UNITED STATES
POSTAL SERVICE

U. S. Postal Service

Local Implementation -

Trainers Manual; August 1994

I. OVERVIEW

Management is under a contractual obligation to conduct local implementation with local Unions, excluding Rural Carriers, on the items enumerated in Article 30 of the National Agreements. Article 30.B (APWU/NALC) and Article 30 Section 30.2 (MH) provides for a 30 day period of local implementation, commencing on a specified date. For example, the 1990 National Agreement with the APWU/NALC provided for local implementation to commence on October 1, 1991; with the Mail Handlers, May 1, 1991. The following guidelines have been developed to assist the management negotiators in arriving at a fair and equatable Local Memorandum of Understanding (LMU).

A. Bargaining in Good Faith

In negotiating Labor Contracts, management and the union(s) have an obligation to bargain collectively in good faith as is contained in Section 8(d) of the National Labor Relations Act. In the Postal Service when negotiating Local Memoranda of Understanding, local management and union representatives are likewise required to bargain in good faith.

Good faith bargaining or negotiating requires an honest attempt by management and the union(s) to reach agreement. Neither side is required to make any concessions or agree to any proposals.

The National Labor Relations Board (NLRB) and courts do not look at isolated acts or statements by either side to determine if the respective parties have bargained in good faith but rather the totality of the conduct of the bargaining.

The following are a series of obligations placed on employers in the bargaining process:

1. Duty to furnish requested information

    a. must be relevant
    b. must be full disclosure
    c. must not be unduly burdensome

d. must not disclose confidential information

2. Parties may not impose conditions - i.e. "withdraw your grievance and we'll accept your proposal"

3. Parties may not refuse to meet without compelling reasons - may not be agreeable to meet at only certain times of the day or only in a location far away from the installation.

4. Parties may not normally have extended periods of unavailability

5. Negotiators must have sufficient authority to speak for their respective sides, advise the other side on positions, accept and reject proposals, make counter-proposals and perform other duties of a negotiator.

6. Parties may not engage in surface bargaining - surface bargaining gives the appearance that serious negotiations are taking place, but the real intent is to avoid agreement. - i.e. management in it's first proposal regarding Article 30, Item 9 " Determination of the maximum number of employees who shall receive leave each week during the choice vacation period" offers 10% and in it's second proposal offers only 8% off.

7. Neither party may withdraw accepted offers

8. Parties may not refuse to put agreements in writing - Applies to individually agreed upon provisions as well as the signing of an entire contract

9. Management may not bypass the union(s) and deal directly with the employees

B. Considerations and Techniques in Bargaining

1. Considerations

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

b. Each proposal from the Union should be evaluated on it's merit. What is appropriate for one craft might not be so for another.

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

d. There is no magic formula for successful bargaining.

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

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

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

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

i. Put the burden of proof on the Union.

j. 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".

k. Bargainers at the table are equals.

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

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

n. 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, what the Postal Service response was at the national level, and what contractual changes were made in the latest national negotiations.

o. Prior to agreement know the costs (Is overtime required?) and the difficulties in operating.

p. Do not bargain away management rights; don't be misled by mutual consent clauses thus giving away our rights.

q. Don't bargain solely on Union demands.

r. 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, the method of exchanging proposals.

s. Do not "sign off" on any one item until you have an agreement on the entire package.

t. Start bargaining easy proposals first; this aids in the establishment of a rapport.

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

v. Bargain, conservatively, don't offer your best right away.

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

x. Get value for value.

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

2. Techniques

a. Each bargainer or each team has his/its own style.

b. "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.

c. Threats of going to higher authority; either higher management or to the N.L.R.B.

d. Calling of caucuses.

(1) Desired review with fellow team members.

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

(3) Provides for a cooling-off period.

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

C. Beware of What You Negotiate

Once an item 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 or is inconsistent or in conflict with the National Agreement. Prior to determining an item to be inconsistent or in conflict, review "OUTSIDE 22 ITEMS, OR INCONSISTENT, OR IN CONFLICT", Part IV; or

3. Where the item causes or could cause an unreasonable burden.

II. GUIDE TO CONDUCTING LOCAL IMPLEMENTATION

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. Even so, local management may and should initiate bargaining, if any of the following situations exist in the current Local Memorandum of Understanding:

1. Management desires to negotiate new language for an item not previously covered in the existing LMOU;

2. Items in the existing LMOU have been identified as being inconsistent and/or in conflict with the National Agreement

3. Items which cause or may cause and unreasonable burden.

The following is a sample letter from management to the union notifying them of our interest. The letter may be used where language which is considered inconsistent and/or in conflict with the National Agreement or which 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 in order to carry forward existing language.

