during the non-prime time period is not unreasonable and will not cause an undue burden in a facility with an overtime rate of less than 4%...."

Item 13. ***The method of selecting employees to work on a holiday.***

Recommended Language: The following order will be used for holiday scheduling:

- All casuals and part time flexible employees to the **extent possible,** even if payment of overtime is required.

- All full time and part time regular employees who possess the necessary skills and have volunteered to work on the holiday or their designated holiday.

- Transitional Employees (TEs), **to the extent possible,** will be scheduled for work on a holiday or designated holiday after full time volunteers are scheduled to work on their holiday or designated holiday.

- Full time and part time regular volunteer employees whose scheduled non-work day falls on the holiday and possess the necessary skills, even though the payment of overtime is required, by seniority.

- Full time and part time regular non volunteer employees whose scheduled non-work day falls on the holiday and possess the necessary skills, even though the payment of overtime is required, by juniority.

- Full time and part time regular employees who have not volunteered to work their holiday, by juniority.

Strategies: Article 11, Section 6 of the Agreement requires that as many full-time and part-time regular employees as can be spared be excused from duty on a holiday. To accomplish this, casuals and part-time flexible employees are to be utilized first, even if overtime is necessary. If additional employees are necessary, volunteer full and part-time regular schedule employees must be selected before requiring non-volunteers to work. The method for selecting such volunteers and non-volunteers is a proper subject for local implementation. Local Memoranda of Understanding which give preference to full-time volunteers over part-time flexible or casuals have been considered by management to be in conflict and inconsistent with the National Agreement. However, this argument has not been consistently accepted by arbitrators.

Be careful not to agree upon a provision that may result in unnecessary costs or prevent you from assuring that the needed operations are covered on a particular holiday, or day designated as a holiday.

Arbitrations: Fasser (NC-C-6085, August 16, 1978) This arbitrator found that the National Agreement established "three categories of employees for use in performing work on holidays, but does not spell out the order in which individual employees are to be selected within each category. This matter is to be left to local negotiations..." He further determined that "no local agreement can vary the order of selection as among the three categories set forth in Article XI, Section 6."

Gamser (MC-C-481, December 22, 1979) "It is clear that the whole thrust of the holiday scheduling provisions is to provide as many employees as possible with the holiday or their designated holiday as a day of rest. The part-timers and casuals are to be employed where possible despite the requirements in other parts of the agreement to grant priority in work assignments to the career employees."

Cohen (C8C-4M-C 14957, April 7, 1981) Article XI, Section 6, "provides that the employer is to use as many part-time flexible and casuals as is possible. The National Agreement; in Section 6, Article XI, states that after casuals and part-time flexible employees are used, employees who wish to work on the holiday will be permitted to do so."

Di Leone (C1C-4K-C 15524, July 29, 1983) This arbitrator held that full-time regulars "will not be required to work even if they volunteer to work on a holiday except or unless the casual and part-time flexible employees, who are first chosen to work said holidays, do not or cannot appear for work. Then and only then may volunteers or full-time regulars be considered."

Scearce (Impasse 8, August 11, 1983) "(Whether) the USPS is to avoid scheduling all employees in a small section during holiday scheduling is not an appropriate subject for bargaining under Article 30."

Seidman (C1C-4E-C 16108, October 13, 1983) "The result of adopting the local agreement is to deprive regular employees who do not wish to work on a holiday of the right to avoid being mandated to work when there are regular employees qualified to work who are not given the opportunity to work because the assignment is by section in the local agreement."

Nolan (S4C-3D-I 900015, June 28, 1986) "Management wants to be able to assign PTFs before using full-time employees, to minimize cost. While the PTFs, hourly rate is higher than a regular clerk's, the clerk is guaranteed eight hours of pay...Given a choice between minimizing premium pay costs and maximizing employee's premium pay earning, the neutral should choose the former."

Schroeder (S4C-3W-I 900042, September 23, 1985) "The answer is in the first sentence of Article 11.6.B which reads, 'As many full-time and part-time regular schedule employees as can be spared will be excused from duty on a holiday....' In order for this to happen, the casuals and part-time flexible must be called in ahead of the regular full-time and part-time volunteers. If a regular volunteer works he is not being excused from duty."

Caraway (S1C-3Q-C 32054, June 27, 1984) "Even if the LMU would be construed to give the full-time regular clerk a priority over holiday work, it would necessarily fall before the clear and unambiguous language of the National Agreement."

Larson (S4C-3U-I 900078, May 2, 1986) "The specific nature of item 13 excludes bargaining on when hours should be worked on holidays."

Mittenthal (H4N-NA-C 21 (2nd issue) and H4C-NA-C 23, January 19, 1987 "Management may not ignore the 'pecking order' in holiday period scheduling under Article 8."

Bennett (S7C-3T-I 700017; June 28, 1988) "As stated above, the purpose of Article 11.6.B is excusing regular employees from holiday work. Its purpose does not appear to be to afford the regular employees the opportunity for premium pay. Labor cost is a relevant factor for consideration in holiday scheduling. Management's proposal took into account giving the regulars the opportunity for premium pay. The weight of the evidence appears to lie with Management on this point. Therefore, the "pecking order" in the Management's proposal is hereby adopted as a part of the LMU."

Marlatt (S7C-3T-I 700005; May 8, 1988) "It (the National Agreement) says that the full-time employees will not be required to work until all the casuals and PTFs are utilized to the maximum extent possible. It does not say that full-time employees will not be allowed to work until all the casuals and PTFs are utilized to the

maximum extent possible."

Martin (C7C-4G-I 99273; January 6, 1989) "It is obvious (at least to me) that Article 11.6.B. is a grant of right to regularly scheduled employees, as opposed to a restriction upon them. Regulars are to be excused from duty on a holiday, not forbidden to work. Management essentially substitutes the word 'forbidden' for the word 'excused' in the first sentence. The words simply do not support the claim of the Postal Service that regulars are barred from working until all others have been scheduled."

Wooters (Merrick, NY, August 3, 1992) "The effect of the Union proposal would be to require the payment of premium pay even before employees available to work on a straight-time basis are solicited. The validity of such a proposal is questionable given the language of part 6 which provides for premium pay for employees who volunteer to work on the holiday or designated holiday. In addition, it cannot be assumed that there will never be any volunteers. When there are such volunteers, the National Agreement requires that they be allowed to work before any non-volunteers. Under the Union proposal, it is not clear that an employee who wishes to work on his holiday or designated holiday would be permitted to do so unless he could find another employee to swap with."

Render (WOC-5R-I 90169, January 5, 1994) "Based on the provisions of the contract, and the arguments of the representatives of the parties, the Arbitrator has concluded that the Union's proposal to give full time regular employees volunteering to work a holiday or non scheduled day the right to decline such assignment if the starting time is more than 2 1/2 hours different from the employees' regular starting time is in conflict with the National Agreement and is not negotiable under article 30 of the National Agreement."

Stallworth (E94C-1E-I 96052152; September 10, 1997) " Because the Service retains the right at all times to challenge language that is in conflict with the National Agreement, the Arbitrator concludes

that the Service did not waive its right to challenge Item 13.A as 'inconsistent or inconsistent" by failing to make a fully developed argument at the local level…The Service argues that proposed Item 13.A.5 is in conflict and inconsistent with the language of Article 11.6.B (of the National Agreement), because Article 11.6.B requires overtime for PTFs and casual employees only, not regular employees, when assigning holiday overtime…The Undersigned Arbitrator concludes that this provision of the National Agreement is not in conflict with or inconsistent with proposed Item 13.A.5."

