# ARTICLE 12 EXCESSING:

# COLLECTIVE BARGAINING AGREEMENT ENFORCEMENT OF THE PROCESS

## A STUDY IN STRATEGY AND TACTICS

***A STEP BY STEP STRATEGY BOOK***

***16TH IN THE CONTINUING SERIES***

**BY**


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# INTRODUCTION

This Strategy Book – the 16th in the series begun in 1987 – places, for the first time, into a single readily accessible package, the strategies and tactics necessary to successfully prevent involuntary reassignment (excessing) of Bargaining Unit Employees – from sections defined in LMOUs and from crafts/installations - and to successfully prosecute United States Postal Service violations when employees are involuntarily reassigned.

Using a combination of the formats of the Defense vs. Discipline and Roadmap to Winning Strategy Books, each issue, argument, COLLECTIVE BARGAINING AGREEMENT reference and JOINT CONTRACT INTERPRETATION MANUAL cite are compartmentalized to maximize their impact of value. Evidence elements and appropriate remedies are also included.

This book does not comport to address every possible issue under Article 12. What it does do, however, is provide a solid basis for successfully pursuing and preventing excessing, and those remedial avenues which are crucial under the Article 12 umbrella.

My thanks to Trenton Metro Area Local Clerk Craft Director **Sandy Schleher** without whose assistance this book would not have been ready for its original April 3, 2007 release at the New Jersey State Postal Workers Union Convention.

If you have any comments or questions on this or any of the other 15 Strategy Books, please contact me at: (856) 740-0115, JEFFKEHLERTAPWU@AOL.COM or at 1401 Liberty Place, Sicklerville, New Jersey 08081.

Only through our educational commitment will we approach and achieve the best possible representation.

Yours in Unionism,

Jeff

Jeff Kehlert

# TABLE OF CONTENTS

## Part One – Reassignment From the Craft And/Or From the Installation

## Part Two – Excessing/Involuntary Reassignments From LMOU Defined Sections Within An Installation

# PART ONE

## EXCESSING/INVOLUNTARY REASSIGNMENTS

## FROM THE CRAFT AND/OR INSTALLATION

# SECTION ONE

# ARTICLE 12

# PRINCIPLES OF SENIORTIY

# AND REASSIGNMENTS

## THE BASIC, CONTROLLING PRINCIPLE

Ultimately, all of our involuntary reassignment / excessing arguments within the Collective Bargaining Agreement derive their importance from the **Basic Principle** of Article 12. The Parties included it within the Article in two places:

**SECTION 4. PRINCIPLES OF REASSIGNMENTS**

**A.** **A primary principle in effecting reassignments will be that dislocation and inconvenience to employees in the regular work force shall be kept to a minimum, consistent with the needs of the service.** Reassignments will be made in accordance with this Section and the provisions of Section 5 below.

**SECTION 5. REASSIGNMENTS**

**B. Principles and Requirements**

1. **Dislocation and inconvenience to full-time and part-time flexible employees shall be kept to the minimum consistent with the needs of the service.**

## THE JOINT CONTRACT INTERPRETATION MANUAL

**REASSIGNMENT – GENERAL PRINCIPLES**

Article 12.4 establishes the following reassignment rules:

• **The dislocation and inconvenience to bargaining unit employees be kept to a minimum.**

When the USPS proposes to dislocate and inconvenience full time regular and part-time flexible employees – through their involuntary reassignment – the USPS has an affirmative obligation to **minimize** such dislocation and inconvenience. The USPS has an affirmative obligation to prove - with legitimate and substantive evidence - what critical service needs may reduce their obligation to minimize the negative impact. Each of the issues and arguments contained within the following pages are integrally related elements of the basic principle. Individually - or in consort with one another – they will assist in establishing that involuntary reassignments are in violation of the Collective Bargaining Agreement.

# SECTION TWO

## THE ISSUE

**THE SIX (6) MONTH ADVANCE NOTICE AND MEETING**

## THE COLLECTIVE BARGAINING AGREEMENT

**SECTION 4 – PRINCIPLES OF REASSIGNMENTS**

**ARTICLE 12.4B**

When a major relocation of employees is planned in major metropolitan areas due to the implementation of national postal mail networks, the Employer will apply this Article in the development of the relocation and reassignment plan. At least 90 days in advance of implementation of such plan, the Employer will meet with the Union at the national level to fully advise the Union how it intends to implement the plan. If the Union believes such plan violates the National Agreement, the matter may be grieved.

**Such plan shall include a meeting at the regional level in advance (as much as six months whenever possible) of the reassignments anticipated.** The Employer will advise the Union based on the best estimates available at the time of the anticipated impact; the numbers of employees affected by craft; the locations to which they will be reassigned; and, in the case of a new installation, the anticipated complement by tour and craft. The Union at the Regional Level will be periodically updated by the Employer should any of the information change due to more current data being available.

**SECTION 5 - REASSIGNMENTS**

**B. PRINCIPLES AND REQUIREMENTS**

**ARTICLE 12.5.B.4**

The Union shall be notified in advance (as much as six (6) months whenever possible), **such notification to be at the regional level, except under A.4 above, which shall be at the local level.**

# THE JOINT CONRACT INTERPRETATION MANUAL

**ARTICLE 12.4**

**Meetings with the union at the area/regional level are required no less than 90 days (six months if possible) in advance of any anticipated reassignments from an installation under Article 12.** In such case, the union will be advised of the following:

1. The anticipated impact, by craft.
2. The installations with available residual vacancies for the employees to be reassigned.
3. When a new installation is involved, the new installation's anticipated complement by tour and craft.

**ARTICLE 12.4B**

**AREA/REGIONAL NOTIFICATION**

**The union at the area/regional level will be given notice when technological, mechanization or operational changes impact the bargaining unit no less than 90 days in advance, (six months in advance whenever possible). This notice shall be in the form of *an Impact/Work Hour Report*.**

Involuntary reassigning bargaining unit employees outside their craft/installation requires an area/regional labor management meeting. It is in the interest of both parties to meet as soon as practicable and to develop an ongoing flow of communications to insure that the principles of Article 12 (reassignment) are met. The first area/regional labor management meeting must be held no later than 90 days prior to the involuntary reassignment.

# THE ARGUMENT

The USPS is required to provide the APWU – at the Regional Level – with six (6) months advance notice when it is their intent to excess employees outside of an installation. This also includes a mandatory Regional Labor Management meeting. Should the six (6) month advance notice not be provided, the COLLECTIVE BARGAINING AGREEMENT has been violated. The USPS bears an immediate burden of proof to prove - with bonafide evidence (not assumption or argument) - that it was impossible to provide the required six (6) month advance notice.

Should the USPS fail in this regard, any excessing without the six (6) month notice is in violation of the threshold notification necessary for proper COLLECTIVE BARGAINING AGREEMENT based involuntary reassignments. All that occurs after this initial violation then is also polluted and poisoned in violation of the COLLECTIVE BARGAINING AGREEMENT.

The full six (6) month advance notice period affords maximum attrition opportunity to reduce the number of affected employees. It also provides the Union the opportunity to track PTF, casual, light and limited duty, and FTR overtime hours for the full period leading up to the USPS' intended reduction in FTRs. These reducible hours will then help demonstrate whether a reduction trend exists – leading up to intended excessing – of reduced work. If no trend is established, reassignments would be unsupported.

In addition, the full six months provides the time necessary for closer and closer landing spot residual vacancies to occur thus reducing the distance to which an employee would have to be reassigned from the home installation. The closer to the home office an employee is excessed, the more dislocation and inconvenience is kept to the required minimum.

In addition, the USPS is required – at the Regional Labor/Management Meeting – to inform the APWU of:

- The number of affected employees by craft (impact)

- The specific installations with available residual vacancy landing spots for the affected employees.

Should the USPS not provide to the APWU this <u>mandatory</u> information – along with the required accurate Comparative Work Hour Report - the process is procedurally defective and in violation of the COLLECTIVE BARGAINING AGREEMENT.

Any Labor/Management Meeting the USPS espouses to be its obligated regional notification meeting which does not include the required elements does not meet the minimum requirements of Article 12. Any excessing thereafter is in violation of the COLLECTIVE BARGAINING AGREEMENT.

