C-33674A-B

REGULAR ARBITRATION PANEL

In the Matter of Arbitration between United States Postal Service and National Association of Letter Carriers, AFL-CIO	Grievant: Class Action Post Office: Plainville, Connecticut USPS No: B16N4BI18058297 B16N4BI18058283 DRT No: 14-04222 14-04221 Union No: UITEM9 UITEM 4N

Before: EILEEN A. CENCI

Appearances:

For United States Postal Service: Glenn Smith

For the National Association of Letter Carriers: Charles Carroll

Place of Hearing: Hartford, CT

Date of Hearing: October 2, 2018

AWARD SUMMARY

The Union has not met its burden of proving that its proposed modifications to Items 9 and 4N of the LMOU should be adopted. The LMOU already contains provisions including CCAs in the selection process for prime time leave. Item 4N, pertaining to incidental leave, is worded broadly enough that it includes CCAs and prevents them from being denied incidental leave when the quota has not been met. The evidence does not support the Union's claim that its proposed changes to Items 9 and 4N, to include CCAs in the complement for purposes of calculating leave percentages, are necessary and appropriate.

Date of Award: November 1, 2018

Regular Regional Arbitration Panel

Eileen A Cenci

Eileen A. Cenci

OPINION

STATEMENT OF PROCEEDINGS:

This interest arbitration was arbitrated pursuant to the grievance and arbitration provisions of a collective bargaining agreement (National Agreement) in effect between the United States Postal Service (Service) and the National Association of Letter Carriers (NALC or Union). A hearing was held before me on October 2, 2018 in Hartford, Connecticut. The parties appeared and were given a full and fair opportunity to be heard, to examine and cross-examine witnesses and to present argument. Each party called witnesses who testified under oath. Following the testimony, the parties gave oral closing arguments and the record was closed on the day of hearing.

ISSUE:

Should the Union's proposed modifications to Items 9 and 4N of the LMOU be adopted?

FACTS:

The parties met in local negotiations and were unable to reach agreement concerning Items 9 and 4N of the LMOU. These matters were impassed on November 1, 2017 and appealed to arbitration pursuant to the impasse provisions of Article 30.

The current Plainville LMOU includes CCAs in the leave selection process under Item 4.

Formulation of a Local Leave Program

Item 4D of the current LMOU currently reads as follows:

> D. Letter Carriers, including City Carrier Assistants, will make their first selection for the choice vacation period from...

Item 4E reads as follows:

> E. Letter Carriers, including City Carrier Assistants, will make their second selection for the choice vacation period from...

The parties did not propose changes to Items 4D and E during the current round of local negotiations. Negotiations instead concerned including CCAs in Items 9A and 4N for purposes of

calculating the percentage of carriers allowed to take leave. The current language of those items and proposed changes are set forth below:

Item 9 Determination of the Maximum Number of Carriers Who Shall Receive Leave Each Week During the Choice Vacation Period

Item 9A currently reads in pertinent part as follows:

The maximum number of carriers who shall receive leave each week during the choice vacation period shall be 16.5% of the carriers on the rolls as of February 1st of each year...

The Union proposed to modify the language so that it would read:
The maximum number of carriers, **which includes full time carriers, PTFs and CCAs,** who shall receive leave each week during the choice vacation period shall be 16.5% of the carriers on the rolls as of February 1st of each year... (emphasis added).

Management refused to accept the language proposed by the Union.

Item 4N currently reads as follows:

In the letter carrier craft there will be a minimum of 12.5% allowed off each day with a preference given to a period of five (5) days. No employee will be denied annual leave if the 12.5% has not been met. Percentage of employees off during non-prime time will be effective only if pending National Arbitration is applicable.

The Union proposed modifying the provision to read:

In the letter carrier craft, **which includes full-time carriers, part-time flexibles, city carrier assistants**, there will be a minimum of 12.5% allowed off each day with a preference given to a period of five (5) days. No employee will be denied annual leave if the 12.5% has not been met. Percentage of employees off during non-prime time will be effective only if pending National Arbitration is applicable (emphasis added).