Ables (I94C-4I-C 96051061; April 15, 1997) "Local Management argues that the only real difference between its proposal and the Union's is the Union's attempt to gain more holiday work opportunities for full-time and part-time regular employees by placing them ahead of casuals and part-time flexibles. Management claims this would entail an increased cost due to the higher wage levels for full-time regulars…Generally speaking, Management's cost effective argument would be most persuasive in this type of impasse dispute. But, the fact is local Management has ignored the pecking order and incurred the very costs it now seeks to avoid…local Management's defense is meritless and, in fact, has no probative value."

Gudenberg (B94N-4B-I 96040206; January 9, 1997) "The Union has not met the burden of justifying the need for a change to the current provision, known as Item #13, in the Local Memorandum of Understanding with regard to Article 11 holidays. Therefore the provision in the previous Local Memorandum of Understanding will continue in force and effect."

Benn (I94C-1I-I 96054807; April 20, 1997) "I disagree with the Service's argument that a pecking order negotiated at the local level which places regular volunteers before casuals and PTFs for holiday scheduling is 'inconsistent or in conflict with' Article 11.6.B of the National Agreement."

Cossack (F94C-4F-I 96057132; February 11, 1998)

"The Postal Service may call the legitimacy of any LMOU provision into question, and refrain from honoring it. However, as National Arbitrator Mittenthal articulated, the Postal Service bears the burden of proving that the challenged LMOU provision is, in fact, inconsistent or in conflict with the National Agreement...The national negotiators expressed their preference for placement of TEs in the pecking order, but allowed local negotiators to override their expressed preference. In the instant case, since TEs had never been included in the holiday pecking order at Concord, there was no agreement between the parties about their proper placement which might supercede the preference expressed by the national negotiators. When TEs became a part of the Concord workforce, they were placed in the holiday pecking order as the Postal Service has proposed here. I am persuaded the Postal Service proposal more closely conforms to the expressed preferences of the national negotiators."

Plant (H94C-4H-I 96075254/96075255; March 21, 1997) The arbitrator held that the Union proposal to allow an employee having leave the day before or after a holiday to be exempt from holiday scheduling would restrict management from complying with Article 11 of the National Agreement.

Fletcher (I94C-1I-I 96052852; March 26, 1997) The arbitrator held that an LMOU addendum negotiated outside of the 30 day local implementation period was valid. He found that the Postal Service's reliance on the Mittenthal award to be misplaced. Mittenthal acknowledged that over the years local parties made LMOU changes by mutual agreement outside of the implementation window and that such is permissible under the National Agreement.

Angelo (F94C-4F-I 9607256; December 21, 1997) "...This means that the LMOU is inconsistent with the National Agreement. The latter requires that Transitional Employees be scheduled for holidays at a certain point in the pecking order while the LMOU does not. Therefore the language of the LMOU is in conflict with the National Agreement and cannot be maintained...."

Item 14. Whether "Overtime Desired" lists in Article 8 shall be by section and/or tour.

Recommended Language: Overtime desired lists for bargaining unit employees will be administered by craft as follows:.

Letter Carriers - by zone.

Strategies: Item 14 of the National Agreement allows local implementation on "Whether 'Overtime Desired' lists in Article 8 shall be by section and/or tour."

Item 14 has clearly defined the parameters for bargaining as being solely for the purpose of establishing Overtime Desired lists by section and/or tour.

Many local memoranda of understanding have incorrectly gone far beyond this intent. Some call for establishment of separate lists for pre-tour, post-tour and off-day overtime. This is in conflict with Article 8, Section 5.A. of the National Agreement, which reads, "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." An "Overtime Desired" list means just that - one list. Further, the pre-tour and post-tour lists cannot be administered without violating Article 8, Section 5. Therefore, such lists are in conflict with the cited section. Some local memoranda establish the "pecking order" of overtime assignments for those personnel required to work overtime after exhausting the Overtime Desired list. Section 5. D. of Article 8 provides for the scheduling of mandatory overtime, which precludes the necessity of going to each employee not on the Overtime Desired list and asking if he/she wants to work overtime that day. This practice established by some local memoranda is inconsistent with the cited provisions.

Article 8, Section 5.C.1.,

Advance notice requirements contained in several local agreements pertinent to overtime are inconsistent and/or in conflict with the National Agreement. Arbitrator Robert F. Grabb's decision for the St. Paul, Minnesota Post Office, dated May 5, 1986, (Case No. C4C-4C-I 99016), on an impasse item involving advance notice for overtime, ruled the issue as non-negotiable under Article 30. Arbitrator Grabb outlined both sides of the issue in this award, giving supportive reasons for his decision. He states on page 12 of the award:

"(The) need for overtime is something which may come up on very short notice brought about by something local management can not or does not foresee. The need can arise during the last hour of a required employee's work day and if the "Overtime Desired" list is depleted at the time, local management under the overtime notice clause of the LMU here in question, may not be able to find anyone who will volunteer. It could avail itself of the reverse seniority provisions of Section 8.D. of the National Agreement. The LMU clause has effectively emasculated Section 8.D. This is the basic issue before the Arbitrator. The LMU clause must, then, be found to be in conflict with the National Agreement since it destroys management's rights under Section 8.D."

In your bargaining you should avoid reaching agreement on any such new language.

You must conceptualize to determine what problems or costs may result from the provision you have in mind. Desirability as to section and/or tour should be discussed with operations.

Provisions applicable to one craft may not be applicable to other crafts.

NOTE: If the Union demands language which may be questionable or inconsistent in light of the Article 8 language, contact your Area/District coordinator for guidance. Do not bargain something you

don't understand. Multiple lists, e.g., PRE-TOUR, POST-TOUR, NON-SCHEDULED DAY, are not contemplated by this language.

Arbitrations: Klein (C1C-4B-C 15229, August 29, 1983) "Overtime assignments will be rotated within a tour, but there is no contractual requirement to rotate overtime among the various tours."

Nolan (S4C-3P-I 900017, July 3, 1985) "Management's primary objection to creating another overtime desired list is the difficulty of administration. First-level supervisors already make mistakes using a single list. In the absence of any compelling reason not to use separate lists, the Union's proposal is a reasonable one."

Schroeder (S4C-3W-I 900019, July 12, 1985) "I therefore conclude that the National Agreement specifies only one overtime desired list."

Duncan (S4C-3D-I 900032 July 22, 1985) "It does appear that having a single category of overtime would be easier to manage than a list with 3 categories consisting of before tour, after tour, and days off."

Shipman (S4C-3W-I 900024, August 7, 1985) "I am persuaded to grant the Union's request for the continuation of the 3-tier overtime provision of the LMU. I do not believe that the provision is inconsistent or in variance with the terms of the National Agreement...."

Shroeder (S4C-3W-I 900011, August 12, 1985) "It seems clear to me that the (LMU) provides for one overtime desired list for each tour or station or branch, prepared so that employees can indicate their desire to work on regular days only, or on days off only, or both. I can find nothing...which prohibits...."

Shipman (S4C-3W-I 900014, August 8, 1985) "The Union's proposed...provision makes for greater equity by enabling the employee to determine for which of the 1 or more of the 3 types of

overtime he/she is able to volunteer."

Jewett (S4C-3F-I 900021, September 13, 1985) "There is nothing in the labor agreement that prevents the continued use of the multiple overtime desired lists."

Klein (C4C-4F-I 99043, December 9, 1985) "It is the arbitrator's opinion that the proposal as submitted by the Union (for more than one list) would be difficult to implement, and the difficulties in administration could result in an increased number of problems."