# SECTION THREE

## THE ISSUE

**USPS' WITHHOLDING OF SUFFICIENT POSITIONS FOR EXCESS EMPLOYEE CANDIDATES**

## THE COLLECTIVE BARGAINING AGREEMENT

**SECTION 5. REASSIGNMENTS**

**B. PRINCIPLES AND REQUIREMENTS**

**ARTICLE 12.5.B.2**

The Vice-President, Area Operations shall give full consideration to withholding sufficient full-time and part-time flexible positions within the area for full-time and part-time flexible employees who may be involuntarily reassigned. When positions are withheld, local management will periodically review the continuing need for withholding such positions and discuss with the union the results of such review.

## THE JOINT CONTRACT INTERPRETATION MANUAL

**SECTION 5. REASSIGNMENTS**

**B. PRINCIPLES AND REQUIREMENTS**

**ARTICLE 12.5.B.**

**WITHHOLDING OF RESIDUAL VACANCIES**

After notification to the union at the area/regional level, residual vacancies are withheld at the same or lower level in all crafts in the affected installation, and residual vacancies at the same or lower level in surrounding installations.

Residual vacancies in other crafts at the same or lower level in the losing/surrounding installations may also be withheld for the involuntary reassignment of employees identified as excess to the needs of the installation to which assigned.

**NUMBER OF WITHHELD POSITIONS (DUTY ASSIGNMENTS)**

Management may not withhold more positions than are reasonably necessary to accommodate any planned excessing. Article 12.5.B.2 authorizes management to withhold "sufficient **...** positions within the area for employees who may be involuntarily reassigned." The geographic area within which residual vacancies will be withheld will depend on the number of employees being excessed, residual vacancies available in other crafts within the installation, and the attrition rate.

**BURRUS-VEGLIANTE APWU/USPS**
**ARTICLE 12 QUESTIONS AND ANSWERS (5-18-2005)**

**Q25.** What happens to vacant duty assignments once the Postal Service has withheld a sufficient number of residual vacancies to place impacted employees?

**A25.** The Postal Service will not withhold more residual duty assignments than are necessary to place all impacted employees. The Postal Service may substitute residual duty assignments to the withheld pool that are closer to the impacted office, or residual duty assignments within the same craft. The Postal Service will release residual withheld duty assignments not needed. These withheld duty assignments will be released for PTR bidding, PTF preference, or transfers where applicable.

# THE ARGUMENT

Historically, the USPS has blatantly and zealously "over - withheld" residual vacancies in anticipation of projected excessing. For example, the USPS intends to excess 5 FTR clerks from Howell, NJ. The USPS withholds all residual vacancies – present and future – within a 50 mile radius of Howell.

There may immediately be 5 residual vacancies at two Post Offices within 10 miles of Howell, yet blanket withholding at dozens or even hundreds of Postal installations freezes conversion of PTFs from residual vacancies - indefinitely. The key is "sufficient." Once (sometimes immediately) the USPS "captures" the necessary (equal in number to the number of employees to be excessed) residuals, the withholding is satisfied and must be lifted.

It is particularly important that the Local Unions keep regularly updated records of all residual vacancies within their respective jurisdictions. It is equally imperative that Locals communicate with one another and share their residuals' information. The USPS is in violation of the

COLLECTIVE BARGAINING AGREEMENT and the JOINT CONTRACT INTERPRETATION MANUAL when it withholds unnecessary residual vacancies – beyond the number needed as landing spots for the to-be-reassigned employees to achieve "residual vacancy buoyancy".

Sometimes the USPS also violates the COLLECTIVE BARGAINING AGREEMENT through withholding in USPS created "artificial areas," i.e. performance cluster, district, area – not by radial geography – the 50 miles, 100 miles, 250 miles, etc.)

# SECTION FOUR

## THE ISSUE

**NOTIFICATION OF RESIDUAL VACANCY WITHHOLDING – TO THE LOCAL PRESIDENT**

## THE COLLECTIVE BARGAINING AGREEMENT

**ARTICLE 37.3.A.3**

**Withholding.** When vacancies are withheld under the provisions of Article 12, the local Union President will be notified in writing.

## THE JOINT CONTRACT INTERPRETATION MANUAL

**BURRUS-VEGLIANTE APWU/USPS**
**ARTICLE 12 QUESTIONS AND ANSWERS (5-18-2005)**

**Q10**. How are placement opportunities for impacted employees identified?

**A10.** The Postal Service will provide the APWU Regional Coordinator with a notice of intent to withhold residual vacancies in which to place impacted employees. A residual vacancy is a duty assignment that goes unbid, and remains after assignment of unencumbered employees and activation of retreat rights. **In the Clerk Craft, when a duty assignment is identified as residual, the local manager will give the local union president a written notice that the duty assignment is being withheld pursuant to Article 12.**

## THE ARGUMENT

While Article 12 requires the USPS to notify the APWU at the Regional level as to identified residually vacant duty assignments, the USPS is also mandated to notify – in writing – the Local APWU President as to any/all residual vacancies being withheld under Article 12. Although jobs may be identified at the Regional level, failure/refusal by the USPS to identify Article 12 residuals to the Local President – in writing – results in their non-inclusion as withheld residuals. Once it is determined that a duty assignment was not (without proper, written local notice) withheld, then conversion of a PTF to FTR is both appropriate and required by Article 37 of the COLLECTIVE BARGAINING AGREEMENT. Written USPS notice to the Local President is a separate, required process in the proper identification of a withheld residual. Without it that job is not withheld under Article 12.

# SECTION FIVE

## THE ISSUE

**REDUCING THE "REDUCIBLE HOURS" – PTF, CASUAL, LIGHT AND LIMITED DUTY, FTR OVERTIME – TO PREVENT FULL TIME REGULAR, PART-TIME REGULAR OR PTF EXCESSING**

## THE COLLECTIVE BARGAINING AGREEMENT

**SECTION 4. PRINCIPLES OF REASSIGNMENT**

**ARTICLE 12.4D**

In order to minimize the impact on employees in the regular work force, the Employer agrees to separate, to the extent possible, casual employees working in the affected craft and installation prior to excessing any regular employee in that craft out of the installation.

**SECTION 5. REASSIGNMENTS**

**ARTICLE 12.5.C.5 (a) (2)**

Reassignment within installation. When for any reason an installation must reduce the number of employees more rapidly than is possible by normal attrition, that installation:

(2) Shall, to the extent possible, minimize the impact in regular work force employees by separation of all casuals.

**ARTICLE 12.5.C.5 (a) (3)**

(3) Shall, to the extent possible, minimize the impact on full-time positions by reducing part-time flexible hours.

# THE JOINT CONTRACT INTERPRETATION MANUAL

**ARTICLE 12.5B**

**MINIMIZING IMPACT**

In order to minimize the impact on employees, casuals working in the affected craft and installation will be separated to the extent possible prior to making involuntary reassignments. Also, to the extent possible, part-time flexible employee hours will be reduced. There is an obligation to separate casual workers if doing so would yield sufficient hours for a regular duty assignment: that is, eight hours within nine or ten hours, five days during a service week.

**LIGHT AND LIMITED DUTY EMPLOYEES**

Other limited duty employees who are temporarily assigned to the craft undergoing excessing, will be returned to their respective crafts before excessing can occur.

# THE ARGUMENT

In keeping with the Basic Principle (that dislocation and inconvenience be kept to the minimum) of Article 12, the United States Postal Service is required to reduce hours if those reductions will save (prevent) Full-time Regulars from being excessed. The reducible hours include PTF, casual, light and limited duty and FTR overtime. Light and limited duty employees from other crafts are to be returned to their originating crafts prior to any full time regular clerk craft excessing. Casuals need only be separated if such separation saves (prevents) a full time regular from excessing. However – and far more important and useful – PTF, casual, light and limited duty and overtime hours must be combined and argued as a reducible commodity – to save full-time clerks from involuntary reassignment. Once the APWU receives its Article 12 mandated six (6) month notice, the Local APWU must request the work hours of PTFs, casuals, FTRs (overtime) and light/limited duty employees working in the clerk craft and installation. Then the Local APWU must begin to chart those hours on a daily and weekly basis. This charting record mirrors our Article 7.3.B. Maximization strategy to combine individual PTFs - in consort with each other - to prove FTR eight (8) within 9 or 10, 5 day, 40 hour schedules exist. Here, within Article 12, we are charting individually the PTF, casual, FTR OT and light/limited duty hours categories and then combining them to track and demonstrate the number of hours which management must reduce prior to involuntarily excessing FTRs from the installation.