TO: Local Union President

Our review of the current Local Memorandum of Understanding reveals that there are provisions which management is interested in ***(changing and/or adding)***. In addition, in our judgment, there are provisions which are

inconsistent and/or in conflict with the National Agreement. They are as follows:

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

There may be other provisions which 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 which 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. Ground Rules Guidelines

As soon as possible after the establishment of the local implementation time frame, meet with the union(s) to discuss the following Ground Rules:

1. Time and place of meetings - Meetings must be scheduled at a location close to the installation. In most cases meetings take place at either the postal facility or local union office. These sites can be rotated. In some cases a hotel conference facility or other conference facility may be necessary. If meetings are held in a neutral location, cost should be shared.

2. Conduct of meetings - Timely start; prompt completion if possible; accurate and complete minutes of all sessions; specific identity of any impasse items.

3. Size and make-up of Bargaining teams - Management team should include sufficient resources to properly reflect input from Operations Managers as well as Labor Relations Professionals. An agreement should be reached regarding a maximum number of team members from each side including technical advisors. Members of the Union's team are off-the-clock. Management does not have the right to dictate who will be on the Union team, nor can the Union dictate who will be on Management's team.

4. Procedures for the exchange of proposals. It is advantageous to receive all union proposals in the early stages of negotiations so that counter proposals can be prepared with a full understanding of all proposals.

5. Appointment of spokesperson - Generally, only the spokesperson will speak at the negotiations sessions. Other members may offer input if requested by the spokesperson.

6. Availability of caucus areas.

7. Method of calling caucuses - Generally only the designated spokesperson will be permitted to call caucuses.

C. Conducting Local Implementation

1. Items Subject to Local Implementation.

   The Unions may request bargaining on items not included in Article 30. If this happens, our firm position is 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 items, consult with your Area/District Coordinator.

2. Documentation

   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 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 in operations or potential hidden costs. Present these arguments (with necessary proof) to the Unions. 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.

3. Effective Date

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

4. 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.

D. 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 which 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 which is inconsistent or is in conflict with the terms of the 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 the National Agreement. They are as follows:

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

There may be other provisions which 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. (UNREASONABLE BURDENS) They are as follows:

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

Article 30 of the National Agreement also contains provisions for binding arbitration of any impasse issues or 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.

E. Local Implementation Guidelines

Article 30 of the National Agreement provides for local implementation of 22 specific items for the APWU/NALC and 20 for Mail Handlers. The method of resolution of any disputes remaining after a good faith effort to reach agreement has been made remained unchanged from 1973 to 1991. In 1991, management gained the right through interest arbitration to the impasse procedures in the APWU/NALC 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 LMOU did not contain a provision for that item or where an LMOU did not exist;

- Management may propose and where agreement is not reached invoke the impasse procedure when an item creates or presents an unreasonable burden.
  (Remember the union is the moving party to impasse when management declares an item to be inconsistent and/or in conflict.)

Continuing emphasis must be placed on the importance of good faith bargaining in which both parties must make every attempt to resolve disputes.

The parties are contractually require to bargain only on the enumerated items. Local management should listen to any other proposals which the

unions may make, but should not bargain or reach agreement on any such new items. Inform local union representatives that the USPS is not required and will not bargain outside of the items enumerated in Article 30, and that no agreement will be reached on any item which is inconsistent with or varies the terms of the National Agreement.

If you have any questions regarding these guidelines, contact your Area/District coordinator.

1. Effect of pre-existing memoranda of understanding

   If certain of the 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 the National Agreement. The fact that a provision is outside the scope of the 22 APWU/NALC or 20 Mail Handler items does not in and of itself make the provision inconsistent or in conflict with the National Agreement. If you have questions contact your Area/District coordinator for proper guidance. ***(Note: Neither side can contractually impasse a proposal which is outside the scope of the National Agreements.)***

2. Scope of items to be locally implemented

   a. Item 21 in the APWU/NALC and Item S in the MH Agreement covers other items in the craft provisions which are subject to local implementation. The appropriate sections of the craft articles are cited here for easy reference.

