REGIONAL ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION	GRIEVANT: CLASS ACTION CASE NO:G98C-4G-C99188211
BETWEEN	
UNITED STATES POSTAL SERVICE	APWU NO: 17JB0999
AND	
AMERICAN POSTAL WORKERS UNION, AFL – CIO	POST OFFICE: SAN ANTONIO, TX

BEFORE: LOUIS V. BALDOVIN, ARBITRATOR

APPEARANCES:
FOR THE U. S. P. S.: DEBI E. EDMUNDS, ADVOCATE
FOR APWU: TOM STRAPKOVIC, ADVOCATE

PLACE OF HEARING:	SAN ANTONIO, TEXAS
DATE OF HEARING:	NOVEMBER 15, 2000
DATE HEARING CLOSED:	DECEMBER 19, 2000
DATE OF AWARD:	JANUARY 13, 200.
RELEVANT CONTRACT PROVISIONS:	LMOU ATRICLE 10 (7) & (14)
CONTRACT YEAR:	1998 - 2000
TYPE OF GRIEVANCE:	CONTRACT

AWARD SUMMARY

THE GRIEVANCE IS SUSTAINED. THE RECORD EVIDENCE DISCLOSES THAT THE STEP 2 SETTLEMENT ENTERED INTO BY THE PARTIES AT THE LOCAL LEVEL ON 2-27-97 DID NOT EXPIRE OR ATROPHY WHEN THE PARTIES CONCLUDED NEGOTIATIONS AND AGREED TO THEIR 98-2000 LMOU. THE 2-27-97 SETTLEMENT AGREEMENT IS STILL VIABLE AND REMAINS BINDING ON THE PARTIES UNTIL IT IS OVERRIDDEN AND/OR SUPERCEDED BY ANOTHER SETTLEMENT OR THE PARTIES MUTUALLY AGREE TO VOID THE 2-27-97 SETTLEMENT AGREEMENT.

Louis V Baldovin

LOUIS V. BALDOVIN, ARBITRATOR

ISSUE

Whether a Step 2 settlement entered into by the parties at the local level on 2-27-97 continued in effect following the conclusion of negotiations and agreement between the parties on the 98-2000 LMOU?

STATEMENT OF THE CASE

The hearing opened as schedule on 11-15-00 at 9 a.m. in the San Antonio, Texas. All the parties were afforded the opportunity to call and cross-examine witnesses, to submit documentary evidence, to make opening and closing argument and to file a post hearing brief. The parties agreed briefs would be due postmarked no later than c/o/b 12-15-00. Briefs were timely filed by both parties and received by the Arbitrator on 12-19-00 at which time the hearing was declared closed. The proceedings were tape recorded by the Arbitrator as a supplement to notes taken at the hearing and for the purpose of studying the record and preparing this Award.

DISCUSSION AND OPINION

On 2-27-97 in a grievance not otherwise relevant to the instant case, a Step 2 settlement was entered into by the parties regarding the procedures for requesting **incidental** leave. That settlement set forth three elements to be considered in dealing with a request for incidental leave: (1) LMOU Article 10 (14); (2) Union grievance No. 30-TV-12-96; and, (3) LMOU Article 10 (7) relative to percentages. (J.Ex.2,p.18). On 11-15-00, the morning of the hearing in the instant grievance, the Service acknowledge by stipulation that the intent of the parties in the 2-27-97 Step 2 settlement was to establish a settlement that would guarantee incidental leave within the parameters of the LMOU Article 10 (7) percentages. In its 5-17-99 Step 2 denial of the instant grievance, without any reference to the 2-27-97 settlement, the Service took the position that:

> The LMOU 10 (7) clearly defines leave percentages for choice vacation period **only**. ...The position of the Postal Service is that the percentages stated in Article 10 (7) are for the choice vacation period **only** and when submitting and/or requesting other leave (incidental) then Article 10 (14) applies where no percentages are cited and/or negotiated. (J.Ex.2,p3).

Except for the fact that the parties had agreed on 2-27-97 to include the Article 10 (7) percentages as part of the procedure for granting or denying **incidental** leave, the Service's Step 2 position in the instant case would have been valid. In its Step 2 denial the Service, referring to the negotiations for the 98-2000 LMOU, stated:

> To further strengthen the position of management, during the recent local negotiations the union submitted a proposal for Article 10 (14) whereby it proposed to apply the choice vacation period percentages as stated in Article 10 (7) to an employee's remaining leave, incidental, requests. The Postal Service countered this proposal stating leave present language as is, which was agreed to by the parties. This demonstrated the unions attempt to gain a negotiated incidental leave percentage and it strongly suggests the union is aware that an incidental leave percentage is not presently nor has ever been a negotiated and/or agreed upon item per the LMOU. (J.Ex.2,p.4).