**Here is an example of said chart:**

| | PTF Hours | Casual Hours | FTR OT Hours | MH Casuals | MH PTFs | LC Casuals | LC PTFs | L/LD Hours | Reducible Total |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |
| **PP1/WK1** | | | | | | | | | |
| | | | | | | | | | |
| Saturday | | | | | | | | | |
| Sunday | | | | | | | | | |
| Monday | | | | | | | | | |
| Tuesday | | | | | | | | | |
| Wednesday | | | | | | | | | |
| Thursday | | | | | | | | | |
| Fri | | | | | | | | | |
| | | | | | | | | | |
| **PP1/WK2** | | | | | | | | | |
| | | | | | | | | | |
| Saturday | | | | | | | | | |
| Sunday | | | | | | | | | |
| Monday | | | | | | | | | |
| Tuesday | | | | | | | | | |
| Wednesday | | | | | | | | | |
| Thursday | | | | | | | | | |
| Friday | | | | | | | | | |

Logically, one would believe that these reducible hours would gradually diminish from the time of the mandatory six (6) month notice up to the date of excessing. Often that does not happen. Often, there is no demonstrable or readily ascertainable downward trend in these hours. This evidence-tracked for at least 6 months weighs heavily against any USPS decision to involuntarily reassign FTR clerks in the face of sufficient hours yet to be reduced. There may be instances in which work is reassigned with FTR clerks from the "losing" installation. Even in these instances the USPS almost invariable still sends the FTR clerks down the road while failing/refusing to reduce the hours of PTFs, casuals, FTR OT and light/limited duty employees in conjunction with each other. The USPS simply does not believe it must reduce the reducible in order to save/prevent FTRs from being excessed. The Basic Principle requires that reduction in order to **Minimize** disruption and inconvenience a.k.a involuntary reassignment. Remember, it is critical that you begin your tracking process as soon as the 6 month notice occur. Your Request for Information must document your progress in obtaining and tracking the USPS efforts (or lack thereof) to reduce the reducible.

# OTHER CRAFT PTF(s) CASUALS

Although it is not specifically addressed we must also request, chart and argue that other craft (Mailhandlers and Letter Carriers) PTFs and Casuals are also reducible hours and those reductions will enhance potential reassignment opportunities within the installation to other crafts. Should management reduce PTFs/Casuals in other crafts, additional "within-the-installation" "landing spots" may be created, thus keeping our affected employees within the installation and not reassigned without.

# SECTION SIX

## THE ISSUE

**EXCESSING TO OTHER CRAFTS WITHIN THE INSTALLATION PRIOR TO EXCESSING OUTSIDE THE INSTALLATION**

## THE COLLECTIVE BARGAINING AGREEMENT

**SECTION 5. REASSIGNMENTS**

**Article 12.5.C.5.a Reduction in the Number of Employees in an Installation Other Than by Attrition**

a. Reassignments within installation. When for any reason an installation must reduce the number of employees more rapidly than is possible by normal attrition, that installation:

(2) Shall, to the extent possible, minimize the impact on regular force employees by separation of all casuals;

(3) Shall, to the extent possible, minimize the impact on full-time positions by reducing part-time flexible hours;

(4) Shall identify as excess the necessary number of junior full-time employees in the salary level, craft, and occupational group affected on an installation-wide basis within the installation; make reassignments of excess full-time employees who meet the minimum qualifications for vacant assignments in other crafts in the same installation.

## THE JOINT CONTRACT INTERPRETATION MANUAL

**REASSIGNMENT ACROSS CRAFT LINES WITHIN THE INSTALLATION**

If involuntarily reassigned across craft lines within the installation, the employee has no option and must be returned to the first available vacancy. If involuntarily reassigned outside the installation, including across craft lines, the employee can exercise his/her option to return to the vacancy.

# THE ARGUMENT

Following the mandatory 6 month Notice at the Regional Level and the reduction in PTF, FTR OT, casual and light/limited duty hours – the USPS must – before excessing them outside the installation - excess FTR employees to the other crafts within the installation. These involuntary reassignments – like those to other installations - must be to same or lower level withheld duty assignments. If, during the intervening period following the mandatory 6 month Notice, the USPS has failed/refused to withhold (capture) same and lower level residual vacancies within the other crafts within the installation, the USPS has violated Article 12. Moreover, the USPS has irrevocably violated the specific requirement for same installation excessing prior to extra installation excessing - as well as the basic prohibition against inconvenience and disruption to FTRs. Anytime the USPS forces an employee to go down the road – or further down the road – when they could have stayed – or stayed closer – the basic principle of Article 12 is fatally violated.

This USPS historically fails/refuses to withhold residuals in the losing installation – within other crafts. Their obligation to withhold in other crafts is mandatory.

# SECTION SEVEN

## THE ISSUE

**EXCESSING TO MORE DISTANT INSTALLATIONS WHILE CLOSER "LANDING SPOTS" EXIST.**

## THE COLLECTIVE BARGAINING AGREEEMNT

**SECTION 5 REASSIGNMENTS**

**ARTICLE 12.5.C.5.B.(1)**

Reassignments to other installations after making reassignments within the installation.

> (1) Involuntarily reassign such excess full-time employees starting with the junior with their seniority for duty assignments to vacancies in the same or lower level in the APWU crafts in installations within 100 miles of the losing installation, or in more distant installations if after consultation with the Union it is determined that it is necessary, the Postal Service will designate such installations for the reassignment of excess full-time employees.

## THE JOINT CONTRACT INTERPRETATION MANUAL

**REASSIGNMENTS OUTSIDE THE INSTALLATION**

Article 12.5.C.5.b(1) provides for the involuntary reassignment of full-time employees by juniority to other installations to residual vacancies in the same or lower level in the APWU crafts.

**BURRS-VEGLIANTE APWU/USPS**

**Q25.** What happens to vacant duty assignments once the Postal Service has withheld a sufficient number of residual vacancies to place impacted employees?

**A25.** The Postal Service will not withhold more residual duty assignments than are necessary to place all impacted employees. The Postal Service may substitute residual duty assignments to the withheld pool that are closer to the impacted office, or residual duty assignments within he same craft. The Postal Service will release residual withheld duty assignments not needed. These withheld duty assignments will be released for PTR bidding. PTF preference, or transfer where applicable.

## THE ARGUMENT

The Local APWU receives the residual vacancies' listing from the USPS at the Regional Labor/Management Meeting. The USPS proposes to excess FTRs to specific residuals, yet the Local APWU has evidence that there are residual vacancies – not on the USPS list – which are closer in proximity to the proposed losing installation. Should the USPS continue the excessing process to more distant location – while closer landing spots exist – the USPS is in violation of the basis principle of Article 12. Closer is less disruptive – and inconvenient – the further away.

The Local APWU must keep in regular and effective communication with other Local Unions – as well as within its own Union in the case of a large area local – in order to maintain current residual vacancies information as those new landing spots are born.

# SECTION EIGHT

## THE ISSUE

**THE 60 DAY NOTICE TO EXCESSING CANDIDATES**

## THE COLLECTIVE BARGAINING AGREEMENT

**SECTION 5. REASSIGNMENTS**

**B. PRINCIPLES AND REQUIREMENTS**

**ARTICLE 12.5.B.5**

Full-time and part-time flexible employees involuntarily detailed or reassigned from one installation to another shall be given not less than 60 days advance notice, if possible.

## THE JOINT CONTRACT INTERPRETATION MANUAL

**ARTICLE 12.5.B.**

**EMPLOYEE NOTIFICATION**

Affected regular work force employees are entitled to an advance notice of not less than 60 days, if possible, before making involuntary details or reassignments from one installation to another.

The language relative to the 60 day notice, "if possible," is not intended to be permissive, but is a requirement. If it is at all possible to provide 60 day notice, then management must do so. When the employee is provided the 60 day notification, the APWU local president will be notified.

## THE ARGUMENT

In conjunction with the mandatory (6) six month advance Notification at the Regional Level, individual employees must receive at least (60) sixty days advance notice of intended excessing.

