LOCAL NEGOTIATIONS

Tri-State Conference
St. Louis, MO.
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Arkansas
Iowa
Missouri

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GUIDE TO LOCAL NEGOTIATIONS

ARTICLE 30 NEGOTIATION ITEMS

Negotiations at the local level will occur for a 30 consecutive day period between April 2, 2007 and May 31, 2007. Negotiations can encompass any and all of the twenty-two (22) items in Article 30. In addition, any other subject may be negotiated if both parties are willing. But, unless it is one of the twenty-two (22) items it may not proceed through the impasse procedures (AIRS # 22). Any Local Memorandum of Understanding reached may not be inconsistent with or vary the terms of the 2006 National Agreement.

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

Requests can be directed to the Regional Coordinator, your NBA, or to:

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Regardless of whether the APWU agrees with certain arbitration awards, we have tried to accurately reflect the issues that have been arbitrated and views of arbitrators concerning those issues in the following pages on the 22 items. Note that in some of these awards, arbitrators did not uphold pre-existing provisions in LMOUs on the basis that they were inconsistent and in conflict with the National Agreement and these decisions were not limited to provisions of the contract in effect at the time the local negotiations occurred. However, due to changed language in Article 30, pre-existing provisions cannot be challenged except when the provisions are in conflict and inconsistent with language that has changed in the 2006 National Agreement or with changes that have occurred after the time the 2000 Agreement went into effect. As a result, some of the awards on pre-existing provisions would be reasoned differently if they were decided under the 2006 National Agreement. They have been included in this issue because any new provisions or changes in pre-existing language that are being negotiated may be subject to the arguments that were raised in these cases.

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

1. Wash-Up

Additional or Longer Wash-Up Periods

The National Agreement Article 8, Section 9, requires management to provide reasonable wash-up time to those employees who perform dirty work or work with toxic materials. Local negotiations should explore the possibility of additional wash-up time to individuals, particular job categories, crafts or work locations, as well as "across the board" wash-up time to everyone where it can be justified.

However, locals should be prepared for Postal Service arguments that proposed wash-up provisions are inconsistent and in conflict with the National Agreement. If a pre-existing wash-up provision is carried over, management does not have the right to argue that such an item is inconsistent or in conflict with the National Agreement since Article 8.9 has not been changed in the 2006 National Agreement. But if a local decides to make a change in pre-existing language and it is submitted to impasse arbitration, keep in mind that the Postal Service may argue that the changed language is inconsistent with longstanding provisions of the National Agreement.

Factors to Support Additional Wash-Up

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

Specifically, the local will have to demonstrate that the employees for whom wash-up time is sought perform dirty work or work with toxic material. This showing depends on the nature of the work, such as types of machinery and materials handled. For instance, it would be reasonable to negotiate longer wash-up for maintenance and motor vehicle employees who

work in dirt or grease, or for clerks that work in a newspaper section. A separate demonstration, therefore, should be made for each craft and perhaps even sections or units within each craft. In addition, several other factors that should be taken into consideration to support a provision for additional wash-up include:

a. The location of washrooms in relation to the work areas;

b. The degree of congestion that might occur in the washroom at lunch time or at the end of a tour; and very importantly

c. Any changes in any of the above during the life of the current Local Memo which now would justify more time than what might have been needed, and

d. Any grievances filed or complaints made about insufficient wash-up time or denial of wash-up time.

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

One arbitrator has set out items that need to be considered in determining the reasonableness of wash-up periods including "(a) the process required of employees who take wash-up time, (b) the nature of the employees' wash-up activity, (c) the relationship between the employees' work locations and the wash-up facilities, (d) the availability of workable wash-up facilities, (e) the number of employees who will use those facilities during a specific period of time, (f) the nature of the wash-up needed, as determined by the nature of the employees' work and (g) the nature of the post wash-up activity" (AIRS # 33153).

Inconsistent and In Conflict

In requesting additional or longer wash-up time, locals need to be prepared for Service arguments that the scope of the National Agreement was not intended to be broadened beyond granting reasonable wash-up for employees subjected to dirty or toxic conditions. Though arbitrators have reached varying conclusions on this issue, an arbitration award has emphasized that there has been no definitive interpretation of Article 8.9 on a national level that prohibits LMOU provisions for a fixed wash-up period. Therefore, a claim of inconsistency must be assessed on the basis of record proof (14655). Also, arbitrators have found that by listing "additional" or "longer wash-up periods" as an item for local negotiation in Article 30, it was clear that negotiators did not intend that wash-up provided by Article 8.9 would be limited and could not extend to all employees (AIRS # 13483, 22498, 22499, 21117, 28749-50, 27060). In addition, an arbitrator has rejected the position that fixed wash-up periods are "per se, inconsistent and in conflict with the National Agreement" on the basis of national postal management's two decade acquiescence to the existence of local memoranda providing fixed wash-up periods as well as a national level arbitrator's recognition in AIRS # 27077 that there is no "bar [to] a specific group of employees within a class or a job description from being granted wash-up time on a routine basis" (See AIRS No. 33153).

It should be noted that a 2004 national-level award in the letter carrier craft concerning fixed wash-up under Article 30 determined that "Section 8.9 and 30.B.1 prohibit negotiation of LMOU provisions that provide wash-up time to all employees without consideration of whether they perform dirty work or are exposed to toxic materials." Significantly, the APWU was not a party in that case and didn't participate in the proceedings. Therefore, the award isn't binding in APWU regional arbitration proceedings. Moreover, Arbitrator Nolan's primary reliance on NALC regional arbitration awards, and the absence of the APWU as a party would argue against giving any weight to the decision as it relates to APWU bargaining unit employees or the APWU contract. Though Nolan indicated that there was "near-consensus among the [NALC's and USPS's regional] arbitrators" on the relationship between Article 8.9 and Article 30.B.1 that takes the Postal Service's position, he relied on the fact that there was "an overwhelming majority of NALC regional arbitrators holding that locally negotiated fixed and general wash-up time proposals are inconsistent with Article 8.9. ..." Arbitrator Nolan found that most of the cases submitted in support of NALC's position involved the APWU, and many of those were decided after the NALC and APWU had separate contracts. He further acknowledged that awards "interpreting even identical language from another contract carry less weight than decisions interpreting the same contract, because the meanings of the words often change in different contexts or

different bargaining relationships." Also, since Arbitrator Nolan specified that "[l]ocal parties remain free to define the employees who satisfy these conditions [i.e., performance of dirty work or exposure to toxic materials]," the union can stress that all of the employees covered by a fixed wash-up proposal perform dirty work or are exposed to toxic materials (See Case Nos. B98N-4B-I-01029365 and 29288; 7/25/2004).

Wash-up for All Employees

There is a split of opinion by regional arbitrators on the provision of fixed wash-up for all employees. Many arbitrators have resisted granting required wash-up time for all employees because of the restrictions in Article 8, Section 9 (AIRS # 4596, 6479, 6606, 6774, 6913, 6995, 20540,20764, 20761, 26898, 32538, 32848 and 32869). Provisions granting all employees a wash-up time of 3, 5 or 10 minutes have been rejected in a number of arbitrations (AIRS # 4913, 4944, 5281, 5287, 6001, 6088, 6089, 6124, 20764, 21111, 27068-69, 27061, 26690-91, 33379). In addition, an effort to allow reasonable wash-up time for all employees was not accepted by one arbitrator (AIRS # 6520).

On the other hand, one arbitrator ruled that local parties are permitted to fix wash-up periods in whatever amounts the parties agree to (AIRS # 27944). In addition, another arbitration award upheld fixed wash-up periods ranging from ten to fifteen minutes before lunch and twelve to fifteen minutes at the end of a tour for all APWU-represented crafts in the Manhattan and Bronx, N.Y. Post Offices (AIRS # 33153). In that case, the arbitrator relied in part on the fact that the common dictionary definition of "period" for purposes Article 30.B.1 is "an event of fixed duration" and a definition in the dictionary of industrial relations defines "clean up period" as "that part of a work day before meals or at the end of the work shift allowed the employee to clean his person or clothing...." The arbitrator also indicated that the language "performs dirty work" and "works with toxic material" in Article 8.9 "does not contain any qualifying or limiting language on its general eligibility tests." He thus rejected the Service's argument that an employee's eligibility for wash-up requires a determination of whether or not the employee actually becomes dirty from "dirty work", performs such dirty work regularly or predictably, or performs such work immediately before being granted wash-up time. Also, note that in a national level award, Arbitrator Snow said that the terms "performs dirty work" and "works with toxic material" "are open-ended terms" that "are subject to local definition and elaboration" and "[t]he content of the terms may change as new conditions arise requiring wash-up time or modified administrative regulations and managerial instructions authorize certain actions" (AIRS # 27077).

In addition, an arbitrator ruled that the Postal Service could not meet its burden of proving the existence of an unreasonable burden by continuation of a wash-up period of five minutes prior to lunch and five minutes prior to ending of a tour for all employees and ten minutes before lunch and before ending a tour for maintenance employees. She found that merely establishing the cost of total wash-up for all employees as well as the amount of nonproductive wash-up did not satisfy its burden of proof (AIRS # 22498, 22499). Another arbitrator upheld continuation of a wash-up period of two minutes before lunch for all clerks and maintenance employees on the basis that the Postal Service failed to show that they did not perform dirty and toxic work (AIRS # 27944).

Since the anthrax exposure incidents in late 2001, there have been two arbitration awards that have relied at least on part on the need for fixed wash-up to protect against such potential hazards. In AIRS # 38883, the local union sought a five minute wash-up period every two hours "for all employees that perform any duties that cause them to have hands on and/or any involvement with any type of work at any postal facility or any duties involving postal procedures." The union relied on a directive from Postal Headquarters Vice Presidents to field offices containing a mandatory safety talk on hand protection which said "wear your gloves, and wash your hands with soap and water every two hours during your tour, and other times as appropriate." The arbitrator observed that "[t]he ... memo and instructions of the two senior Postal Service [officials] clearly enunciates the recognized safety problems faced by postal workers in the post 9/11 era." He found also that the Postal Service failed to provide "valid proofs" to support its position that providing a five minute wash-up every two hours would have a serious impact on the operations and distribution of the mail.

In AIRS # 39691, an arbitrator upheld a union's request to change its LMOU to provide employees performing any dirty work, including work with trays, letters or mail handling equipment,

or work with toxic materials a five minute period of wash up before lunch and before leaving the facility. He noted that the "Union has appropriately observed, 'Anthrax and the threat of biohazard are now a fact of life in the Postal Service' and "[i]n that regard every employee on the workroom floor should be required to wash their hands not just for their own safety but for the safety of the fellow employees." The arbitrator found also that given the nature of the facility and number of employees assigned to it and the distance each employee has to travel to sinks, the time clock and the cafeteria a five minute time period for wash-up before lunch and departure from the facility is not excessive.

Even taking into account the anthrax exposure incidents, several arbitrators have denied requests for fixed wash-up for all employees. The APWU's proposals covering 20 associate offices in Harrisburg, Pa., to provide that all APWU employees be granted reasonable time to wash-up before lunch, at end of tour and at least every two hours or to include additional language where five-minute wash-up time currently existed to provide for such time at least every two hours, were rejected by an arbitrator in AIRS # 41921. He found that evidence regarding 2001 management directives covering Capital Metro operations and the Harrisburg Performance Cluster in the aftermath of anthrax exposure, which provided that employees be encouraged to wear masks and gloves and wash their hands with soap and water every two hours, were not binding on other facilities. The arbitrator further reasoned that though employees may be at risk from biological agents like anthrax being shipped through the mails, they have the right to take as much time to wash their hands if they believe they have come into contact with a toxic substance. Moreover, he indicated that the issue of allowing for wash-up every two hours should be decided on a national basis, not on an installation by installation basis through regional arbitration.

In another award in AIRS # 40576, an arbitrator rejected a local union's request that all employees be granted five minutes of wash-up time every two hours. He was unpersuaded by the union's argument that additional wash-up time was mandated because of health and safety concerns due to the increased presence of contaminants in the mail stream. The arbitrator determined that the union had failed to show that a five minute wash-up period was warranted for all of its members due to "some actual and objective condition – not some hypothetical situation that may or may not develop." Another arbitrator rejected a union's proposal that "[t]hose employees who perform dirty work, work with toxic materials, process the mail or support the processing of mail shall be granted reasonable wash-up time every two hours." In AIRS # 40651, the arbitrator refused to grant a fixed period for wash-up time since there was no evidence that management prevented employees from washing their hands when there was a need to do so, and there were procedures and policies in effect to ensure a "quick, effective response" to exposure to dangerous substances. She reasoned that the Postal Service is taking steps to provide a safe environment for employees including isolating contaminated mail, evacuating employees from potentially contaminated areas, and making sure that employees who have touched potentially contaminated mail wash their hands and any part of their body that may have come into contact with that mail.

In rejecting blanket provisions, arbitrators have noted that not all employees require a set period of wash-up time (AIRS # 4862 and 6072, 26898), and that a limited benefit cannot be turned into a general benefit for all (AIRS # 4867, 4871, 13017, 27068-69, 33379). In addition, another arbitrator held that the Postal Service had met its burden of proving that an unreasonable burden existed because of a provision allowing five minutes of wash-up before lunch for all employees. He cited the excessive cost of all employees receiving the fixed wash-up time and the fact that employees use the time for smoking breaks, to fetch their lunch buckets, and to wait at the time clock (AIRS # 20764).

Finally, another arbitrator found that the cost of two four minute wash-up periods daily for all employees regardless of a demonstration of need constituted an unreasonable burden (AIRS # 26898).

Maintenance and Motor Vehicle Employees

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

(AIRS # 508, 525, 556).

However, see AIRS # 40576, in which an arbitrator rejected the union's argument that there be ten minutes of wash-up for all TTO and MVO drivers before lunch and ten minutes wash-up time for these drivers at the end of their tours. He relied on the 2004 national level award by Arbitrator Nolan dealing with letter carriers, and found that it could be applied to the APWU since both agreements contain similar language and the 22 items set forth in Article 30 appeared in the 1973 agreement when both the NALC and APWU bargaining together. However, he recognized that he was not bound by that award. The arbitrator then determined that the only way that "blanket wash-up" can be negotiated without conflicting with Article 8.9 of the National Agreement is when there is a showing that all MVS employees in the facility perform dirty work or work with toxic materials.

Clerk Craft Wash-Up

Efforts to show that Clerk Craft employees meet the "dirty work" standard of Article 8 have proven more difficult. In case after case, wash-up proposals involving fixed amounts of time for Clerk Craft employees have been rejected due to the arbitrators' opinions that their work in the facility did not meet the dirty work standard (AIRS # 175, 507, 523, 524, 525, 531, 534,34361). The standard applied by many arbitrators requires that the clerks perform work that would be "dirtier" than normal (i.e., what one would expect from distribution of ordinary letter mail).

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

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

In another case, an arbitrator held that the union had made the showing that all members of the bargaining unit routinely performed dirty work or work involving the handling of toxic materials. Its demonstration was essentially unrebutted. She upheld continuance of fixed wash-up times for all employees including clerks (wash-up of 10 minutes before lunch and at the end of a tour) (AIRS # 14655).

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

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

Moreover, one arbitrator held that there was sufficient evidence to support increasing the wash-up time for clerks at the Brooklyn GPO based on the large size of the facility, the long distances

clerks must travel to wash-up facilities, and the demonstrated inadequacies of elevators and stairways (AIRS # 504).

Support for Fixed Wash-Up

Sometimes, arbitrators have refused to establish fixed wash-up periods where the facility already has a "wash-up as needed" policy (See, for example AIRS # 13017, 20499, and 34360). Thus, the local must show that the "as needed" policy is insufficient and that the requested amount of time is necessary. This may be done in several ways. One approach is to show that management has denied reasonable wash-up requests.

In many cases reviewed, however, locals requesting fixed wash-up periods either cannot cite any or cite very few grievances filed or complaints made. Often arbitrators point to the lack of grievances and complaints in their determinations that a current "as needed" policy is adequate (AIRS # 1, 2, 529, 542, 565, 2943, and 34360). However, the lack of grievance activity during the time fixed wash-up time provisions are in effect may be a convincing argument to support continuation of the existing provisions (AIRS # 33153).

A local may also demonstrate that granting a fixed wash-up period for a group of employees is more efficient than maintaining an "as needed" policy because the latter approach requires time by supervisors to deal with daily wash-up requests (AIRS # 566). Note that such an argument was persuasive in a case upholding fixed wash-up times for all employees. In that case, the arbitrator concluded that given "(a) the Service's goal of maintaining the efficiency of its operation, (b) the mandatory obligation placed on Installation Heads by Section 8.9 to grant wash-up time, (c) the recognized subjective nature of the concept of dirty, (d) the complexity of applying the. . . criteria to determine the reasonableness of each employee's request and for determining the time needed for wash-up in these varying conditions and circumstances, and (e) the number of impacted employees and resulting requests for wash-up time," it would be reasonable to have a fixed wash-up period rather than to accept management's proposal to deal with each employee's specific request (AIRS # 33153).

Facilities Argument

Still another approach involves proof that a fixed wash-up period is necessary since wash-up facilities are inadequate due to the employee/ facility ratio, the inoperative condition of some facilities, the geographical inconvenience either because an employee must travel a great distance to a wash-up facility and/or is delayed by faulty elevators or stairways (AIRS # 502, 504). Such allegations are subject to proof and should not be made if they cannot be substantiated (AIRS # 505, 542, 2287).

One local justified an increase in wash-up time over the previous LMOU by proving that workroom congestion made additional time necessary (AIRS # 4447). The same demonstration would assist arguments for an initial grant of wash-up time in an LMOU. On the other hand, reduction in wash-up time has been found justified on the basis of conditions such as the number of employees using washrooms, the location of the washrooms in relation to work areas, and the total number of washrooms (AIRS # 13034).

Comparability and Time Studies

Locals should avoid comparing wash-up policies of one facility with those of another. First, the arbitrator may find that the comparisons are not valid. Second, for every comparison which the local makes to support its position, the Service can probably make one which does not (AIRS # 542).

Further, a local should be very circumspect in using calculations or time studies to support wash-up proposals. Such calculations may be invalidated if they fail to take into account the normal daily absences which reduce the size of the work force on any given day. Such calculations can also be invalidated if an actual demonstration contradicts them (AIRS # 544).

However, locals should be prepared to discredit time studies performed by management in order to obtain additional or longer wash-up time. For example, an arbitrator ruled that "[t]he design, universe, and methods of data collection" in a management wash-up time survey were so "flawed" that he could not "in good conscience give any validity to its results." He credited testimony of the union's industrial engineering experts that the survey findings had no usefulness in predicting wash-up time behavior and violated

Article 34 of the National Agreement (AIRS # 21117). But, see AIRS # 14562 where an arbitrator rejected carrying over a pre-existing wash-up provision on the basis of management time studies showing that only 41% of a sample of 188 employees used wash-up time over a two week period and indicating that employees using wash-up consumed less time than required by the LMOU (AIRS # 14562).

Past Practice of Fixed Wash-Up

Evidence that fixed wash-up time has been a past practice in a facility may support continuation of the policy in an LMOU. However, a local should avoid making the past practice argument unless it can actually be substantiated. Unfortunately, some locals have been alleging a past practice where none was proven (AIRS # 529 and 2943). One arbitrator has outlined the following criteria for a determination of the existence of such a past practice:

> The past practice wash-up (must be) (1) unequivocal, (2) clearly enunciated and acted upon, (3) readily ascertainable practice accepted by both parties (AIRS # 529, p.8).

On the other hand, several locals have been able to keep their five minute wash-up times by proving that the wash-up periods had been long-term practices at the facilities. In one case, an arbitrator stated that since the parties agreed to the five-minute wash-up period in the previous LMOU, it could be assumed that the provision was required under the circumstances of the postal installation and that the parties had found it reasonable (AIRS # 7862). Moreover, he held that there was no inconsistency with the National Agreement where the parties by their own long practice and continued agreement, fixed the terms of the wash-up time. Another arbitrator found that a five minute wash-up provision that had been in effect since 1949, and carried forward as an existing practice in the LMOU, was not inconsistent with the National Agreement (AIRS # 13483). However, locals should be aware that reliance on past practice or prior agreements as evidence of reasonableness may not be appropriate "in the face of objective evidence" that requires a decision to the contrary (AIRS # 14562).

Increasing Wash-Up

Proposals for additional or longer wash-up periods may succeed if based upon facts showing that the requested change(s) is warranted (AIRS # 504, 545). The local should demonstrate that the wash-up period initially granted did not provide enough time, or that changes during the life of the current LMOU now require more time (AIRS # 545).

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

> ...clerks and maintenance employees were entitled to a reasonable wash-up time before lunch and at the end of the tour. However, clerks were allowed clock time only if 5 minutes or more were required to accomplish a clean condition...(AIRS # 556).

2. Basic Work Week

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

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

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

1) That your proposal meets the Postal Service need for X number of employees with appropriate skills.

2) There is a need for a change.

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

Note: In accordance with the parties' agreement and intent of the 2006 MOU re: "Supplemental Work Force; Conversion of Clerk Craft PTF's," in mail processing, transportation and vehicle maintenance facility operations in 200 man-year installations, career employees will have consecutive

scheduled days off, unless otherwise agreed to by the parties at the local level.