CRAFT ARTICLES
Local Bargaining References
APWU/NALC/MH

Clerk Craft - Article 37

Section 2.C.	Copy of updated seniority list.
Section 2.E.5.	Copy of updated seniority list for part-time regulars.
Section 3.A.4.	Sufficient change of duties to cause reposting.
Section 3.A.5.	Sufficient change in starting time to cause reposting.
Section 3.A.5.b.	Application to cumulative changes in starting time.
Section 3.A.5.c.	Incumbent's option of accepting new starting time.
Section 3.D.	Length of posting.
Section 3.F.2.	Shorter period for placement in new assignment.

Maintenance Craft - Article 38

Section 3.C.	Application of seniority.
Section 4.A.4.	Repost an assignment where the change in starting time is 2 or more hours.
Section 4.A.5.	Change of duties.

Motor Vehicle Craft - Article 39

Section 1.E.	Application of seniority.

Section 2.A.3. Change of duties.

Section 2.A.4. Change of starting time.

Section 2.C. Length of posting.

Section 2.E.2. Placement of successful bidder in new assignment.

Special Delivery Messenger Craft - Article 40

Section 1.C. Application of seniority.

Section 2.A.3. Application of non-work day preference.

Section 2.A.4. Establishment of sections to implement Section 2.A.4.

Section 2.A.5. Change of duties.

Section 2.A.6. Change of starting time.

Section 2.B. Area of posting and bidding.

Section 2.C. Length of Posting.

Section 2.E.2. Placement of successful bidder in new assignment.

Letter Carrier Craft - Article 41

Section 1.A.3. Local scheduling of fixed or rotating non-work days and local method of posting and bidding shall remain in effect unless changes are negotiated locally.

Section 1.A.5. Change of starting time.

Section 1.B.2. Area of posting and bidding.

Section 1.B.3. Length of posting.

Section 1.C.4.	Rule as it applies to T/6 and utility assignments.
Section 3.0.	Reposting routes when other than a junior carrier's route is abolished.

Mail Handler Craft

Article 12.3B5	Change in duties or principal assignment area requiring reposting.
Article 12.3C	Posting and bidding installation-wide unless otherwise agreed.
Article 12.3E3e	Order of movement of full-time regular Mail Handlers.
Article 12.4	Definition of a section. NOTE: this definition is confined to one or more as enumerated in Section 12.4, A through I.
Article 12.6C4a	Definition of a section for excessing purposes.
Article 13.3	Light duty assignments. NOTE: There is redundancy between this language and the language in Items M,N, and O of Article 30 in the Mail Handler Agreement.

b. Item 22 in APWU/NALC and Item T in MH Agreements covers items relating to seniority, reassignment, and postings.

As a precaution, if the Union presents a demand in the general area regarding Item 22 or Item T about which there is any question in your mind as to whether the issue is appropriate for local implementation, you should immediately contact your Area/District coordinator for proper guidance.

3. Time Limits for Completion of Local Implementation

The local parties will have a specifically designated 30 day time frame, as provided for in Article 30, in which to bargain and reach agreement on demands.

4. Preparation for Local Implementation

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

      Responsibilities and qualifications for Chief Spokesperson and other team members:

      <u>Chief Spokesperson</u>

      - 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.

      <u>Other Team Members</u>

      - 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; not word for word, but minutes which reflect subject matter and how such was discussed, when, and the 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, costs effects, etc. Be aware of the requirement that management demonstrate that continuing the provision would represent an unreasonable burden to the Postal Service.

c. Completely review and determine management's basic 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 which you are satisfied with is effective.

d. All management committee members should completely familiarize themselves with the provisions of the National Agreement and review all local memoranda which may be in conflict with the National Agreement. In addition, these individuals should be especially aware of any changes in the National Agreement which has just been negotiated. Contact your Area/District coordinator 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 which 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 the 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.

5. 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 coordinator for proper guidance.

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 either party 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.

g. All provisions in previous Local Memoranda that are in conflict and/or inconsistent with any provisions of the current National Agreement are to be so declared. Contact your Area/District coordinator for proper guidance. This should be undertaken in advance of bargaining with notice to the Union at the outset of bargaining.

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 which 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.