The founders of the Collective Bargaining Agreement placed this 60 day advance notice in the Collective Bargaining Agreement in order to afford all affected employees with the bonafide opportunity to make in informed decision regarding their futures. Full-time regular employees might decide to revert to part-time regular so as not to be reassigned.

A senior full-time regular may decide to be reassigned in place of an identified, affected junction full-time regular.

A full-time regular may decide to attempt to procure a voluntary transfer to a location perceived to be more beneficial and advantageous than the intended "landing spot".

When the USPS provides a generic, "no information" 60 day notice – and then attempt to afford an affected employee only a week or a few days at the end of said notice to review landing spot choices, we must argue the intent of the 60 day notice was violated. Moreover, we must argue that the basic principle prohibiting dislocation and inconvenience was also violated.

The burden is upon the USPS to prove – with tangible bonafide evidence – that is was impossible for the USPS to meet the (60) sixty day minimum requirement. Failure of the USPS to provide the required (60) sixty day notice violates Article 12's threshold for proper involuntary reassignment. Any excessing following USPS failure/refusal to provide this minimum advanced Notice is in violation of the Article 12 prohibition against inconvenience, disruption and dislocation.

# SECTION NINE

# EVIDENCE ELEMENTS

The following are some elements of the evidence necessary to prevent excessing and/or prosecute violations and support the arguments included in this Strategy Book. There will be other evidence elements dependent upon distinct and particular fact circumstances and situations.

Minutes of Area/Regional Labor/Management Notification Meeting

Impact/Work Hour Report

List of Withheld Duty Assignments including Job Hours, Non-Scheduled Days, Locations

Written Notice to Local President – Detailing Specific Withheld Residual Vacancies By Job #

Interview with Installation Head

Time and Attendance Records:

- Casuals
- Part-time Flexibles
- Light/Limited Duty Employees
- Loaner Part-time Flexibles
- Full-time Regular Overtime Hours
- Part-time Regular Overtime Hours

Written Notices to Excessing Candidates

Stand-By Time Hours

# SECTION TEN

# REMEDIES

Dependent upon the circumstances appropriate, COLLECTIVE BARGAINING AGREEMENT based remedies for violations discussed within the above issues could include:

Out Of Schedule Compensation Pay – overtime and administrative leave
(this is distinguishable from ELM Chapter 4's Out of Schedule Premium Pay).
(See Out of Schedule Compensation Strategy Book)
Mileage
Travel Time Pay
Holiday Work Pay/Leave Credit
Conversion of PTFs to FTR
Overtime (for Clerks in the "gaining" installation/Craft)
Straight time pay (for PTFs in the "gaining" installation/Craft)

We must be as specific with our requested remedies as possible – including naming and EINing employees entitled to remedies. General, vague and/or confusing remedies will only afford management and/or our employee arbitrators the opportunity to reduce and/or deny violation remedies. In addition, if employees are improperly excessed they must be compensated - as well as those employees in the gaining installation who would have worked had it not been for the presence of those improperly reassigned.

# PART TWO

## EXCESSING/INVOLUNTARY REASSIGNMENTS FROM LMOU DEFINED SECTIONS WITHIN AN INSTALLATION

# SECTION ONE

# APPLICABLE & CONTROLLING CBA AND JCIM PROVISIONS

Like the Basic Principles governing excessing from the craft/installation, so too does Article 12 and the JCIM specifically control the process when management proposes to reassign employees from identified sections within an installation. First, the Local Memorandum of Understanding must identify "sections" within the installation:

Article 30, Item 18 states:

> "The identification of assignments comprising a section, when it is proposed to reassign within an installation employees excess to the needs of a section."

Once sections have been negotiated and included within the LMOU under Article 30 the USPS is bound by Article 12 and Article 37's controlling protections.

The following are those regulations – including critical JCIM provisions – which will be discussed in further detail later:

## THE COLLECTIVE BARGAINING AGREEMENT

**ARTICLE 12.4**

Section 4. Principles of Reassignments

A. A primary principle in effecting reassignments will be that dislocation and inconvenience to employees in the regular work force shall be kept to a minimum, consistent with the needs of the service. Reassignments will be made in accordance with this Section and the provisions of Section 5 below.

**ARTICLE 12.5**

**Section 5. Reassignments**

**A. Basic Principles and Reassignments**

4. Reassign within an installation employees excess to the needs of a section of that installation.

**B. Principles and Requirements**

1. Dislocation and inconvenience to full-time and part-time flexible employees shall be kept to the minimum consistent with the needs of the service.

3. No employee shall be allowed to displace, or "bump" another employee, properly holding a position or duty assignment.

4. The Union shall be notified in advance (as much as six (6) months whenever possible), such notification to be at the regional level, except under A.4 above, which shall be at the local level.

**C. Special Provisions on Reassignments**

**4. Reassignment Within an Installation of Employee Excess to the Needs of a Section**

a. The identification of assignments comprising for this purpose a section shall be determined locally by local negotiations. If no sections are established immediately by local negotiations, the entire installation shall comprise the section.

b. Full-time employees, excess to the needs of a section, starting with that employee who is junior in the same craft or occupational group and in the same level assigned in that section, shall be reassigned outside the section but within the same craft or occupational group. They shall retain their seniority and may bid on any existing vacancies for which they are eligible to bid. If they do not bid, they may be assigned in any vacant duty assignment for which there was no senior bidder in the same craft and installation. Their preference is to be considered if more than on such assignment is available.

c. Such reassigned full-time employee retains the right to retreat to the section from which withdrawn only upon the occurrence of the first residual vacancy in the salary level after employees in the section have completed bidding. Such bidding in the section is limited to employees in the same salary level as the vacancy. Failure to bid for the first available vacancy will end such retreat right. The right to retreat to the section is optional with the employee who has retreat rights with respect to a vacancy in a lower salary level. Failure to exercise the option does not

terminate the retreat rights in the salary level in which the employee was reassigned away from the section. In the Clerk Craft, an employee may exercise the option to retreat to a vacancy in a lower salary level only to an assignment for which the employee would have been otherwise eligible to bid.

d. The duty assignment vacated by the reassignment of the junior full-time employee from the section shall be posted for bid of the full-time employees in the section. If there are no bids, the junior remaining unassigned full-time employee in the section shall be assigned to the vacancy.

**LOCAL IMPLEMENTATION**

**ARTICLE 30**

B. There shall be a 30 consecutive day period of local implementation which shall occur within a period of 60 days commencing April 2, 2007 on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the 2006 National Agreement:

18. The identification of assignments comprising a section, when it proposed to reassign within an installation employees excess to the needs of a section.

**ARTICLE 37.3.B**

**ARTICLE 12 Exceptions – Clerk Craft**

2. In the Clerk Craft, when excessing from a section occurs (Article 12.5.C.4), any duty assignments remaining within the section occupied by Clerks junior to the senior Clerk whose duty assignment was abolished will be posted for bid to currently qualified Clerks within the section.

3. Special excessing provisions for Best Qualified duty assignments are found at Article 37.3.A.7.d.

**BEST QUALIFIED**

**ARTICLE 37 SECTION 3A**

7. **Best Qualified Positions**

d. Incumbents in each best qualified position and salary level will be in a separate category for Article 12 excessing purposes. These categories will be separate from senior qualified positions.

# THE JOINT CONTRACT INTERPRETATION MANUAL

**Article 12.5.C.4**

***LOCAL NOTIFICATION***

When it is proposed to reassign within an installation employees excess to the needs of a section, union notification shall be at the local level (as much as six months in advance when possible), pursuant to Article 12.5.B.4. The identification of assignments comprising a section is determined through the local implementation procedure (See Article 30.B.18). If no sections are established by local negotiations, the entire installation shall comprise the section.

***REASSIGNMENTS WITHIN THE INSTALLATION/SECTIONS***

Before involuntarily reassigning full-time employees from a section, the following must be completed:

• Identify the full-time duty assignments to be abolished; and

• Identify the junior full-time employees to be reassigned; and

• Identify the number of duty assignments occupied by the junior full-time employees that will remain following their reassignment. These duty assignments are to be posted for sectional bidding.

• **In the clerk craft, identify the number of duty assignments remaining within the section occupied by clerks junior to the senior clerk whose duty assignment was abolished or reposted and post for bid to currently qualified clerks within the section.**

• Return any limited or light duty employees from other crafts who are temporarily assigned to the affected section to their respective crafts.