Fixed vs. Rotating

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

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

Claims by management that locals must negotiate for either fixed or rotating and not a combination of both are wrong.

In a rights arbitration, Arbitrator Haber stated that a clause containing specified percentages of Monday through Friday, Tuesday through Saturday and rotating schedules would be consistent with the National Agreement (AIRS # 278, grievance was denied for other reasons). In addition, a provision that called for a six-month trial period of a five-day work week with rotating days off for distribution clerks and then allowed the clerks to vote to either keep or reject the rotating schedule was upheld by an arbitrator. Arbitrator Foster held that the provision was not inconsistent with the National Agreement and did not present an unreasonable burden to the Postal Service (AIRS # 21048 and 20392). Another arbitrator upheld a similar provision and found that a "mix" of fixed and rotating days off was not inconsistent with the National Agreement (AIRS # 27132-33). Moreover, Arbitrator Fletcher found that a one-third to two-thirds ratio between positions with rotating days off and positions with fixed days off was reasonable and not inconsistent with the National Agreement (AIRS # 28108-111). But, see AIRS # 20574 in which Arbitrator Eyraud ruled that a provision allowing for a combination of fixed and rotating days off constituted an unreasonable financial burden and was inconsistent with the terms of the Agreement. In addition, an award by Arbitrator Helburn determined that a proposal seeking an increase by one or two in the number of Window Clerks with a fixed schedule of Saturday and Sunday off, rather than retaining them on a rotating schedule, would create an unreasonable burden. He relied on a supervisor's testimony that a minimum of eight clerks were needed for the window and distribution work as well as data showing that if the union's proposal were in effect clerk staffing would have been at six or less during 69% of the Saturdays (AIRS # 32252).

Management Rights

Arbitrators have rejected language that infringes on Management's right to fix the basic work week, as established by the conditional language of Article 8, Section 2.C (AIRS # 4901,4902, 13586). Moreover, one arbitrator held the subject of five consecutive work days was outside the negotiable items under Article 30, since Item Two did not indicate a work week was comprised of five consecutive days (AIRS # 6414). In another award, an arbitrator held that Article 30.B.2 does not cover consecutive days off (AIRS # 13586). However, see AIRS # 33542 in which an arbitrator reasoned that management's right to schedule could be restricted in rejecting its proposed deletion of language that limited part-time regular employees to five work days with two fixed days off. The arbitrator determined both that the existing provision was not in conflict with the National Agreement and not an unreasonable burden.

Language that is conditional and reserves management's right to determine the basic workweek within reasonable bounds has been allowed. For example in AIRS #4909, an arbitrator held that an existing LMOU with the qualifier "subject to the needs of the Postal Service" was not in conflict or inconsistent with the National Agreement. Moreover, in AIRS # 7579, an arbitrator upheld a provision with the phrase "to the maximum extent possible." Another arbitrator refused to disturb a provision that stated that "[e]very effort shall be made to provide the maximum number of Monday through Friday basic work weeks in each Section/Tour consistent with operational needs." (AIRS # 20619) Also, an arbitrator concluded that Management failed to show with probative evidence that a provision establishing a mandatory work week of five consecutive days was inconsistent with the National Agreement, and therefore found that there was no reason for doing away with a provision that had been in existence for a length of

time (AIRS # 7022). (However, see AIRS # 20499, 20500 in which an arbitrator rejected the union's proposed language that "[t]o the maximum extent possible, all full-time and part-time regular positions in the clerk craft shall have consecutive days off.")

Practicality of Proposal

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

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

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

Proposals that are too restrictive will probably be rejected (AIRS # 513 and 1443). For example, the arbitrators in Case Nos. 513 and 1443 rejected provisions that provided that all full-time regular positions in a facility shall have a regular work week of five consecutive days or a work week shall be five days with fixed days off of Saturday and Sunday, Sunday and Monday, or rotating days. (But see AIRS # 20792 cited below for a different result.)

Even though a proposal is practical in the sense that it will provide sufficient workers each day of the week, it may be rejected. For example, a local attempted to change its LMOU from providing that each full-time employee shall have a job with a fixed day off to all full-time clerks shall have a rotating day off. The arbitrator rejected the proposal because it would cause inefficiencies such as increased training costs (AIRS # 2105). Also, see AIRS # 42359 which had a similar result.

Showing of Need or Benefit

Additionally, arbitrators will consider the benefits of a proposal to an employer or employees (AIRS # 2105 and 20921). Basic work schedules that have worked well over a long period will not be changed without a demonstration of a need or benefit to employees, or a demonstration of an impediment in the efficiency of the Postal Service (AIRS # 2105, 4860, 6414, and 7892). For example, in one case, an arbitrator refused to delete a provision providing that regular clerks shall have two consecutive days off, Saturday and Sunday, or Sunday and Monday. He found that there was no showing that unnecessary overtime would occur during weekends, holidays, and vacations (AIRS # 20792). A proposal that benefits only a small number of the employees at a facility may be rejected (AIRS # 5291). Moreover, a proposal that may benefit employees by providing rotating days to some clerks to allow them to spend more time with their families may require the Postal Service to hire more employees or reduce service. An arbitrator has rejected such a proposal on efficiency grounds (AIRS # 4869). Another arbitrator rejected a proposal for rotating days off on the basis that it would deprive a postmaster of the ability to schedule regular clerks when they are most needed and would result in additional expenses for cross-training and providing security for the stock of more employees with accountability (AIRS # 20491).

Union Approval or Consultation

Provisions requiring union approval or consultation regarding the basic work week have been rejected in some cases (AIRS # 6120, 6130, 6186, 13586), as well as provisions requiring Management to establish a five consecutive work day week for new job assignments or additional positions created (AIRS # 4902 and 7501). However, union consultation has been allowed by arbitrators in AIRS # 13028 and 20619.

3. Emergency Curtailment

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

Management will strongly oppose giving up its right to determine when postal operations should be curtailed and administrative leave granted to employees who are prevented from reporting to work due to an "Act of God." However, every effort should be made to negotiate guidelines to cover such "Act of God" situations, taking into consideration the resulting impact on employees, notification of employees, the safety and health of employees, the advice of local authorities, etc.

In support of proposals seeking curtailment

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

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

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

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

A U.S. Supreme Court ruling upheld OSHA's regulation prohibiting discrimination against an employee who refuses to perform a task because of a reasonable apprehension of death or serious injury under circumstances where there is insufficient opportunity or time to obtain correction of the problem by the employer or assistance from the Occupational Safety and Health Administration. While this decision in *Whirlpool Corp. v. Marshall* (445 US 1, 1980) and the OSHA regulation in 29 CFR 1977.12 provides some protection for employees, it may be important to set out a local procedure to address such circumstances and to provide for alternatives such as administrative leave or reassignment that will be available to employees if they exercise the right of refusal after reporting an imminent danger to management and no corrective action has been taken. Also, examples of provisions that other unions have negotiated on some of these subjects are included at the end of this item.

Management Discretion

Relying on Article 3 or ELM Sections 519.213 and 519.221, some arbitrators have rejected proposals that restrict management's discretion in granting administrative leave or in determining what constitutes an emergency (AIRS # 6107, 6335, 6433, 7232, 7233, 7235, 27950, 32253, 32253). Examples of proposals rejected on these grounds have included provisions that require shutdown of a facility on the basis of hurricane warnings by the National Weather Service or when weather conditions prohibit delivery of mail or that require automatic evacuation of a facility after an alleged bomb threat. However, while an arbitrator denied language for an LMOU requiring managers at a Processing and Distribution Center to comply "when the weather bureau issues a hurricane warning or any severe weather warning and the mayor or city manager of the city in which employees live, informs people to stay off the streets," the arbitrator included language that

would not delegate management's right to manage the facility. The language provided that

> The decision for curtailment or termination of Postal Operations to conform to the orders of local authorities or as local conditions warrant because of emergency conditions shall be made by the installation head. When the decision has been reached to curtail Postal Operations, to the extent possible, management will notify and seek the cooperation of local radio and television stations to inform employees. This decision will be made as promptly as possible with due consideration for the safety and welfare of the employees and the protection of their families and personal property. (AIRS # 38348)

Some arbitrators have rejected detailed language that protects the health and safety of employees (See AIRS # 7232, 21011, 21012, 21013). Also, one arbitrator has ruled that a broad definition of "emergency conditions" proposed by a local union contained circumstances that were beyond the scope of Article 30.B.3 (AIRS # 33168). Another arbitrator rejected a proposal that provided that at any time Acts of God exist or the area is ordered to be evacuated by civil authorities, employees shall be granted approved leave or reassignment. Though the proposal provided that the type of leave to be granted would be determined by the Postal Service, the arbitrator ruled that the proposal extended beyond the scope of Article 30 when it proposed that leave should be granted. He said that the union's failure to make reference to Article 10 in its proposal, and to defer to such leave regulations, could create conflicts that are inconsistent with the National Agreement (AIRS # 39771).

Successful Provisions

However, several arbitration awards have accepted extensive union proposals. In AIRS # 576 Arbitrator Dash added the following provisions to the LMOU:

> In the event that a bomb threat occurs at either the Newark or Hackensack Postal Service locations, the Newark management's "Contingency Plan For Bomb Threats" (February 23, 1972) shall become immediately operative for that location, and a simplified written "plan" shall become operative at the Hackensack, New Jersey location. In both locations, the "Joint Labor-Management Safety and Health Committee" members at work at the time shall be consulted briefly by management before the "Plan" is initiated in connection with any bomb threat. All American Postal Workers' Union officers at both locations, shall be provided with written copies of the "Plan" by management.
>
> If and when heating equipment at any subject location is deemed inoperable by management, and any possible offsetting steps taken by it fail to prevent the dropping of the inside temperature below 50 degrees for a full tour, the individual employees who fear to work under such conditions may request appropriate relief therefrom in the form of a temporary transfer to a nearby location or of a leave. The nature of such leave if requested, shall be determined by management, but a leave shall not be unreasonably withheld.
>
> If and when air-conditioning or air-ventilation equipment at any subject location is deemed inoperable by management, and any possible offsetting steps taken by it fail to attain an inside temperature level below 95 degrees for a full tour, the individual employees who fear to work under such conditions may request appropriate relief therefrom in the form of a transfer to a nearby location or of a leave. The nature of such leave, if requested, shall be determined by management, but a leave shall not be unreasonably withheld.

In AIRS # 5554, an arbitrator rejected management's contention that the union was limited to proposing only those guidelines which may be operative after an employer has decided to curtail or terminate operations. He emphasized that it was well established that health and safety was a mandatory subject of bargaining and he accepted as modified proposals for curtailing operations in the event of a bomb or safety hazard and dealing with granting leave when conditions result in extremely high or low temperatures in a facility. This arbitrator added the following provisions to the LMOU:

> In making a determination to curtail or terminate operations following an emergency, management will take into account (a) the adverse effects, if any, on the normal operation of public transportation, (b) the

closing of roads and highways in counties contiguous to Fulton County.

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

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

Another arbitrator upheld these same provisions against another management challenge, but held that another provision requiring that leave be granted if the Department of Public Safety or another governmental body certifies or determines that conditions pose an imminent health or safety risk constituted an unreasonable burden (AIRS # 20501).

However, Arbitrator Parkinson ruled that a provision allowing employees to request appropriate leave whenever a traveler's advisory exists and they believe conditions are so hazardous as to make it unsafe to drive did not constitute an unreasonable burden. The arbitrator rejected management's argument that this language created an impression with employees that they were entitled to administrative leave and caused them not to report to work. In addition, this arbitrator upheld provisions giving special delivery messengers the right to request curtailment of delivery of mail to comply with any emergency and allowing a handicapped employee confined to a wheelchair to request release during inclement weather through the appropriate chain of command or outside regular hours by calling the Labor Relations representative at his/her place of residence (AIRS # 27191).

In AIRS # 20617, an arbitrator added the following language to an LMOU that already provided for notification to the union of management's plan to curtail mail due to local emergency conditions:

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

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

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

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

Management shall supply the union with a copy of all emergency contingency plans that

relate to the safety and welfare of postal employees (i.e. bomb plans), except as to the personal telephone numbers of the Postal Officials, with updates as they become available.

Other arbitrators have allowed language that clarifies an employee's right to request leave when driving may be hazardous (AIRS # 5231, 27191). Language calling for union notification in the event of a breakdown in air conditioning or heating also has been accepted (AIRS # 6433). In addition, another arbitrator has added language to an LMOU that requires management to grant an employee appropriate leave if medical authorities determine they are too ill to work due to faulty heating and air-conditioning (AIRS # 14258).

Leave for Acts of God

Impasse arbitrations show that most disputes arise when leave is in issue for "Acts of God." For example, in AIRS # 4906, the arbitrator rejected a union proposal that restricted the postmaster to granting only administrative leave in the case of employees affected by closing of businesses and curtailment of public transportation due to emergency conditions. Also rejected have been proposals to negotiate leave guidelines for emergency situations where there is no curtailment or termination of operations but some employees are unable to report (AIRS # 530, 568, 573). In addition, a provision requiring that administrative leave be granted when employees are prevented from reporting for work due to Acts of God, hazardous weather conditions, or emergency situations, and when dismissals are warranted due to orders of local authorities was rejected on the basis that it removed from management the right to make a judgment on the scope of emergencies and the granting of administrative leave (AIRS # 20913).

An attempt to insert language that management must follow the provisions of the ELM was rejected because the regulations exist and violations can be grieved without adding to the LMOU (AIRS # 535).

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

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

Examples of Other Union Contract Proposals on Safety

In determining what language to include in a provision, a review of other unions' proposals on the issues of safety and health and responses to accidents and emergencies may be useful. Of course, such language has to be refined so that it will be more applicable to a local union's circumstances. A provision in the contract between USWA and Bethlehem Steel, 1993-1999, addresses the situation of emergency responses: "... Employees shall be instructed in escape and emergency rescue procedures. A detailed outline of the training procedures shall be included in the program: [The program shall include] posting of emergency escape procedures in areas of potential hazard; [There shall be] an emergency rescue program which shall include provisions for treatment of carbon monoxide exposures [can be changed to reflect the type of exposure that is involved, such as anthrax exposure], emergency rescue techniques for various parts of the plant, and appropriate rescue and recovery equipment including resuscitators. The program shall include identification of Employees trained in emergency rescue techniques."

Another example is a provision addressing the issue of not working under unsafe conditions in the ILWU and Pacific Maritime Association Agreement, 1993-1996: "Longshoreman shall not be required to work when in good faith they believe that to do so is to immediately endanger health and safety ... The employer shall have the option of having the men raise a question of health and safety stand by until a decision is reached or 'working around' the situation until it can be resolved, and no further work shall be performed on that disputed operation until the health and safety issue is resolved." A provision concerning assigning an employee another job after he or she exercises a right of refusal is contained in the UAW and General Dynamics contract of 1991: "Employees who exercise ... right of refusal shall be assigned to other available work ... either at the

... rate of the job from which he/she was relieved or the rate of the job to which he/she is assigned, whichever is higher."

4. Leave Program

Formulation of Local Leave Program

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

Item 4 gives the local an opportunity to tie all of the other items together into some logical leave program as well as to cover subjects not specifically covered elsewhere: such as, the sections for vacation choices; whether an employee coming from another section during the course of the year will keep his or her initial vacation selection or will have to select a new vacation in the new section; how employees cancel vacation; how empty choice vacation slots are filled as they become vacant during the course of the year; the trading of vacation periods; the effect of military duty or illness on vacation periods; indicating the number or percentage of employees permitted off during non-choice periods. Remember to specifically address each craft separately in your LMOU leave provisions. Each craft has different needs for coverage and seniority selections.

Note: Locals are cautioned against negotiating LMOU provisions identifying the APWU as administrator of employee choice vacation periods. Depending on what is negotiated, including provisions on this item in a local's LMOU may limit the union's flexibility to opt out of administration on a quarterly basis (as provided in the 2006 National Agreement MOU re: APWU Administration of Overtime, Choice Vacation Periods, and Holiday Work). At this time, reliance on the MOU itself should suffice. In addition, before a Local assumes these administrative responsibilities, the local parties will be provided training by the national parties.

Inconsistent and In Conflict

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

- A minimum of two days bereavement leave (AIRS # 4353). However, see MOU re: Bereavement Leave in 2006 National Agreement.
- Automatic approval of leave for weddings, graduations, military leave, funerals, Christmas Eve if the request is based on religious reasons, etc. (AIRS # 4353, 6660, 6137, 7584)
- Automatic "Administrative Leave" when not able to report due to snow storm (AIRS # 2607 and 512)
- No denial of emergency annual leave so long as management receives notification of the nature of the emergency (AIRS # 6097)
- Removal of 204B from vacation schedule (AIRS # 2607)
- Automatic approval of requested time off for blood donations and provision of uniform amount of administrative leave for this purpose (AIRS # 574, 20913, 20915-20920). But see AIRS Case #20907 where an arbitrator has upheld such a provision.
- Prohibition against requiring a medical certificate for sick leave or LWOP requests of 3 days or less, or requirement to accept verbal certification of absences of 3 days or less (AIRS # 543, 6103, 7586)
- Automatic LWOP for Disapproved absences or charging of LWOP in all cases where employees don't have annual leave or sick leave (AIRS # 6142, 7581, 7582, 20903). But see AIRS # 20915-20920 where an arbitrator upheld a provision on granting requests for LWOP or LWOP in conjunction with sick or annual leave the same consideration as sick or annual leave requests. Also see the MOU on LWOP in Lieu of SL/AL and pre-arbitration settlement Q9OC-4Q-C 95048663 on LWOP, CBR 99-03, pages 58-61.
- Maternity leave policy (AIRS # 20895, 21888)
- Automatic approval of any leave up to a minimum number of employees or a

minimum percentage of employees (AIRS # 21888)

- Automatic LWOP to allow employees to retain earned leave at employee's option (AIRS # 21888)
- No denial of incidental annual leave due to managerial leave, craft employees detailed out of craft or loaned to another facility (AIRS # 21888, 21034)
- 48-hour time period to select choice vacation (bypassing choice vacation selection period) (AIRS # 27030-34)
- Signing up for leave for less than a week during the choice vacation period (AIRS # 27195)

Proper Items for Leave Programs

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

- Computations of the number allowed off during choice vacation period (Item 9) should be based on number of authorized positions rather than actual number working (AIRS # 4353)
- Time frame in which management must act upon incidental leave requests (AIRS # 512, 541, 549, 2955, 7585, 8470, 20892, 21034, 20915-20920)
- Time frame in which employees must make requests for leave for choice vacation period and for incidental leave (AIRS # 4662, 4861, 4953, 9686)
- Procedure for disapproving leave requests (AIRS # 7370)
- Employee to keep original choice vacation selection from old section when transferred to a new section (AIRS # 562, 34360)
- Employee to select another vacation period when ordered to military training during a selected vacation, and military leave not to be included as part of choice vacation leave (AIRS # 7366, 21888, and 22474)
- Documentation procedures for substantiation of absences (AIRS # 7583)
- Exchange of a choice vacation leave selection by mutual consent in the same craft and level (AIRS # 21888)
- Procedure for cancelling previously approved annual leave and posting the available leave (AIRS # 21888, 21034, 21871)
- Requests for granting LWOP to be given same consideration as applications for annual leave or sick leave (AIRS # 20915-20920)
- LWOP may be granted where employee lacks leave to cover vacation choice (AIRS # 27397 and 34984)
- Procedure for vacation bidding by using calendar system (AIRS # 26731)
- Election to be wait-listed in seniority order for choice vacation that was disapproved or to select any open choice periods (AIRS # 27128-31)
- Leave used during employee's leave selection will be at employee's option (in 8 hour increments) (AIRS # 27068-69)
- Reposting of vacation slots that have been withdrawn (AIRS # 34360)
- Orientation before annual leave sign-up (AIRS # 34360)
- Posting of leave vacancies of less than one week during the non-choice vacation period (AIRS # 34360)
- Posting of an early out list for employees on the clock (AIRS # 33001)
- Procedure for holding a previously denied 3971 for consideration (AIRS # 33001)

Guaranteed Leave Quota

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

However, in a national level decision, Arbitrator Mittenthal ruled that LMOU provisions granting employees the right to take certain leave time on the basis of a consolidated percentage, fixed number or other comparable formula, are not inconsistent or in conflict with the National Agreement (See, AIRS No. 6931, January 1986).

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

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

5. Choice Vacation Period(s)

Duration of the Choice Vacation Period

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

In AIRS # 13045 the arbitrator held that a 20-week choice vacation period, beginning with Memorial Day, was a reasonable compromise of the union proposal for a 16-week period and a management proposal for a 24-week choice period. The arbitrator reasoned that a 20-week period would increase the number of employees off during the choice period at a given time by five and would still provide a choice during the desirable vacation season. There would also be little effect on the efficiency of mail operations since the volume of mail would not increase until after the 20-week period. In AIRS # 20765 and 20766, an arbitrator ruled that the Postal Service had not met its burden of proving that an unreasonable burden existed due to existing language that provided for a choice vacation period beginning on the last Sunday of May and lasting for 18 weeks. He rejected the Service's attempt to extend the choice period to 24 weeks on the basis that the alleged adverse impact from insufficient employees may be due to other factors than the length of the choice vacation window and the number of employees eligible for vacation.