III. GUIDELINES ON THE 22 ITEMS

For the APWU/NALC, the item number, 1 through 22, is indicated. For the corresponding Mail Handlers items substitute by alphabet A through T, excluding items 2 and 13, which are not included in the Mail Handler Agreement.

Item 1. Additional or longer wash-up periods.

Recommended Language: When an employee performs 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.

In the application of wash-up periods, consideration should include the geographical positions 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." 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 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 work 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: 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."

Roumell (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 (C0C-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 LMOU 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 (W0C-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 LMOU 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 LMOU 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 (W0C-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."

Klien (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 (C0C-4A-I 99052; July 25, 1992) "From a plain reading of the relevant language, because the LMOU 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 LMOU 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 (N0C-1M-I 90141 & N0V-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."

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 LMOU would unduly restrict the exercise of managerial discretion as established by the National Agreement.

Marlatt (S0C-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."

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 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."

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.

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:

- Clerk Craft employees by skill and tour.
- Maintenance employees by occupational group and salary level office wide.
- Motor Vehicle by position designation, salary level and tour.
- Special Delivery Messengers by location and tour.
- City Letter Carriers by zone.

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."

Item 5. The duration of the choice vacation period.

Recommended Language: Due 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 planing 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) 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 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."

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."

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 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.

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: None.

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 LWOP including employees on OWCP, 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 LMOU should be retained without modification."

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

Recommended Language: This varies by size of office. No recommended language.

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: None.

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 January 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 LMUs which 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/NALC 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."

Mariatt (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 LMOU 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."

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 who 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 which 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 (W0C-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."

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 section and tour. Sections are defined as follows:.

Clerk - by position designation, salary level, tour, skill and location*.

Maintenance - by occupational group, salary level, tour and location*.

Motor Vehicle - position designation, salary level, tour, and location*.

Special Delivery - by tour and location*.

Letter Carriers - by zone.

*** Where there are multiple locations within an installation, separate overtime desired lists should be maintained at each location. eg. Stations, branches, P&DCs, VMFs, etc.**

Strategies: Article 30 B.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., relating to the APWU, provides for a set rotation in scheduling overtime opportunities. Some local memoranda provide for the equalization of overtime hours for employees covered by these provisions. Such a provision is in conflict with Section 5.C.1. in that the equalization of overtime is not probable if strict adherence is applied to the required rotation. For example, all employees on an Overtime Desired list normally do not have the same qualifications, and when an opportunity arises it may be necessary to bypass one or more employees to reach employees on the list with the necessary qualifications. The subject provisions do not provide for and, in fact, prohibit the make-up of overtime opportunities missed when an employee is bypassed due to a lack of qualifications. Also, employees absent, or on leave are passed over, and such lost opportunity is not made up. The set rotation merely moves to the next qualified employee.

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."

To rid these local memoranda of such extraneous "inconsistent and/or in conflict" verbiage, management should "declare the items inconsistent and in conflict and notify the Union they are null and void and won't be continued in the LMU". Past practice will probably be the major defense of the Unions in an attempt to retain the language of the local memoranda even though inconsistent and/or in conflict with the National Agreement. You must affirm, and be prepared to defend, the Postal Service's position that any current language that is inconsistent and/or in conflict with the National Agreement is improper under the provisions of Article 30, Section A.

And, of course, 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.

Additionally, you should be aware of language in Article 38, Section 7, Special Provisions, Paragraph D of the USPS - APWU/NALC Agreement:

"An overtime desired list in the maintenance craft shall be established for each occupational group and level showing special qualifications where necessary."

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."

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."

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 Carrier 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 LMUs.

Since installation heads are contractually required to show the greatest consideration for Full-Time Regulars and Part-Time Flexible 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 LMOU 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 (S0C-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 LMOU 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"

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.C.4 would have no application and excessing from a section will 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.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.)

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 dis-incentives 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 based on ***number of parking spaces.*** e.g. If you negotiate ten spaces for Management and with the reaming spaces available on a first come first served basis, should the need arise to reserve additional spaces it could 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."

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."

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 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.

NOTE: No management proposal should be made regarding the length of posting (Article 37 Section 3.D.) or the period of time for placement in new assignment (Article 37 Section 3.F.2). Management should not make a proposal regarding the application of seniority in the maintenance craft (Article 38 Section 3.C. or Section 4.A.5.)