Parkinson (E4C-2F-I 50080, December 21, 1985) "The parties' national officials further lent credence to the use of multi-column overtime lists when it was agreed 'that local offices may discuss multiple overtime desired lists during the current local implementation process with a view toward local resolution of the issue.'"

Schedler (S7C-3T-I 700031; June 22, 1988) " I do not agree that a 3 tier ODL would add to the National Agreement. The purpose of an overtime desired list is to encourage employees to volunteer for overtime. An overtime desired list with before tour, after tour, and off day separations would be more compatible for employees with other (outside) responsibilities."

McAllister (C7C-4H-I 99454; June 17, 1988) "I agree with management's assertion that the national agreement does not provide for conditional signing of the ODL. Either an employee signs the list or does not. A LMU cannot be consistent with the National Agreement and at the same time provide that an employee may choose whether or not he/she will work overtime before or after a tour or on off days."

DiLeone-Klein (Topeka, KS, November 16, 1992) "As it relates to multiple overtime desired lists, the Union maintains that there is no language in the National Agreement prohibiting negotiations to provide the vehicle for designating before tour, after tour and non-

scheduled day preferences. Arbitrators have consistently up held the Union's right to negotiate multiple overtime desire lists, says the Union."

Talmadge (Newark, NJ Impasse Items) "Arbitrator McAllister posits the notion that the National Agreement does not provide for 'conditional signing of the Overtime Desired List.' Case # C7C-4H-I 99448 (1988). There is a sound basis for the common sense necessity of accommodating Article 8.5 with Article 3, to enable the Service to conduct efficient operations utilizing its personnel and facilities in a manner intended to best serve its customers and its obligations."

Frost (Impasse # 4362, NALC San Antonio, Texas; October 31, 1997) "The Union wishes to have the OTDL list posted by tour. The USPS wants to leave the language as it was in the 1990 LMOU...The Union failed to show it is either more efficient or more reasonable to assign overtime by tour. And, the Union has failed to prove that the national agreement has been violated, the LMOU will remain as it is, 'by tracking strings"

Fletcher (I94C-1I-I 96044002; July 25, 1997) "Much of the losing argument of the Postal Service dealt with the expense associated with a requirement that volunteers be used before draftees. Further, the Service argued that if a volunteer was bypassed and a draftee was used instead, it would be liable for payment of time claims. Arguments in this vein are really arguments that retention of a provision would represent an unreasonable burden to the USPS. This contention was never advanced at any step below. It is not supported with any data whatsoever, merely assertion. Accordingly it cannot be accepted here."

Benn (I94C-1I-I 96054806; April 15 1997) "However, the fact that such provision was in prior and current LMOUs coupled with the fact that Management now seeks to remove the provision from the LMOU places the burden on the Service to demonstrate that placing

PTFs in the pecking order is in conflict or inconsistent with the National Agreement. I find that the burden has not been met…In sum then, the fact that the parties at the local level have previously agreed to place PTFs in the pecking order for assignments of overtime is not inconsistent or in conflict nor does it vary the terms of Article 8.5. There is simply no specific provision in that Article which poses such an inconsistency, conflict or variance."

Angelo (F94C-1F-I 96057131: September 17, 1997)
"The LMOU presently provides that an employee on an ODL may be excused from overtime for any reason four times during the quarter without having their names removed from the overtime desired list. The union seeks to increase this entitlement to eight times a quarter…As it is I am obligated to enforce the terms of the National Agreement. As the Supreme Court stated in the Steelworkers Trilogy, arbitrators are obligated to follow the intent of the parties and not impose their own brand of industrial justice. For the reasons stated, the language of the LMOU is inconsistent with the National Agreement."

Caraway (H94C-4H-C- I 9607281/96074125; February 19, 1997)
The arbitrator ruled it reasonable for PTF vacations to include week ends and changed the local memo to read, "Choice annual leave shall begin on Sunday and extend through Saturday for Part-time flexible employees." The union proposed under item 14 that before tour, after tour and non-scheduled day overtime desired lists be established. The arbitrator rejected this, "Article 30 in paragraph 14 limits the question of overtime desired lists to section and/or tour. The union proposal would modify this adding three specified categories. This would be in violation of the National Agreement."

Marx (A94-C-A 1960553351; May 9, 1997) "The addition proposed by the Union for Item 14.A of the Princeton LMOU is not acceptable, but the parties are urged to consider and implement a variation of the language as discussed in the opinion." The opinion discusses having a non-scheduled day overtime desired list.

Parkinson (D94C-1D-I 96070332; March 17, 1997) The arbitrator incorporated into a LMOU a provision for two overtime desired lists, before and after tour and non-scheduled workday.

Roumell (J94C-1J-I 96051055; January 31, 1997) The arbitrator found that an incidental leave provision was inconsistent with Article 10.3.D.1 and 10.3.D.2 of the National Agreement in that such provision allowed the employees to take more than the successive number of days as outlined in the National Agreement.

Benn (I94-1I-I 96054921; July 31, 1997) "...As argued by the Union and because of well established precedent, it is not inconsistent or in conflict with the National Agreement to have LMOU language which has PTFs and casuals in a pecking order for overtime assignments. That portion of the Union's motion for summary judgment is therefore granted...."

Klein (I94C-4I-I 96051046; March 5, 1997) "...The following language shall be included in the Local Memo. Item 14: A. The overtime desired list shall be by sections as defined in Item 4. B. One overtime desired list shall be maintained with separate categories identifying volunteers for non-scheduled day, before tour and after tour; C. On an employee's last regular workday prior to his/her scheduled weeks of annual leave, the employee can submit a PS Form 3971 requesting to be excused from after tour overtime for that workday. The request may be approved based on the needs of the service.

Shea Jr. (A94C-1A-I 96051996; February 1, 1997) In this case, the Union requested two overtime desired lists classified by type of overtime. The Arbitrator found, "...In consideration of the analysis of the record, the Arbitrator determines that it does not establish the need for the Union's proposal to resolve any related difficulties which may have existed in the past, currently exist, or which may be predicted with a major degree of certainty to occur during the 1994-1998 contract term.

Fletcher (I94C-4I-I 96041265; February 24, 1997) In this case, the Union challenged existing LMOU language as being in conflict or inconsistent with the National Agreement since the provision conflicted with a 14 year old Step 4 pre-arb decision. The Arbitrator found, "...In this case it is obvious that the challenged language is inconsistent with the National Agreement. 'Inconsistent' is, by general definition, a 'lack of harmony' or something that would be 'contradictory.' The Step 4 pre-arb settlement dated January 13, 1982, restricted pool and relief clerks to placing their names on other than the OTDL at the pay location where domiciled. The challenged LMOU item does not contain this restriction. Also, the Step 4 pre-arb settlement provided that Pool and Relief clerks would not be offered overtime in units other than where their names were listed until after the OTDL for that unit was exhausted. The challenged LMOU item permitted Pool and Relief clerks to be called for overtime before such OTDL's were exhausted. In these two instances Item 14 of the LMOU evidenced a lack of harmony with the National Agreement. Furthermore, in actual application Item 14 is inconsistent with the intent of the National Agreement as is evidenced by the teachings of the Step 4 pre-arb settlement, quoted above. As such Item 14 cannot remain in effect during the term of the 1994-1998 National Agreement...."