Management did not accept the Union proposal. It offered a counter-proposal to add the following language to Item 4:

4.P. After the second pass any open weeks will be available for CCAs to pick for prime-time weeks.

The Union refused that proposal.

Arnaldo Vargas negotiated for the Union during the most recent round of local

negotiations. He met once with the Postmaster but they were unable to reach agreement on Items 9A and 4N. Mr. Vargas testified at arbitration that he was not involved in the prior round of local negotiations that included CCAs in Items 4D and 4E. He testified that in practice, the office had been allowing full-time carriers to pick vacation weeks and allowing CCAs to take whatever time was left over. The process set forth in Items 4D and 4E, to which the parties agreed, had not been followed. The Union rejected the Postmaster's proposed language in Item 4P because the language simply reflected what the office had already been doing and was insufficient, in the view of the Union, to meet the requirements of the CCA MOU.

CONTRACT:

Article 10 Leave

Section 3. Choice of Vacation Period

...

D. Annual leave shall be granted as follows:

1. Employees who earn 13 days annual leave per year shall be granted up to ten (10) days of continuous annual leave during the choice period. The number of days of annual leave, not to exceed ten (10), shall be at the option of the employee.

Article 30 Local Implementation

30.A. A. Presently effective local memoranda of understanding not inconsistent or in conflict with the **2016** National Agreement shall remain in effect during the term of this Agreement unless changed by mutual agreement pursuant to the local implementation procedure set forth below or, as a result of an arbitration award or settlement arising from either party's impasse of an item from the presently effective local memorandum of understanding (LMOU).

B. There shall be a 30 consecutive day period of local implementation to commence on **October 16, 2017** on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the **2016** National Agreement.

...

9. Determination of the maximum number of employees who shall receive leave each week during the choice vacation period.

...

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO (2011-2016 National Agreement)

Re: City Carrier Assistant (CCA) Annual Leave

Article 30 of the National Agreement and Local Memorandum of Understanding provisions do not apply to city carrier assistant employees except as follows:

During the local implementation period, the parties may agree to include provisions into the local memorandum of understanding to permit city carrier assistant employees to apply for annual leave during choice vacation periods, as defined in Article 10.3.D of the National Agreement. Granting leave under such provisions must be contingent upon the employee having a leave balance of at least forty (40) hours.

In addition, the parties will explore at the national level appropriate options regarding current policies for paying terminal leave.

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO (2016-2019 National Agreement)

Re: City Carrier Assistant (CCA) Annual Leave

Article 30 of the National Agreement and Local Memorandum of Understanding provisions do not apply to city carrier assistant employees except as follows:

In any office that does not have provisions in its current LMOU regarding annual leave selection for CCAs, the parties agree that, during the 2017 local implementation period, the local parties will, consistent with the needs of employees and the needs of management, include provisions into the LMOU to permit city carrier assistant employees to be granted annual leave selections during the choice vacation period and for incidental leave. Granting leave under such provisions must be contingent upon the employee having a sufficient leave balance when the leave is taken.

POSITIONS OF THE PARTIES:

NATIONAL ASSOCIATION OF LETTER CARRIERS (NALC OR UNION)

The Union stipulates that there is currently a procedure allowing CCAs to pick weeks during the prime-time vacation period. There is no similar language for incidental leave. The existing language was added to the contract at a time when the Union did not have the same standing to negotiate strong language as it does under the current CCA MOU, and the Union wants stronger language that would include CCAs in the complement to be added.

The burden of proof should be neutral in this case since the parties are required, under the national CCA MOU to include language in the LMOU allowing CCAs to make prime time leave selections and take incidental leave. The Union maintains that the existing language does not meet

the requirements of the CCA MOU. The existing language does not explicitly include CCAs in the incidental leave program, in violation of the CCA MOU.

The Union proposals will meet the requirements of the CCA MOU by fully including CCAs in all aspects of the leave program, while respecting the seniority of full-time regular carriers.

The Union asks that its proposed modifications of Items 9 and 4N be adopted.