Based upon the foregoing and the Service's position at the hearing in this case, the Service appears to be contending that while it is true that there was a 2-27-97 Step 2 settlement requiring the use of the LMOU Article 10 (7) percentages as part of the procedure for determining when to grant or deny incidental leave, because the Union sought to incorporate the language of the 2-27-97 settlement re the Article 10 (7) percentages in the 98-2000 LMOU which the Service rejected, that the 2-27-97 settlement is no longer binding on the Service. The rejection by the Service to accept the Union's proposal to include application of the LMOU Article 10 (7) percentages for determining when to grant or deny incidental leave according to Robert Morris, the Service's representative during negotiations on the 98-2000 LMOU, was because it was his position that percentages with respect to incidental leave are not covered by the 22 items open for local implementation as per Article 30 of the N/A. Even though Morris' position appears to be contrary to the 1986 National Award by Mittenthal in Case #HIC-NA-C-59 & 61, the Union choose not to pursue its proposal to incorporate in the 98-2000 LMOU the language of the 2-27-97 settlement—application of the LMOU Article 10 (7) percentages to incidental leave—since it was of the view that it already had the language in the 2-27-97 settlement and that would suffice for resolving any failure by the service to utilize the Article10 (7) percentages for incidental leave purposes. In short, that since the Service did not want to include the percentages for incidental leave in the 98-2000 LMOU it was not necessary to do so in view of the outstanding 2-27-97 settlement agreement on that matter. The Service on the other hand is of the view that since it refused to include in the 98-2000 LMOU any reference to applying percentages to incidental

leave requests, the Union had the burden of pursuing its proposal to impasse arbitration and not having done so, the 2-27-97 settlement expired and was no longer binding following the conclusion of negotiations on the 98-2000 LMOU. While it was true that a proposal by the Union to which it cannot secure agreement from the Service must be carried to impasse arbitration or it or waived, where as here, there is an outstanding valid settlement agreement on the same matter, and the Union decided to take a fall back position because the settlement satisfies its needs or desires, it cannot be said that the Union was obliged to take its proposal to impasse arbitration or consider the settlement null and void. Carried to its extreme the Service's position would lead to the result that any Step 2 settlement not incorporated in an LMOU negotiated subsequent to the date of the settlement would no longer be binding where not included in the subsequent LMOU. A settlement between the parties at the local level that does not contain a duration clause, unless it conflicts with or is inconsistent with the N/A is binding on the parties and remains so unless it is superseded by another settlement or the parties **mutually** agree to void the settlement. In the instant case the 2-27-97 settlement has not been superseded by any other settlement and the parties have not **mutually** agreed to void the settlement. What happened here was the Union, in effect, wanted to incorporate in the 98-2000 LMOU, the 2-27-97 settlement language relative to the use of percentages with respect to incidental leave and the Service did not want to do so for the reason as stated by Morris and as noted above, which reason itself appears questionable although I place no reliance on his reason for not doing so and his reason for not doing so is not relevant to my decision herein. His reason might have been relevant in the event the Union opted to carry the matter to impasse arbitration. Bearing in mind that the Service did stipulate on the morning of the hearing in the instant case to the intent of the 2-27-97 settlement, the contention that since the Union failed to pursue the Service's refusal to include the settlement language in the 98-2000 LMOU that the settlement atrophied, is somewhat spurious. There is nothing in the 94 or 98 LMOU or the corresponding N/A's that has been cited by the Service or that I can discern that requires all settlements at the local level to be incorporated in the next succeeding LMOU or be considered abandoned or expired or void upon agreement of the succeeding LMOU. It is true that for their own reasons the parties both at the national level and at the local level do, at times, include language resulting from certain settlement agreements at the national level in a succeeding N/A and at local level in a succeeding

LMOU. However, there is nothing in this record to establish that if not so incorporated, the settlement necessarily atrophies. As a postal arbitrator, on many occasions, one party or the other party to a dispute relies upon a Step 4 settlement that has not been incorporated in the succeeding N/A and likewise have relied upon prior settlements at the local level that have not been incorporated in the succeeding LMOU. Finally, the fact that the form upon which the parties wrote their 2-27-97 settlement contains pre-printed canned language that the 2-27-97 settlement was "mutually resolved," on a non-citable, non-citable, non precedent basis is overcome by the fact that the Service stipulated that the intent of the parties at the time the settlement was entered into **was to establish** a settlement that would guarantee incidental leave within the Article 10 (7) percentages. Such a settlement can only be applied prospectively and it cannot be said that the settlement was only applicable to the particular grievance being settled. Based upon all of the foregoing and the entire record herein, I am constrained to conclude that the 2-27-97 settlement agreement survived beyond the period the 98-2000 LMOU was concluded and is currently valid and binding upon the parties.

AWARD

The grievance is sustained.

January 13, 2001

Louis V. Baldovin
Arbitrator