Local negotiations are coming, Part 3

Lew Drass

Some branches normally avoid opening local negotiations for fear of losing something previously achieved. I've always seen the 30-day local negotiations period as an opportunity to gain something not previously achieved instead. My reasoning is grounded in management's limited ability to force changes to a local memorandum of understanding (LMOU).

The 22 items that both parties are required to discuss in good faith (if raised by either party) are listed in Article 30 and were explained in last month's Contract Talk. Either party also is free to raise issues outside the scope of these 22 items. However, the other party is not required to discuss such items, and neither party has the right to impasse such items. This means that if you have an existing provision(s) in your LMOU—such as management supplying ice each day, pizza each pay day or birthday leave—and management raises the issue with the intent of eliminating the provision, you can simply let them know that you are not interested in discussing the provision. That will be the end of it. Even if they attempt to impasse the item, they will get nowhere, provided the provision in question is outside of the 22 items listed in Article 30.

Management has only two rights to pursue if they want to force a change or remove an existing provision in an LMOU that falls within the 22 items listed in Article 30 of the National Agreement.

The first right they have is to claim that a provision is "inconsistent or in conflict" with the National Agreement. However, management's right in this regard is very limited. There are only two ways that management can successfully raise the "inconsistent or in conflict" with the National Agreement claim.

One way is if they raise this claim in the very next round of bargaining after the provision in question becomes part of an LMOU. So, let's say your LMOU has a provision that grants you two 15-minute breaks each day, or that says every letter carrier can select four consecutive weeks of annual leave during the choice vacation period. While both examples are "inconsistent or in conflict" with the National Agreement, the only way that management can successfully make this claim is if the provision in question was first negotiated during the last local implementation period that took place as a result of the 2016-2019 National Agreement. That round of local negotiations took place in 2017.

If the provision in question has been in your LMOU longer than that, management is barred from making the "inconsistent or in conflict" claim. This point is illustrated in paragraph 6 of the Memorandum of Understanding Re: Local Implementation found in the 2019 National Agreement.

> **"If you have an existing provision outside the 22 items in your LMOU and management raises the issue with the intent of eliminating the provision, you can simply let them know that you are not interested in discussing the provision."**

The only other way that management can make the "inconsistent or in conflict" with the National Agreement claim is if a change was made to the 2019 National Agreement that caused an existing provision in an LMOU to become "inconsistent or in conflict" with the National Agreement. I cannot think of an example for the 2019 National Agreement, so we will use one from the 2016 National Agreement.

An example from 2016 would be if you had a provision in your LMOU that says overtime worked on your own route does not count toward equitability at the end of the quarter. As you know, one of the changes made in the 2016 National Agreement was to count overtime worked on your own route toward equitability at the end of the quarter (an hour is an hour). In this example, the existing LMOU provision became "inconsistent or in conflict" with the 2016 National Agreement, so management could challenge this provision during the 2017 round of local negotiations as such. However, if they didn't challenge this provision during the 2017 round of local negotiations as being "inconsistent or in conflict" with the National Agreement, they would be barred from making this claim during local negotiations this year or in the future. In either case, the old adage "speak now or forever hold your peace" applies.

The second right that management has to impasse an item is to claim that an existing provision in an

(continued on next page)

Local negotiations (continued)

LMOU creates an “unreasonable burden” on them. The “unreasonable burden” claim can be made to any provision within the scope of the 22 items listed in Article 30 of the National Agreement. However, arbitrators have consistently ruled over the years that, for management to be successful with this claim, they must carry a heavy burden. In other words, they have to prove something more than the fact that the provision in question causes them an inconvenience, or even some additional expense that they would like to reduce or eliminate. Additionally, the longer a provision has been in an LMOU, the heavier the burden management must carry to force a change to or remove an existing provision from an LMOU.

On the other hand, the union has no such burden or limitations when attempting to make a change to an existing provision or to add a new provision to an LMOU. Arbitrators normally look for the union to show that there is an existing problem, and that the change or new provision proposed solves the problem, and/or that what we are proposing is justified. The point is that our burden is much lighter than management’s when it comes to making changes to an LMOU. It is a good idea to gather any information you can to document the problem you are attempting to address and/or to justify the new language you are proposing. This information/documentation will also be helpful in the later steps of the local negotiations process in the event you cannot reach agreement during the 30-day local negotiating period and decide to impasse the item/issue in question.

We are also free to raise issues outside the scope of the 22 items listed in Article 30 of the National Agreement during the 30-day local negotiations period. Once again, keep in mind that management can decline to discuss such issues just the same as we can if the shoe is on the other foot. Also, if there is no agreement locally, we cannot successfully impasse issues outside the scope of the 22 items listed in Article 30 of the National Agreement.

If you follow the preparation advice discussed in my last two (January and March) articles, as well as in the 2021 *Local Negotiations* book that was distributed through your national business agent’s office, you will be all set for the upcoming round of local negotiations.

You should decide which member of your local negotiations committee will be the notetaker before your initial meeting with management. This person should focus on nothing else but taking good notes during your local negotiations meetings. These notes can be very important in the later steps of the local negotiations process or can be used to clarify the intent of an agreed-to provision should the need arise at a later time.

You should present and explain your initial proposal for each item at your first meeting. If management is not willing to agree to your initial proposal on an item, you should ask management if they have a counterproposal to offer. If they make a counterproposal, you should consider what they offer within your negotiating committee before your next meeting. If they do not offer a counterproposal, this fact should be documented by your notetaker. This process should be repeated at each meeting as you submit alternate proposals during the 30-day negotiating period.

If management is unwilling to agree to a proposal you offer, you should listen carefully to their reasoning. Sometimes you can figure out a way to achieve what you seek and take care of their concerns with a subtle change to your proposal.

It is advisable to begin by discussing items that are normally easier to reach agreement on, such as fixed or rotating days off, to set a good tone before trying to tackle more difficult items. When you come to agreement on an item/issue, both parties should initial copies of the proposal with the agreed-upon language.

If you need time to consider a proposal within your negotiating committee during a meeting, you should call a caucus and go to a private place to discuss the matter. Caucuses also can be used as a cooling-off period if the negotiations become heated.

It is fine to submit proposals for items/issues that are outside the 22 items listed in Article 30 of the National Agreement, but if management is not interested in discussing such items, do not waste a lot of time or energy in pressing these matters.

If you come to the point where it becomes obvious that you are getting nowhere on a proposal for one of the items that fall within the scope of the 22 items listed in Article 30 of the National Agreement, it is a good idea to table the item and come back to it later in the meeting or wait until your next meeting. Just be sure to ask management if they have a counterproposal, as discussed above.

Do not give up on the prospect of reaching agreement. Just keep on negotiating until the 30-day local negotiations period has ended. Oftentimes, agreement can be reached before the end of the 30-day negotiating period. This is especially true for the most difficult items, even though it appears that you are at a total impasse and the end of the negotiating period is drawing near.

Next month, I’ll discuss the impasse process.