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 Area/District Coordinator for guidance immediately.

Arbitrations: None.

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 Area/District Coordinator 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 Area/District Coordinator for guidance.

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."

SUGGESTED 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 _____, 19__, 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 19__ National Agreement with the___(national Union's name)_____.

_____

For the United States Postal Service

_____

For the Union

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.

> 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-C 36, 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 LMOU 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. Its 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 LMOU, 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 LMOU 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 LMOU 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. MANAGEMENT INITIATED IMPASSES

A. Origin

As a result of the June 12, 1991 Mittenthal award, the 1990 USPS-JBC National Agreement was changed significantly in several areas including Article 30. The new Article 30 allows for dual impasse, i.e., both parties are authorized to declare an item in impasse and send it to interest arbitration. Recognizing that the decision to impasse an item is ultimately grounded to the ability to prevail in interest arbitration, it is essential that the Postal Service have a clear understanding of what this new language requires.

B. Contract Language - Article 30

Section C - All proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the National Union President or the Assistant Postmaster General, Labor Relations. The request for arbitration must be submitted within 10 days of the end of the local implementation period. 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 the 1990 National Agreement.

Section F - Where the Postal Service, pursuant to Section C, submits a proposal remaining in dispute to arbitration, which proposal seeks to change a presently-effective Local Memorandum of Understanding, 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.

1. Those arising under Section C where the item in dispute does not seek to change a presently effective LMU provision.

2. Those arising under 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.

C. Definition of Unreasonable Burden

1. Dictionary Definition

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; nct 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.

2. External Sources

A search of BNA's Labor Relations Reporter turned up 17 private arbitration awards in which the arbitrator used the term "unreasonable burden." For reference purposes, a list of the cites is as follows:

95 LA 28	95 LA 452	93 LA 185
91 LA 1340	90 LA 844	90 LA 625
89 LA 80	85 LA 1195	85 LA 140
84 LA 1010	93 LA 838	82 LA 985
81 LA 560	78 LA 1145	78 LA 985
74 LA 844	73 LA 573	

Regarding mandatory union leave, Arbitrator Samuel J. Nichols, Jr., (89 LA 80, at page 85) stated, "Management is in a much better position to know whether plant operations are sufficiently manned and, at the same time, to ascertain whether a given number of absences would pose an unreasonable burden on production and the continuity of same." At page 86, he further stated, "After all, it cannot be forgotten that the production process is the 'cornerstone' for any and all union activity...(the) grievant knew that his absence would have an adverse effect on production." This case may be useful in arguing for a lower incidental annual leave percentage.

In a decision regarding overtime (82 LA 985, at page 988), Arbitrator Earl J. Wyman discussed administrative burdens, "...(I)n the opinion of this arbitrator, with respect to 'make-up' overtime it would place an unreasonable burden upon the company to require it to attempt to remedy its overtime make-up obligation to an employee by offering him or her vacancy after vacancy, ad infinitum, until it identified a job agreeable to the employee on a shift agreeable to the employee and on a Sunday agreeable to the employee. Such a process might take months, creating a monumental bookkeeping chore."

In another overtime case (84 LA 1010, at page 1013) Arbitrator Samuel J. Nichols, Jr. stated, "If no volunteer can be found to work the overtime, it poses no unreasonable burden on the company to give employees at least one hour's advance notice that overtime will be required...I agree with the union if an employee is asked to give advance notice of unavailability for work, it is only fair that management give some advance notice to the employee that he will be required to do additional work." If this case is cited by the union, it is important that our advocates distinguish it as a mining industry case with facts that are unique to that industry. The arbitrator must be made aware of our own unique problems regarding changing mail flow patterns and closing windows of opportunity.

In a case in which the company argued that the requirement of manual recording of industrial engineering job slots was unduly burdensome (85 LA 140, at page 143), Arbitrator Rolf Valtin stated, "I do not see how it would take more than a second or two. And a second or two applied to some 2,000 instances amounts to about an hour. I do not believe that it can properly be held, in the context of what is here presented, that an hour's time per week constitutes an unduly burdensome requirement." Our advocates should be prepared to present actual documentation of time and/or money spent unnecessarily as a result of burdensome language.