• Before excessing from a section, all full-time employees not holding a duty assignment must be assigned outside the section.

When making involuntary reassignments from a section, start with the junior full-time employee in the same craft or occupational group and in the same salary level regardless of whether the junior employees' duty assignment was abolished.

Junior full-time employees excessed from a section retain their seniority and are reassigned as unassigned full-time employees in the same craft or occupational group and in the same salary level. Duty assignments vacated by the reassigned junior employees are posted for bid to employees remaining in the section. If no bids are received, the unassigned employees remaining in the section are assigned to the vacancies.

Junior full-time employees who are reassigned outside the section as unassigned/unencumbered full-time employees must be assigned to a full-time schedule with either fixed or rotating non-scheduled days off, as determined by the Local Memorandum of Understanding.

Unassigned/unencumbered full-time employees may bid on vacancies for which they are otherwise eligible to bid. Unassigned/unencumbered full-time employees who are unsuccessful in bidding may be assigned to residual vacancies.

Unassigned/unencumbered full-time employees temporarily assigned to a work area cannot use their seniority to the detriment of employees holding regular bid assignments in the work area.

Initial vacancies occurring within a section, in the same salary level from which excessed employees have active retreat rights, are posted for bid within the section for employees of the same salary level as the excessed employees. The resulting residual vacancies, if any, are then offered to employees in the same salary level who have retreat rights to the section.

If vacancies remain after offering retreat rights to eligible employees, the vacancies are then posted for bid installation wide.

**ARTICLE 37.3B2**

**Q & A #133**

When excessing in the same wage level from a section occurs, which duty assignments are posted for bid within the section?

**Response:** The remaining duty assignments that were vacated by the excessed junior employees are posted for bid within the section and level. Additionally, all duty assignments within the same wage level occupied by clerks who are junior to any senior clerk whose duty assignment was abolished **or reposted**, are posted for bid within the section and level. (Note: These jobs are posted only to currently qualified clerks within the section and level in order to accomplish the parties intent that no additional training costs will result.)

**134. Who is eligible to bid on the duty assignments vacated by the excessed junior employees?**

**Response:** All employees within the section and level, whether currently qualified or not currently qualified.

**135. Who is eligible to bid on duty assignments reposted pursuant to 37.3.B.2?**

**Response:** All Clerks, regardless of seniority, within the section and in the same level who are currently qualified for the reposted assignments.

**136. Are the eligibility requirements for duty assignments reposted pursuant to 37.3.A.4 applicable to 37.3.B.2 re-postings?**

**Response:** No.

**137. Who is eligible to bid on duty assignments reposted pursuant to 37.3.B.2 if management also elects to make substantial changes in those duty assignments while reposting?**

**Response:** If management elects to make substantial changes (i.e., changes which normally result in reposting in accordance with Article 37.3.A.4 and/or the LMOU) while reposting duty assignments pursuant to Article 37.3.B.2, all current employees within the section, and in the same level, are eligible to bid, regardless of their current qualification.

**138. When positions/duty assignments identified in Article 37.3.F.5 are reposted pursuant to Article 37.3.B.2 must employees within the section, and in the same level, be given an opportunity to demonstrate the necessary skills?**

**Response:** Yes.

***BEST QUALIFIED***

Incumbents in each best qualified position and salary level are considered a separate category for Article 12 excessing purposes. **Employees holding best qualified duty assignments are identified for excessing based on their seniority in their best qualified position title.**

# SECTION TWO

# SYNOPSIS OF THE PROCESS

## THE KEY ELEMENTS

### 1. SECTIONS WERE ESTABLISHED IN LMOU

In order to have the seniority protection of Article 12's section-to-section within-the-installation process, the (LMOU) Local Memorandum of Understanding, the Local Article 30 Agreement must identify sections under Item 18. If no sections are identified – and no sectional seniority integrity is preserved - then the USPS may reassign employees within the installation – at will – without regard for juniority/seniority consideration.

### 2. 6 MONTHS ADVANCE NOTIFICATION

Article 12.5C requires 6 months advance notification – to the Local Union (President) – prior to within-the-installation – section-to-section reassignments – whenever possible.

This requirement mirrors USPS' obligation to provide the mandatory 6 months advance notice at the Regional Level for outside-the-installation excessing.

The founders of the CBA, in their wisdom in the early 1970s, put into place this 6 months advance notice. This long period provides for attrition to satisfy staffing needs and, hopefully, to reduce the need for involuntary reassignments, as well as to provide adequate, progressively closer "landing spots" - as the six months passes - for reassigned employees.

Although the USPS may argue that "there is only a 90 day advance notice requirement," the "when possible" requirement places an affirmative burden upon the USPS to prove 6 months advance notice was impossible. Such would have to be accomplished with bonafide proof established through evidence, not simply by U.S. Postal Service unsupported position or argument.

3. **THE JCIM "PECKING ORDER" REQUIRED <u>BEFORE</u> INVOLUNTARY SECTION-TO-SECTION REASSIGNMENT**.

After the 6 months advance notice to the Local, the JCIM requires the following sequential events for reassignments within the installation to be potentially proper:

A. Identify the full-time duty assignments to be abolished; and

B. Identify the junior full-time employees to be reassigned; and

C. Identify the number of duty assignments occupied by the junior full-time employees that will remain following their reassignment. These duty assignments are to be posted for sectional bidding.

D. **In the clerk craft, identify the number of duty assignments remaining within the section occupied by clerks junior to the senior clerk whose duty assignment was abolished or reposted and post for bid to currently qualified clerks within the section.**

E. Return any limited or light duty employees from other crafts who are temporarily assigned to the affected section to their respective crafts.

F. Before excessing from a section, all full-time employees not holding a duty assignment must be assigned outside the section.

Any U.S. Postal Service involuntary reassignment from an identified LMOU section – without strict adherence to the prerequisite pecking order specified in the JCIM – would make the reassignment process procedurally defective and nullified. Should the U.S. Postal Service proceed at that point substantial remedies would be appropriate for excessed employees and for the "gaining sections."

**4. MANAGEMENT "BACKFILLING" OF 'ABOLISHED' DUTY ASSIGNMENTS**

In addition, should management "backfill" the abolished assignments with a combination of PTRs, PTFs, TEs, Casuals or Overtime, then our position would be the "abolishment" was not bonafide because the work of the abolished duty assignment would still exist. And with the work, so too would exist the "abolished" duty assignment.

In Case #C7C-4Q-C 31257, Arbitrator Goldstein said it best:

**It is clear from the language contained in Articles 3 and 37 of the National Agreement that Management has a broad right to abolish jobs if, in fact, the particular position has been shown not to be a consistent eight-hour work assignment. In my earlier decision in <u>Maryland Heights</u>, I noted that there are**

**numerous precedent arbitration awards which show the respect arbitrators give Management's judgment in this type of case, once the factual predicate for a decision that less than eight hours' work is involved in the particular preferred duty assignment has been established. I still believe that, and recognize that panel arbitrators have been extremely reluctant to overturn the Service's discretion in the particular context of abolishment of job slots, if the job is shown to be "under-timed." It is quite another case if the eight hour preferred duty assignment <u>in</u> <u>fact</u> still exists, I also note.**

**The definition of "abolishment" also makes clear that the employer must actually make a decision to abolish or reduce "duty assignments." It does not indicate that the Service can merely piecemeal or spread the same work around, if what is left to do still covers the original eight hour assignment. After all, the contractual definition of "abolishment" is as follows:**

> **A management decision to reduce the number of occupied duty assignments in an established section and/or installation. (See Jt. Ex. 1, p. 128).**

**The parties have defined "duty assignments as follows:**

> **A set of duties and responsibilities within recognized positions regularly scheduled during the specific hours of duty. (See Jt. Ex. 1, p. 128).**

**Read together, these definitions demonstrate to me that the employer's decision to abolish a job is <u>always</u> subject to the initial factual predicate that the employer prove that there was, in the first instance, less than a routine or normal eight-hour work assignment in the abolished slot. In that sense, there must be a fair and honest management conclusion that the particular slot is really "excess" to the needs of the Postal facility and that the required work to be done which involves the particular former bid position is less than eight hours. See Article 12, Section 5.A.4, quoted above. It is not enough to show that there is a need to save hours, even if that need grows out of a Methods Improvement Survey or audit, or there is a Management determination that a reconfiguration of several jobs would save man hours, as apparently occurred here. Bid jobs give more protection than that under the National Agreement**.