Another arbitrator rejected management's proposal of a 38 consecutive week choice vacation period starting in January and instead accepted the union's proposal of a 26-week period starting in April (AIRS # 28108-111). Moreover, an arbitrator rejected management's proposal to make the leave schedule the entire calendar year with the exception of the Christmas period. Instead, he accepted in part the union's proposal that it should run for 24 consecutive weeks beginning with the first full week in May and including the week in which Thanksgiving falls, or the week of Christmas if Christmas falls on Tuesday or earlier, the week after if it falls on Wednesday (AIRS # 34360).

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

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

> *The maximum number of employees in each category as specified in each craft article of the Local Memorandum of Understanding shall be 10% each week of the prime vacation period.*
>
> *In the Motor Vehicle Division, categories shall be occupational groups, sections, and tours.*

A longer choice vacation period may accommodate the needs of employees better than a shorter choice vacation period. For example, a local with a large group of parents of school age might feel the summer months are preferable to meet their needs whereas a local with an older workforce might find the winter months preferable. A longer choice period may accommodate the needs for the entire workforce of the local. However, one arbitrator has determined that in the absence of proof of a compelling need for increasing a choice vacation period or an adverse effect on employees, he would not accept a local union's proposal to increase a choice vacation period from February through November to January through November and the last two weeks in December (AIRS # 26967-68). He found that the current 43-week choice period was sufficient to preclude any forfeiture on the part of the nine clerks at the office.

Choice Vacation during Holiday Periods

Some arbitrators have been reluctant to increase the choice vacation period to include the Christmas to New Year's period, the week of Thanksgiving, or the period around Easter in the choice vacation period (AIRS # 21888, 20504, 20904, 34361). Also, the addition of the month of November to the choice vacation period may be rejected because of the high volume of mail at that time (AIRS # 27427-30). Another arbitrator rejected the elimination of restrictions on assignment of the last week of December as a vacation period (AIRS # 28647). In addition, an arbitrator rejected a union's proposal to include clerk craft employees in a provision granting 5% of all employees within each section leave during the first full week of December through December 24th (AIRS # 26788). In smaller offices, an arbitrator may refuse to change an established practice so that clerks can select choice leave on weeks in which six holidays fall if it means that employees in one craft will be treated more favorably than employees in another craft (AIRS # 20560).

Also, an arbitrator denied a union's proposal to include the entire month of December as part of the choice vacation period on the basis of evidence that the majority of offices in the district in which the facility was located granted leave for one week only during December and mail volume as well as customer usage of window service increases during this period of time. He found unconvincing union arguments that training additional staff for window work, reducing the numbers of clerks serving as acting supervisors, and considerations of equity justified giving clerks and maintenance employees an opportunity to select choice vacations during the entire month of December since carriers at the facility were granted such an opportunity (AIRS # 39540). See also AIRS # 42763 in which an arbitrator rejected a union's proposal to include the period from the last Saturday in November through December 25th in the vacation leave year. The arbitrator found that there was no compelling reason to change the leave year language which already provided that the leave year extends from the fourth full service week in April and continues through the third full service week in April of the following year, with the exception of the time between the end of November and December 25th. He noted that the union had not made reference to local MOUs in which parties had agreed to extend the vacation period to include December, and sufficient staffing was necessary during the high volume period surrounding Christmas.

However, see AIRS # 28108-111 in which an arbitrator allowed the addition of the week of Thanksgiving and the period from December 25th through January 1st to be included in the choice vacation period (Also see AIRS # 26728 and 34360). Moreover, another arbitrator included language in a local agreement that "[e]very effort will be made to allow the period of Christmas Day through December 31 as a vacation period in accordance with Item 12 of the LMOU" (AIRS # 26811). In addition, an arbitrator expanded the choice vacation period to start two days prior to the New Year's Day holiday (December 30th through November 30th) while rejecting the union's proposal that it start on December 25th (AIRS # 27128-31).

Another arbitrator ordered that the choice leave period, which currently extended from the first full week of May through the last full week of September, also include the period between December 25th through January 1st. He found that there was no evidence showing that requiring management to grant leave within negotiated percentages would inhibit its ability to efficiently manage the facility during the holiday period. The arbitrator cited evidence that in the past during this same period of time management granted leave that exceeded existing percentages and made such decisions arbitrarily and capriciously (AIRS # 39925) Similarly, another arbitrator accepted a

proposal to add December 26th through December 31st to the choice vacation period, which extended from January through the last full week that includes November 30th. He was persuaded by evidence that employees are being given time off during this period anyway, but it is not being approved on an equitable basis. (AIRS # 40576)

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

> *The Choice Vacation Period is designated as from the week in which Memorial Day falls through the week in which Labor Day falls.*

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

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

(Note that different percentages can be set for periods around holidays such as Thanksgiving and Christmas. However, see AIRS # 35332 where an arbitrator rejected a proposal to increase the percentages off during those times.)

6. Vacation Start Day

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

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

Failing to negotiate otherwise, Article 10, Section 3.E of the National Agreement will control: "The vacation period shall start on the first day of the employee's basic work week." In AIRS # 14264, the arbitrator upheld management's proposal to have the employee's vacation start date as the first day of the employee's basic work week of the service week in which the employee is requesting a choice vacation selection.

Some of the cases reviewed dealt with union attempts to secure a start date following employees' non-scheduled work days. In resisting such proposals, management showed concern for extended use of overtime and the denial to other employees of their choice vacation period (AIRS # 6654 and 8052). However, in one case, an arbitrator upheld a provision that the vacation period shall start on the first day of the employee's basic work week and allowed employees to start their vacation days other than the first day of the basic work week, if they so desired (AIRS # 27697-98). He found that there was insufficient evidence to establish that there had been any significant scheduling or cost problems with the past operation of this clause. In another case, an arbitrator accepted a union's proposal to grant employee requests for choice vacation period for "the entire period of 12/25-1/1, regardless of days off, or inclusion of weekends." (AIRS # 39925)

Start After Non-Scheduled Days

Some proposals that have mandated a start date following non-scheduled work days were rejected as inconsistent with Article 10, Section 3 (AIRS # 6497, 6654, 8052). In addition, some proposals allowing employees to select their vacation start day have been rejected (AIRS # 6144, 6548, 8625, and 14264). In AIRS # 6548, the arbitrator noted Article 10, Section 3 states that exceptions to the first day can only be made by agreement among the employee, a union representative, and the employer. In AIRS # 8625, the arbitrator stated that since no evidence was put forth that exceptions had ever been requested, there was no basis for changing the current arrangement. However, see AIRS # 27697-98 discussed in the previous paragraph.

Also, where management policy has been to grant requests for start days following non-scheduled work days, a proposal requiring that such requests be granted was rejected on the reasoning that the existing policy kept a certain amount of management flexibility while accommodating employees (AIRS # 8052).

It has been much easier to get approval for proposals stating that employees would not be required to work non-scheduled work days and

holidays that happen to fall in conjunction with vacation (AIRS # 4941, 5232, and 20729). In AIRS # 4941, the arbitrator stated the ability of an employee to plan vacation in conjunction with non-scheduled work days or holidays outweighed any inconvenience to the Postal Service in refraining from compelling the employee to work on these days. Also, see AIRS # 28108-111 in which an arbitrator accepted the local union's proposal that non-scheduled days and holidays at the beginning and end of a vacation period will be considered as a part of the vacation period unless stipulated by the employee.

However, see AIRS # 40098 in which an arbitrator rejected the same provision on the basis that the union had not shown that any employee with Sunday-Monday off days who had pre-arranged a vacation surrounding one of the three-day holidays had to actually work Saturday as a holiday or designated holiday.

Language requiring supervisors to avoid scheduling employees on non-scheduled work days and holidays immediately preceding or following vacation days has been allowed in order to avoid grievances (AIRS # 5232).

Also, a local union has been successful in ensuring that part-time flexibles' vacation include some weekend time. The arbitrator determined that it was fair to include a provision in the LMOU that choice annual leave shall begin on Sunday and extend through Saturday for part-time flexible employees (AIRS # 26789-94).

7. Splitting Vacation Choice

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

Locals usually negotiate the option for employees to request up to 15 continuous days or two selections in the choice period in units of 5 or 10 days. This provides the employee with options. (See Article 10, Section 3.D.3). However, it should be noted that Arbitrator Mittenthal limited these options when ruling that to the extent an LMOU allows an employee to make his initial selection within the non-choice period, such clause is inconsistent with the National Agreement (AIRS # 6931, national level, January 1986).

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

Some locals have provisions far in excess of the minimum with the proviso that after the initial selection, any unused vacation slots are closed off and not available for any later selections. However, see AIRS # 13023. In that case, the arbitrator held that the union's proposal to add a provision to the LMOU providing that employees could make additional selections during the choice vacation period as long as some slots were available, had merit and was not inconsistent with the National Agreement. He ordered that the following language be included in the LMOU:

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

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

Additionally, proposals that do not ensure the availability of sufficient employees to run a department; for example, a proposal for leave choices that groups employees by job classification, may be rejected (AIRS # 6521).

Finally, the local negotiating team should note that a proposal should be adequately supported by evidence, or risk being rejected because of lack of evidence showing a need for the provision (AIRS # 6337). Similarly, management objections to a proposal have been dismissed because of lack of evidence as to why the provision should not be included. In AIRS #

7338, the arbitrator rejected management's argument that a proposal for a two-round selection process was not necessary since management intended to follow the procedure anyway. Lacking substantive evidence against the proposal, the arbitrator concluded the LMOU served an educational purpose as well as defining the agreement of the parties, and therefore the provisions should be included.

8. Convention Time and Jury Duty

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

Union Conventions

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

Article 10, Section 3.F grants the right of a delegate to make another selection during the choice vacation period in addition to any convention time during the choice period provided the additional selection does not deprive any other employee of first choice for scheduled vacation. The negotiation of a provision that union convention time not be charged to the choice vacation period should eliminate the possibility of depriving someone of their choice selection (AIRS # 6529, 7369, 8573). Also, an argument that the Mail Handlers Union obtained such a provision, coupled with the fact that no evidence showed that the provision burdened the Postal Service, persuaded an arbitrator to award inclusion of language that attendance at national and state union conventions will not be charged against the choice vacation period quota (AIRS # 40576). In addition, a pre-existing provision that employees on jury duty, attending state or national conventions as actual delegates, or on military leave and union activities of two days or less will not effect the number of employees that can be allowed annual leave during the choice vacation period, has been upheld against management's argument that it was an unreasonable burden (AIRS # 20561). Also, see AIRS # 33389 for a similar outcome.

There will be two National Conventions during this contract period, and the first one is scheduled for August 18-22, 2008. Remember that pre-convention workshops, a Human Relations Conference and Division meetings are also scheduled on additional days close to the time of the convention. This should be kept in mind when negotiating any provision in regard to leave for union business.

Proposals on leave for union meetings or business have usually been rejected as outside the scope of mandatory bargaining (AIRS # 7369, 21871) or inconsistent and in conflict with the National Agreement (AIRS # 20560 and 21888).

Jury Duty

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

Article 10, Section 3.F provides that the

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

9. Number Permitted Vacation

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

Minimum Number

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

a. Multiplying the number of employees with less than 3 years of service by 2,

b. Multiplying the number of employees with three years or more service by 3,

c. Adding those two figures together,

d. Divide the total by the number of weeks in the choice vacation period.

This becomes the minimum number of people that the employer must allow off during each week of the choice vacation period to accommodate the requirements of Article 10 of the National Agreement. Most locals attempt to improve upon this minimum number. While we refer to this computation as producing the "minimum" number, locals cannot assume that a lower number might not be awarded in arbitration (AIRS # 2659). Arbitrators have pointed to specific facts in an installation showing that everyone did not take all of their entitled leave during the choice period. Consequently, even though the number allowed off by Item 9 of the LMOU was lower than the computed "minimum", no violation of Article 10 occurred because no one who wanted their full entitlement was turned down.

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

Facility Size and Numbers Off

When determining how to select employees to be off during the prime vacation period, arbitrators will take different factors into consideration. For example, in AIRS # 14272, the arbitrator rejected the union's proposal that selection of vacation during the prime time should be on a seniority basis by craft. The reason for rejecting the proposal was because it would infringe on the efficiency of the Postal Service given the small size of the facility. The arbitrator thereby ordered that the following management proposals for items 4 and 9 be accepted:

4. Leave selection shall be by seniority of all crafts within the office, except rural carriers.

9. There shall be one employee off each week during the choice period with the exception of Item 8.

However, an arbitrator in AIRS # 13044 adopted the following language when formulating the local leave policy with respect to the choice vacation period:

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

In addition, one arbitrator held that the maximum number of employees to be allowed off during the choice vacation period was not a discretionary decision for the Postal Service merely because of the size of the facility. In holding such, the arbitrator stated that Article 30 does not draw a distinction between small and large facilities nor do Article 3 concerns override the obligation to consider Article 30 negotiable items (AIRS # 14273). Also see AIRS # 37245 in

which an arbitrator upheld a local union's proposal that a maximum of one employee shall be granted leave during each week of the choice vacation period. He found unpersuasive the Postal Service's argument that the current system allowing leave to be assigned at the discretion of management was necessary given the small size of the facility in which there was only one full-time regular clerk and one part-time flexible clerk. The arbitrator observed that the evidence showed that carrier craft employees, three of whom were senior to the full-time regular clerk, were assigned the first three choices of vacation. However, arbitrators may take into account the efficiency needs of the Postal Service when determining the maximum number of employees to be permitted off during the choice vacation period. In AIRS # 13029, the arbitrator adopted the following language:

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

In an attempt to meet the needs of the efficiency of the Postal Service, as well as to provide some benefit sought by the union, the arbitrator in AIRS # 13025 determined that it was reasonable to limit the number of employees off during the choice period so as not to affect the efficiency of the Service. The following language was thereby adopted in accordance with this concern:

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

Numbers Off by Occupational Groups and Sections

Also, the Postal Service may attempt to limit the number of employees permitted to take choice vacation on the basis of occupational group or skill. Arbitrators have been reluctant to change a pre-existing provision that has worked well in the past. For example, in AIRS # 20929, an arbitrator refused to change a provision that allowed for 14% of maintenance employees to receive leave each week during the choice vacation by tour, by occupation to one that prescribed the 14% to be by occupational group alone. He indicated that the Service had not met its burden of proving that the provision resulting in three out of five Electronic Technicians off, one out of two General Mechanics off, or one out of two Building Equipment Mechanics off at any one time constituted an unreasonable burden. The evidence showed that the present language had worked effectively over the last 12 years and there was insufficient evidence to demonstrate that excessive overtime was used because of numbers of maintenance employees off.

In addition, in AIRS # 20493, 20494, and 20495, an arbitrator held that designation of sections for taking leave during the choice vacation period as 1) window clerks, 2) the entire GMF workroom floor, 3) several stations, 4) maintenance, and 5) VMF did not constitute an unreasonable burden. He rejected the Service's assertion that sections needed to be broken down further into schemes for vacation selection. He found unpersuasive Postal Service evidence that plan failures occurred during a one week period. However, see AIRS # 20382 in which an arbitrator held that the combining of two distinct titles for vacation purposes, i.e., Level 5 Motor Vehicle Operations and Level 6 Tractor Trailer Operators, resulted in an unreasonable burden to management. He ruled that the two occupational groups be separated for vacation purposes. Also, see AIRS # 34360 in which an arbitrator rejected a union proposal that leave be administered by principal assignment area only. Instead, he accepted management's proposal that leave be by shift as well as section.

Moreover, in AIRS # 44499, an arbitrator rejected a union's proposal that for employees in the maintenance craft leave should be administered by building, by occupational group, with a minimum of one employee allowed off, by

building, by occupational group. He found that if this proposal were accepted, the number of employees off on annual leave would double where there was a complement of 12 maintenance employees and such a result would be too high for management to meet its maintenance commitments. However, the arbitrator indicated that management's practice had been to allow additional employees to take choice vacation above the current provision that provided for one Electronic Technician and one non-Electronic Technician off each week during prime time periods. Therefore, he ordered an amendment to the effect that consideration will be given to other leave requests depending on operational requirements. In AIRS # 38355, an arbitrator denied a union's proposal to change existing language providing that choice vacation leave shall be granted by seniority within pay location to provide that choice vacation leave shall be granted by seniority by tour and occupational group and level. The arbitrator indicated that he would not set aside a prior arbitrator's award in an impasse arbitration regarding the identical provision at this facility since there had been no substantive change in circumstances and the arbitrator had already considered arguments posed by the union. The union contended in both arbitrations that reliance on pay locations adversely affected the seniority rights of employees. However, in the prior award, an arbitrator determined that management's creation of new pay locations was within its Article 3 rights and in any event the use of new pay locations merely enhanced the value of seniority for some other employees in relation to lower graded, less senior employees in their pay location (AIRS # 32312).

In another award, an arbitrator rejected a union proposal to create another section based on occupation for vacation selection purposes. The union argued that the existing LMOU provision created an unfair disparity since it contained a separate section for "office clerk" at the main post office whereas no corresponding section designation existed for the other facility covered by the LMOU. The arbitrator found, however, that since the General Clerk position at the other facility didn't perform exclusively office work, there was no need for a separate "office clerk" section (AIRS # 39019).

Another arbitrator accepted a change to an LMOU that affected one station of a P&DC and prescribed that scheduling for overtime, vacations, and holiday coverage be done by tour. He rejected the Postal Service's argument that due to the small number of personnel at the facility, which included four window clerks and two relief clerks, it was not practical to allow the change. The arbitrator found the language to be reasonable and not unduly burdensome on management's flexibility to assign staffing (AIRS # 39602).

Advantages of Percentages

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

Every effort should be made to provide for a maximum number of employees to be off each week during the choice vacation period.

Percentages usually turn out to be beneficial in this regard because they properly account for the changing size of various sections and the office as a whole (AIRS # 4866). As an office grows, a percentage will permit an increasing number of employees leave, while a fixed number will become inadequate (AIRS # 6101). While an arbitration is likely to grant an upward adjustment in a fixed number when the complement has increased (AIRS # 7234), the union would have to wait until the next negotiation period to get an increase.

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

A. A maximum of 16.67% of the employees in the Clerk Craft, one (1) employee in the Maintenance Craft, and one (1) employee in

the Special Delivery Craft during the choice vacation period.

B. A maximum of 10% of the employees in the Clerk Craft, one(1) employee in the maintenance Craft, and one(1) employee in the Special Delivery Craft during the non-choice vacation period. (AIRS # 13016)

Problems with Percentages

Locals should note a few problems in negotiating for a fixed percentage. Numbers that are unreasonable at the outset will be rejected (AIRS # 4861, 8479, 6480). When a proposed percentage, combined with routine absences due to sick leave, jury duty, etc., could leave a section unable to perform its duties, it may be rejected (AIRS # 8479). Also, absent a showing that a long-term provision giving management discretion to determine, by craft, the number of employees per week to grant leave, has resulted in employees forfeiting leave or in complaints or grievances, an arbitrator may determine that there is no compelling need for a change to percentages (AIRS # 32946).

Percentages also may be rejected where sections or offices are so small and staffed with senior employees that the selections of these senior employees while within the allotted percentages for the installation could leave the section or office unable to perform its duties (AIRS # 4861 and 4866). One arbitrator solved this problem by holding that the total number of employees in a section or tour would determine the maximum number of slots available during the choice vacation period (AIRS # 4947).

Also, a local must be sure to present sufficient evidence to substantiate its request for a fixed percentage. One arbitrator rejected a union proposal for a fixed percentage and used a fixed number instead, stating that absent a persuasive reason to do otherwise, a fixed number would be used because it was easier to administer (AIRS # 7337).

Part-Time Flexibles and Percentages

Finally, locals should be careful of the impact part-time flexibles can have on a proposal for an increase in the fixed percentage. One arbitrator allowed an increase because management recently had increased its number of PTFs (AIRS # 7255). Conversely, one arbitrator reasoned that increased reliance upon PTFs, due to larger numbers of more experienced senior clerks being off at the same time, could itself result in impairment to the efficiency or cost of operations which would justify rejection of a proposal for a higher fixed percentage (See AIRS # 6114). Also, management can argue that the number of part-time flexible clerks has decreased in number and therefore, it has less flexibility to cover vacancies resulting from employees taking annual leave (AIRS # 32538).

If you decide upon a percentage, you should consider the problem of rounding off. If the LMOU is silent, the standard method of rounding will probably be presumed (.5 or greater is rounded up to next highest integer, less than .5 is dropped). Most locals attempt to get an agreement to round upward any fraction (no matter how small) to the next highest integer. Some LMOUs drop all fractions. Note that in a recent award in AIRS # 32673 the arbitrator upheld a provision requiring that fractions be rounded up against management's argument that the provision constituted an unreasonable burden. But see AIRS # 39519 in which an arbitrator denied a local union's request to add language providing for a standard method of rounding on the basis that the parties have successfully worked out problems in the past and such language may create a potential of "internal conflict."

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

Benefits to Management

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

If a local has a history of people not choosing a full vacation during the vacation planning process, but reserving substantial amounts of leave for use during the course of the year, it should be pointed out to management that having an attractive vacation planning calendar with

sufficient slots will encourage people to make vacation plans at the beginning of the year. Thus, management can plan for absences. If large banks of annual leave are being reserved, there will undoubtedly be time taken off with very little advance notice and very little opportunity for management to plan. Some locals have negotiated substantially larger numbers than necessary for the above reasons with an agreement that once the choice vacation planning has ended unused slots will be blocked off. Thus management is relieved of further obligation to allow leave for that large number of employees.