In an interest arbitration case (91 LA 1340) the employer failed to negotiate a change in the existing contract language and declared the item to be at impasse. At the hearing the employer argued that they had met their burden by showing that a legitimate problem exists that requires a change in contract language and that the suggested change will reasonably address the problem. Arbitrator Robert L. Reynolds, Jr. disagreed and held that:

"This arbitrator has subscribed to a three-prong test to be used to evaluate whether a party desiring to alter contract language has met its burden. Here the burden is upon the company to show: (1) that the present contract language has given rise to conditions that require amendment; (2) that the proposed language may reasonably be expected to remedy the situation; and (3) that alteration will not impose an unreasonable burden on the other party."

Even though this case mentions unreasonable burden it is not in the same context in which it is used in Article 30. Our "unreasonable burden" language would go to the first prong of the Reynolds test.

3. Factors to Consider

   a. Facts of Case

      It is eminently clear that the phrase "unreasonable burden" cannot have significant content 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 that should be taken into consideration when determining if an "unreasonable burden" exists are as follows:

(1) Impact on service standards

(2) Impact on the facility's overall operation

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

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

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

(6) 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 inclusive as the determination must be made in light of the totality of the circumstances in which it arose. As previously discussed, there is no bright line rule or formula that can be applied.

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."

b. 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 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.

c. 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.

d. 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.

D. 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 be used to assist in the discussions with the unions. 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.

E. Arbitration History

Prior to the 1990 National Agreement, the following regional arbitration awards provided insight as to the manner in which arbitrators applied 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."

The following local management cases, impassed under the "undue burden" concept, should be reviewed. This will facilitate a understanding of how arbitrators have begun to define this term within the framework of Article 30. F.:

In case W0C-5T-I 90212 decided January 13, 1993, Arbitrator William Eaton stated, "The Union argues that the Postal Service

can revise its trip reduction plan, and can look into other alternatives to achieve the required APR [Average Vehicle Ridership]. The difficulty with this argument is that the Union presented no evidence to support it, while the evidence of the Postal Service makes it abundantly clear that alternatives available are either unreasonable, too expensive or ineffective."

"The Union argues here that the Postal Service is requesting language to meet a situation which does not exist. However, the situation clearly does exist. Rule 210 requires a higher vehicle ridership than the Postal Service has been able to effect, even with the preferred parking plan in place for a short term. It is undisputed that when preferred parking was discontinued following the Union grievance and the Third Step resolution, ridership declined even further below the goal."

In case S0C-3R-I 900028 decided on May 12, 1992, Arbitrator George V. Eyraud, Jr. stated, "The existing language, as established by the testimony of the supervisor, the grievances, along with the unreasonable demands of employees, established to this Arbitrator that an "unreasonable burden" for management presently exists".

In case No. S0C-3N-I 90063 decided on June 23, 1992, Arbitrator Fallon W. Bentz stated, "I agree with the Union's contention that some of the relevant evidence to establish the "unreasonable burden" would be the provision and its history with particular reference to whether its application has imposed an unreasonable burden in the past. However, contrary to the Union's contention, the reasonableness, cost saving and efficiency of the Postal Service's proposals are factors which should be given some secondary weight." Concerning item 4, the arbitrator further rules, "Yet the Postal Service presented evidence of one isolated period of plan failure during a one-week period in March, 1991. This is just not enough evidence to support the unreasonable burden standard of proof which the National Agreement specifies. Furthermore, the failure of the Postal Service to provide evidence that this provision has caused other problems during the life of

the agreement leads me to the conclusion that although they may be a "burden", such burden is not "unreasonable".

In relation to item 7, he stated, "Accordingly, the undersigned agrees with the Postal Service's position that if it can establish that the provision is in conflict with or inconsistent with the National Agreement, it is an "unreasonable burden".
In relation to item 8, he stated, "While the Postal Service's concern over utilization of overtime is highly commendable, standing alone the overtime is insufficient to establish an unreasonable burden. There was no evidence of plan failures on the 3 days in question. There was no evidence of the impact of the LMOU provision on the Postal Service's operations in years prior to 1991. The Postal Service has not met its required standard of proof."

In case No. S0C-I 900040 decided on May 20, 1992, Arbitrator William K. Harvey stated, "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 no 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 state, 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 its mission to the public."