Loeb (C94C-4C-I 96065709; April 27, 1997) In this case the Arbitrator adopted the Union's request for multiple overtime desired lists with the following explanation, "...However, the Service's decision to make similar proposals part of the local memorandums of understanding in two other areas means that Management was secure enough in its belief that such proposals would work at those facilities that it had no hesitancy in putting them into place there. While those facilities may not be identical to the Woodbury, New Jersey Post Office, the undersigned is convinced by the testimony of the Union's witness that they are similar enough in composition and operation that if multiple overtime desired lists work in those facilities thy will work in the Woodbury, New Jersey Post Office too.

Render (E94C-1E-I 96052387; January 8, 1998) In this case the Union requested that a LMOU provision that barred travel on overtime be removed. The arbitrator found, "...the Arbitrator has concluded that the 'no travel on overtime' language is invalid because it violates section 438.132 of the E&LRM...."

Render (E94C-1E-I 96052372; January 8, 1998) "...In order for the Arbitrator to order the establishment of a new subsection as requested by the service, it is necessary for him to conclude that the continuation of the existing provisions of the local memorandum are an unreasonable burden to the Service. The Arbitrator is satisfied that the Service as carried its burden on this point...."

Render (E94T-1E-I 96052382; January 7, 1998) This case involved a Management proposal for the Choice vacation period that would not accommodate the employee entitlements. The Arbitrator found, "The facts are virtually undisputed that the adoption of the Service's proposal would put the parties in violation of the National Agreement. Article 30 of the National Agreement requires local memoranda to be consistent with it. Whatever the Arbitrator may think about training for ET's and the desirability of avoiding excess overtime, the Arbitrator simply cannot in good conscience find that there is consistency between the National Agreement and the local memorandum of understanding as proposed by the Service. That leaves the Arbitrator with no choice other than to declare that the union's proposal become the current memorandum of understanding...."

Item 15. The number of light 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 work force will be adversely affected.

Item 17. The identification of assignments that are to be considered light duty assignments within each craft represented in the office.

Recommended Language: No recommended language, since the availability of light duty assignments varies by craft and installation.

Strategies: Your discussion must stay within the purview of Article 13 of the National Agreement; such as the following:

1. Don't bargain assignments across craft lines.
2. Avoid identifying a specific number of assignments.
3. Assignments may consist of less than eight (8) hours.
4. Assignments should not be made to the detriment of bid positions.
5. The assignment schedule does not have to be the same as the previous duty assignment.
6. For temporary assignments, rather than identify specific assignments, we should attempt to make modifications to the light duty employee's existing duty assignment.

Therefore, the management spokesperson should be thoroughly familiar with the following provisions of Article 13:

Sections:

1.A. Part-time fixed scheduled employees are a separate category.

1.B. Implementation requirements subsequent to local implementation.

2.A. Light duty requests to be supported by medical documentation.

2.B. It is imperative to understand the difference between temporary (Article 13.2.A.) and permanent (Article 13.2.B) light duty assignments and the rules pertaining to each.

3.A.B.C. Management's obligation to explore ways and means to establish light duty assignments.

4.A Qualification requirements.

4.E. Additional Position authorization.

5. Craft crossing.

It is imperative that all members of management's bargaining team understand the difference between our permissive contractual obligations applicable to light duty (injured off duty) and our legal OWCP obligations regarding limited duty (injured on duty).

Do not agree on light duty assignments in one craft when bargaining with another craft; e.g., the APWU cannot bargain light duty assignments in the Mail Handler Craft. Like all facets of bargaining, operating problems and cost considerations must be thoroughly reviewed.

It would really be a matter of local preference as to whether to agree to a set number of light duty assignments or to establish some way to determine the types of duties that will be considered light duty. However, be aware that where a number is agreed to, the Union will probably be seeking to increase that number in the future.

The possible impact of automation should be considered as there may be a serious impact on the amount of light duty work available during the time frame covered by newly negotiated LMOUs.

Since installation heads are contractually required to show the greatest consideration for Full-Time Regulars and Part-Time Flexibles requiring light duty without seriously effecting the production of the assignment and without excessively increasing the hours used in the

operation, emphasis should be placed on bargaining the types of duties that will be considered light duty, rather than the number of assignments, especially in smaller offices. Then the number of assignments available will depend on the availability/volume of work and as the duties diminish, so does the assignment without there being an implied guarantee.

The installation head is to always retain the authority to determine the type of assignment, the area of assignment and the hours of duty of all light duty assignments, made within the documented medical restrictions.

Arbitrations: Cohen (C8V-4J-19687, January 22, 1982) "The parties have negotiated a (LMU) which states that there shall be at least 6 light-duty assignments. Nothing prevents the installation head from giving more than 6 light-duty assignments."

Walsh (W1C-5C-D 24110, April 29, 1985) "Absent definitive language in the LMU requiring management to establish a set number of permanent light duty assignments, the Service is given considerable latitude to determine when light duty requests will be granted."

Gentile (W4M-5B-153, November 9, 1985) "...Prudence would strongly indicate that the same relationship continue between (an increasing) employee population and the number of light duty assignments."

Marlatt (S4C-3T-I 900086, August 31, 1985) "A reopener clause (on the number of light duty positions) will be added to apply to future changes in manning levels."

Rose (Impasse 45, December 27, 1979) "The (Union's) proposal is regressive because it moves an employee who is presently working full time on light duty to part time."

McAllister (C4C-4H-I 99112, October 25, 1985) "Article 13.4.D

clearly and exclusively reserves such light duty decisions to the installation head. Accordingly, the proposal to add new language to the local memo of understanding creating a Union/management light duty review committee is in conflict with the National Agreement and therefore, an inappropriate subject of local negotiation."

McAllister (Impasse 94, December 18, 1984) "With respect to the (Union's proposal) to...have the employee's physician determine the period for each light duty assignment, we again note that Article 13.4.D invests that authority in the installation head."

Caraway (Impasse 58, September 12, 1979) "Such a proposal would have the effect of the Postal Workers' Craft negotiating terms and conditions binding on other crafts without their consent."

Walsh (Impasse 76, August 29, 1983) "There can be a benefit (accepted by the arbitrator), as the Union contends, to setting forth with particularity the type of work that can be properly classified as light duty."

Gentile (W4M-5G-I 060, April 7, 1986) "The...language proposed by the Union...clearly cuts across craft lines, and for all practical purposes attempts to create assignments consisting of other craft duties."

Harvey (S0C-3E-I 900040, July 13, 1992) "The thrust of the language of the above cited award is of the intended use of informed discretion by Postal authorities in carrying out the 'liberal' language of Article 13. I find the language of paragraph 5 of items 15, 16 and 17 of the LMU inconsistent with Article 13 in that it substitutes a rigid formula, apparently rigidly applied by supervisors and other management officials in denying light duty assignments without the individual attention to the request mandated by the provisions of Article 13. Is the current language easier to apply? I am sure it is but that does not justify its continued maintenance if it crowds out the language and intent of Article 13. I

find that it does and for that reason, the Union proposal is adopted as the award in this matter."

Moberly (SOC-3E-I 900051, July 31, 1992) "Prior to arriving at the above determination, the Arbitrator carefully considered the National Award of Arbitrator Mittenthal cited by Management (No. H1C-4E-C 35028, 1987). That case did not involve the current issue, but rather involved a holding that employees on light duty assignments were not guaranteed eight hours a day or forty hours a week, and that Management could send such employees home due to lack of work, even while retaining limited duty employees for their full hours. Nothing in the instant decision contradicts that holding. Today's decision only removes unnecessarily restrictive local requirements which bar employees requiring light duty from being considered even for those light duty assignments which they can perform. Nor does this case contradict the differentiation between light and limited duty noted by Arbitrator Mittenthal."