Other locals have negotiated percentages or numbers that come very close to the minimum in exchange for a guarantee that should any of those slots go unfilled or become vacant during the course of the year anyone requesting those vacancies will get the time off. Such guaranteed "incidental leave" provisions have been determined by a national level arbitration to be consistent with the National Agreement (AIRS # 6931).

Rebutting Management Arguments

Management's arguments concerning "excessive cost", "inefficiencies" and "staffing difficulties" do not always find a sympathetic ear in impasse arbitration (AIRS # 263, 503, 549). Still the local must rebut those management allegations and show compelling reasons for the local union proposal (AIRS # 4402, 26796-97, 27944). Also, locals should be prepared with data to show the eligibility (2 or 3 weeks) of each employee to a choice vacation selection (AIRS # 263, 2659). It is advisable to show total leave that will be earned during a year plus any carry-over from a previous year.

Examples of some successes by local unions in rebutting management claims follow. In one case, a union showed that percentages off in the LMOU were not being adhered to for specific months, but rather were increased routinely, and no evidence was presented by management to show that granting an increase in the percentage for these months from 10% to 12% would harm the Service's operations (AIRS # 27427-30). Also, another local union showed that an increase in the percentages of leave for Clerk Craft employees each week during the choice vacation period was warranted in order to prevent forfeiture of leave by employees who have earned a considerable amount of leave due to their length of service. The arbitrator said a 1% increase was justified due to the "undisputed age of the work force" and would not sacrifice productivity and efficiency of postal operations (AIRS # 33490). But see AIRS # 32538 in which an arbitrator denied a union's proposal to increase percentages of the active clerk complement on annual leave. He relied on evidence that there had been difficulties in dispatching mail on time given the present work complement and present annual leave percentages. The union had sought the increase in percentages off to benefit employees with a high level of seniority.

Note that arbitrators have indicated that the party seeking a change in an LMOU provision bears the burden of proving that the current provision does not work or presents a problem that needs to be corrected (AIRS # 32242, 33424, 33379). For example, an arbitrator found that the union did not meet its burden of proving that a proposed increase from a maximum of one employee off to a maximum of 12% of the total number of each craft's employees was justified. He cited the fact that the existing LMOU provision on annual leave had only been in effect for one contract term, there had been no substantial changes in the circumstances existing at a facility under the existing provision, the facility was small, and the Service had shown that a substantial portion of the workforce would be off at any given time if the union's proposal were accepted (AIRS # 33424). Also, another arbitrator rejected a local union's proposal to increase the number of CFS clerks that may be on annual leave during the choice period by one based on the fact that the number of CFS clerks had doubled since the existing provision was negotiated. Relying on evidence that showed that no CFS clerk was denied a request for vacation leave during the choice period for the 1999 leave year and the fact that no CFS clerk testified that he or she requested but was denied leave during that time, the arbitrator found that the union failed to show there was a problem with the existing provision. However, he warned the Postal Service that it was on notice that it could not rely on the LMOU provision to deny a clerk leave during the choice periods if he or she is entitled to leave under Article 10.3.D (AIRS # 33379).

In addition, an arbitrator rejected a union's proposal to increase the percentage of employees allowed to vacation selections per week during the choice period from 15% to 20%. In AIRS # 42673, the arbitrator relied on evidence that the

current percentages appeared to be working adequately and employees were not losing annual leave opportunities necessarily. He found unconvincing the union's argument that the existing provision had only been in effect for one contract term, whereas a prior provision allowing 20% had been in effect since the late 1980s, and the reduced percentage was only the result of a concession to retain a general overtime desired list that is not in effect now. The arbitrator remarked that union attempts to obtain what has been given back does not constitute a basis for reinstating prior provisions.

Moreover, locals should be prepared for Postal Service arguments that a presently effective provision now constitutes an unreasonable burden. It should be remembered that the Service has the burden of proof in these instances. Arbitrators will not delete a pre-existing provision based on speculation as to anticipated automation or reductions in staff or undocumented or poorly documented cases (AIRS # 20658, 20765, 20766, 21668,28921-2, 32509,and 38602). However, they will be persuaded by unrebutted evidence that staff losses will actually occur or a change from a number to a percentage of employees off is necessary to operate a small office (AIRS # 20378, 20548, and 26724). But note that an argument may not be successful that seeks reduced numbers on leave because of additional employee absences as a result of requirements of the Family and Medical Leave Act, the Dependent Care Sick Leave provisions of the agreement, and more widely anticipated military reserve call-ups (AIRS # 26686-88, 32673, and 39275).

Increases by Occupational Group or Section

In addition, while all employees are permitted time off during the choice vacation period, in some situations an arbitrator might decide that the maximum number of employees off in certain occupations should not be increased. For example, in AIRS # 500407 and 500408, the arbitrator held that Electronic Technicians had specialized knowledge and that current automation would require that more Electronic Technicians be available during the prime vacation period. Accordingly, the arbitrator denied the union's proposal that the maximum number of Electronic Technicians allowed off during the prime period be changed from 1 to 3. The arbitrator found no merit in the union's argument that since the number of Electronic Technicians increased the number permitted off should increase. There was also no evidence available to indicate that Electronic Technicians had been unreasonably denied time off during the prime vacation period. In another case, an arbitrator denied a union proposal to allow an increase from 10 to 15% off for customer services employees (AIRS # 28417). The Postal Service agreed to the 15% increase for mail processing employees, but refused it for customer services employees. The arbitrator found that implementation of the union's proposal would result in excessive overtime, the need to hire new employees, and would adversely affect management's ability to serve summer customers.

Also, see AIRS # 34360 in which an arbitrator refused to allow more than 25% of scheme qualified employees to be off during the same leave week, rejecting the union's proposal to allow 50% of clerks utilized on a particular scheme to be off at any one time. However, see AIRS # 28544 in which an arbitrator increased the number of Electronic Technicians off at any time during the choice vacation period from 1 to 3. He relied on the fact that there had been a dramatic increase in the numbers of ETs and they could not take all the leave to which they were entitled during the choice period because of the one person off limit.

Reductions by Occupational Group or Section

Other awards show that an arbitrator may reduce the number of employees off in certain occupations from a pre-existing provision. In AIRS # 26724, management's proposed change to an existing LMOU provision which limited the number of Maintenance Support Clerks off to two per week and the number of Electronic Technicians to one a week was considered reasonable. The Postal Service argued that the existing language of the LMOU created an unreasonable burden on management in seeking to cover positions with current staffing. It merely produced testimony of the Manager of Maintenance Operations that new computerized systems have resulted in twice as much work for Maintenance Support Clerks and ETs. The arbitrator noted that though there was not "strong documentary evidence" to support management's assertions, she would rely on the manager's testimony since he was credible and his statements about the need to deal with six new systems were unrefuted.

However, another arbitrator denied management's proposal to change smaller administrative groups for vacation purposes to larger occupational groups (AIRS # 27697-98). Though the Postal Service provided documentation to show that existing groups allowed more than the 10% minimum provided by the LMOU to be on leave at certain times and management's proposal was found by the arbitrator to be a reasonable approach to determining leave usage, he determined that the Service had not met its burden of establishing that the pre-existing provision constituted an unreasonable burden. The arbitrator cited the fact that there was no showing that when more than 10% of the employees were on leave excessive overtime, operational difficulties or other adverse consequences occurred. In another award, an arbitrator rejected management's proposal to reduce the percentages of Motor Vehicle employees that were allowed off during various periods of the choice vacation period. The arbitrator relied on the fact that no evidence was submitted to document any change in operating conditions since the time the existing language had been negotiated, with the exception that the MVS complement had been reduced in size. However, he noted that since leave was determined on the basis of a percentage, not a "static" number, the number of employees allowed off on annual leave would be reduced to the same extent as the reduction in complement (AIRS # 43196).

It should be noted that an arbitrator will not necessarily be persuaded to increase the percentage of one craft off during the choice vacation period by an argument that another craft's percentages off had been increased. In AIRS # 20989, an arbitrator refused to increase the percentage of Clerk Craft employees off during given periods to match what Maintenance Craft employees had been granted. He reasoned that the union had not established that a change was necessary since there was insufficient evidence to prove that craft employees that desired annual leave were not granted leave when they desired it.

Effects of Leave Carryover and Leave Sell-Back

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

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

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

Remember

This LMOU will have to deal with four leave years (2008-2011). The next LMOU negotiations will occur in the spring of 2011 when most employees will already have set their 2011 vacation plans.

10. Vacation Notices

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

In addition to the schedule posted on the bulletin board, locals have negotiated for the employee to receive some sort of notice, such as a duplicate copy of the vacation selection request

with an approval signature, a Form 3971 with an approval signature, or a copy of the actual posting of the vacation schedule.

In AIRS # 7349, Arbitrator Snow added the following provision to the LMOU, ensuring notice to both the employee and his or her supervisor of the employee's reserved annual leave:

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

Local unions should note that where there already exists a method of notification, the arbitrator may reject an additional method of notification, such as a vacation chart or calendar system, as unreasonable (AIRS # 7348, 27427-30). However, locals should make sure that a standard practice, such as notification by Form 3971, is clearly stated to be the medium of communication in the LMOU (AIRS # 7348).

11. Leave Year Notice

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

A number of Local Memos require the posting of a notice on the bulletin board or in the local Post Office newsletter. Some locals have required written notice to the individual employee.

Aside from the Local Memorandum of Understanding, locals have used their own publications to inform employees about upcoming vacation planning: when it will take place, when the leave year will start, the specific dates and weeks in which holidays fall, etc. Such efforts by the local remind employees that they enjoy their vacation as a result of the efforts of their national and local union.

Leave Year	Begins	Ends
2007	PP 02-2007 Jan.6, 2007	PP 01-2008 Jan.4, 2008
2008	PP 02-2008 Jan.5, 2008	PP 01-2009 Jan.2, 2009
2009	PP 02-2009 Jan.3, 2009	PP 01-2010 Jan.1, 2010
2010	PP 02-2010 Jan.2, 2010	PP 01-2011 Dec. 31, 2010
2011	PP 02-2011 Jan.1, 2011	PP 02-2012 Jan.13, 2012

Note: There will be 27 pay periods in leave year 2011.

12. Non-Choice Vacation

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

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

1. Seniority - The mechanisms here are a little more difficult to administer. Usually the method calls for all leave requests to be held until "x" number of days prior to the particular week at which point the senior employee having submitted a request will be granted the additional leave.

2. First come, first served - meaning that the first person to submit a Form 3971 (after the beginning of the leave year) or some other request form will be granted the leave.

While it is usually preferred to do things by seniority, it certainly is much easier to administer first come, first served. It is common under both methods to specify a response time in which

management must notify the employee concerning the disposition of the request (AIRS # 512, 541, 549, 572, 2955).

The following is an impasse resolution on this particular item:

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

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

Advance Notice

Attempts to reduce the amount of advance notice that must be given by an employee when requesting incidental leave, as well as reducing the time period within which management must respond have met with limited success. Arbitrators have generally held as unworkable LMOU procedures which require the Postal Service to respond to employee requests within twenty-four hours or forty-eight hours.

Arbitrators have emphasized that such provisions unduly restrict the Postal Service's discretionary rights in granting incidental leave under Article 10, Sections 3 and 4 (AIRS # 6115, 6778, 8469, and 20892). Moreover, an arbitrator rejected a union's proposal to require that incidental leave on a day-to-day basis be automatically granted up to agreed-upon percentages (15%) upon no less than 48 hours notice prior to the time of the requested leave. He reasoned that there was "no inherent right to last minute annual leave." Instead, he found that the existing requirement based on five calendar day advance notice was reasonable given the needs of management to manage its operations. (AIRS # 42673)

However, several arbitrators have approved provisions allowing applications for incidental leave with twenty-four hours advance notice, and requiring the Postal Service to approve or deny the request within twenty-four hours (AIRS # 4904, and 20915, 20916, 20917, 20918, 20919, 20920). In addition, in one of these cases, the arbitrator also upheld a provision allowing for applications of annual leave of six hours or less to be given with one hour of advance notice and requiring the Service to approve the leave not less than 30 minutes prior to the effective time of the requested leave (AIRS # 20915, 20916, 20917, 20918, 20919, 20920). These provisions also provided that management's failure to notify the employee would be considered automatic approval (AIRS # 20915, 20916, 20917, 20918, 20919, 20920). Another arbitrator adopted a union's proposal to require that employees be notified of the disposition of requests for annual leave in increments of less than 40 hours within 48 hours, and lack of notification within that time constitutes "automatic approval." He indicated that it is good management/labor relations to process requests in a timely manner and 48 hours is not an unreasonable amount of time to do that. (AIRS # 39752)

Another arbitrator accepted a provision that if no action is taken by the end of an employee's tour prior to the day of requested incidental leave, such leave shall be approved. He ruled specifically that the provision for automatic approval of incidental annual leave when the time periods to approve or disapprove are not met is not inconsistent or in conflict with the National Agreement (AIRS # 27080). In addition, see AIRS # 28108-111 in which an arbitrator placed a provision in a LMOU that provided that automatic approval would occur if an employee was not notified 14 days in advance of the first day of the leave requested. However, see AIRS # 20892, 20894 and 34360 in which provisions allowing for automatic approval after a limited period of time were rejected.

Locals may expect greater success with a seventy-two hour time period limitation. In AIRS # 7599 and 21034, the arbitrators granted demands for automatic approval of leave requests after seventy-two hours from submission. In the first of these two cases, if the immediate supervisor did not act upon the request within the first twenty-four hours of the 72 hour period, the employee had the right to go to a higher level of supervision. Also see AIRS # 32538 in which an arbitrator accepted

a union's proposal that supervisors process all PS Forms 3971 within 72 hours. In addition, an arbitrator in AIRS # 34984 determined that a provision requiring that management approve applications for leave in units of less than one week or a full week so long as the maximum allowed number of employees were not on leave constituted an unreasonable burden to the Postal Service due to scheduling problems caused by last minute call-ins and the claimed right to submit a 3971 during the course of a tour and then leave work. He reasoned that there was a right to incidental leave but it was subject to advance notice and then directed that the language be amended to require approval upon submission of an application within 72 hours prior to the beginning of the tour of the requested leave date.

However, see AIRS # 32242 where an arbitrator rejected a proposal seeking a change in a provision to require that if the Postal Service fails to return a copy of a signed request to an employee indicating that it is approved or disapproved within 72 hours of submission, the leave shall be considered approved. The arbitrator ruled that the union failed to meet its burden of proving that the change was necessary to remedy a significant problem that needed correcting. For example, the union argued that the current system subjected employees to hardships because of supervisors' failure to approve leave requests in a timely manner but failed to provide witnesses' testimony to describe hardships such as missed vacation opportunities, inability to care for sick relatives, or forfeited annual leave. Also see AIRS # 42763 in which an arbitrator denied a union proposal to reduce the amount of time within which a supervisor has to deny a request for incidental annual leave of a fraction of a day or more from five calendar days to 48 hours. The arbitrator relied on the fact that the union had not shown that there were actual problems involving individuals that were handicapped or prejudiced by existing procedures. Moreover, in AIRS # 40576 an arbitrator rejected a union proposal to change a provision limiting submission of leave requests to Tuesday of the week prior to the desired leave and requiring that they be answered by Thursday of that week or they will be considered approved. The arbitrator determined that the union's proposal, that leave requests not answered within three days of submission will be considered approved, should not be granted since there was no "real evidence" that existing language was not working and the evidence showed that work schedules are made up on Wednesday of each preceding week.

In another case, AIRS # 20722, an arbitrator upheld a short notice leave provision against management's assertion that it created an unreasonable burden. However, he held that same day requests constituted an unreasonable burden. In addition, an attempt to require that leave requests submitted 30-60 days in advance be granted on a first-come, first-served basis has been rejected by an arbitrator as infringing on management's discretion under Article 10.3.D.4 (AIRS # 27030-34). Also, a proposal that employees will be allowed to select guaranteed time off, up to the amount credited for the coming year on their pay checks, following the choice sign up during the period of non-choice leave was rejected because it infringed on management's discretion to approve leave and was not supported by a preponderance of the evidence (AIRS # 28182). Moreover, see AIRS # 26756 in which an arbitrator disapproved of a union's proposal that leave requests made with at least seven days notice be granted subject to certain percentage limitations that might be on leave in any week. Also, note that in AIRS # 39833 an arbitrator rejected a union's proposal to require that an installation head honor all requests for vacant weeks that are submitted seven days in advance of the leave period, and to provide that management make every effort to grant requests for vacant weeks submitted less than seven days in advance of the leave period. The arbitrator found that there was no evidence presented to show that the current provision caused an undue hardship on bargaining unit members; i.e., by showing unreasonable denials of incidental leave or actual leave forfeiture by employees.

However, an arbitrator denied a management proposal to prohibit an employee from making an annual leave request "no earlier than 60 days in advance and no later that the Tuesday prior to the service week in which annual leave is desired." She found the proposal was unworkable because requests for leave may occur at the last minute as in the case of home or car repairs and requests in advance of 60 days prior to taking leave should be helpful to management (AIRS # 26977). Also see AIRS # 38359 in which an arbitrator added language requiring that Forms 3971 for incidental leave be submitted not more than 21 days nor less than three days before posting of the following week's schedule in an existing LMOU which already contained the provision that "any request

not acted upon within 48 hours shall be considered 'guaranteed approved leave.'"

In addition, a proposal to increase the "window" period in which a supervisor is required to consider an application for incidental leave from 15 to 60 days before the first day of leave requested has been allowed as an addition to existing language that requests will be approved or disapproved by a supervisor within three days (AIRS # 27128-31). (But see AIRS # 26795 in which an arbitrator rejected a union proposal to extend the period for requesting incidental leave from not more than 31 days to not more than 90 days in advance.)

Percentages Permitted

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

The Postal Service has declared many LMOUs that provide for "guaranteed" approval of leave requests up to the number or percentage established to be "in conflict" with the National Agreement. Earlier attempts to achieve a "guarantee" provision through impasse arbitration did not meet with much success. (AIRS # 512, 539 and 577). However, in a national level case decided in 1986 (AIRS # 6931) the arbitrator found that such non-choice vacation period clauses or incidental leave clauses are not "inconsistent or in conflict" with the National Agreement. Because this is a national level arbitration, this interpretation is binding on regional level arbitrators.

In AIRS # 13036, a regional level arbitrator, relying on the national award by Arbitrator Mittenthal, ruled that the proposal for a percentage of employees to be allowed off during the non-prime time was both arbitrable and negotiable. The arbitrator summarized Mittenthal's award as meaning that the subject of the percentage of employees off during the non-prime time period was not precluded from negotiation even if it was not specifically mentioned as one of the 22 items. The union's proposal addressed an issue that was neither inconsistent with nor varied the terms of the National Agreement. Because the parties had made offers and counter offers during local negotiations and reached impasse, the matter at hand was arbitrable.

In addition, see AIRS # 26733-36 in which an arbitrator ruled that a proposal to allow a fixed percentage of employees off on incidental leave was within the scope of negotiable items and thus was arbitrable. He then accepted the proposal on the basis that it had been implemented effectively at other facilities in the region. Also, see AIRS # 32561 where an arbitrator ruled that percentages of employees off during the non-choice vacation period "belongs as an integral part of Item 12 negotiations." He rejected the Service's argument that this item was limited to how applications are submitted since "[t]he intention of the contract was to permit the local parties to negotiate meaningful non-choice leave provisions." In addition, locals achieving "guarantee" provisions have successfully enforced such provisions in rights arbitration (AIRS # 594, 1444 and 1984). But, several recent awards in AIRS # 33168 and 32409 determined that proposals requiring a minimum of 12% of employees to be allowed off during the non-choice period for each pay location were outside the scope of negotiable items in Article 30.B.4.12.

In several cases, the union has been successful in obtaining, retaining, and increasing fixed percentages of employees allowed to be off during the non-choice period. In AIRS # 14677, the arbitrator held that the union's request to change the incidental leave policy so that it would be more congruous with the choice vacation period policy had merit. In looking at other LMOUs that addressed this concern, the arbitrator held that 11% of employees could be off for incidental leave and that employees should provide management with advance notice of the requested leave in order to adjust schedules based on the absence of employees on leave. The notice to be provided was two days advance notice.

In AIRS # 20623, the union's proposal to increase the percentage of clerks off on annual leave during the non-choice period from 11% to 13% was granted by an arbitrator. The arbitrator held that the union had clearly established a need for its proposal not only to provide additional employees time off, but to provide employees with "additional control over and predictability of their use of annual leave." Then, in AIRS # 21365, an arbitrator upheld a provision requiring the Service to allow 15% of employees off for non-choice leave against management's attempt to prove that it created an unreasonable burden. He found that the evidence was too inconclusive to show that the 15% guaranteed leave provisions were the cause of delayed mail and use of overtime at the facility.