In case No. S0C-3N-I 900062 decided May 21, 1992, Arbitrator George V. Eyraud, Jr. stated, "Testimony was presented by Management which was sufficient to meet the 'unreasonable burden' test of Article 30 F. Specifically that testimony showed that rotating days off created excessive overtime and without rotating days off, there would be no problem. This resulted in an additional financial burden to the service. Another financial burden showed was with regard to scheduling, i.e., matching the

workload with available manpower which makes it necessary to call for overtime."

In case No. S0C-3E-I 900045 decided on May 18, 1992, Arbitrator William K. Harvey stated, "The Postal Service argument is bottomed upon cost and operational flexibility consideration. There is no demonstrated "cost" factor involved with the pay of PTF's showing any "unreasonable burden", in continuation of the LMOU language in issue. Because the Postmaster's testimony was disputed and as there was no documentary evidence offered to support the assertion, I find the Service has failed to meet its burden of proof on this issue."

In case No. N0N-1G-I 90081 decided June 15, 1992, Arbitrator Francis T. O'Brien stated, "The Postal Service failed to offer any documentation to support its contention that by 1995 the number of letter carriers will be reduced to a level which will make it impossible to service all routes in a timely manner during the choice period in July. It is the burden of the Postal Service to offer any relevant information in its possession on downsizing in order to facilitate intelligent bargaining on both sides. Instead, the testimony offered by the Postal Service was speculative in nature. Speculation is not a proper foundation to order a change in the LMOU."

In case No. S0C-3B-I 900015 decided May 21, 1992, Arbitrator William K. Harvey stated, "I must agree with the Union that there is no showing that the annual leave provisions in issue have caused or ever been a major contributing factor to the delay in mail.... This conclusion is based upon evidence which demonstrates that the facility is presently understaffed. The Service has certainly shown that it has a staffing problem.....however, it has not shown that the present language in issue regarding annual leave is the proximate cause of the 'unreasonable burden' of delayed mail."

In case No. N0C-1J-I 90030 decided May 14, 1992, Arbitrator Randall M. Kelly stated, "The fact that this provision is

mandatory, with no consideration for the needs of the Service or changing conditions, is what makes it an unreasonable burden. Given the fact that the office is shrinking, it is unreasonable to continue to require that the office guarantees that four employees be allowed leave on a daily basis."

In case No. N0C-1J-I 90043 decided May 20, 1992, Arbitrator Randall M. Kelly stated, "Under all the circumstances, while there may be a burden on the Service because of item 22F6, the Service has not established that it represents an unreasonable burden and its request that it be deleted in its entirety from the LMOU is denied."

In case Nos. W0C-5M-I 90114 and W0C-5M-I-90119 decided August 21, 1992, Arbitrator Barbara Bridgewater stated, "As to an appropriate definition of "unreasonable burden" requires more than just evidence that a "burden" exists, otherwise the word "unreasonable" would not have been included in Section F of Article 30. Specifically, under the express language of Article 30.F the Postal Service must produce evidence sufficient to demonstrate that "continuation of the LMOU provision would result in an "unreasonable burden to the USPS." And the cost data that was presented in the instant controversy did not meet that requirement; because although the Arbitrator was convinced that unproductive wash-up time is a burden to the Postal Service, Management did not establish that the cost of wash-up time at San Mateo constitutes an unreasonable burden."

In case No. N0C-1E-I 90004 decided May 13, 1992, Arbitrator Daniel G. Collins stated, "The Arbitrator believes that the Service's evidence that more than 40% of the assigned TTO's have successfully chosen vacation in two pay periods establishes that the existing language poses an unreasonable burden on management. The parties have agreed that in all other job classifications a maximum of 14% of the employees will be on vacation at any one time -- that 40% of the TTO's would, under the existing language, be on choice vacation in two pay periods in 1992 is clearly unreasonably burdensome."

In case No. S0C-3N-I 900061 decided June 25, 1992, Arbitrator Fallon W. Bentz stated, "The Postal Service's evidence was vague and not specific. While this office has been identified as an automation impacted office and operational changes can be anticipated, no evidence was presented as to when this may happen. There was no evidence of any plan failures. Other than the one instance in 1992, there is no specific evidence with reference to excessive overtime which can be attributed to extended sick leave, jury duty, military leave, or LWOP. In short, the undersigned concludes the Postal Service has not established that failure to include its proposal with reference to the types of leave to be counted toward the 12 percent and 8 percent factors in determining the number of employees to be granted annual leave would represent an unreasonable burden to it."

