

More about the local memorandum of understanding



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As 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 get yourself familiarized 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 the 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 also may 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 at any time had the right to declare LMOU provisions "inconsistent or in conflict" with the National Agreement. 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 Nation-

al Agreement and 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 cannot 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 the letter carriers. This could be a provision that could qualify, and has been in the past, argued to be inconsistent or in conflict with the National Agreement. For this example, let's say that 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 that it's a burden. The standard of "unreasonable" is more than merely it 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 listed item, the next step would be to impasse the provision(s) to the higher level.