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

An arbitrator in AIRS # 32561 determined that 3% of the employees at the facility, that equals one person's hours, should be allowed to be on annual leave during the non-choice period. However, he rejected the union's proposal that 6% of the employees, or two people, should be allowed off despite a union contention that in the past there had been no problem with two employees being on leave at the same time. He found that a reduction in the workforce and a change in mail operations had occurred, and therefore circumstances were no longer the same and it would amount to speculation as to whether two people could be off at one time without affecting operations. In AIRS # 41167, another arbitrator accepted a union's proposal to allow 8% of the clerk workforce to be off on leave outside of prime time, and allowing one additional clerk to be granted leave in the event the formula reaches .4 or more of an employee. He determined that the proposals were necessary to more clearly define matters in the leave program and appeared to be reasonable.

In other cases, arbitrators approved a provision allowing a minimum of one clerk craft employee leave outside the choice vacation period subject to operational needs of the Service (AIRS # 20622), and provisions requiring that the number of employees off during the non-choice period be measured as a percentage of the complement rather than by numbers of employees (AIRS # 13016, and 21871). Moreover, while another arbitrator rejected a provision to increase the number of maintenance employees on incidental leave by administering it on the basis of building as well as occupational group, he added language to the LMOU to the effect that "[c]onsideration will be given to other leave requests depending on occupational requirements." (AIRS # 44499)

Also, in a rights arbitration, an arbitrator determined that a Step 2 settlement that prescribed that percentages used for leave during choice periods applied to non-choice periods was binding even though the union did not pursue its proposal to incorporate this language into a subsequently negotiated LMOU. (AIRS # 34914)

Problems with Percentages

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

In AIRS No. 500559, the arbitrator held that permitting 8% of the employees annual leave during the non-prime period would burden the efficient operation of the Postal Service. In addition, the union in this case failed to show that management was abusing its discretion in granting leave during the non-prime vacation period so as to require this fixed percentage guarantee. Annual leave during non-prime time was to be based on mail volume, the needs of the Service and the skills required to meet those needs. Another arbitrator rejected a union proposal to provide that up to 8% of employees be granted incidental leave on the basis that such a percentage was unusually high and there was no showing that grievances had been filed due to incidental leave requests being denied under the existing provision. The union argued that management had not even abided by the requirement that a request be acted upon within 48 hours or otherwise be considered "guaranteed approved leave" and this resulted in unpredictability that was disruptive in employee's lives. In response to the union's concerns, the arbitrator added language to the provision requiring that "[a]ny request shall be denied only if Management has good reason to believe, at the time the Request is made that, with the absence of the requesting employee, sufficient personnel will

not be available (regardless of the cause of their unavailability) to permit the Greenville installation to operate in a reasonably timely, efficient and cost-effective manner" (AIRS # 38359).

The arbitrator in AIRS # 13031 rejected the union's proposal to grant 12% of the employees a right to vacation in the non-prime time period. In so holding, the arbitrator stated that the union failed to establish any inference that under the present contract language employees were unreasonably being denied leave during the non-prime time period. Absent any evidence to indicate that supervisors were arbitrarily rejecting leave requests during the non-prime time vacation period, as well as the absence of any violations of ELM 512.61, the arbitrator ruled against the establishment of a new rule (See also AIRS # 546 and 20550).

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

In AIRS # 26867, the arbitrator determined that the union failed to meet its burden of proof that the advantages of a proposal to provide that unscheduled annual leave requests be granted up to 10% of the employee complement outweighed its disadvantages. He found uncompelling the union's arguments that the implementation of a percentage for annual leave should be granted as a matter of convenience to employees and has worked at other facilities. He also indicated that the union did not show concrete evidence that any employees had actually forfeited leave. On the other hand, the arbitrator was convinced by management's arguments that adoption of the union's proposal would increase overtime and would be unworkable during certain weeks because of additional employees that would be off.

An arbitrator in AIRS # 27062 denied a union's proposal to require that a minimum of one clerk be allowed annual leave during the non-choice period. He cited the fact that the union did not demonstrate any instances of abuse or disparate treatment in granting requests for incidental leave. Another arbitrator rejected a proposal to increase the number of "personal days" of choice that are guaranteed from two to four days. He found convincing Postal Service arguments that doubling guaranteed personal leave days would "erode" flexibility needed for scheduling, and that there was an insufficient showing that the current provision presented problems. (AIRS # 39150)

There are also cases in which the union has not been successful in obtaining percentages because arbitrators have ruled that the negotiation of percentages exceeds the scope of Item 12. In AIRS # 27066, an arbitrator determined that a local union's proposal for a fixed percentage of employees to be off during non-prime time did not fall within the scope of the 22 items that are mandatory subjects of negotiation under Article 30. In addition, he ruled that there wasn't persuasive evidence to support a finding that a fixed percentage was necessary at the installation. Another arbitrator ruled that it is not mandatory that management negotiate a percentage of employees that must be allowed annual non-choice leave and it is therefore under no obligation to demonstrate the basis for its rejection of a union proposal for a fixed percentage (AIRS # 26977). (Also, for other awards that determine that proposals seeking percentages off for non-choice eave periods fall within the scope of Article 30, see the section above on percentages permitted.)

Locals should also be aware that provisions have been upheld that require the inclusion of leave for military purposes, sick leave scheduled in advance, unscheduled absences (i.e.: AWOL, emergency annual and administrative leave) in calculating the maximum percentage to allow off on incidental leave (AIRS # 31926). Moreover, one arbitrator found that a local union didn't meet its burden of proving that a change needed to be made to existing language by deleting sick leave from the calculation of 14% off on incidental leave. The provision allowed for such leave as well as all other "known leave," with the exception of jury duty, military leave, and convention leave, to be included in the percentage count. (AIRS # 38599)

Miscellaneous Procedures

In other circumstances involving procedures for granting annual leave other than during the choice vacation period, an arbitrator rejected management's argument that an existing provision requiring that incidental leave of less than eight hours be granted after considering "the operational needs of a given section" constituted an unreasonable burden. He found unpersuasive the contention that limiting management to

considering the needs of one section, rather than the giving it the flexibility to consider the needs for service in other sections as well, had resulted in plan failures. The arbitrator reasoned that the evidence showed that management had not had major disruption to its operations during the two years the provision was in effect and it failed to establish that any plan failure was "directly attributable" to its granting of incidental annual leave. (AIRS # 37376) Another arbitrator rejected a management proposal to change an incidental leave provision to require that incidental leave on a day to day basis be calculated on the basis of the agreed upon percentage taking into account the "daily complement" within a section. The existing provision provided for calculation on the basis of the employee complement within a section as of February of every new leave year. Management maintained that such language didn't account for daily fluctuations in staffing, and provided testimony relating to insufficient staffing on weekends in the FSM area and on Tour 2 as a result of the provision. The arbitrator ruled that the Postal Service failed to meet its burden of proving that the current contract provision resulted in an unreasonable burden since it didn't offer evidence that continuation of the existing leave provision affected management in other sections on other tours. (AIRS # 42673)

In another award, an arbitrator rejected a local union's proposal to require that annual leave requests for bereavement, wedding, anniversaries, and/or the employee's birthday will be given priority consideration over other requests, when submitted in advance. He said that such a benefit has not been included in the National Agreement. Moreover, he denied a proposal that approved rescheduled annual leave requests shall not be cancelled or rescinded by management. The arbitrator indicated that the provision would prevent management from scheduling during emergency situations or from placing an employee on LWOP if he/she finds out following approval of leave that the employee's leave balance wasn't sufficient. (AIRS # 39752)

13. Holiday Scheduling

The Method of Selecting Employees to Work on a Holiday

The National Agreement, Article 11, Section 6 provides for management to schedule casuals and part-time flexibles even while they are on overtime before requiring a full- time regular to work. There are three categories of career employees in most installations: part-time flexibles, part-time regulars and full-time regulars. In each category there are those who may wish to volunteer and those who do not want to work. In addition, in each one of those categories there are those who would be working the holiday or the designated holiday at straight-time and those who would be working on overtime. All of these categories and subcategories can be arranged in almost any fashion to suit local needs.

Note: Locals are cautioned against negotiating LMOU provisions identifying APWU as the administrator of holiday work. Depending on what is negotiated, including provisions on this item in a local's LMOU may limit the union's flexibility to opt out of administration on a quarterly basis (as provided in the 2006 National Agreement MOU re: APWU Administration of Overtime, Choice Vacation Periods, and Holiday Work). At this time, reliance on the MOU itself should suffice. In addition, before a Local assumes these administrative responsibilities, the Local parties will be provided training by the national parties.

The following "pecking order" is the most common one used and generally an impasse can be expected to be resolved in a similar fashion.

1. All casuals even if overtime is necessary.
2. All part-time flexibles even if overtime is necessary.
3. Volunteers, full and part-time fixed scheduled employees by seniority.
    a. whose regular schedule includes that day (100% premium, 8-hour guarantee for FTR);
    b. whose regular schedule does not include that day (150% premium, 8-hour guarantee for FTR).

4. Non-volunteers, full and part-time fixed scheduled employees by inverse seniority

    a. whose regular schedule does not include that day (150% premium, 8-hour guarantee for FTR);

    b. whose regular schedule includes that day (100% premium, 8 hour guarantee for FTR).

(See AIRS # 27339-40 in which in arbitrator upheld a provision similar to the above.)

It should be noted that the MOU re: Supplemental Work Force in the 2006 National Agreement (#2) provides with regard to postal installations having 200 or more many years of employment in the regular work force, "[a]ll part-time flexible clerk craft employees shall be converted to full-time regular status by December 1, 2007." However, even though a negotiated pecking order may be affected by such a change, there is no reason to negotiate a change since crafts other than the Clerk Craft are not affected and the parties merely can skip over the reference to part-time flexibles as it affects the Clerk Craft in 200 or more man year offices once conversions have been completed.

Transitional Employees

Also, Article 11.6.D provides that transitional employees will be scheduled for work on a holiday or designated holiday after all full-time volunteers are scheduled to work on their holiday or designated holiday. This provision further states that transitional employees will be scheduled, to the extent possible, prior to any full-time volunteers or non-volunteers being scheduled to work a nonscheduled day or any full-time non-volunteers being required to work their holiday or designated holiday. However, if the parties have locally negotiated a pecking order that would schedule full-time volunteers on a nonscheduled day, the Local Memorandum will apply. Based on language in this provision, one arbitrator has rejected a union proposal to schedule transitional employees after all full-time volunteer regulars have been scheduled and instead accepted a Postal Service provision to schedule transitional employees after full-time employees who have volunteered to work on their holiday or designated holiday but before full-time volunteer employees whose scheduled non-work day falls on the holiday (AIRS # 28749). The arbitrator stressed however that local negotiators may agree to override the expressed preference of placing TEs in the pecking order ahead of nonscheduled day volunteers. Also see AIRS # 27116 in which an arbitrator upheld a holiday pecking order in which Transitional Employees would be scheduled to work after full-time regular volunteers. In addition, see AIRS # 33136 in which an arbitrator rejected the union's proposal to change the pecking order to place volunteers from employees with needed skills on a non-scheduled work day by seniority ahead of transitional employees. He based his decision on the fact that the current approach was effective, grievance-free and working.

Full Time Volunteers before Casuals and PTFs

Attempts to schedule full-time volunteers before casuals and part-time flexibles have been rejected in several impasse arbitrations as contrary to the intent of Article 11, Section 6 (AIRS # 528, 6005, 6131, 6141 and 6143, 33308). However, several more recent arbitration awards have upheld provisions that schedule full-time volunteers first. In AIRS # 500626, an arbitrator has found that a provision scheduling full-time volunteers before part-time flexibles and casuals was not inconsistent and in conflict with Article 11, Section 6. He disagreed with the Postal Service's arguments that the language of Article 11 barred regular employees from working until all others have been scheduled and the union's pecking order would violate management's obligation to maintain the Service's efficiency by increasing costs. The arbitrator indicated that volunteer regulars are "not prohibited from working on a holiday until all casuals and part-time flexibles are utilized; rather they are part of the group who must precede non-volunteer regulars prior to those non-volunteers being forced [to work]." (Also, see AIRS # 39582 for similar reasoning.) In addition, in another decision in AIRS # 39103 an arbitrator rejected management's argument to delete an existing LMOU's provision requiring that full and part-time regular volunteers be scheduled to work a holiday ahead of casual and part-time flexible employees on the basis that the provision was inconsistent and in conflict with Article 11.6 of the National Agreement. The arbitrator ruled that

since there was no showing that Article 11.6 had been amended subsequent to the effective date of the previous agreement, Article 30.C "precludes the Postal Service from arguing that the Item 13 language, which has been included in the LMOU between the Parties for more than ten (10) years, is inconsistent or in conflict with the National Agreement."

Two other arbitration awards, AIRS # 20724 and 20725, found that pecking orders which gave first priority to full-time regular volunteers were consistent with the National Agreement. In addition, the arbitrator in these decisions ruled that management had not met its burden of proving that pre-existing provisions setting forth this priority constituted an unreasonable burden. He found that general arguments that elimination of this practice would result in cost savings were insufficient to prove its case.

In another award, AIRS # 32848 and 32869, an arbitrator found that the Postal Service had not proven that a provision scheduling full-time regular volunteers first was an unreasonable burden. He held that the need for greater flexibility and cost savings from using PTFs to cover holidays constituted insufficient evidence to prove its case. See also AIRS # 20489, 20490 and 41919 which also upheld a provision allowing full-time and part-time regular volunteers priority in holiday scheduling. (However, in AIRS # 27092 and 42763, arbitrators determined that provisions to schedule regular volunteers ahead of PTFs and casuals were consistent with the National Agreement, but they then rejected the proposed language on the basis that the union failed to meet its burden of proving that the change should be made. Also, see AIRS # 27132-33 in which an arbitrator rejected a local union's proposal to have regular volunteers scheduled before casuals and part-time flexibles on the basis that the existing agreement functioned moderately well and the proposed change was costly. In addition, in AIRS # 27030-34 and 34113, the arbitrators found that adoption of a proposal for scheduling regular volunteers before casuals and part-time flexibles was an unreasonable burden. Moreover, in AIRS # 33264, an arbitrator found that while Article 11, Section 6 does not prohibit changing the pecking order in local negotiations, the union failed to meet its burden of proving that there was a problem that warranted changing the local provision to require that full and part-time regular employee volunteers be scheduled by seniority ahead of casuals and part-time flexible employees.)

Moreover, in a contract arbitration case, an arbitrator held that where there is an established past practice of soliciting full-time volunteers before scheduling casual or part-time flexible employees, the Postal Service could not circumvent the practice for the purpose of avoiding its obligation to pay full-time volunteers holiday premium pay (AIRS # 11334). In addition, in an impasse arbitration, the arbitrator accepted the union's proposed language that a full-time regular volunteer within a section with necessary skills may be selected to replace a part-time flexible if there is no need to draft any full-time or part-time regulars for the specific holiday schedule. He found convincing the fact that the union's proposal did not require, but merely allowed the Service to use a full-time regular volunteer rather than a PIF (AIRS # 34360).

Pecking Orders, Sections

Separate holiday "pecking orders" can be negotiated for each craft (AIRS # 528). However, a pecking order requiring that only casuals and part-time flexibles be used if only one tour works on a holiday has been found to be an unreasonable restriction on management rights (AIRS # 500,309). The arbitrator also indicated that requiring casuals and part-time flexibles to work back-to-back on two tours would "clearly" not be in the "best interests of safety and employee health." On the other hand, another arbitrator in AIRS # 39970 accepted a union's proposal to delete language from a holiday scheduling provision that limited scheduling of casuals and part-time flexibles with needed skills to the same tour as the holiday opportunity. The union argued that its proposal would require management to maximize the use of PTFs and casuals, and minimize the number of full and part-time regular volunteers that are required to work a holiday or designated holiday. The arbitrator rejected management's arguments that there was no need for the change and the change would cause a violation of the Fair Labor Standards Act on the basis that the FLSA work week is established when PTFs and casuals are first assigned a tour and starting time. She found that the union proved that a problem existed but management failed to provide proof for its assertions, and did not show that the proposed language was unworkable.

The fact that a particular pecking order would increase Postal Service costs does not make the

proposal an improper matter for local negotiations (AIRS # 528). In addition, the fact that a proposal relies on seniority in holiday scheduling for volunteers and non-volunteers and does not include a requirement that employees working on a holiday must possess skills needed for available assignments does not render it inconsistent with the National Agreement (AIRS # 21002, 21003, and 21004). Also, a provision to schedule regular employees who volunteer to work their holiday, designated holiday or non-scheduled day or days in other units prior to forcing employees to work who do not wish to work has been found to be consistent with the National Agreement and upheld as needed at a facility (AIRS # 27682).

Management may not pass over an employee who would be working on penalty pay, if Article 11 Section 6 or the LMOU pecking order would require the scheduling of that employee ahead of other employees who could work at lower premiums (AIRS # 10374).

Locals should consider establishing sections for Holiday Scheduling (i.e., craft, tour, pay location, occupational group, skill, scheme, unit, etc.). See Items 14 and 18 for more detailed discussion of sections. While a local may wish to establish uniform sections for vacation planning, holiday scheduling, overtime desired lists and excessing, it is not necessary. Sections can vary with their purpose.

Union Review

LMOU provisions requiring management to provide the numbers and categories of employees needed to work on any given holiday and to meet with the local union about the numbers and category of employees that will be needed have been upheld (AIRS # 20537). In addition, a provision allowing the president of a local or his designee to review the holiday schedules prior to them being posted has been upheld (AIRS # 20537).

Provisions limiting the type of maintenance craft employees who could be worked on a holiday to coverage of mail processing operations and the building have been found to be inconsistent with management's right to schedule (AIRS # 20537). However, a provision that employees detailed to a non-bargaining unit position for 40 hours shall not be allowed to volunteer for a holiday schedule unless all non-volunteers are required to work, was upheld (AIRS # 20537).

Limits of Item 13

It is important for locals to remember that the scope of Item 13 is limited to the subject matter of holiday scheduling. Impasse arbitrators have frequently held that Item 13 may not be used for securing items which provide that:

- No employee will be required to work more than one day of any three day holiday weekend. This has been rejected as either inconsistent with the Agreement or beyond the scope of Item 13, for it includes the selection of other (weekend) days in addition to the holiday (AIRS # 6005, 6141, 6143, 8493 and 20537).

- A stated percentage of employees will be allowed to observe their holiday or day designated as their holiday. Item 13 concerns the method of selecting employees to work, not take, a holiday (AIRS # 6141, 6143 and 8493).

- Employees required to work their holiday or designated holiday will be scheduled within the employee's regular work schedule. Item 13 concerns the method of selecting employees to work a holiday, not the selection of hours (AIRS # 5422, 8352, 8491, and 22515).

- Employees on either limited duty or light duty may volunteer to work their holiday provided such work is within their restrictions. Item 13 is only concerned with holiday scheduling, not limited or light duty assignments (AIRS # 8522). However, see AIRS # 34360 in which an arbitrator found that Item 13 may cover references to including light/limited duty employees in holiday schedules if the work is within their limitations.

- No employees will be worked in a non-bargaining unit position while there are non-volunteers scheduled to work any day during a holiday period (AIRS # 20537).

But see AIRS # 26859-60 in which an arbitrator found that it was proper to negotiate an item that an employee having leave the day before or the day after a holiday should be exempt from holiday scheduling. Then turning to the merits,

however, she determined that a practice in existence at this facility to allow employees on leave to be exempt from holiday scheduling was not a binding past practice since it was limited to one tour and management should be allowed the discretion to implement a policy fair to employees while allowing for operational flexibility. Note also that in AIRS Cases No. 33264, an arbitrator indicated that a provision that employees who are scheduled for annual leave during a holiday week will not be subject to reporting for work on a holiday could be negotiated, but determined that the union did not meet its burden of proving that a problem existed with the current language that did not contain such a guarantee. In addition, another arbitrator accepted a union's proposal that no full-time or part-time regular employee shall be scheduled to work on his/her holiday in conjunction with scheduled annual leave unless he/she volunteers by signing the holiday list (AIRS # 34360).

Moreover, a union's proposal to modify Item 13 of its LMOU by adding a provision that placed the time period for volunteering to work a holiday no later than 14 days before the week of the actual holiday or closer to the holiday time than the existing provision was considered in AIRS # 33264. However, the arbitrator denied this proposal because of a lack of evidence showing that a hardship existed.

14. Overtime Desired List

Whether Overtime Desired List in Article 8 Shall be by Section and/or Tour

Locals should carefully consider whether they will use sections or whether they will use tours. Generally smaller offices will go by tour while larger offices will divide into many sections within a tour.

In selecting sections careful attention should be paid to such things as:

1) Starting times. If varied starting times in a section are placed on one Overtime Desired List then a strict rotation through the list may result in one starting time continuously missing opportunities while another starting time works all the opportunities.

2) Qualifications. If there are a wide variety of qualifications within a section disparities can occur where a number of people are skipped to get to a qualified person.

Note: Locals are cautioned against negotiating LMOU provisions identifying the APWU as administrator of overtime. Depending on what is negotiated, including provisions on this item in a local's LMOU may limit the union's flexibility to opt out of administration on a quarterly basis (as provided in the 2006 National Agreement MOU re: APWU Administration of Overtime, Choice Vacation Periods, and Holiday Work). At this time, reliance on the MOU itself should suffice. In addition, before a Local assumes these administrative responsibilities, the local parties will be provided training by the national parties.

Some locals have developed multiple Overtime Desired Lists (ODL) having separate lists for before tour, after tour and non-scheduled days. Others have accomplished the same thing using an annotated single list.