Should work continue to be performed even though management claims the work was "abolished," we must document the performance of that work through interviews, statements, stewards' logs/journals/notes, mail counts, mail volume reports, etc.

In addition, the USPS TACs records may be helpful depending upon their accuracy insofar as staffing within the losing section.

## 5. ABOLISHMENT GRIEVANCE TIMELINE

It is recommended that once a duty assignment is abolished, a grievance be filed if the Local Union has any reasonable belief that the "abolished" work may be backfilled.

Should we not file a timely grievance, then the USPS will argue timeliness in the event we wait a substantial period so as to document the existence of the work (i.e. a six-month ("maximization") tracked period).

We can also file a six-month grievance and attempt to tie it to the first – but without the initial anchor when the abolishment occurs – our second case will most likely flounder.

## 6. CLERK CRAFT – SECTIONAL REPOSTINGS AFTER SENIOR ABOLISHMENTS/REPOSTINGS

2006-2010 CBA language requires a "seniority equity leveling" following sectional abolishments/repostings – which result in outside-the-section excessing.

Article 37.3B2 states,

**In the Clerk Craft, when excessing from a section occurs (Article 12.5.C.4), any duty assignments remaining within the section occupied by Clerks junior to the senior Clerk whose duty assignment was abolished will be posted for bid to currently qualified Clerks within the section.**

The JCIM is even more specific:

**Q & A #133**

When excessing in the same wage level from a section occurs, which duty assignments are posted for bid within the section?

**Response:** The remaining duty assignments that were vacated by the excessed junior employees are posted for bid within the section and level. Additionally, all duty assignments within the same wage level occupied by clerks who are junior to any senior clerk whose duty assignment was abolished **or reposted**, are posted for bid within the section and level. (Note: These jobs are posted only to currently qualified clerks within the section and level in order to accomplish the parties intent that no additional training costs will result.)

**134. Who is eligible to bid on the duty assignments vacated by the excessed junior employees?**

**Response:** All employees within the section and level, whether currently qualified or not currently qualified.

**135. Who is eligible to bid on duty assignments reposted pursuant to 37.3.B.2?**

**Response:** All Clerks, regardless of seniority, within the section and in the same level who are currently qualified for the reposted assignments.

**136. Are the eligibility requirements for duty assignments reposted pursuant to 37.3.A.4 applicable to 37.3.B.2 re-postings?**

**Response:** No.

**137. Who is eligible to bid on duty assignments reposted pursuant to 37.3.B.2 if management also elects to make substantial changes in those duty assignments while reposting?**

**Response:** If management elects to make substantial changes (i.e., changes which normally result in reposting in accordance with Article 37.3.A.4 and/or the LMOU) while reposting duty assignments pursuant to Article 37.3.B.2, all current employees within the section, and in the same level, are eligible to bid, regardless of their current qualification.

As you can see, the "sectional bidding" of reposted junior bids caused by a senior abolishment or reposting – which occurs following excessing from the section - is limited to the same wage level as that of the vacated assignment(s).

Reposted assignments due to the "seniority equity leveling" process (repost those junior to the senior abolished/reposted) are only posted (within the same level) to currently qualified within the section.

In addition, the reposted assignments vacated by the junior clerks excessed are reposted for <u>all</u> (within the same level) within the section – regardless as to whether currently qualified or not currently qualified.

An exception to the "currently qualified" requirement would be when duty assignments, reposted due to the "equity" principle, are also further changed – changes which would have required "normal" repostings in accordance with Article 37.3A4:

a. When it is necessary that fixed schedule day(s) of work in the basic work week for a duty assignment be permanently changed, the affected assignment(s) shall be reposted.

b. The determination of what constitutes a sufficient change of duties , principal assignment area or scheme knowledge requirements to cause the duty assignment to be reposted shall be a subject of negotiation at the local level.

c. The determination of what constitutes a sufficient change in starting time of a duty assignment to cause the duty assignment to be reposted is negotiable at the local level, provided:

(1) No duty assignment will be reposted when the change in starting time is one hour or less.

The JCIM states on page 196 Q & A #137 (3.B2):

**137. Who is eligible to bid on duty assignments reposted pursuant to 37.3.B.2 if management also elects to make substantial changes in those duty assignments while reposting?**

**Response:** If management elects to make substantial changes (i.e., changes which normally result in reposting in accordance with Article 37.3.A.4 and/or the LMOU) while reposting duty assignments pursuant to Article 37.3.B.2, all current employees within the section, and in the same level, are eligible to bid, regardless of their current qualification.

In that regard, the "currently qualified" requirement is waived with "all current employees within the section, and in the same level" being eligible to bid the reposted assignments.

These aforementioned cited and discussed, very specific regulations govern excessing within the installation. They help to protect seniority and are consistent with the basic principle of Article 12:

> "Dislocation and inconvenience to employees in the regular work force shall be kept to a minimum . . . . ."

# SECTION THREE

# EVIDENCE ELEMENTS

These evidence examples are not intended to be all inclusive, dependent upon, specific and distinct scenarios you will utilize and develop additional elements

Labor/Management Meeting Minutes

Written notice to the Local President of Specific Anticipated Sectional Event

Duty Assignments Postings

Time and Attendance Records:

- Casuals
- PTFs
- FTR's
- Light/Limited Duty employees

Interview with installation head, POOM, MDO, etc.

Stand-By Time Hours

# SECTION FOUR

# REMEDIES

Like remedies for employees improperly excessed to other crafts/installation – and for affected employees in "gaining" installations – we must specify our remedies in order to maximize our chances of obtaining same - both in the grievance procedure - and at Arbitration.

Remedies for internal excessing violations would include:

Out-of-schedule compensation pay – Overtime and Administrative Leave (for those improperly reassigned)

(Again, distinguishable from ELM, Chapter 4's Out-of-Schedule Premium Pay)
(See the Out-Of-Schedule Compensation Strategy Book)

Overtime (for those in the "gaining" section) where improperly excessed employees are working.

# PART THREE

## THE ARBITRATORS

# THE ARBITRATORS

Although arbitral history on the issues included herein is not extensive, here are several useful references:

**ARBITRATOR PECKLERS March 27, 2008 C00C-4C-C 03147041**

As provided for in the National Agreement, the APWU at the regional level, then received the copy of the COMPARATIVE WORK HOURS REPORT SUMMARY (a.k.a. "CWHR"), which appears at page 8 of the moving papers. For the purposes of my deliberations, this serves as the controlling document, as the operative analysis is 30 days before the excess declaration, and 30 days after. In this case, the periods at issue are from February 6, 2003 through March 7, 2003, and March 8, 2003 through April 6, 2003. These numbers for the hours worked are as follow:

| | 30 DAYS PRIOR | 30 DAYS AFTER | CHANGE |
|---|---|---|---|
| FTR | 509.24 | 191.30 | -317.94 |
| PTF | 277.74 | 513.50 | +235.76 |
| FTR OT | 195.68 | 113.75 | -81.93 |
| PTF OT | 50.94 | 120.50 | +69.56 |
| LD | 102.00 | 112.98 | +10.98 |
| Casuals | 162.60 | 185.98 | +23.86 |
| **TOTAL** | **1,298.20** | **1,238.01** | **-60.59** |

At the outset, notice must be taken that because this grievance was initiated at Step 3 of the grievance procedure, the record is not as fully developed as in other cases. It is also 5 years since the excessing event. As a practical matter, the APWU'S *prima facie* burden has been satisfied by reference to the Function Four Review, and the above hourly figures in the CWHR. As the Union has properly argued, it is a primary principle under Article 12.4.A. that in effecting reassignments, dislocation and inconvenience to employees in the regular work force shall be kept to a minimum.

This precept must inform the decisions of all bean counters making Function Four recommendations, as they too are tasked with compliance with the National Agreement.

Arbitrator Fritsch expressly recognized this immutable obligation, when he stated at page 6, ¶ 2 of his award in *United States Postal Service and American Postal Workers Union,* Case No. B00C-4B-C 04215302/05001 (Fritsch, 2006) (Exhibit U-5):

> [t]he provisions cited above have been in effect for some period of time and reflect not only the interpretation of specific articles of the National Agreement but also reflect the underlying principles upon which the agreement was based. When the Service plans to excess employees, it is obligated to adhere to these concepts. It is equally true that audit teams that make recommendations that are most always followed must be mindful of these principles so that they do not recommend changes that are in violation of the National Agreement.