Lurie (S0N-3W-I 900111) "The Arbitrator agrees with the Postal Service that the Union's proposal is in conflict with the National Agreement both because it shifts the burden of submitting written notification from the returning employee to the unit supervisor, and because it mandates light duty, regardless of whether there is a light duty assignment available. Under Article 30.B a local memorandum of understanding may not be inconsistent with or vary the terms of the 1990 National Agreement."

Simaitis (Philadelphia, PA, November 9, 1992) "Applying Arbitrator Mittenthal's reasoning to this dispute, it is evident that Article 13, Sections 2,4 and 5 of the LMU are not inconsistent or in conflict with the National Agreement. Local negotiations on light duty assignments are called for in both Article 13 and 30 of the National Agreement. In negotiations, Management agreed to the procedure it would apply when exercising its right to make light duty assignments. Consistent with what it viewed to be good business and past practices, it agreed to apply standards such as 'to the extent that there is adequate work available,' and by 'reasonable

efforts' and 'every effort' when making light duty assignments. Management's agreeing to these constraints cannot be considered as inconsistent and in conflict with Article 3 of the National Agreement"

Collins (B94C-1B-I 96054170; February 24, 1997)
"The Union sought to continue in the parties' 1994 Local Memorandum of Understanding ("MOU") the prohibition in the 1991 MOU that 'non APWU bargaining unit employees shall not be assigned work on tour two to the detriment of any APWU bargaining unit bid position, light duty assignment or other temporary assignment.' The Postal Service contended that the aforesaid provision was inconsistent with the National Agreement and regulations protected thereunder. The arbitrator found that the language at issue was inconsistent with the National Agreement in that it was at variance with the Employee and Labor Relations Manual."

Axon (F94N-4F-I 96045177; February 11, 1998)
"Management needs to maintain flexibility in the assignment of light duty work in order to maintain the efficiency of the operation. Light duty work is not guaranteed... Adoption of the union's proposal goes against the intent of the National Agreement because it makes assignments before a determination is made on whether work is available that the employee can perform."

Collins (B94C-1B-I 96054169; February 24, 1997) "...The Union sought to continue in the parties' 1994 Local Memorandum of Understanding ('MOU') the requirement in the 1991 MOU that 'except where operationally impossible, all light/limited duty assignments shall maintain the employee's bid or other assigned hours and non-scheduled days.' The Postal Service contended that the aforesaid provision was inconsistent with the National Agreement and regulations protected thereunder. The Arbitrator found that the language at issue was inconsistent with Article 13, Section 3C and 4D of the National Agreement. The Arbitrator ordered that the language at issue not be included in the 1994 Local

MOU...."

Item 18. The identification of assignments comprising a section, when it is proposed to reassign within an installation employees excess to the needs of a section.

Recommended Language: For purposes of applying Article 12 of the National Agreement, the entire installation shall be considered a section.

Strategies: It must be remembered that, in this regard, the definition of a section relates only to permanent reassignments.

It is in management's best interest to have the entire installation as a section. If this is the case, Article 12 Section 5/6.C.4 would have no application and excessing from a section would not occur.

It is generally in management's interest to negotiate local memorandum language which permits reassigning those employees excess to the needs of a section who actually encumber those assignments which are no longer needed, or a section definition which "pinpoints" the affected assignment(s). This can be accomplished in either of two ways:

1. The section is defined as the entire installation (see Article 12.5/6.C.4.a); or,

2. Sections are defined as narrowly as possible.

Arbitrations: McAllister (C4C-4C-I 99098, October 8, 1985) "The Union insists it has a right to negotiate sections which are defined by occupational group and level, as well as tours. This arbitrator is unable to agree...and holds that to do so would vary the terms of the National Agreement."

Zobrak (Lancaster, PA; June 24, 1992) "The Union has made a strong argument citing the need to protect senior employees from

disruptive moves when excessing takes place. The Postal Service made an equally strong argument that the Union's proposal was too costly and disruptive. It is apparent that the Parties' concerns could be addressed by implementing the reassignments by tour and section. In this manner, the disruption to senior employees will be minimized, as will be the costs and disruptions to operations." (See award. Sections break down along position designation and skill lines.)

Olson (F94N-4F-I 96045220; November 14, 1997) The Union desired to change the sections identified for purposes of excessing. "There was no evidence furnished by the Union to establish that the present practice of reassigning carriers has caused any significant harm or that such reassignments are unfair."

Item 19. ***The assignment of employee parking spaces.***

Recommended Language: Parking spaces in excess of USPS needs will be available on a first come first serve basis.

Strategies: You are cautioned not to bargain on total parking spaces, but only on those existing spaces excess to the needs of the Postal Service. Keep in mind the space requirements for postal vehicles, supervisors, handicapped, etc. You must be reasonable in bargaining this item, and remember that spaces often become available as tours change and other craft employees finish their work day. Be aware also that various local jurisdictions are enacting legislation to implement the Clean Air Act. The Postal Service is subject to this legislation, which often mandates trip reduction efforts, including preferential parking for van/car pools and disincentives for use of single person vehicles. As of November 15, 1992, states with severe ozone or serious carbon monoxide problems must have revised their implementation plans to include transportation control measures to offset growth in emissions, including employer trip reduction for work-related vehicle trips and increasing employee car pooling by more than 25 percent in facilities with more than 100 employee.

It is important that you not negotiate parking base on ***number of parking spaces.*** E.g., if you negotiate ten spaces for Management and with the remaining spaces available on a first come first served basis, should the need arise to reserve additional spaces it would require you to renegotiate this item. As you will note from the recommended language the number of spaces is left open based on the needs of USPS.

Arbitrations: Scearce (Impasse 19, February 20, 1980) "The use of on-premise parking is a privilege and not a right."

Rose (Impasse 38, January 17, 1980) "To reserve a number of parking spaces for specific employees, would give the appearance of arbitral endorsement to the Union spokesperson's statement that

'the management's obligations to the other craft is of no concern to us.'"

Naehring (S4C-3W-I 900084, August 31, 1985) "The record does not show that the elimination of reserved parking spaces for certain management personnel would solve the parking space shortage."

Erbs (C4N-4G-I 99083, October 31, 1985) "...That bargaining and the ultimate presentation to arbitration of an impassed item would require a showing as to the reasonableness of the request in light of the National Agreement and the needs of the Service. The mere fact that bargaining over parking is allowed does not require that the bargaining result in a change."

Schroeder (S4C-3W-I 900049, September 30, 1985) "I agree with management that an agreement for parking for APWU employees is not desirable, since others are also involved."

Eaton (W4C-5F-I 18, October 29, 1985) "The Union has been unable to point to any provision in the National Agreement (beyond 'assignment') which would authorize the arbitrator to require the USPS to create, or even to pay for employee parking on premises which it does not control."

Dennis (N1C-1K-C 23659, December 14, 1985) "While the employer has a right to set aside some reserved spaces, based on functional needs, it cannot support the argument that all non-bargaining unit employees require reserved parking."

Dash (Impasse 118, November 27, 1974) "If the arbitrator were to direct that a Local Joint Management Committee be set up,...for the three limited crafts in this case...(without consideration for the other crafts), he would be bringing into effect a LMU inconsistent with...the National Agreement."

DiLeone-Klien (Topeka, KS, July 10,1992) "Although Management contended that the parking spaces currently designated for the local

Union were needed to accommodate visitors, vendors and contractors, etc., it was not shown that other alternatives have been explored or that other personnel have been asked to park in the lots at the end of the main building. It was not demonstrated that allowing the Union to continue utilizing the four parking spaces in question represents an 'unreasonable' burden on Management."