Locals should note that the 1984 Memorandum of Understanding on Article 8 provides for a designation on the ODL for those people wishing to work more than ten hours on a regularly scheduled day.

In a few circumstances locals have negotiated a procedure that allows for an ODL in particular sections and a tour ODL. When a particular section ODL has been exhausted, volunteers from outside of that section on the tour ODL will be selected before forcing people within the section to work. Several arbitrators have held, however, that ODLs by tour and sections are in conflict with Article 8, Section 5 (AIRS # 4863, and 6593). In at least one case, an arbitrator has ruled that overtime desired lists by tours and position descriptions for motor vehicle employees was acceptable (AIRS # 20621).

In the Maintenance Craft the concept of "occupational group and level" applies to overtime desired lists. Article 38, Section 7(B) provides that an overtime desired list shall be established for each occupational group and level showing special qualifications where necessary. As a result of this provision, the union team can negotiate for sectional and/or tour OTDLs for maintenance craft workers but these OTDLs must, as required by Article 38, also be established for each occupational and group level.

Management has attempted not to honor or to declare inconsistent and in conflict some of the

more elaborate local provisions on this item. Therefore, the local negotiation team should pay careful attention to Article 8 and the Memorandum on Article 8 to make sure that their proposals and their LMOU language are consistent with all of the provisions.

In pre-1985 LMOU impasses, many arbitrators declined to implement multiple overtime desired lists. However, since the 1984 contract there have been a number of successes in implementing these procedures.

Multiple Overtime Desired Lists

A case that reversed the trend came from the Daytona Beach Area Local, where a proposal to establish multiple Overtime Desired Lists for before and after tours and off days was held consistent with the National Agreement. The arbitrator found that no provision expressly prohibits establishment of multiple lists or "clearly implies" that such lists are not permitted (AIRS # 6628).

Other awards that have accepted provisions setting up different types of lists include:

- provisions requiring three lists for ODLs so that an employee can volunteer to report prior to and/or after his/her regular reporting time and/or on his/her nonscheduled days were accepted (AIRS # 4896, 5280, 7026, 6015, 8350-8356, 20621, 26890, 34667);

- a provision requiring that overtime lists include overtime before the beginning of a tour, at the end of a tour, on an off day only, and in excess of 10 hours (AIRS # 4851);

- a provision for off-day and workday overtime (AIRS # 5289, 27339-40, 26866). But see AIRS # 27353, 27063 and 26854 in which arbitrators rejected such a provision.

- a provision requiring overtime lists for off-day and workday overtime as well as overtime on any day of the service week and overtime before and after a regular scheduled workday (AIRS # 27538).

Arbitrators also have accepted provisions that define tour hours and start times in AIRS # 20621 and 22515.

Since the 1987 National Agreement went into effect, there has been mixed results with regard to acceptance of multiple overtime desired lists. One well-reasoned award indicated that to prohibit multiple overtime desired lists would frustrate the parties' intent under Article 8, Section 5 which is to reduce forced overtime (AIRS No. 14652). In that award, the arbitrator accepted the union's proposal to carry-over a provision for daily overtime and one for scheduled days off. Other awards under the 1987 Agreement which upheld similar provisions include AIRS 13438 and 13033.

In an award under the 2000 Agreement, an arbitrator ruled that Article 8 and/or Article 30 don't prohibit multiple overtime desired lists, "those Articles mandate discussion of multiple OTDLs" such as those allowing before tour, after tour, and off days overtime lists. He found that if local negotiations were not allowed to cover multiple overtime desired lists, Article 30.B.14 merely would be redundant and have no meaning since Article 8.5.B also provides that ODLs be established by tour and section. Moreover, the arbitrator cited an April 16, 1985 letter signed by the then-Assistant Postmaster General and APWU national president that indicated that "local offices may discuss multiple overtime desired lists during the current local implementation process with a view toward local resolution of the issue." He reasoned that this letter is evidence that multiple overtime desired lists fall within the parameters of Article 30.B.14. Finally, the arbitrator concluded that management failed to show support for its claim that multiple ODLs would increase costs because of the potential for increases in grievances that are filed over their use (AIRS # 38868). In an award under the 1990 Agreement, an arbitrator determined that a multiple overtime desired list proposal had merit in "concept" but determined that it should not be included in the LMOU because of its lack of "completeness and clarity" (AIRS # 21005). This award indicates the importance of clearly delineating the number and type of lists desired. Another award denied the union's proposal to create multiple overtime desired lists for pre-tour and post-tour overtime, and scheduled days off for maintenance employees on the basis that this proposal was "overly broad, ambiguous and not specifically tailored to ensure a smooth transition which would mutually balance the needs of both parties." The arbitrator found convincing the management's contention that there would be an administrative burden on management in using the three lists, due to possible mistakes and the potential for additional grievances, even though management

currently had a policy in place of 10 and 12 hour overtime lists (AIRS # 39465).

Another award under the 1998 Agreement found that multiple overtime desired lists fall within the scope of Item 14 thereby rejecting the Postal Service's argument that the union's proposal was not arbitrable (AIRS # 32777). However, the arbitrator determined that the union failed to provide sufficient proof that three lists were needed and there was no evidence of the reasons why the union previously gave up the three-list system during negotiations under a prior local agreement between the parties. Also, an arbitrator upheld a multiple overtime desired list, which created a pecking order providing that if employees on the section overtime desired list are not sufficient, employees in a non-ODL section should be assigned overtime by seniority followed by employees on the ODL of a tour and finally employees not on an overtime desired list by tour. He found that the provision was not inconsistent with the National Agreement and did not represent an unreasonable burden on management (AIRS # 32505). Moreover, an award determined that a multiple overtime desired list by nonscheduled day, before tour, and after tour for three buildings did not result in an unreasonable burden to management. The arbitrator found that though employees had to travel between buildings, the Service did not show that this factor caused any problems (AIRS # 34667).

Awards rejecting multiple overtime desired lists include AIRS # 13047; 13104; 13019; 14251; and 500309- 500315, 26789-94, 35332. An award under the 2000 National Agreement accepted a union's proposal for three overtime desired lists, before tour, after tour, and scheduled off days. However, he found that additional proposals would result in unwarranted administrative obligations. These included allowing employees on the before and after tour lists to have the option of choosing two and/or four hours of overtime, and to provide that the scheduled off day list have a separate rotation for each of the seven calendar days. (AIRS # 40576)

Advance Notice of Overtime

Some arbitrators have ruled that proposals calling for advance notice of overtime are beyond the scope of Item 14 (AIRS # 506, 514, 526). However, several locals have successfully obtained advance notice of overtime. (AIRS # 5198, 5213, 6003, 7024, 8051, 20621, and 38356).

If the advance notice provision is so stringent as to give the employee an unqualified right to refuse the overtime, the provision may be found in conflict with the right of the Service to carry out its mission and the right to require overtime (AIRS # 5199, 6184, 6792, 7989, 20381, and 39925). Examples of these types of provisions are ones that provide that management "shall" or "will" provide one or two hours notice (AIRS # 5199, 7989), those explicitly giving employees the option of refusing overtime "without reprisal" if circumstances prevent one hour's notice (AIRS # 6003), and those requiring 24 hours advance notice before requiring work on a non-scheduled work day (AIRS # 5199).

The following is an example of a negotiated advance notice provision:

> Employees in the Clerk Craft shall normally be given 2 hours advance notice when the Postal Service schedules overtime work, but may receive less notice if unusual conditions are found by the Director of Mail Processing or his designee. Employees receiving less than 2 hours notice who state that they do not want to work overtime on a given day will not be so required if they state that they are unable to do so for equitable reasons (e.g., anniversaries, birthdays, illness and death). Acceptable evidence may be required to substantiate such employee claims and may be provided within 3 working days following the date of the employee's return to work.
>
> Employees receiving 2 hours or more notice of overtime who state that they do not want to work overtime on a given day will be given consideration in exceptional cases based on equity (e.g., anniversaries, birthdays, illness and death).

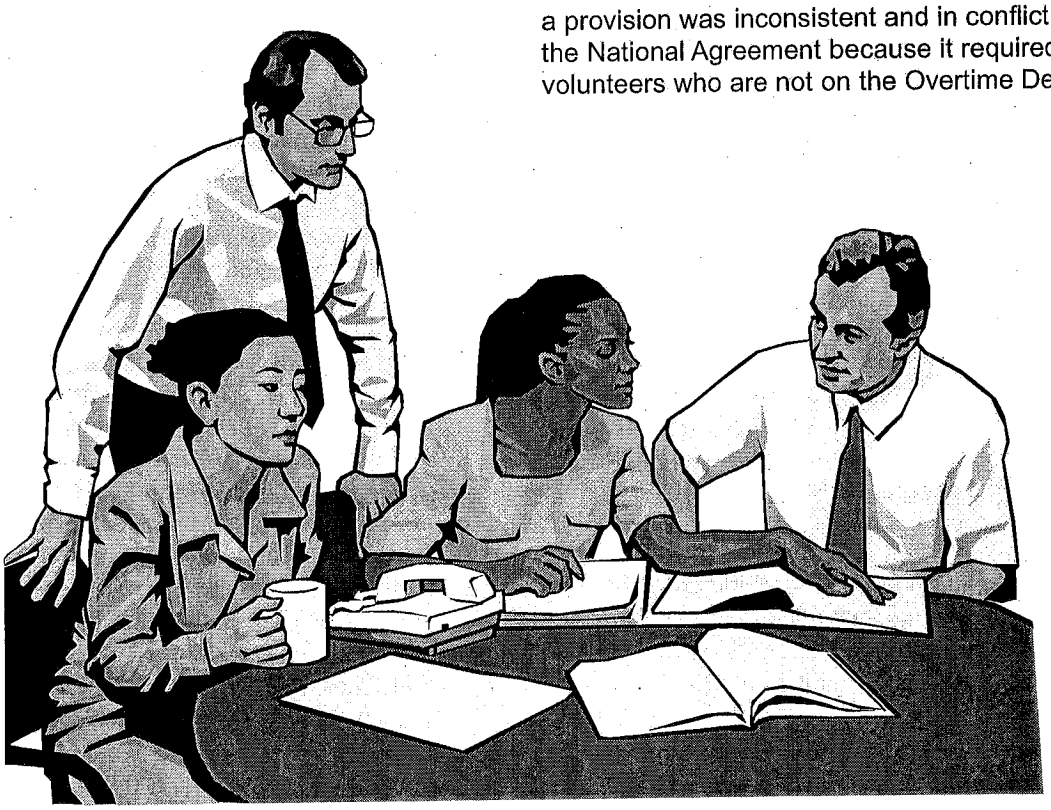
Note: As with many advance notice agreements, this does not appear in the LMOU, but is rather a local policy statement.

Scope of Item 14

Proposals that go beyond the scope of setting up ODLs may be rejected in impasse arbitration. Examples of proposals that have been determined by arbitrators to be outside the scope of negotiation for this item are as follows:

- a "telephone policy" allowing employees to use the phone to make arrangements when overtime is called (AIRS # 506)
- an exception from mandatory overtime for employees who have not qualified on a scheme (AIRS # 555)
- a prohibition on scheduling employees for overtime work who have medical restrictions (AIRS # 6105)
- allowing employees who have medical appointments or who are faced with emergency situations to be excused from overtime (AIRS # 6515)
- specifics as to time of the overtime distribution, when and how overtime lists will be prepared, and how an employee signs the list (AIRS # 7580)
- a policy allowing part-time flexibles who are converted to part-time regular or full-time flexible during a quarter to place their names on the ODL within ten days of their conversion (AIRS # 8503)
- a requirement that if a supervisor is unable to contact an employee for the purpose of offering overtime, the missed overtime shall not be counted as an opportunity for overtime (AIRS # 8511)
- a requirement that an employee on an ODL may be excused from overtime for any reason eight times without having his or her name removed from the Overtime Desired List (AIRS # 27950)
- a requirement that breaks be allowed at specified intervals during overtime (AIRS # 26883-887)

Another provision that has been held to be inconsistent and in conflict with the National Agreement, and an unreasonable burden is a provision that allowed employees to volunteer for overtime when additional overtime is needed. An arbitrator ruled that this language was inconsistent with the need to sign the Overtime Desired List two weeks before the start of each calendar quarter. In addition, the efforts necessary for management to find volunteers created an administrative burden and excessive cost if employees are not contacted (AIRS # 20730). Also see AIRS # 28749 in which an arbitrator found that a provision was inconsistent and in conflict with the National Agreement because it required that volunteers who are not on the Overtime Desired



List be worked before calling non-volunteers if there are an insufficient number of personnel on the ODL to cover the needs of the Service.

In addition, a provision that established an overtime desired list by installation was held to be an unreasonable burden. The arbitrator ruled that a section-based list was necessary in view of the need to assign overtime to employees who are qualified to perform it (AIRS # 20748). Another arbitrator held that a provision setting up overtime desired lists by section or tour was outdated because work units had been moved around due to automation. Therefore, he held that it constituted an unreasonable burden (AIRS # 21928). Another arbitrator accepted a change to an LMOU that affected one station of a P&DC and prescribed that scheduling for overtime, vacations, and holiday coverage be done by tour. He rejected the Postal Service's argument that due to the small number of personnel at the facility, which included four window clerks and two relief clerks, it was not practical to allow the change. The arbitrator found the language to be reasonable and not unduly burdensome on management's flexibility to assign staffing. (AIRS # 39602)

Another arbitrator ruled that management does not have to negotiate over the definition of section contained in Item 14 and could determine that a section was equivalent to a pay location in accordance with its rights under Article 3. In this case, four new pay locations had been developed and maintenance craft employees were placed in sections according to their prior training so that a section could include employees from different occupational groups and levels. The union argued that the use of pay locations rather than occupational groups denied the seniority rights of the employees and caused significant hardship. The arbitrator rejected the union's proposal that overtime desired lists shall be by tour, section, occupational group, and level (AIRS # 32312). However, see Article 38, Section 7(B) which establishes that overtime by occupational group and level should apply in cases such as this one.

A provision that prohibited craft employees detailed to non-bargaining unit positions from working overtime in a bargaining unit position was rejected as inconsistent with management's right to schedule overtime (AIRS # 20621). However, an arbitrator held that it would be advisable for management to accept a provision requiring that additions to the overtime desired list can be made in the case of part-time flexibles converted to full time; when a successful bidder goes to a different tour, different facility, different position descriptions, different craft; and because of absences during the solicitation period (AIRS # 20621). Another arbitrator determined that a letter of clarification for the implementation of the off-day and extended overtime desired list, which mandated that employees work overtime in their bid assignments and allowed them to leave if they desired while on extended tour, was consistent with the National Agreement. He reasoned that the reference to bid assignment addressed the issue of section and tour raised by Item 14 and that voluntary departures by employees on overtime did not constitute a violation of the National Agreement since there is no obligation by the Service to pay guaranteed overtime in these circumstances (AIRS # 32508).

Pecking Order

In addition, LMOU provisions for two locals which assigned a pecking order for overtime which placed part-time flexibles and casuals after ODL employees were upheld. The arbitrator found that these provisions were not inconsistent or in conflict with the National Agreement (AIRS # 27104 and 27486, and AIRS # 27543 and 28327). Also, in one of the cases (AIRS # 27543 and 28327), the arbitrator determined that in order to prevail on an unreasonable burden argument in the future, the Service will have to show through substantial facts that something has significantly changed since the last round of local negotiations which can now be considered as representing an unreasonable burden. He cited the fact that the Service had repeatedly agreed to the provision in question during prior impasse proceedings.

It should be noted also that pursuant to the parties' agreement and intent of the 2006 MOU re: "Supplemental Work Force; Conversion of PTF's," full-time employees (regardless of craft) on the Overtime Desired List will receive priority for overtime scheduling before casuals working overtime. This agreement supports the argument that ODL employees should be scheduled for overtime work first.

In another award, an LMOU provision that established a pecking order for overtime placing part-time flexibles along with part-time regulars and transitional employees after full-time regular employees was upheld. The arbitrator determined that the item, even though it was outside the scope of the 22 items in Article 30, was valid. He

also ruled that it was not inconsistent and in conflict with the National Agreement and that the Postal Service did not prove that the pecking order created an unreasonable burden. The arbitrator reasoned that the Postal Service's failure to show that overtime usage would have been reduced if the pecking order was not in place, did not allow him to make an informed judgment that the system was burdensome (AIRS # 32116). (But see AIRS # 16924 and USPS #N1C-1J-C 15443, contract cases in which arbitrators found that LMOU provisions giving a preference to full-time regulars on the ODL before PTFs were inconsistent and in conflict with the Agreement.)

Also, a local's proposal that provided that management would use employees from sections associated with an affected section before requiring non-ODL employees to work overtime was accepted by an arbitrator (AIRS # 26883-26887). He found unpersuasive management arguments that the provision would create an overtime pecking order outside the scope of Article 30 and would conflict with Article 8.5. He indicated that the proposal served the purpose of ODLs which is to provide overtime opportunities to individuals that desire the work and bypass individuals that do not desire the extra work.

Moreover, another arbitrator upheld a provision setting up a pecking order requiring in part that non-ODL volunteers from an appropriate section and then from other sections on a tour be scheduled for overtime ahead of non-volunteersfrom the appropriate section and then from other sections on the tour. The Postal Service argued that the provision was inconsistent with the National Agreement. However, the arbitrator reasoned that "[u]nless there is something specific in the National Agreement outlining, or restricting, a pecking order, it is difficult to perceive how retention of a previously agreed upon pecking order would be inconsistent or in conflict with the National Agreement." In addition, he cited a prior contract arbitration award that upheld the same pecking order at this facility and the fact that management did not make any assertions during negotiations that the challenged language was unworkable or placed an undue burden on it (AIRS # 27538).

An award upheld a pre-existing provision, setting up guarantees once overtime hours are scheduled, a "desire to be bypassed" policy, and payment to employees on the ODL if they do not remain on the list and their hours are below the list average by 10%. The arbitrator rejected management's argument that the provision, which had been in effect since 1993, resulted in an unreasonable burden. The only evidence in support of this claim was that flexibility would be affected if overtime hours were guaranteed when scheduled and it was difficult to find someone to work since management allegedly had to go though the entire overtime desired list, not just by tour, before it could require an employee to work overtime. The arbitrator found that a document prepared by management merely showed "assumed actions and potential costs, not actual costs that have been incurred" and therefore does not prove that an unreasonable burden existed. He noted also that there was testimony that until the impasse arbitration, there had never been a grievance by the union (AIRS # 39064).

Also, an award found that an LMOU that contained a consolidated overtime desired list covering two facilities located 15 miles apart did not conflict with the National Agreement or constitute an unreasonable burden to management. The arbitrator determined that there is nothing in the National Agreement that precludes one consolidated overtime desired list being shared by two locations. In addition, he determined that although this arrangement may be inconvenient for the Postal Service, it has been working for many years at these facilities and therefore the Postal Service did not meet its burden of proving that the consolidated list created an unreasonable burden. (AIRS # 40182)

Note: Where Pool and Relief employees sign ODL should be defined by Locals.

A local's proposal to change its LMOU to require that Pool and Relief Clerks can only sign the overtime desired list in the pay location where domiciled, and when assigned to units other than where their name is, may be offered overtime, if available, after the overtime desired list is exhausted in that unit was upheld by an arbitrator (AIRS # 26899). Relying on a Step 4 settlement in H8C-3W-C 22961, he ruled that the existing provision which did not contain this restriction was in conflict and inconsistent with the National Agreement.

15. Light Duty—Number of Assignments

The Number of Duty Assignments Within Each Craft or Occupational Group to be Reserved for Temporary or Permanent Light Duty Assignment

16. Light Duty—Reserving Assignments

The Method to be Used in Reserving Light Duty Assignments So That No Regularly Assigned Member of the Regular Workforce Will be Adversely Affected

17. Light Duty—Identifying Assignments

The Identification of Assignments That Are to be Considered Light Duty Within Each Craft Represented in the Office

These three items are almost always dealt with as if they were a single item because they are so closely interrelated and tied together. Article 13, Section 3 of the National Agreement addresses each of these items in more detail. In order to formulate proposals, a request for specific information from management should be made. Information such as the average number of employees on temporary or permanent light duty, the average duration of the light duty assignments, the type and nature of the physical restrictions, etc., should be obtained.

Once some idea of the number and type of assignments that are needed is known the National Agreement suggests that light duty assignments may be created from part-time hours, adjustments to normal assignments or reserving certain assignments as may be established through local negotiations to accommodate the local needs.

The National Agreement implies that actual duty assignments should be established and reserved for deserving light duty personnel. Locals may be reluctant to reserve "x" number of light duty assignments and there is an inherent danger in this approach. As an example, if 10 assignments are reserved, this means that 10 assignments may be exempt from the bidding process. In addition, if and when the eleventh person requested light duty, management might decline the request if all 10 positions were filled.