UNITED STATES POSTAL SERVICE (USPS OR SERVICE)

The Union has the burden of proof in this case to show a violation of the National Agreement, specifically the CCA MOU. It has not met that burden since the language proposed by the Union does not address the requirements of the MOU, to offer CCAs annual leave selections during the choice vacation period and for incidental leave. Adding CCAs to the complement, as proposed by the Union, does not achieve the goal of the MOU. Moreover, there is no requirement or mandate in the MOU to add CCAs to the complement. The Union has also proposed language adding PTFs to the complement, when this is completely unnecessary, as they are part-time career employees.

The current language in both Items of the LMOU is clear and very strong. There is a process for CCAs to select leave during the prime-time vacation period. The LMOU also provides in Item 4N that no employee will be denied leave if the 12.5% quota has not been met. This guarantees CCAs access to incidental leave without the need for any change to the current language.

The Union has failed to support the need for its proposals to be adopted. It has not introduced vacation schedules or denied Form 3971s showing that CCAs have been denied leave. The Service asks that the existing language of Items 9A and 4N remain unchanged, since the Union has not met its burden of proving that any change is necessary or appropriate.

DISCUSSION:

In cases where an LMOU includes no language pertaining to CCA access to the leave program, I have previously ruled that the party proposing language does not bear the burden of proving that its proposed language is necessary and appropriate. This is because of the directive included in the National level CCA MOU in the current contract, stating that, "In any office that

does not have provisions in its current LMOU regarding annual leave selection for CCAs, the parties agree that, during the 2017 local implementation period, the local parties **will**, consistent with the needs of employees and the needs of management, include provisions into the LMOU to permit city carrier assistant employees to be granted annual leave selections during the choice vacation period and for incidental leave" (emphasis added). Where no language exists in an LMOU, the parties are required to include new provisions, and the necessity of changing the existing language has therefore been established at the national level and need not be proved by the party proposing new language. The Plainville Post Office, however, included provisions pertaining to CCA choice vacation leave in its last LMOU, and the national directive in the CCA MOU does not apply. While there is no provision specifically pertaining to CCA usage of incidental leave, Item 4N provides that "no employee" can be denied incidental leave if the 12.5% quota has not been met. Clearly, this language protects CCA access to incidental leave.

Since the LMOU currently contains provisions allowing CCAs to access both choice and incidental leave, the party proposing changes to the existing language, in this case the Union, bears the burden of proving that its proposed modifications are necessary and appropriate.[1] The parties have also agreed, in language contained in the national MOU, that provisions regarding CCA annual leave selection must be consistent with the needs of employees and management.

I find that the Union in this case has not met its burden of proving that the changes it has proposed to existing LMOU language are necessary and appropriate. There is no proof that the existing LMOU language has presented any problems for CCAs attempting to utilize choice or incidental leave. Nor is there any evidence that the proposed modifications would better serve the interests of employees and management than the existing provisions.

CCAs are explicitly included in the prime time leave selection process under the existing language of Items 4 D and E in the current Plainville LMOU. While a Union witness testified that the selection process has not been conducted in accordance with the existing language of those sections, any failure to abide by existing language can and should be addressed by means other

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1 A number of arbitrators have concluded that the standard of proof when the Union proposes a change to existing LMOU language is that it must show that the change, deletion or addition is necessary and appropriate. (See, Arbitrator Joseph Duffy in Case #I18052941 and I18052950 (Sandy, Utah 2018), quoting Arbitrator Abernathy in Case #I90165). I accept that formulation of the burden.

than drafting new language. There is no evidence that CCAs have had problems accessing prime time leave, or that there is an existing shortage of prime-time slots. The need to include CCAs in the complement in order to increase the available slots and provide access to prime time leave for CCAs has therefore not been established.

With respect to non-prime-time or incidental leave, there is no evidence that a change in the current language is needed. The existing language of Item 4N guarantees that "no employee" will be denied leave if the non-prime time quota of 12.5% off has not been met. The term "employee" is clearly broad enough to encompass CCAs, and CCAs are therefore guaranteed incidental leave any time less than 12.5% have been approved for leave. There is no evidence that the 12.5% quota has resulted in an insufficient number of leave slots or that CCAs have had trouble accessing incidental leave.

Based on the foregoing record, I find that the Union has not met its burden of proving that a change to the existing language of Items 9A or 4N is necessary or appropriate.