Stephens (S0N-3V-I 900163; July 27,1992) "Although some Post Offices do allocate parking spaces for Union officials, these are usually the very large ones. The Union at Lake Jackson has shown that it would be helpful if spaces were designated for Union officials, but it has not shown a need sufficient to change the LMU, thus the Union's item 19 proposal shall not be adopted."

Cossack (F94C-4F-I 96061755; June 5, 1997) The practice at the office was to assign available parking on a seniority basis, irrespective of craft designation. NALC desired the greater share of parking spaces be designated to city carriers. The arbitrator agreed but stated that the status quo must prevail unless and until APWU requests negotiations on this subject.

Fletcher (I94C-1I-I 96054887; March 10, 1997) The APWU proposed that reserved parking spaces for most management personnel be given up and be for all employees on a first come first serve basis. "The arbitrator is not persuaded that reserving parking spaces for key personnel is not a legitimate consideration of Management...APWU has not demonstrated that insufficient parking is available within a reasonable distance from the work site."

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 total choice vacation plan.

Recommended Language: Annual Leave approved to attend Union activities prior to the granting of choice vacation period will be counted in the percentage provided for in Item 9/H of the memorandum.

Strategies: Management's position on this item must be consistent with its position on the duration of the choice vacation period and the numbers of employees permitted off each week.

If you have retained a reasonable provision on the numbers of employees off at one time, the question of charging or not charging annual leave for Union activities to the choice vacation period may become a minor concern.

Arbitrations: Caraway (S4M-3W-I 900118, January 9, 1986) "The Union counter proposal is adopted. The LMU shall include as item R the following: 'The determination of annual leave to attend official Union activities requested prior to determination of the choice vacation schedule is not to be part of the total choice vacation plan.'"

Item 21. Those other items which are subject to local implementation as provided in the craft provisions of this Agreement.

Recommended Language: Normally, there are only a few management proposals made regarding the provisions within the craft articles that are negotiable. For example, it would be in the best interest of USPS to propose language for Article 37 Section 3.A.5. If nothing is in your local memorandum, management would be require to repost a full-time duty assignment with a change in starting time in excess of one hour. However, numerous LMUs provide for two hours with some providing even more time.

Strategies: You should carefully read each craft article and become familiar with those sections which are specifically enumerated as proper for local implementation. See the earlier section of this document for a listing. If you have any doubt as to whether a particular section is proper for local implementation, contact the appropriate Labor Relations Office immediately.

Arbitrations: Odom (G4-1G-I 96069783; April 21, 1997) "The Union proposal begins by requiring Management to solicit volunteers within ten days after learning of the need for detail. It requires applicants for the detail to make their application not later than 10 days before the start of the detail…the Union as the party proposing to change or add to the contract language has the burden of proof to show that the change or addition is necessary and appropriate…This prompts the question, what problem does this proposal seek to solve? The answer is that there has been no showing that a problem exists. This means that there is no showing that the proposed change will address and resolve an existing problem. In other words, the Union has not demonstrated a need for the new language change."

McAllister (I94C-4I-I 96051076; May 13, 1997) The arbitrator held that a union proposal for day to day seniority was inconsistent

and in conflict with Article 37.3.F.10 and Article 3 of the National Agreement.

Parent (F94N-4F-I 96045126; December 23, 1997) "...The five impasse awards (and the awards cited therein) all support the Union's position that a trial period for bidders, set forth in a Local MOU, is not inconsistent or in conflict with Article 41, Section 1.c.2 and 3. I agree with the reasoning set forth in these awards. All of the prior impasse arbitrators held that since Article 41 was silent on the issue of trial periods and on the issue of retreat rights, the language of the Local MOU could not be inconsistent or in conflict with the National Agreement...."

Item 22. Local implementation of this Agreement relating to seniority, reassignments and posting.

Recommended Language: Management should not make proposals for this particular item.

Strategies: Generally, all matters affecting reassignments, seniority and posting which are proper for local implementation are set forth in the various craft articles. Strategies in Item 21 above are also applicable. You should keep the key word "implementation" in mind when dealing with this item.

If you feel the Union is demanding items already demanded at the national level, e.g., part-time flexible work/pay guarantees, provisions on loaning of part-time flexible to other installations, further restrictions on overtime, granting employees additional leave for perfect attendance, child care, etc., contact your appropriate Labor Relations Office immediately for proper guidance. In regard to seniority matters, you must carefully think through the impact that any change would have on operations. For example, agreement to day-to-day seniority can cause serious operational problems. If such proposals are presented local bargainers should contact your appropriate Labor Relations Office immediately.

Arbitrations: McAllister (C4C-4K-I 99003, November 22, 1985) "I find the disputed language (concerning temporary bids) to be inconsistent with and in conflict with the National Agreement. As drafted, the language is ambiguous and could include a higher level assignment, a best qualified position, or, perhaps, a temporary assignment.... Finally, I find no contractual basis which would exempt a bid under the language of item 22...from 'out of schedule premium.'"

Duncan (S4C-3Q-I 900066, November 6, 1985) "...The Union proposal cannot come under this item since seniority is only considered in the assignment of FTR employees."

Larson (Impasse 102, September 17, 1979) "A provision along these lines (to limit split days off) in the LMU cannot be imposed under Item 22 of Article 30.B of the National Agreement."

Garrett (AC-N-19218, February 23, 1979) - NATIONAL CASE - "It must be held that the local memo represents a legitimate effort to 'implement' a seniority provision of the National Agreement, within the meaning of Item 22 of Article 30.B."

Mackenzie (Impasse; January 3, 1989) "The Arbitrator finds that there is an insufficient basis for awarding the inclusion of the new language proposed by the Union in Item 22 of the LMU. The proposal requires supervisors to initial bid forms and would have the effect of shifting the responsibility for timely submission from the employee to management. This would constitute a substantial change in the parties' long-standing practice. Nor was it sufficiently demonstrated that the issuance of a receipt for a bid form would necessarily resolve the problem which the Union seeks to address by its proposal. Additionally, the evidence before the Arbitrator would indicate only isolated instances of lost or untimely receipt of bid forms. It is also noted that the parties' grievance procedure is available for redress of specific cases."

Leibowitz (B94N-4B-I 96040905; April 3, 1997) "...all support the Union's position that a limited trail period for bidders set forth in the local MOU, is not inconsistent or in conflict with Article 41, Section 1.C.2 and 3 of the National Agreement. All of the prior impasse arbitrators held that since Article 41 was silent on the issue of trial periods and on the issue of retreat rights, the language of the Local MOUs could not be inconsistent or in conflict with the National Agreement."

Sickles (D94N-4D-I 96071701; September 15, 1997)
The arbitrator allowed the union to incorporate into the LMOU certain Step 4s and other agreements made by these parties at the National Level.

Maher (B94N-4B-I 96040568; January 31, 1997) "In labor arbitration the doctrine of res judicata recognizes that a purpose of grievance arbitration is not only to do substantial justice, but also to bring an end to a controversy. The doctrine permits parties to rely on arbitration decisions in conducting their affairs and permits the force arbitration decisions from being undermined. Collateral estoppel precludes relitigation or rearbitration of active claims, which is barred by the doctrine of res judicata…the same item in dispute and comparable contract language as well as the 1987 arbitration decision …preclude the USPS from rearbitrating the same dispute."

Parent (F94N-4F-I 96044876: November 24, 1997)
NALC desired to formalize under Item 22 the established practice for opting for vacant assignments of 5 days or more. The arbitrator rejected the proposal, "…the soundness and integrity of the collective bargaining process is made vulnerable any time the parties relinquish to a third party their right to determine what their Agreement is to provide, not to mention the possible disappointment resulting from the award. For that reason, I believe that arbitrators, in instances of interest arbitration, should proceed with the utmost caution before taking it on themselves to "fashion' language with the intent of resolving the issue before them, unless specifically mandated by the parties."