Reserving Assignments

Some locals have elected not to negotiate into their LMOU a fixed number of reserved light duty assignments, and have relied on past practice. Despite the risks, failure to negotiate reserved assignments may cause a deserving employee to be denied a light duty assignment. It is not uncommon for management to simply state, "This office has no light duty work." **With the union's negotiation of an MOU in the 2006 National Agreement on Limited Duty and Rehabilitation Assignments within APWU Crafts involving Workers from Other Crafts, the Postal Service has agreed that reassignments or reemployment under Section 546 of the ELM "must be accomplished through Article 13 of the National Agreement applicable to the craft to which the employee is being reassigned or reemployed." Therefore, locals that have a fixed number of reserved assignments may want to cite this provision as support for increasing the number of assignments and/or type of assignments to include limited duty assignments, as well as light duty assignments.**

A two-pronged approach may be taken. For example, reserving specific assignments in some number, and providing a method to be used to accommodate additional requests beyond the reserved assignments, or to accommodate employees whose physical imitations would not allow them to work the reserved assignments. In addition, locals may negotiate specific duties within prescribed tours for light duty after all efforts have been made by management to adjust the employee's regular duty assignment.

In a small office, setting up a fixed number of light duty assignments may be difficult. One arbitrator has held that seasonal demands as well as the irregular flow of mail in such a setting would vary thereby affecting the work availability for light duty employees (AIRS # 5295). On the other hand, another arbitrator has accepted a provision setting up reserved light duty positions for a percentage (3%) of employees (AIRS # 6092). Moreover, in response to a claim that an unreasonable burden resulted from an existing

provision's requirement that six light duty positions be available within the Motor Vehicle Craft, a third arbitrator found that use of a percentage approach would respond to management's concern that there had been reductions in the Motor Vehicle workforce. He ordered that the appropriate percentage be calculated on the basis of the total MVS complement in 1998 (the date of the previous LMOU), divided by six positions, and that this percentage be frozen during the term of the 2002 LMOU. (AIRS # 43196) A fourth arbitrator has rejected management's contention that fixed permanent and temporary light duty assignments for the Clerk Craft set at 12 assignments for Tour 1, 4 assignments for Tour 2 and 8 assignments for Tour 3 constituted an unreasonable burden. Evidence that new machinery reduced the number of positions on all tours and volumes processed on the Manual Primary Line where light duty employees are generally placed merely proved that management was inconvenienced, not that it was "severely taxed" by the required number of reserved assignments or prevented from maintaining efficiency of operations. (AIRS # 38738) In cases where a fixed percentage for light duty assignments is sought, however, a local union bears the burden of showing how it arrived at the percentage.

An arbitrator rejected a union's proposal to reserve the number of light duty positions at 5% of all APWU-represented positions on the basis that the union had failed to offer any data on the number of light duty employees in the facility at any given time and the characteristics of jobs to be designated as light duty. He stressed that if a number is set too low, deserving candidates could be denied accommodation if the parties considered it a negotiated cap or if it is too high, too many assignments would have been designated which could adversely affect regular employees. (AIRS # 39159) Also note that an arbitrator accepted the union's argument that language requiring that consideration be given to using employees on light duty at 1% per tour was inconsistent with management's obligation to provide light duty assignments to the extent possible (AIRS # 33264).

Another award has accepted the union's proposal prescribing a number of positions per tour in the maintenance craft in an effort to ensure that maintenance employees on light duty would be accommodated (AIRS # 20990). It should be noted that any increases in light duty positions have to be justified by increases in the number of employees per facility (AIRS # 21295).

Moreover, several arbitrators have accepted provisions that prescribe non-bid duties that can be performed by light duty employees (AIRS # 6092, 7578). In one of these cases, the provision specified that employees on light duty could perform duties related to Nixie/tearup mail, light duty casework, facing mail, work in the label room, mail counting work, and incidental assignments within the employee's physical limitations (AIRS # 6092). However, see AIRS # 26789-94 in which one arbitrator rejected a local union's proposal which recognized certain duties by craft as light duty assignments. The arbitrator reasoned that there was no need for the proposed listing and it would unduly restrict the desired flexibility needed by management to make light duty assignments.

Arbitrators have deleted provisions that have set up specific criteria for obtaining a light duty assignment, such as lifting and standing requirements, as being unnecessarily restrictive on an employee's right to be considered for light duty assignments on an individual basis (AIRS # 20743 and 20717).

Cross-Craft Light Duty Assignments

Maintaining light duty assignments within a certain craft, thereby preventing the crossing of craft lines, has been rejected (AIRS # 8481). In addition, giving employees represented by the APWU the superior claim to duty assignments that are recognized as belonging to crafts of the APWU has been determined by an arbitrator to be outside the scope of Item 17 (AIRS # 26722). Another arbitrator also held that a provision assigning employees from other crafts to work certain tours was impermissible. He relied on the fact that it infringed on another union's negotiating authority without its consent (AIRS # 553). Moreover, language in an LMOU prohibiting non-APWU bargaining unit employees from being assigned work on Tour Two to the detriment of any APWU bargaining unit bid position, light duty assignment or other temporary assignment was ruled to be inconsistent with the National Agreement (AIRS # 26756). A provision defining light duty assignments as including assistance to other carriers has been rejected; the APWU cannot bargain for NALC duties (AIRS # 6132).

A less restrictive provision, requiring that the union be advised when cross- craft assignments are made, has been allowed (AIRS # 8623). In addition, an arbitrator accepted a provision that

requires employees not represented by the American Postal Workers Union assigned to APWU work to perform work during the tour APWU employees normally perform such work (AIRS # 5283). **Note that the 2006 National Agreement provides that "[m]anagement will give the local union president advance written notification when it is proposed to reassign an ill or injured light or limited duty employee in a cross craft assignment into an APWU represented craft." (Article 13.4.M)**

Other Provisions

Local agreements may repeat language from Article 13 of the National Agreement to show the scope of management's obligation to consider light duty requests. It may prove fruitful to attempt to write language similar to ELM 546.142 (changing references from "limited duty" to "light duty") into the Local Memorandum of Understanding. Locals should also consider putting language in their LMOU that specifies that employees reinstated under the Rehabilitation Program should be assigned to one of the reserved light duty assignments or a residual vacancy. This would help protect against management creating special preferred jobs for Rehab employees, while still protecting the Rehab employee. Note that management may object to language used that is not identical to language contained in the National Agreement. For example, see AIRS # 14656 in which an arbitrator ruled that a provision addressing limited duty employees was outside the scope of Article 30.B.17. However, as noted earlier, the APWU and Postal Service entered into an MOU as part of the 2006 National Agreement that provides for a change to ELM 546 stating that reassignments or reemployments under that provision must be accomplished through Article 13 of the National Agreement applicable to the craft to which the employee is being reassigned or reemployed. Therefore, this provision supports an argument that proposals addressing limited duty as well as light duty assignments can be negotiated locally.

Moreover, an attempt by management to declare as inconsistent a provision using the language "maximum effort" instead of "greatest consideration" was rejected by an arbitrator (AIRS # 27682). In addition, management's objection to a union proposal to require that work will be provided to the extent possible at the plant or elsewhere in an installation if it is unavailable at the stations, was not found to be consistent with Article 13 (AIRS # 33264).

It should be noted that an attempt to add a provision setting up a union-management light duty committee that has the specific duty of reviewing requests for light duty will not be successful (AIRS # 22575, 22576, 22577, and 22578). In addition, some arbitrators may be reluctant to continue an LMOU provision providing for a union/management light duty committee if it there is no showing that it has ever met or been an effective committee (AIRS # 32848 and 32869). Moreover, a provision that "mandates" a light duty committee to find work within the medical restrictions for an employee within the employee's tour of duty has been held to be in conflict with the National Agreement (AIRS # 23385).

However, a proposal that temporary, transitional and loaned/borrowed employees shall be included in the expression "supplemental work force" for the purposes of creating hours for light duty positions in Article 13.4.A was allowed to be added to one local agreement (AIRS # 22575, 22576, 22577, and 22578). In addition, a provision that states management's obligation to make all reasonable efforts to reassign employees even though presently identified light duty assignments are filled by disabled employees was accepted by an arbitrator (AIRS # 22575, 22576, 22577, and 22578). Another arbitrator also has upheld a provision that reasonable efforts shall be made to assign an employee to light duty within the employee's craft or occupational group and "to keep the hours of light duty as close as possible to the employee's regular schedule" (AIRS # 21102). However, a provision providing that except where operationally impossible, all light/ limited duty assignments shall maintain an employee's bid or other assigned hours and nonscheduled days has been found to be inconsistent with Article 13 (AIRS # 26758). The arbitrator determined that use of the terms "operationally impossible" was an absolute requirement which was incompatible with language which allowed the Postal Service some discretion in assigning such work. Also, a provision addressing limited duty employees has been ruled to be outside the scope of Article 30.B.17 (AIRS # 14656). Moreover, a provision establishing a part-time permanent light duty position has not been allowed (AIRS # 527). The proposal was considered to be inequitable since it did not address the needs of temporary light duty employees and the needs of a permanent light

duty employee to work full-time.

Moreover, a provision that the union be given notice of when a light duty request is received, and of each denial of light duty was determined to be beyond the scope of Article 13 which only requires that concerned employees be notified in writing of the reasons why an employee cannot be reassigned. Additional language regarding medically defined work limitations and tolerances, the ability of an employee to perform work of his own job, modifications to other jobs, and a requirement that duties assigned to casuals, TEs and PTFs be modified for light duty when production is not impacted were considered to be burdensome procedures in circumstances where the union had not shown that there was a problem with existing language. The arbitrator urged the parties to merely "fulfill the bargain" they made when they negotiated the provision requiring that when a deserving employee seeks light duty work the president of the local union and installation head "shall establish the light duty assignment by consultation" in accordance with Article 13.3. (AIRS # 39159)

Note: The 1987 negotiations resulted in the deletion of language in Article 8, Section 5.C.1.b., which prohibited employees on light duty from performing overtime work. The intent of this change was to allow light duty employees to work overtime - within their physical limitations. This change in language was not intended to disrupt any local memorandum which requires management to call people in on their off day when overtime is available.

18. Sections for Reassignment

The Identification of Assignments Comprising a Section when it is Proposed to Reassign within an Installation Employees Excessed to the Needs of a Section

Locals of any size should negotiate sections for the purpose of protecting seniority in the event management determines that it is necessary to reduce the number of employees on a tour or within a unit in the installation. Sections may be determined through local negotiations for the purpose of excessing employees of a section as outlined in Article 12, Section 5.C.4.

As an example, if your office had three Window Clerks and management decided to abolish the senior Window Clerk's position, if sections are not defined the senior excessed Window Clerk becomes an unassigned regular and will be required to bid on any vacant duty assignment within the installation without retreat rights back into the window unit. On the other hand, if the window unit had been negotiated as a section, the senior Window Clerk would have remained in the section and the junior clerk would have been excessed and declared an unassigned regular. The junior clerk would have retained retreat rights to the first residual vacancy in the window unit. The principle of seniority is protected since the senior clerk whose job was abolished had the right to remain in the window section. The job vacated by the junior clerk would be filled by section bidding, which means that if the number two employee did not desire the vacated position, the senior regular would be assigned to the position vacated by the excessing of the junior employee.

Defining sections not only by particular work units but also by levels and skills within a unit may be desirable. If the Window Unit also contained Scheme Distribution Clerks who did not have fixed credits or window training and contained Window Clerks that did not have the scheme, then distinguishing the two skills as separate sections might prevent the assignment of a senior Window Clerk who remains in the section to the Junior Scheme Clerk's position, thus forcing the senior clerk to learn the scheme or vice versa, the Scheme Clerk to qualify on the window. In addition, it is recommended that for the Maintenance Craft, each occupational group by tour should be identified as separate sections. This will prevent management from making reassignments across tours. (See AIRS # 39693 in which an arbitrator accepted the union's proposal to add "and tour" to existing language for the Maintenance Craft stating "section will be by occupational group and level." However, in AIRS # 26783 an arbitrator rejected a local union's proposal to add occupational group to tour in four sections set out for Maintenance Craft employees.)

Several awards on reassignment show how arbitrators approach the identification of section under different circumstances. In one case, an arbitrator added tour of duty and work units and skills to the identification of assignments comprising a section. The prior section was defined as an entire installation. The union argued

successfully that the current LMOU did not adequately protect senior employees and should indicate that a section was comprised of a tour of duty. The Service argued that the union's proposal would disrupt operations (AIRS # 20518). A similar case involved another union proposal to change a provision on reassignment sections from installation wide/one section to sections by tour (AIRS # 32364). The arbitrator accepted the proposed change on the basis that an installation-wide section was detrimental to seniority considerations.

In AIRS # 22010, an arbitrator ruled that the Service had not met its burden of proving that a pre-existing provision establishing section by tour and LSM, FSM operations constituted an unreasonable burden. The Postal Service argued that projected automation made it necessary to excess employees by scheme combination. The union opposed the change, arguing that excessing could result in senior employees losing their tour of duty. The arbitrator ruled that management's argument was purely speculative since the evidence did not permit a finding that tentatively-scheduled automation was certain to occur (AIRS # 22010).

In a fourth award, an arbitrator denied the local union's proposal to change an existing LMOU identifying sections by 41 pay locations and by tour (AIRS # 26721). The union sought to identify sections as all full-time employees by salary level and by tour, with each best qualified position and salary level in a separate category (one section per position for the entire installation). It asserted that the current language imposed a hardship because the Postal Service could target a pay location for extinction and decide which employees would be assigned to that location, and as a result senior employees could become unassigned regulars while junior employees would receive preferable assignments. The union also argued that the language is in conflict with Article 37.3.A.7.d and its proposal would protect seniority rights of employees. The arbitrator determined that the union had not met its burden of proving that the current language, which had been in effect since 1987, was unworkable throughout prior excessing or that any grievances had been brought alleging a violation of Article 37.3.A.7.d.

Another arbitrator rejected a local union's proposal to add language to its provision on sections for reassignment that "all part-time regulars will be declared excess to the needs of a section by juniority before full-time regulars are declared excess." The arbitrator indicated that the language of Article 12.5.c.4.a states that the identification of assignments comprising for this purpose a section shall be determined locally by local negotiations, but does not say that all part-time regulars may constitute a section. He also said that since 12.5.c.4.b merely indicates that "full time employees, excess to the needs of the section . . . shall be reassigned outside the section" and does not specifically say that this should be accomplished after excessing part-time regulars, the addition of this language would be inconsistent with the pecking order set out by negotiators at the national level. This arbitrator said he is "reluctant to state that the part time regular employees were inadvertently left out of a 'pecking order' established either for the removal from a section or reassignment within a section or reassignment from an installation" (AIRS # 22515).

19. Parking Spaces

The Assignment of Employee Parking Spaces

Parking facilities are usually very limited and negotiations in this area may be difficult. Management has been instructed to only negotiate on the allocation of existing parking spaces in excess to the needs of the Postal Service. Locals may wish to reserve parking spaces for the local APWU officers and/or stewards. Many locals have successfully negotiated reserved spots for the union.

In reserving spots, arbitrators have allowed parking to include spots for Directors of the Clerk, Maintenance, and Motor Vehicle Crafts, in addition to the President of a local, in order that the union may conduct its business properly (AIRS # 21006, 21007, 21008). In addition, in a case where a set number of spots was reserved by craft for employees in the Letter Carrier Craft and the Clerk Craft, an arbitrator allowed a change to a LMOU provision to provide for parking space allocation on the basis of proportionality of the number of employees in each craft thereby allowing Clerk Craft employees to receive 10 of the 14 spots allotted for employees (AIRS # 20624). In another case, a local union representing 22 employees in a facility with only 10 parking spaces for APWU and NALC employees was able to obtain a reserved parking space for a SSPC technician, an APWU representative, two APWU bargaining unit

members, and a handicapped employee without regard to union affiliation. The arbitrator reached this decision after balancing the interests of the NALC that had 98 employees at the facility with those of the APWU (AIRS # 27246).

In a case in which management had only 40 parking spaces available following closure of a parking garage and five of those spaces were permanently assigned to carriers with drive-out agreements and an ODIS clerk, an arbitrator found that management acted fairly in assigning parking spaces on a combined seniority basis including both letter carriers and clerks. He rejected the letter carrier union's proposal to assign parking on a proportional basis by craft on the basis that letter carriers constituted approximately 70% of the employees at the facility. The arbitrator found that use of a combined seniority list for parking would ensure that members of both union's bargaining units "are treated equitably in this very limited employee asset of free parking" (AIRS # 39584).

However, when parking is already inadequate, an impasse arbitrator will be reluctant to reserve spaces for the union (AIRS # 500). In one case the arbitrator did not feel that Item 19 envisioned reserving spots for the union (AIRS # 500 and 5420), yet another arbitrator rejected the Postal Service's argument that the National Agreement does not require management to negotiate on the subject of reserved parking spaces for union officials (AIRS # 33168). In any event, a parking program administered on a first come, first serve basis may be acceptable (AIRS # 4945, 6008, 6565, 7162, 7380, 8484 and 20752). Also, an arbitrator has required preferred parking for certain vehicles in response to Clean Air Act legislation (AIRS # 21258).

In another case, the arbitrator held that the Postal Service could unilaterally take back management spaces which the union had been allowed to use. The arbitrator stated that this was not a binding contractual provision, but merely a concession granted by the Postal Service (AIRS # 10231). In addition, an arbitrator has rejected a union proposal to restrict reserved parking used by management employees by only allowing reserve parking for the handicapped, the postmaster, and APWU craft designees (AIRS # 26883-887). The local had sought this provision in order to increase the number of first-come, first-served parking spots for bargaining unit employees. Also, a proposal to allow parking for maintenance employees that is similar to supervisors' parking was rejected. The arbitrator determined that the union's desire to ensure that parking spaces would be available closer to where the maintenance employees worked was outweighed by cost considerations of management (AIRS # 33804). Moreover, a proposal to increase the number of parking spaces by reestablishing spaces that had been taken out of use due to construction was rejected by an arbitrator as outside the scope of Item 19 (AIRS # 27513). The arbitrator ruled that Article 30, Item 19 only covers the assignment of parking spaces, not the creation of parking spaces. He also denied a proposal for permit parking on the basis that there was no evidence showing that employees were disadvantaged by the present system of first-come first-served parking.

On the other hand, locals have been successful against the Postal Service's efforts to argue that pre-existing provisions represent an unreasonable burden. For example, a parking program in effect for eight years, which included four parking spaces on postal premises for employees, was upheld by an arbitrator despite attempts by the Postal Service to reduce available spots for employees to one. The arbitrator ruled that the pre-existing parking provision did not constitute an unreasonable burden since it did not "substantially interfere with the Service's primary operation, the safety of postal patrons or employees, or lessen the Service's competitive position in the market of delivery of services." In addition, the arbitrator found that the Postal Service failed to show that alternatives available to correct an inadequacy in patron parking would be "ineffective or prohibitively costly in terms of financial or other resources of the Service" (AIRS # 20659). In addition, an arbitrator in another case ruled that the Postal Service did not meet its burden of proving that continuation of a parking program which allowed for five unassigned parking spaces and parking on a first-come first-serve basis constituted an unreasonable burden. Though there was evidence that there had been an increase in the number of vehicles assigned to the facility, vehicles were larger than predecessor jeeps, and there were more vehicles than spaces, the arbitrator found that there was no showing that the congestion negatively impacted the operation and safety of the post office (AIRS # 32367). A third arbitrator concluded that management did not demonstrate that continuing to grant a parking space to the senior clerk in a post office constituted an unreasonable burden. A management official testified that retaining the

space resulted in insufficient space for customer parking, drop shipments, a snow plow and current delivery vehicles driven by carriers because they had become larger. The arbitrator found that her testimony was unsupported by "empirical evidence" or "hard facts that any of these issues have become problematic in the past." (AIRS # 40703)

Parking Security

Article 20, Section 2 of the National Agreement addresses Parking Security. While this section does not call for local negotiations (in fact, management takes the position that it is not subject to local negotiations) some locals have been successful in negotiating provisions for parking lot security; such as lighting and fencing.

Arbitrator Mittenthal's national interpretative award (AIRS # 22) makes clear there is definitely no prohibition against negotiating anything during the local negotiation process that is not in conflict or inconsistent with the National Agreement. However, the local may not take through the impasse procedure anything but the specific twenty-two (22) items.

Subject for Labor-Management Meetings

Significantly, the National Agreement provides that parking is a proper subject for discussion at local Labor-Management meetings. Agenda items for such meetings may include the location of new, additional, or improved parking facilities; the number of parking spaces; security and lighting in the parking areas, as well as similar subjects. The local Labor-Management Committee may make recommendations to the installation head concerning such subjects.

Enforcement of Parking Rules

Locals must also remember that the Postal Service may both prescribe and enforce parking rules and regulations. In several cases, arbitrators have held that when adequate notice of such rules have been given, the Postal Service may issue tickets and/or tow cars parked in reserved or restricted spaces (AIRS # 9672-9678, 9385-9392, 10070 and 10929-10931).

20. Union Leave

The Determination as to Whether Annual Leave to Attend Union Activities Requested Prior to Determination of the Choice Vacation Schedule is to be Part of the Choice Vacation Plan

Locals should be aware that Article 24, Section 2.B. (also see Article 10, Section 3.F) of the National Agreement covers this particular item. Unless the local negotiates differently, the time an officer, steward or delegate takes leave for union activities such as a convention will be charged to the choice vacation period. An example where a local has been able to successfully negotiate otherwise is AIRS # 7334. In that case, the arbitrator accepted a proposal, whereby leave granted to attend union conventions would not be charged to an employee's choice vacation period, as long as no other employee is prevented from obtaining his/her first choice for vacation. Also, see AIRS # 33389 in which an arbitrator upheld a pre-existing provision that leave for state or national conventions shall not count towards choice vacation period numbers.