In that regard, the CUSTOMER SERVICE STAFFING ANALYSIS at page 5 of the Function Four Review arguably contains a prima facie contractual violation, as it proposes to maintain the current compliment of 7 at the Wildwood Post Office, but recommends 4 FTR and 3 PTFs rather than 6 FTR – 1 PTF, as was previously present. *See e.g. United States Postal Service and American Postal Workers Union,* Case No.C00C-4C-C 02246361/E-2003-103 (Loeb, 2004 at page 15, ¶ 2) (Exhibit PS-3).

Management's obligations prior to taking the ultimate step of excessing an employee from his home installation are set forth in part in Article 12.5.C.5a (2) + (3), and have been relied upon on the Union's case-in chief. Simply put, after determining by craft and occupational group the number of excess employees, the Postal Service *shall to the extent possible*, minimize the impact on regular work force employees by separation of all casuals and reducing part-time flexible hours. As the Union has argued, the record before me contains no evidence that Management even considered this before excessing the 2 employees at Wildwood.

I credit the Postal Service's argument that there was only 1 PTF prior to the excessing. However, the APWU has persuasively argued that before the excessing, Management had about 680 hours to play with to reduce the desired 320 hours (2 FTRs @ 40 HRS X 4). This figure rises to 780 when the limited duty hours are added. Therefore, even with the 320 hours per month subtracted from the 780 hours, that still left 460 flexible hours to get the mail out. The above chart likewise does not support the inference that the business conditions at the Wildwood Post Office warranted the excessing of 2 FTR employees.

Instead, it appears that the work was merely shifted from the career to the part-time and supplemental work force. As previously discussed, 2 more PTFs were hired, with these hours increasing by 235.76 (277.74 to 513.50) in the 30 day period following excessing. PTF OT concomitantly climbed by 69.56 hours (50.94 to 120.50). Management has suggested that 120 of these PTF hours were occasioned by window/scheme training. However, as Arbitrator Miles found, I was not directed to any provision which would separate training hours from work hours,

with regard to the CHWR. *See, United States Postal Service and American Postal Workers Union,* Case No. C00C-4C-C 02143246/FP0402 (Miles, 2004 at page 13, ¶ 1) (Exhibit U-7). And as countenanced by Arbitrator Miles and argued by the Union herein, even if these 120 hours are stripped out, PTF hours still increased from 277 in the previous 30 day period to 393 in the subsequent 30 day period, or an increase of 116 hours.

Under normal circumstances the relief in the case, would be that mandated by 12.4.C, with the 2 employees' retreat rights activated, and having them made whole for out of schedule premium and lost emoluments. However, the record indicates that both employees have retired, a PTF was converted, and in February 2004, one of the affected employees, Melvin Stockton was offered retreat rights, but refused them. The APWU accordingly stipulated that any Management liability for that position ended at that time of the refusal. The argument is advanced, however, that Mr. Stockton should be compensated up to the time of his retirement. The Union additionally recognizes that under the circumstances, it may not request that two PTFs be converted. The requested relief is therefore modified to include the conversion of one PTF, and that Mr. Stockton be made whole.

It is therefore ordered that Mr. Stockton be made whole for out of schedule premium, and any other lost benefits, from the point of 14 days prior to the filing of the instant grievance to the point that he refused his right of retreat. The other individual shall be identified by the parties, and is entitled to the same relief during the identified time period, but up to the date of his retirement or when Mr. Stockton refused his retreat rights, which ever is later. In this respect, I credit the Union's argument that the second individual should have been permitted to retreat if the first one did not wish to. The senior PTF at the installation shall also be converted to FTR status. Jurisdiction will also be retained to assist with any remedial issues.

**ARBITRATOR STONE JUNE 30, 2009 C06C-4C-C 09050017**

The Joint Contract Interpretation manual provides in pertinent part as follows:

……

ARTICLE 12.4.B

*Area/Regional Notification*
The Union at the area/regional level will be given notice when technological, mechanization or operational changes impact the bargaining unit no less than 90 days in advance, (six months in advance whenever possible)….

…

The foregoing requires a minimum notice of ninety (90) days but six (6) months whenever possible. The only reason argued by the Employer as to why six (6) months' notice was not possible was coordinating schedules to meet. The Union argued that coordinating schedules to meet did not satisfy the whenever possible requirement.

The parties negotiated the language of Article 12.5.B.4. and provided for notification of "(as much as six (6) months whenever possible)". I am not convinced that coordinating schedules to meet satisfies the contractual requirement. The ninety (90) days is a minimum provision and it is not another option.

The Union argued that the Employer has the burden of proof that it was not possible to give the six (6) months notice. The Union has the ultimate burden of proof in this case. The only reason argued by the Employer that it was not possible to give the six (6) months notice was coordinating schedules to meet. In my opinion, that is an insufficient reason. Article 12.5.B.4. contemplates something more significant than scheduling difficulties. The Employer presented no evidence of said scheduling difficulties. If in fact there was evidence of significant scheduling difficulties, perhaps the whenever possible requirement would have been satisfied. I have no such evidence and the Employer's general argument of scheduling difficulties is insufficient to convince me that the six (6) months notice requirement was not possible.

**AWARD**

For the reasons set forth in the foregoing discussion, it is my opinion that the Employer violated the Agreement when it did not notify the Union six (6) months in advance of the involuntary reassignment of a Clerk and the Employer is hereby ordered to cease and desist doing so and to compensate the Clerk out of schedule premium and mileage.

**ARBITRATOR FRITSCH MAY 3, 2006 B00C-4B-C 02141067**

On page 6 of the section covering Article 12 reassignments, entitled "Minimizing Impact", the parties have memorialized the longstanding requirement that "to the extent possible, part-time flexible employee hours will be reduced." This should take place before full-time employees are excessed.

The provisions cited above have been in effect for some period of time and reflect not only the interpretation of specific articles of the National Agreement but also reflect the underlying principles upon which the agreement was based. When the Service plans to excess employees, it is obligated to adhere to these concepts. It is equally true that audit teams that make recommendations that are most always followed must be mindful of these principles so that they do not recommend changes that are in violation of the National Agreement.

**ARBITRATOR FLETCHER APRIL 19, 2005 J00C-4J-C 03146911**

Article 12.5.C.5 (3) states that Management:

Shall to the extent possible, minimize the impact on full-time positions by reducing part-time flexible hours.

"To the extent possible" fairly read, obligates Management do more than make a token effort to cut PTF hours. Article 12.5.C.5 (3) requires a meaningful and sincere effort to avoid excessing of FTRs by effecting a reduction in PTF hours.

APWU's statistical evidence in this record clearly supports the Union's arguments – no meaningful reduction in PTF work hours occurred in the Jefferson City facility at the time that

Thompson was being excessed.[1] The Union's evidence clearly shows that individual PTF's continued to regularly work approximately 40 hours each week, with several working overtime. But, what is more important, the total weekly PTF (straight time and overtime) hours remained relatively constant during this time – between 350 and 400 each pay period between pay periods 13-1 and 19-2 2003.

**ARBITRATOR ZOBRAK JULY 31, 2001 C94C-4C-C 98010087**

There is no evidence that the Postal authorities at Phoenixville made any effort to minimize the part-time flexible hours at Phoenixville prior to undertaking the excessing. As such it must be found that the excessing was carried out improperly and in violation of the National Agreement.

**ARBITRATOR LIEBOWITZ DECEMBER 19, 1992 N7C-1F-C 40311**

On review of the facts and contractual provisions here, it seems apparent that this grievance should be sustained. The Postal Service did not on these facts comply with the mandate of Article 12.4.A of the National Agreement to keep dislocation and inconvenience to employees in the regular work force to a minimum consistent with the needs of the Service.

If Article 12.5.C.5 is also to be applied, as the Union maintains that it should, to involuntary reassignments outside the installation, then the Service did not to the extent possible minimize the impact on full-time positions by reducing part-time flexible hours (Article 12.5.C.5.a.(3).