Wooters (B94N-4B-I 96040626/96040624; February 10, 1997)
"The union proposal would have required that when a regular carrier was called in on his non-scheduled day, he would work his regular route and if that meant displacing a utility carrier, then the utility carrier would move to an open route or another assignment…management took the position that including this language in the local MOU would be inconsistent with or contradict the National Agreement. The perceived conflict in the management view was the Joint Statement on Overtime…There is no conflict between the Union proposal and the National Agreement and/or Joint Statement on Overtime Distribution."

Shea (A94C-1A-I 96051999; January 9, 1997) The arbitrator held that LMOU provisions outside of the 22 items and not inconsistent and or in conflict with the National Agreement cannot be impassed by the Postal Service.

Shea (A94C-1A-I 96051978; January 16, 1997) The arbitrator held that LMOU provisions outside of the 22 items and not inconsistent and or in conflict with the National Agreement cannot be impassed by the Postal Service.

Shea (A94C-1A-I 96051981; January 15, 1997) The union desired to add, "Temporary details will be posted for bid and shall not exceed 30 days without union concurrence," to item 22 of the local memo. The arbitrator found it unreasonable to have citywide posting to all employees for temporary assignments.

Fletcher (I94C-4I-I 96054837; April 18, 1997) The arbitrator held, "Management did not timely appeal the two open issues at the close of the local negotiation period. They are not arbitrable."

Gudenberg (A94C-1A-I 96050617; July 28, 1997) The arbitrator accepted the union's proposal to identify multiple sections for DCOs for bidding purposes at a Remote Encoding Center.

Klein (APWU Impasse Item 22, Capitol Heights, Maryland; September 15, 1997. The union proposed that a strict seniority be followed in selecting employees for detail assignments. The arbitrator found that the proposal was outside the scope of item 22 and, "Although the Union's proposal pertains to seniority, neither Article 12 nor Article 37 contain any language referring to seniority being utilized for clerk craft details to positions at the same or lower level. Had the parties at the National Level determined that seniority should be a factor in such temporary assignments, they would have established a procedure therefor."

Klein (D94C-4D-I 9606916; March 21, 1997) "...Both parties

referenced the fact that the USPS and NALC at the National level have negotiated a provision for 'PTF bidding.' As stated by Management, such rights are more appropriately bargained for nationally. Because the NALC and USPS entered into an agreement on this issue, no 'conflict' exists. Because the APWU and USPS have no such 'PTF bidding' provision in Article 37, a local bidding or application procedure for PTF coverage of a regular clerk's absence of five days or more varies the terms of Article 37 and deprives Management of the right to assign the PTF to 'flexible' work hours. Such language cannot be carried forward, even though the Arbitrator recognizes that she is deleting language which has boosted the morale of PTFs...."

Fritsch (A94C-1A-I 96053493; January 20, 1998) "...The controlling language in this matter is contained in Article 30(B) of the National Agreement. That paragraph, in part, states that ...'no local memorandum of understanding may be inconsistent with or vary the terms of the 1994 National Agreement.' It was clearly established through a review of the National Agreement as well as the testimony of witnesses from both sides that the Agreement does not contain a time limit for posting of residual vacancies. To grant a specific time frame in this matter would certainly create a provision which would vary the terms of the National Agreement...."

IV. OUTSIDE 22 ITEMS OR INCONSISTENT OR IN CONFLICT.

Management is required, if requested, to conduct Local implementation with the local Union on the 22 specific items enumerated in Article 30 of the National Agreement. Management is not required to negotiate language beyond the 22 items nor reach agreement on language which is inconsistent or in conflict with the National Agreement.

Nolan (B98N-4B-I-01029365), (B98N-4B-I-01029288, July 25, 2004) NATIONAL CASE – "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. Local parties remain free to define the employees who satisfy those conditions."

Mittenthal (H8N-5L-C 10418/N8-W-0406, September 21, 1981) - NATIONAL CASE - "...The local parties are not required to negotiate on any subject outside the 22 listed items. ...The local parties are free if they wish to expand their negotiating agenda to include subjects nowhere mentioned in 30.B. In short, the 'exclusive right' in Article 3 did not prevent...management from contracting with the local NALC branch to limit the assignment of particular work to particular employees."

Williams, JE (S1N-3F-C 25024, July 21, 1984) "While Article 30 lists 22 specific items to be negotiated at the local level, it does not prohibit the negotiation of other local items. The only requirement is that it not be inconsistent with or vary the terms of the National Agreement." However, despite Arbitrator Williams decision it is generally better to avoid the negotiation of items outside the twenty-two.

Mittenthal (H1C-NA-C 25, August 31, 1984) - NATIONAL CASE - "The purpose of the 'inconsistent or in conflict' language is to insure the primacy of the National Agreement. If, as is apparent, this challenge can properly be made when the local Union seeks to

enforce the disputed provision in grievance arbitration, surely the challenge can be made earlier in the local negotiations. The national memorandum's language points in the same direction. The waiver argument is not persuasive. The USPS had a right to challenge provisions of the 1978 LMU on the ground that such provisions were 'inconsistent and in conflict with the 1981 National Agreement.' That is true regardless of whether such provisions had or had not been impacted by a change in the language of the National Agreement."

Zumas (H4M-NA-C36, April 3, 1987) - NATIONAL CASE - The question resolved in this dispute was whether the Postal Service is required to continue to comply with items in Local Memoranda of Understanding that have been declared inconsistent or in conflict with the National Agreement pending agreement by the parties or arbitral adjudication. Arbitrator Zumas clearly concluded,

"...(A)bsent language restricting the right of the Service to honor LMU provisions which it deems to be in conflict or inconsistent with the National Agreement, the Service is fully entitled under Article 30 to reject those provisions. The Union has failed to point to any provision in the Agreement that requires the Service to honor LMU items pending impasse resolution through arbitration."

Garrett (Impasse 78, October 28, 1974) - NATIONAL CASE - "Nothing in the National Agreement contemplates any seniority restriction upon the making of within-tour assignments in response to workload fluctuations. To the extent that the Union proposal would require that the reverse seniority be applied whenever it becomes necessary to move an employee from his bid assignment or assigned section, it thus is inconsistent with the National Agreement."

Williams (S4N-3U-I 900176 March 14, 1986) "It is generally held that there must be negotiation at the local level on the 22 items, but the parties are not required to go beyond them. The history of national negotiations makes it clear that the parties are free to go

beyond the 22 listed items. The only limitation is that the local agreement cannot be in conflict or inconsistent with the National Agreement and this includes the agreement on any of the 22 listed items as well."

Howard (Impasse 22, October 17, 1979) "The mere fact that local negotiators have bargained such a proposal in the past is not the proper test of its validity. If the provision was beyond the authority of the local negotiators to bargain, it is clearly voidable."

Cushman (1401, 1402; Impasse 46, November 15, 1979) "A supplemental local sick leave benefit is, therefore, inconsistent with the contractual benefit structure and the intent of the parties in negotiating the National Agreement and (the LMU provision) must fall on that account."

Collins (N1N-1M-C 4867, et al March 18, 1983) "Rather, those provisions appear to conflict with the admonition in the regulations that 'it is not intended that a full day's administrative leave be granted any employee for donating blood when the blood bank or facility is nearby'."