However, proposals on leave for union meetings or business have usually been rejected as outside the scope of mandatory bargaining or inconsistent with the National Agreement (AIRS # 7369, 21111, 21871 and 21888). For example, a provision requiring that all union leave be automatically approved for meetings, hearings, and arbitrations was found to be inconsistent with the Postal Service's right to manage (AIRS # 21111). In addition, a provision requiring that leave to attend official union functions and activities not be considered part of the choice vacation period and allowing it to be charged to annual leave or leave without pay at the employee's option was rejected. The arbitrator indicated that the issue of the type of leave to be granted to attend union activities is outside the scope of Article 30; however, he noted that the issue of appropriate leave to be charged for state and national conventions is addressed in Article 24. He also determined that the reference to union activities and functions resulted in a proposal that is too broad to uphold since management would be required to accommodate any function or activity the union determined to be official. The arbitrator noted that the union defined union activities and functions to include union training classes, and the

Clerk Craft and President Conferences, for example (AIRS # 39753). Moreover, a provision requiring that union representatives working on union business be granted leave immediately or if not possible, within two hours after such a request 95% of the time was held to be in conflict with Articles 17.3 and 24.2 of the Agreement (AIRS # 21888). Item 20 is also related to Item 8, and both should be considered when formulating local leave policies.

21. Craft Items

Those Other Items which are Subject to Local Negotiations as Provided in the Craft Supplemental Agreements

22. Seniority, Reassignment, Posting

Local Implementation of this Agreement Relating to Seniority, Reassignments, and Posting

Items 21 and 22 cover a wide variety of items many of which overlap because most of the local implementation of seniority, reassignments and postings are also specific items in the local craft supplemental agreements that call for local negotiations.

APPLICATION OF SENIORITY

Clerk Craft - Article 37, Section 2.C.
Maintenance Craft - Article 38, Section 3.C.
Motor Vehicle Craft - Article 39, Section 1.E.

In general the Postal Service will instruct local management not to negotiate day-to-day application of seniority, allegedly because it is beyond the scope of local negotiations. To the contrary, the negotiated provisions of the above-referenced craft articles, clearly provide that the day-to-day application of seniority is open to negotiations at the local level. Some locals have been successful in negotiating day-to-day application of seniority provisions. However, locals should be aware of the difficulties involved in negotiating some kind of movement from assignment to assignment by seniority.

Day-To-Day Seniority

Arbitrator Garrett in three different cases laid-out the guidelines for evaluating "day-to-day seniority" provisions (AIRS # 124, 145 and 812, AIRS # 145 was decided under 1971 Contract before the list of 22 items was placed in Article 30). The following are points he made:

1) Proposals concerning "day-to-day seniority" are mandatory subjects for bargaining under Item 22. Impasses reached are arbitrable. In AIRS # 812, Arbitrator Garrett found that the union's proposal was inconsistent with the National Agreement, but nonetheless negotiable. He provided a 60-day period for further negotiations.

   It is common knowledge that many initial proposals in collective bargaining are unsound, impractical, and sometimes even frivolous or unlawful, yet such proposals may sometimes be so modified through negotiations as to eliminate objectionable features. A local proposal which may seem to seek a result in conflict with the National Agreement - but which nonetheless seeks to deal with a genuine problem within the scope of Article XXX - accordingly still may provide a basis for good faith negotiation. In any such negotiation, of course, either party may and should resist agreement upon any compromise or alternate solution which would conflict with the National Agreement.

   Nothing in the present Article XXX authorizes a refusal to negotiate concerning a local proposal, on one of the subjects delineated in Paragraph B thereof (AIRS # 812, pp.36 and 37).

However, see AIRS # 32366 in which an arbitrator ruled that a 1977 Central Region Agreement rendered a union's appeal of the Postal Service's proposal to delete a LMOU provision allowing day-to-day seniority inarbitrable at impasse arbitration. The arbitrator relied on the 1977 document,that barred the union from arbitrating grievances or impasse matters on the issue of day-to-day seniority, in spite of findings in the Garrett award and 1995 Joint Questions and Responses on Article 37 that recognized the validity and enforceability of day-to-day seniority provisions. She said that the regional agreement

still is controlling since there has been no action to "void or abrogate" the agreement. Note that this award was issued in the case of a local located in the Central Region, and cannot be applied to agreements of locals in other regions.

Consistency of Day-To-Day Seniority

For cases where day-to-day seniority proposals have been upheld as consistent with the National Agreement, see AIRS # 4905 , 7236, 20736, and 27016. In addition, in AIRS # 27016 an arbitrator found the Postal Service had not met its burden of proving that a day-to-day seniority provision was an unreasonable burden. Also, in AIRS # 26726, an arbitrator upheld a provision, requiring that temporary assignments of full-time employees from one section to another be done by juniority according to required skills, and found that management did not prove it was inconsistent with the National Agreement or represented an unreasonable burden.

For cases where such proposals have been found to be inconsistent, see AIRS # 4903, 6187, 6347, 6558, 6776, 7261, 7265, 20922, and 20795. In another case, a union proposed to add language to the LMOU to provide that when positions become temporarily vacant, notices will be posted for qualified craft employees to apply with the awarding of the bid to the senior-qualified applicant. The arbitrator ruled that the union's proposal would place an unreasonable burden on the Postal Service. He indicated that management would be prevented from taking steps to assure efficient operations and would be faced with a domino effect in having to fill a series of vacancies brought about by the bidding process (AIRS # 26637).

2) Proposals that locally implement specific seniority provisions of the National Agreement, even when the proposals call for movement by seniority, are consistent with the National Agreement.

The Postal Service challenged the following provisions contained in the Boston LMOU:

> Temporary Reassignments: Normally management will recognize the application of seniority in the daily reassignment of workers from section to section except recognized stewards of the APWU who shall remain in the bid section during such reassignments.

In AIRS # 124 Arbitrator Garrett explained that the Boston LMOU provision is consistent with the National Agreement:

> The present case arose under the 1975 National Agreement where Article XXX also contemplates that a local memorandum may be negotiated to provide "Local implementation of this Agreement relating to seniority, reassignments, and posting." (Item 22 in Article XXX) Article XII, Section 3-B of the National Agreement also notes that "specific provisions for posting for each craft are contained in the craft posting provision of this Agreement." Article XXXVII of the National Agreement applies to the Clerk Craft. Its Section 2-E-5 requires that:
>
> "Normally, the successful bidder shall work the duty assignment as posted."
>
> Given this contractual context the heart issue here is simply whether the local Article XII-B reasonably "implements" Article XXXVII, Section 2-E-5. Unlike either Union proposal in the two earlier cases, this local provision does not require strict application of seniority in making within tour reassignments. It contemplates only that seniority "normally" will be observed. This word of limitation is exactly the same as that which introduces Article XXXVIII, Section 2-E-5.
>
> Article XXXVII, Section 2-E-5 in itself reasonably would seem to provide some limitation upon the full exercise of Management discretion under Articles III and VI in reassigning employees within tours. At the least, it would mean that casuals, flexibles or other employees not holding bid assignments within the Section "normally" would be moved out first. To the extent that the local Article XII-B seeks to provide additional detail as to the circumstances under which a successful bidder (in a section) is entitled to "work the duty assignment" which was posted for bid, it hardly would appear to conflict with any provision in the National Agreement. It only applies "normally" and as the evidence in this record amply demonstrates - there are many circumstances under which a "normal" guide cannot control because efficiency would be impaired, or too little time might be

available to consider relative seniority under the given circumstances.

On this record, therefore, it must be held that Article XII-B of the Local Memorandum represents a legitimate effort to "implement" a seniority provision of the National Agreement, within the meaning of Item 22 of Article XXX. It thus is valid and enforceable in accordance with its terms (AIRS # 124, pp. 19-21).

For similar proposals upheld as legitimate implementations of the National Agreement, see AIRS # 5197 and 6607. For proposals held invalid as going beyond mere implementation, see AIRS # 5236, 5237, 6098, 7584 and 7594. In addition, see AIRS # 26789-94 in which an arbitrator rejected provisions to normally recognize the application of seniority in the daily work schedules of Motor Vehicle Craft mechanics on a rotating basis, to normally recognize the application of seniority in the daily assignment of work orders and schedules of Maintenance Craft employees on a rotating basis, and to normally recognize the application of seniority in the daily reassignment of workers from one section to another section. Note that a union's proposal that "[n]ormally, custodial laborers will choose from among available job picks by seniority on a daily basis" was rejected by an arbitrator. He found that with the consolidation of Level 1 cleaners, and Level 2 custodial employees into the Level 3 custodial laborer position, the practice of daily selection of available assignments by seniority within the custodial laborer classification ceased. The arbitrator also accepted management's argument that such a practice has not been in place at this facility for ten or more years, and the union exchanged specific duty assignments for such positions for the upgrade of all employees to Level 3 custodial laborers. The arbitrator then concluded that because the current text of the LMOU relating to the Maintenance Craft has been in existence for thirty years without change and there has been an absence of grievances on job assignments since the time the three labor grades were consolidated and daily picks were eliminated, it is not convincing to maintain that the existing LMOU is inadequate for this facility (AIRS # 41134).

Seniority as Exclusive Rule

3) In AIRS # 145 and 812 Arbitrator Garrett ruled that proposals calling for strict movement of employees by seniority in every instance when workload fluctuations require reassignment to be inconsistent with the National Agreement. He rationalized that proposals which removed any management flexibility in dealing with reassignments would conflict with Article 3 and would go beyond the intended scope of local negotiations. Proposals requiring that "seniority be the rule" when effecting reassignments have been consistently rejected by impasse arbitrators (AIRS # 5239, 5290, 6188, 7261, 7264, 8502, and 21222).

In addition, a provision that "temporary details will be posted for bid and shall not exceed thirty days without the Union's concurrence" was ruled to be inconsistent with the National Agreement (AIRS # 26670-72). Despite union witnesses' testimony that posted for bid was intended to mean posted for bid within the meaning of Article 25.4 of the National Agreement, the arbitrator stated that the language would require the Service to post all temporary assignments on a city-wide basis because posting was defined in that way by the previously existing provision in the LMOU. He stated that this meaning would be inconsistent with Articles 25.4, 37.2.D.6.e, 13.2.C and 13.4, 37.3.C, 38.B, 39.2.B, 39.3.E, 38.6.A.6 and 39.3.J of the 1994 National Agreement. In addition, he found that the 30-day length of the details would be inconsistent with the Service's right to assign employees to training programs which may exceed 30 days.

Also, an arbitrator ruled that a union's proposal on reassignment of part-time flexibles did not fall within the scope of Item 22 of Article 30 and was inconsistent with the National Agreement. The provision called for reassignment to be done by qualified volunteers first and then if more reassignments were necessary, by inverse seniority, in circumstances where it is necessary to reassign part-time flexibles to another tour or facility. The arbitrator reasoned that the language of this provision did not serve to implement National Agreement provisions in Article 7.2.B and 12.5.B.8 that were cited by the union as some of the foundation for its proposal (AIRS # 34355).

However, see AIRS # 33490 in which an arbitrator accepted a union's proposal to carry

forward a provision that allowed Special Delivery Messengers the opportunity to replace other Clerk/ Messengers on temporary details and required that selection for these details be made on the basis of seniority.

It is suggested that locals negotiating movement by seniority should try to write a provision that calls for normal movement by seniority. Your proposal will be more likely to survive an "in conflict" challenge if:

a) It specifies certain circumstances in which seniority might not prevail.

b) You can cite specific seniority provision(s) of the National Agreement that your proposal is attempting to implement.

It would be helpful to point to one or more provisions in the National Agreement that are more specific than Article 30.B.22 or the Application of Seniority provisions for the individual crafts.

SENIORITY LISTINGS

Clerk Craft - Article 37, Section 2.C.

This provision provides for the posting and furnishing to the local union of a seniority list on a semiannual basis. Many locals have elected for a more frequent listing such as quarterly.

Maintenance Craft - Article 38, Section 2.F, 2.G.1 & 2, and 3.D

SENIORITY

A. Maintenance Service

B. Maintenance Installation

C. Maintenance Preferred prior to June 25, 1992

Parties should negotiate which seniority will be used for scheduling of overtime and holiday work as well as for annual leave sign-up.

Seniority list must be posted and an updated copy shall be furnished quarterly to the local union.

Motor Vehicle Craft - Article 39, Section 1.F

This section provides simply that a current seniority list be posted in each installation and that such listing be provided to the local union on a specified frequency.

POSTING AND BIDDING - CLERK CRAFT

Article 37 has many provisions that directly or indirectly relate to posting and bidding. You should review the provisions of Article 37 and your LMOU to ensure that you are utilizing its' terms and application properly. For example, the terms as defined in Section 1 of the National Agreement (e.g. duty assignment, bid, abolishment, reposting) have very specific meanings. Another example would be language expanding bidding among full-time and part-time regulars. Improper use of terms or application of the provisions of Article 37 could adversely affect the application of your LMOU.

Note on Part-Time Regular Bidding: If your local agreement addresses a bidding or posting situation in terms of full-time, you should determine if you wish to eliminate references to full-time. An example: If the local agreement states that full-time duty assignments will be reposted if the starting time changes over one hour, you may wish to strike full-time so that the language would apply to part-time regular duty assignments.

Article 37, Section 1.C

Language in this provision makes computerized or telephone bidding mandatory when computer bidding becomes available to all clerks in a facility. Where computer bidding is not available, bids can be submitted in writing or by telephone.

Article 37, Section 3.A.1

It should be noted that the time period for posting newly established and vacant duty assignments is 28 days. Your local agreement can provide for a shorter period.

Article 37, Section 3.A.1.a.1(a) & (b)

These provisions allow residual vacancies to be posted concurrently for PTF preferencing and PTR bidding. Locals should consider negotiating the mechanics of how to implement these procedures including time frames for posting, awarding and placing the successful PTR into the duty assignment. Language exists for placement of the PTFs.

Article 37, Section 3.A.4.b, Reposting

Care should be made to prevent minor changes from resulting in reposting. However, such changes as the addition or deletion of schemes, changes in the principle assignment area are of major consideration to employees when a duty assignment is posted initially. Care should also be taken to protect the rights of the entire bargaining unit, when negotiating provisions that would determine when a duty assignment should be reposted. Provisions which allow the incumbent the option to keep a duty assignment when changes are substantial should be avoided, they invite game playing and may circumvent the seniority rights of others.

Some locals have negotiated provisions which allow the union the sole right to determine whether the duty assignment is reposted. This approach requires the local to administer these reposting rules fairly and equitably. It is better to negotiate concrete rules on repostings which are not discretionary.

Article 37, Section 3.A.4.c

Some locals have negotiated provisions allowing incumbents to retain the duty assignment when there is a time change in excess of one hour, subject to the approval of the local union. While some locals have negotiated provisions allowing the incumbent the option of following the duty assignment regardless of time change. It is recommended that the option of accepting a new reporting time be restricted to as short a time frame as possible and subject to the concurrence of the union. This would eliminate game playing and give senior employees more opportunities to bid. Keep in mind that reporting times is also a major consideration to employees when bidding on duty assignments. Note that in AIRS # 41329 an arbitrator denied a union's proposal to change existing language, that "[a] position shall not be posted for bid when reporting time is changed more than one hour. Management must consult with the Union President prior to change." The union proposed that the provision stated instead that "[a] position shall be posted for bid when reporting time is changed more than one hour. Management must consult with the Union President prior to change." The arbitrator determined that the union failed to present a "convincing need" to change the existing practice, since it didn't present testimony of employees who had been adversely affected by changing starting times or show that any of the employees affected filed grievances.

If this provision is not negotiated, the incumbent shall not have the option of accepting this new starting time. This is a very important issue that should not be overlooked.

It should be noted that the reporting time relevant to this provision for purposes of cumulative changes is that which was effective on November 21, 2006.

Article 37, Section 3.A.4.d.

This section provides that duty assignments for part-time regulars are reposted due to changes in hours, off days or duties. Also, if a scheme or skill is added to a PIR duty assignment, the Agreement requires reposting. A skill is any requirement on a duty assignment which must be passed in order to be declared the successful bidder, e.g. typing, bulk mail, window, machine, driver's license. The CBA also limits the reposting of Level 5, 6, and 7 duty assignments to employees in the same or higher salary level. The use of the word status makes the reposting provisions clear that full-time duty assignments are reposted to full-time clerks and part-time regular duty assignments are reposted to part-time regular clerks.

Article 37, Sections 3.A.5. & 6

This portion of Article 37 deals with the procedure for date stamping written withdrawal of bids. Cancellation of bid may also be processed by telephone or computer, with a confirmation, in order that it be official.

Article 37, Section 3.A.7.d

This portion of the Agreement clearly states that best qualified duty assignments are in separate sections by position title. The parties may want to determine locally whether or not to split these sections by tour as well for excessing purposes within the installation.

NOTE: Locals should determine in Item 18 of Article 30 how the categories of best qualified are defined, e.g. a section by tour or office-wide regardless of tour.

Article 37, Section 3.D, Length of Posting

The notices shall remain posted for 10 days unless you negotiate a different time locally.

Article 37, Section 3.F.2, Assignment of Successful Bidder

The successful bidder must be placed in the new assignment within 28 days except in the month of December. The local agreement may set a shorter time period. Generally, attempts to shorten this time period have been unsuccessful (AIRS # 7385, 7391 and 8485). Locals also should be mindful of new language negotiated in the 2006 National Agreement that is contained in Article 37.3.B.1 (at page 106, tentative 2006 National Agreement).

Article 37, Section 3.F.3.a

This portion of the Agreement deals with deferment periods for scheme training. The Agreement provides that normally, the employee will begin the required training within 10 days after the posting of the senior bidder, excluding December. However, the parties may want to negotiate a time frame to start this training after the senior bidder is identified. Additional language allows for a delay in the start of scheme training if leave was pre-scheduled to be taken within the first 28 days of becoming the senior bidder (posting).

The parties may also want to negotiate short delays caused by illness or other absence of the bidder. Any such negotiated exception must be short term because the intent of the Agreement is to fill the duty assignment as soon as possible.

Article 37, Section 3.F.3.b and 3.F.4.b

The parties may want to negotiate required written notice on all bid postings to alert potential bidders of the penalties for withdrawing after the start of training during the deferment period. This can be on the initial posting listing the bids as part of item 8 of 37.3.E or it can be part of the notice announcing the results.

Article 37, Section 3.F.4.c

This is another point where the parties may want to negotiate language when training may be delayed due to illness or other absence of the bidder. Delays in this regard must be of a short duration so as not to obstruct the bidding process.

Article 37, Section 3.F.8.c.1, 2 & 3

These portions of the Agreement deal with circumstances wherein the senior bidder withdraws or relinquishes a deferment period. The parties may want to negotiate time frames for going to the next appropriate person to fill this duty assignment. Bear in mind when this portion of the bidding process is reached, the assignment must be filled as it is too late to revert the vacancy.

POSTING - MAINTENANCE CRAFT

Article 38, Section 4.B

The Postal Service must post Preferred Assignment Registers and Promotion Eligibility Registers.

Article 38, Section 4.A.4 & 5 - Reposting Because of Changes

4. When it is necessary that fixed scheduled day(s) of work in the basic work week for a craft assignment be permanently changed, or that the starting time for such an assignment be changed by 2 or more hours, the affected assignment(s) shall be reposted, by notice of intent. An exception to the requirement to repost an assignment where the change in starting time is 2 or more hours may be negotiated locally. If the incumbent in the assignment has more seniority for the preferred assignment than the senior

employee on the preferred assignment eligibility register for those off days or hours, the employee may remain in the duty assignment, if the employee so desires.

5. The determination of what constitutes a sufficient change of duties or principal assignment area, to cause the duty assignment to be reposted shall be a subject of negotiations at the local level.

Note: It is the APWU's position that the "principal assignment area" should be negotiated.

POSTING AND BIDDING-MOTOR VEHICLE CRAFT

Article 39, Section 2.A.3 & 4 - Reposting Because of Changes

3. The determination of what constitutes a sufficient change of duties, or principal assignment area, to cause the duty assignment to be reposted shall be a subject of negotiation at the local level.

4. No assignment will be posted because of change in starting time unless the change exceeds two hours. Whether to post or not is negotiable at the local level, if it exceeds two hours.

Article 39, Section 2.A.6 & 7 - Calendar Year Repostings

6. When requested by the union, all full-time regular Motor Vehicle Operator Tractor-Trailer Operator and Vehicle Operator Assistant Bulk Mail Craft assignments should be posted for bid once each calendar year.

7. All full-time regular Motor Vehicle Maintenance Craft duty assignments may be posted for bid once each calendar year upon mutual agreement between the parties at the local level. Absent such local agreement, Motor Vehicle Maintenance Craft duty assignments shall be posted for bid every second calendar year, when requested by the Union.

When including language in an LMOU on this subject, be sure to insert a provision that once a year postings for bid will be at the union's request. Otherwise, once-a-year bidding will become mandatory because the union will have given up its right to have it conducted at the union's request.

Article 39, Section 2.C - Length of Posting

C. The notice shall remain posted for 10 days, unless a different length for the posting is established by local negotiations.

Article 39, Section 2.E.2 - Assignment of Successful Bidder

2. The successful bidder must be placed in the new assignment within 21 days except in the month of December. The local agreement may set a shorter period.