

Beyond the 22 LMOU items



James D. Henry

As previously discussed in my April column, both management and the union are obligated to bargain over each of the 22 subject items listed in Article 30 of the National Agreement. This means that if one party raises the issue of such an item during local memorandum of understanding (LMOU) negotiations, the other party must negotiate over it in good faith. It's important to familiarize yourself with the local implementation rules.

In cases where an LMOU has provisions outside the 22 subject items listed in Article 30, the LMOU representatives can raise an issue or issues with such provisions. For example,

if a provision exists in an LMOU where management provides ice cream during the summer months, management may raise the issue with the intent of eliminating the provision. However, the union has the right not to discuss the issue at hand and vice versa. Moreover, neither party is allowed to impasse provisions outside the subject items.

During local implementation, management may also claim that it is unable to bargain over subjects outside the 22 listed items or that such items are "outside the scope of local implementation." This is completely inaccurate. Nonetheless, management may refuse to address any outside subjects in local negotiations. Although neither party is obligated to bargain over subjects outside the 22 listed items in Article 30, the parties may make agreements on such subjects, so long as nothing in the local agreement is inconsistent or in conflict with the provisions of the National Agreement. Do not assume that management will dismiss discussing an outside subject. The fact is, if you do not try, you will never know.

Prior to the changes in the 2001 National Agreement, management had the right to declare LMOU provisions "inconsistent or in conflict" with the National Agreement at any time. The disputed provision would be suspended until the parties could resolve the provision in question. However, in 2001, the impasse rules changed and limited the parties to challenge an LMOU provision as inconsistent or in conflict with the National Agreement; this can be done only during the implementation period.

The "inconsistent or in conflict" with the National Agreement argument is commonly made by management

during the local implementation period. Management will employ this argument in an attempt to eliminate language that benefits the letter carrier craft. However, the National Agreement contains language in Article 30 and the Local Implementation MOU that limits management's right to challenge existing LMOU provisions on this matter. Management may not make the argument if the provision in question has been in your LMOU prior to the last implantation period. This is illustrated in the Memorandum of Understanding Re: Local Implementation in paragraph 6. Nevertheless, management can make the "inconsistent or in conflict" argument if a provision was changed during the 2021 local implementation.

A perfect example of the argument is if in the 2011 round of local implementation, you negotiated two 15-minute breaks each day for letter carriers. This could be a provision that could qualify, and that has in the past been argued to be inconsistent or in conflict. In 2021 management made the argument that the provision was inconsistent or in conflict with the National Agreement. However, because management didn't make the argument during the 2017 round of local implementation, it is prohibited from making the argument of "inconsistent or in conflict" in the 2021 local negotiation period.

Furthermore, management can assert within the 22 subject items listed in Article 30 of the National Agreement that the existing LMOU provision is an "unreasonable burden" on the Postal Service. When management makes such a claim, the branch should be prepared to request evidence backing up the so-called "unreasonable burden." Arbitrators have consistently ruled over the years that management cannot simply say the LMOU provision is an unreasonable burden, but rather must prove how it's a burden. The standard of unreasonable is more than it merely being an inconvenience for management.

Branches must stay alert to effectively rebut management's claims of either argument. In the case that the parties cannot come to an agreement over a disputed item within the 22 subject items listed, the next step would be to impasse the provision(s) to the next level. I will discuss the impasse process in next month's column.

As previously stated in my April column, while the 2019-2023 National Agreement is set to expire at midnight on May 20, the parties can choose to extend the negotiation deadline or move to the arbitration process. Therefore, the existing language for the National Agreement and local memorandum of understanding will remain in effect until the new National Agreement has been ratified or arbitrated.

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Heat safety (continued)

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This comment by the OSHRC regarding the Postal Service's expert witness should remind letter carriers that we cannot rely solely on management to maintain safety. Letter carriers must look out for each other and make safety a priority; Article 14, Section 1 explains that "the Union will cooperate with and assist management to live up to this responsibility."

During the same hearing, the Postal Service stated that it provides unlimited comfort breaks. The OSHRC decision states:

The Postal Service also maintains that it already gives carriers "rest, lunch, and unlimited comfort breaks" and acclimatizes new carriers through its on-the-job training program...

In addition to a grievance, if management does not take steps to keep letter carriers safe, shop stewards and affected letter carriers should consider the need to file a safety and

health complaint with the U.S. Department of Labor through [osha.gov](https://www.osha.gov). Employees or their representatives have a right to file a confidential complaint and request an OSHA inspection of the workplace if they believe there is a serious hazard or if they believe the employer is not following OSHA standards. The complaint should be filed as soon as possible.

Carriers injured in the heat should file a workers' compensation claim to ensure that their medical care and any lost wages are covered appropriately.

Heat safety is of the utmost importance as we head into the hottest months of the year. Shop stewards are vital in this quest to ensure that management follows its own program and actively works to reduce and mitigate heat injuries. This becomes more and more important as letter carriers spend more time on the street (more exposure) all while our world continues to warm and experience more extreme weather conditions.

Executive Vice President

The good, the bad and the ugly (continued)

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recognition. Branches should also consult their membership records, as they may provide additional information that is not available through the Headquarters membership database. As an added feature, the platform not only identifies the current membership milestone recognition that a member is entitled to receive, but also any past recogni-

tions that have not yet been awarded. This provides branches an easy way to get caught up on membership milestone recognitions as addressed in Article 2, Section 5 (a) of the *Constitution*.

NALC will continue to approach information technology in a secure and professional manner, incorporating industry best practices to stay ahead of the curve and avoid unnecessary interruptions of data flow and accessibility.

Vice President

Beyond the 22 LMOU items (continued)

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On another note, on March 30, I had the honor and privilege of attending Branch 60's retirement ceremony for letter carrier Anthony Spartaccini out of Stamford, CT (see photo at right). Brother Spartaccini has been an active letter carrier for more than 65 years and has amassed more than 6,000 hours of sick leave. He has been an NALC member nearly the entire time. Brother Spartaccini picketed the line in the 1970 Great Postal Strike and is considered part of the greatest generation of letter carriers, who paved the

way for collective bargaining for all letter carriers. Brother Spartaccini epitomizes the highest level of dedication, devotion, work ethic and unionism.

I would like to congratulate him on his retirement and wish him health and happiness in the next chapter of his life.