In case No. NDC-IK-[illegible]037 decided May 8, 1992, Arbitrator Josef P. Sirefman stated, "The Service's case suggests that 21-A may present a burden, but one for which it has solutions. It may prefer to avoid any burden entirely but that is not enough to satisfy the contractual standard. The Service has failed to establish that 21-A represents "an unreasonable burden."

In cases Nos. C0C-4A-I 99054/5 decided July 24, 1992, Arbitrator John C. Fletcher stated, "The test required to be met by the Service in this matter is one of 'unreasonable burden'. This test was placed upon the service by the National Agreement. In satisfying this test, the burden is on the service and it cannot be shifted to the Union so as to require that APWU demonstrate that the existing provisions in the LMOU are not unreasonable. The term 'unreasonable burden' is subjective, but any definition would nonetheless, require demonstration of substantial impact. Merely being inconvenient would not be an unreasonable burden. Nor would some additional costs, slight delay in mail processing-dispatching and modest overtime satisfy the test."

In case Nos. S0C-3U-I 900079 and S0C-3W-I-900030 decided May 19, 1992, Arbitrator Michael Jay Jedel stated, "In the instant

case, 'cost effectiveness', if convincingly established to the level of "unreasonable burden", would warrant a finding in Management's favor. Management has offered a general argument that the elimination of the present practice will result in cost savings. However, in the absence of any data whatsoever which indicates what work was done, and by whom, how steady the volume of work was, whether the particular operations in question on the holidays were in fact of the nature that less expensive PTF's or casuals could have performed them at a level such that there would be some clear cost savings, so that the continuation of the existing practice does, in fact, present a cost burden to the Employer which is of such magnitude as to be "unreasonable" no finding can be made."

In case No. N0C-1E-I 90068 decided May 29, 1992, Arbitrator Harry R. Gudenberg stated, "The problem presented is that the exact facts of the reductions are anticipated but not certain. The reduction of personnel may occur in any number of work areas, clerks or elsewhere and the positions that may be eliminated may well vary from those currently contemplated. The evidence of the Postmaster, while meritorious, does not meet the burden test necessary to overcome the requirements of the other involved contractual provisions."

In case No. S0C-3D-I 900049 decided July 13, 1992, Arbitrator I.B. Helburn stated, "While there is no precise guidelines for the standard, it is clear that the Postal Service, in accordance with Article 30.F, bears the burden of proof in the matter. The showing must be more than simply an inconvenience."

In case No. N0C-1F-I 90018 decided July 7, 1992, Arbitrator George R. Shea, Jr. stated, "The Arbitrator determines that it is appropriate that he evaluate the Service's assertions concerning the existence of an 'Unreasonable Burden' using criteria of the nature of those set forth in the following questions:

1. Does the provision create a substantial obstacle to, or prevent, the Service's accomplishment of its business purpose;

2. Does the provision have an inordinate negative impact on the health or safety of postal patrons or employees;

3. Does the provision have an undue negative impact on the financial and other resources of the facility or the Service;

4. What is the existence, nature, cost and effectiveness of alternative means, other than the elimination or modification of existing LMOU provisions, of alleviating the alleged Undue Burden;

5. What change has occurred, or will occur, during the LMOU term, in the operational conditions existing at the time the provision in question was agreed which has contributed, or will contribute, to the creation of the Unreasonable Burden?

Three common themes can be gleaned from the arbitration history in this area. First, any determination of reasonableness will turn on the particular fact circumstances of each case. Secondly, a mere "burden" will not rise to the level of proof required to eliminate a presently existing LMOU provision. Thirdly, any "unreasonable burden" determination should be grounded in bona fide or legitimate business concerns.

NATIONAL ARBITRATION AWARDS:

1.	Sylvester Garrett, dated October 28, 1974	221
2.	Richard Mittenthal, dates September 21, 1981	H8N5LC10418 (N8-W0406)
3.	Richard Mittenthal, dated August 31, 1983	H1C-NAC-25
4.	Richard Mittenthal, dated January 29, 1986	H1C-NA-C-59 H1W-NA-C-61
5.	Nicholas H. Zumas, dated April 7, 1987	H4M-NA-C36
6.	Richard Mittenthal, dated July 12, 1993	H0C-NA-C3