Scearce (Impasse 16, February 7, 1980) "The thrust of the Service's case here is that the negotiating of an automatic approval for leave requests - where management does not act within a specified time - is beyond the scope of 'local negotiations,' in that it conflicts with the National Agreement and the E&LR manual."

McConnell (Impasse 86, June 12, 1981) "The Memo of Agreement specifically prohibits a supervisor from requesting medical evidence for sick leave of three days or less, while both Article 10.5.E (and the ELM) permit the supervisor to request such documentation, as the manual says, 'for the protection of the interests of the USPS'."

Schedler (S7C-3U-I 700009; June 7, 1988) "The question is whether or not adding language pertaining to breaks, a subject matter that is not found in the National Agreement, alters, amends,

or modifies the National Agreement. In my opinion, the language pertaining to breaks does 'add to' the National Agreement and because the subject 'adds to' the National Agreement, it alters, amends, and varies the terms of the National Agreement. Furthermore, I find that the subject of breaks is inconsistent with the terms of the National Agreement."

Levak (W7C-5S-I 87039, December 4, 1988) "National Arbitrator Mittenthal and Regional Arbitrator Levak have held that the Service is not required to negotiate on issues outside the twenty-two enumerated items, even though management may do so if it wishes. The Union's proposal relates directly to overtime, not to leave, and is therefore not one of the twenty-two enumerated items."

Erbs (C7C-4R-I 99283; December 15, 1988) "There is no question in the Arbitrator's mind that language is not nearly as restrictive as that contained in the LMU and as a result that additional restriction is inconsistent. That language places an additional restriction upon the Local Management that is not contained in the National Agreement and as a result it is inconsistent and in conflict."

Bridgewater (W0C-5R-I 90161, December, 1993)"...Because management could not assign overtime 'as needed' under circumstances where there was less than 60 minutes before the end of the shift, and no emergency within the meaning of Article 3 existed. Therefore, in accordance with Article 30.B of the National Agreement, Local Memorandum of Understanding Article 8 Section 5A must be deleted because it is inconsistent and in conflict with the National Agreement.

Rimmel (impasse Item No. 12; Columbus, Ohio) "...Now, it is true that these local provisions have been in place for some seven years and the record does not congently (sic) demonstrate adverse impact upon the service as a result of such, at least beyond that argued by Management's advocate. However, like the matter of jurisdiction, the issue of inconsistently or conflict with the National Agreement is something that cannot be effectively waived or usually adversely

prejudiced by history. Simply stated, the parties clearly intended to insure the primacy of the terms of the National Agreement and to the extent that a local LMU supplants such, even when entered into in good faith as a result of give and take collective bargaining, such cannot be allowed to continue. This is precisely what Mr. Mittenthal held in the afore-quoted national arbitration decision."

Bridgewater (W0C-5R-I 90169, January 7, 1994) "...Article 12.4.D states: 'In order to minimize the impact on employees in the regular work force, the Employer agrees to separate, to the extent possible, casual employees...prior to excessing any regular employee... The junior full-time employee who is being excessed has the option of reverting to part-time flexible status in his/her craft, or of being reassigned to the gaining installation.' The Union argued that part-time regulars should be factored in somewhere between full-time regulars and part-time flexibles. However, as management argued Article 12.5.C.4.a states what local Unions can do, specifically: 'The identification of assignments comprising for this purpose a section shall be determined locally by local negotiations.' Thus management has not agreed to any restrictions on its right to excess any other employee classifications other than as provided under Article 12.4.D, relative to full-time regulars, part-time flexibles and casual employees. Therefore, although reassignments are covered by Article 30.B.22, the Union's proposal is inconsistent with and would vary the terms of the agreement."

Nathan (C0C-4A-I 99031, July 1, 1992) "...According to the Union, without provisions for the filling of the temporary vacancies which result from the taking of annual leave by regular full-time employees, work goes undone or is performed by non-qualified or non-bargaining unit employees. It's proposal, it therefore argues, is simply an expansion of a leave program. But this proposal is <u>not</u> a local leave program at all. It is a proposal to provide additional work for part-time employees and to enable them to become qualified for full-time positions."

Helburn (S0N-3R-I 900124, July 2, 1992) "...Union representation

is not covered in the craft provisions of the National Agreement. Obviously representation issues, in general, are not unique to one craft within the Postal Service. The language of Article 30.B.21 of the National Agreement clearly puts the Union's requested language beyond the scope of local bargaining under the LMU, Item 21."

Render (W0C-5R-I 90169) "...The Arbitrator has concluded that the Union's proposal to give full time regular employees volunteering to work a holiday or non scheduled day the right to decline such assignment if the starting time is more than 2 1/2 hours different from the employees' regular starting time is in conflict with the National Agreement and is not negotiable under Article 30 of the National Agreement.

Foster (S0C-3N-I 900060, October 24, 1992) "...While it is true that the work volume for clerks varies during the course of a week and the work duties varies among clerks, in the absence of any concrete evidence indicating substantial loss of 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. In summary, the Postal Service has failed to establish that LMU Item 2 is in conflict with the National Agreement or imposes an unreasonable burden on management.

Marx (N0T-1M-I 90138, N0V-1M-I 90139, N0C-1M-I 90140, October 16, 1992) "...The Union seeks local implementation to cover situations where heating or cooling failures in the facility lead to uncomfortable or unsuitable working conditions. In selecting the specified temperature limits, the Union relies on a February 26, 1982 letter from the Assistant Postmaster General to the General President referring to 'the intent of the heating maximum of 65 degrees F and the cooling minimum of 78 degrees F provided for under the [then existing] Postal Services' Energy Conservation Program.' The Union also addresses the Postal Service's intention concerning maximum heating and minimum cooling levels as a basis of energy conservation; that is to say, heating or cooling

would not normally be provided beyond these levels. It in no way addressed circumstances where, because of equipment failures, heat or cold might exceed these levels. The Postal Service also points out that the Union has recourse under the National Agreement Article 14, Safety and Health, in regard to unacceptable working conditions. The Arbitrator further notes that such safety and health matters are not included in the 22 local implementation items."

Erbs (C0N-4G-I 99046, October 30, 1992) "...The key challenge in this case is that the 15 minute breaks are an unreasonable burden on the office. Admittedly this is a close question, however, based upon the record the Arbitrator is unable to determine that they constitute an 'unreasonable burden'. There is no doubt that any break constitutes a burden on the employer. However, cost effectiveness and efficiency, standing alone, do not constitute grounds to uphold Management's position. The criteria that must be examined is whether the breaks constitute an 'unreasonable burden'. Based upon the evidence presented that cost is not unreasonable.

Suardi (C0N-4G-I 99047, December 4, 1992) "...Further the Arbitrator is convinced from Management's evidence that a uniform right permitting all letter carriers two (2) five-minute wash-up periods is both costly and may not be needed or used by all who presently enjoy it....In light of the foregoing the Arbitrator concludes that Article XIV, Section 8 of the Muncie LMU is inconsistent or in conflict with Article 8, Section 9 of the National Agreement and further, that it constitutes an unreasonable burden on the Postal Service. So ordered."

V. CONCLUSION

Your final document is to be labeled "Local Memorandum of Understanding," not "Local Contract" or other such terminology. It is suggested that the following format be used for concluding your local agreements:

> This Memorandum of Understanding is entered into on _____, 20__, at _____, between the representatives of the United States Postal Service, and the designated agent of the ____(local Union's name)_____, pursuant to the Local Implementation Provisions of the 20__ National Agreement with the___(national Union's name)_____.
>
> _____
> For the United States Postal Service
>
> _____
> For the Union