[1] And there is no evidence as to why this could not be done. Instead, it seems that Article 12.5.C.5 (3) may simply have been ignored by the Management of the Jefferson City facility.

I note that while 12.5.C.5.a begins with the designation "Reassignments within installations," the following subsection b deals without qualifying those provisions with reassignments to other installations after making reassignments within the installation.

The Postal Service violated Article 12.4.A and .C and Article 12.5.C.5.a(3) of the National Agreement when it involuntarily reassigned Full-Time Regular Clerks Christine E. Hanlon and Patricia G. Holmes within the craft/outside the installation via notifications dated June 10, 1991 and effective January 11, 1992. The Postal Service shall promptly activate the retreat rights of Hanlon and Holmes and shall permit them to return as part of the full-time complement at the Marshfield Post Office.

**ARBITRATOR ARMENDARIZ FEBRUARY 5, 2003 G98C-1G-C 99198723**

This Arbitrator additionally finds that where an adverse condition of employment (job abolishment (arises such as in this grievance, the Union has a duty to bargain with the Postal Service over the effects and impact their decision will have on the affected employees. Understanding this obligation, the parties negotiated into the National Agreement specific provisions regarding implementation of job abolishment, reassignment and the duty imposed upon the Postal Service in informing the Union at the Regional level ( 6 months – Article 12.5.B.4) and to Full-time and part-time flexible employees detailed or reassigned from one installation to another (60 days – Article 12.5.B.5). The Postal Service did not abide by these provisions of the National Agreement as required.

Under these circumstances, this Arbitrator concludes that the Union has, therefore, met its burden of proof. Thus, the Postal Service violated Article 12.5.B.4 and 12.5.B.5 of the National Agreement.

Accordingly, the following Award is directed.

## VII. THE AWARD

The grievant is sustained and the remedy is as follows:

The Postal Service argued that because no employee was harmed, no contractual violation attaches. The Postal Service based this determination on the fact that the six affected employees were never excessed to the North Texas facility as contemplated because they had bid for and were awarded other bid assignments at the same grade level at the Dallas MPO. This Arbitrator, on the other hand, did in fact find a contract violation over the Postal Service's failure to provide advance notification as stated above. Moreover, this Arbitrator finds that there was a 60 day advance notice requirement. On February 26, 1999, the affected employees received their excess notice of job abolishment. Thereafter, these employees were forced to bid for other clerk positions prior to effectuation of the April 3, 1999, reassignment to an unassigned markup clerk at the North Texas facility. Thus,

the six affected employees would, therefore, be entitled to out-of-schedule premium from the date they commenced their new job bid assignment to the end of the 60 day period.

**ARBITRATOR FRITSCH JANUARY 17, 2009 B00C-4B-C 06276071**

A review of the Comparative Work Hour Report that was prepared by Area management reveals the following:

The total work hour savings for the 30-day period subsequent to the excessing of the grievant was 140.49 clerk hours.

Of that total, full-time clerk hours were reduced by 51.04 hours. Part-time work hours were decreased by 19 hours and casual work hours were decreased by 70.68, the latter constituting approximately one-half the reported savings.

A review of the graphs that the Union developed from the clock rings for PTFs and the casual reveal that most of the days that required a 3:30 AM starting time, a PTF worked the hours that were worked by the grievant prior to his excessing. In only some instances did these PTFs work less than 8 hours per day. As was stated above, there was a total hourly savings of 19 hours for PTFs including overtime during the test period subsequent to the excessing and a regular clerk savings including overtime of 51.04 hours for the 30-day period.

In Article 7.3.B of the National Agreement, the parties committed to the concept of maximizing the number of full-time employees in all Postal Installations. In addition, the parties have further committed in their Joint Contract Interpretation Manual that "to the extent possible, part-time flexible employee hours will be reduced." In this matter, it is clear that the recommendation of the Function 4 Audit Team did not take the maximization requirement into account. The staffing changes that were recommended included three regular clerks instead of five and five PTFs instead two. At the hearing, the Postmaster testified that the additional PTF position was never filled. In addition, it was noted in the Step 1 decision that the situation of the employee who had illness in her family had been resolved thereby making her available to work more part-time hours. Also, the audit report recommends that one of the regular positions be scheduled from 3:30 AM to 12 noon; the same hours that the grievant worked prior to being excessed. In the final analysis, there was only a savings in regular hours of approximately 70 over a 30 day period (excluding casual hours) when, in fact, 80 hours per week, not counting overtime, were eliminated by the excessing of the grievant and the voluntary transfer of the other regular. It is clear that had the Service wanted to follow the maximization dictates of Article 7.3.B of the National Agreement it could have found ways to making some reductions in part-time hours and further reductions in casual hours before excessing a full-time regular and on most days of the test period having his hours worked by PTFs. Also, there is no evidence that changes in schedule were considered in reaching the Service's conclusion in this matter. Even though management has a right to maintain efficiency under the provisions of Article 3, this right is subject to the other terms of the National Agreement including Article 7.3.B.

In view of the foregoing, the instant grievance is sustained. The grievant can exercise his retreat rights back to his former position at Fulton, NY without lose of seniority. He shall also be eligible for out-of-schedule pay in accordance with Postal regulations and travel pay if the latter is applicable. The time frame for this payment will commence 14-days from the date that this grievance was initiated at Step 1. The instant case is remanded to the parties to determine the exact amount of the remedy set forth above.

**ARBITRATOR GOMEZ JANUARY 31, 2009 K00C-4K-C 03198005**

The Union presented evidence that after the Grievant was excessed from Rock Hill, the same duties he had performed there began being performed by PTFs. The evidence also indicated that the number of PTFs at Rock Hill increased after the Grievant and several other FTRs were excessed to other offices[1]. Management did not controvert that evidence.[2] Moreover, there was no evidence that Management gave any consideration to Article 12.5.C.5.a.3's requirement that it minimize the impact on full-time positions by reducing part-time flexible hours "to the extent possible." Therefore, this Arbitrator concludes that the Union has established a violation of the National Agreement[3] and that a remedy is due.

**AWARD**

The grievance is sustained. The Postal Service violated Article 12 of the National Agreement when it excessed the Grievant, Dave Perry, from Rock Hill, SC to Lancaster, SC. The Postal Service shall pay to Grievant out-of-schedule premium for hours worked outside of his prior schedule from the date he began reporting to Lancaster until January 19, 2005, as well as mileage at the then-prescribed rate for his commute to and from Lancaster during all the time he worked in Lancaster. The Arbitrator shall retain jurisdiction for the interpretation of the remedy herein.

**ARBITRATOR KENIS DECEMBER 4, 2008 J06C-4J-C 07332233**

**V. FINDINGS AND DISCUSSION**

From Management's perspective, this is a straightforward case. After a Function 4 Operation Review, two Full Time Regular clerks were excessed from the Decatur installation. The Postal Service takes the position that the Comparative Work Hour Report (CWHR) fully supports the

[1] Such events apparently were the subject of separate grievances.
[2] The ability of Management's advocate to present Management's version of the underlying situation was severely restricted by Management's failure to comply with the provisions of Article 15.
[3] Having found one contractual violation, it does not appear to be necessary to address the Union's allegations concerning violation of Article 7.3.B.

excessing decision. It shows that Decatur reduced its total work hours from 4760.11 hours, during the 30 day period prior to excessing, to 4227.15 in the 30 day period after the excessing. This reduction fully justifies the excessing action that was taken, in Management's view.

However, it must be remembered that the right of the Postal Service to realign the work force is not unfettered. Pursuant to Article 12, Section 5.a of the National Agreement, the Postal Service has the right to "reduce the number of employees more rapidly than is possible by normal attrition" but it must do so in conjunction with any contractual requirements or limitations agreed upon by he parties. Article 12.5.C.5(3) is one such limitation. It states that the Postal Service:

> Shall to the extent possible, minimize the impact on full-time positions by reducing part-time flexible hours.

The purpose of this language is clear. Management must look first to PTF's and make a meaningful attempt to reduce PTF hours before going to the next and more drastic step of excessing a Full Time Regular employee.

Arbitrator Fletcher discussed this same point in a case with facts very similar to those in the matter at hand.[1] There, the Union argued that no real reduction of PTF hours was attempted or accomplished while a Full Time Regular employee was excessed to a different installation. Arbitrator Fletcher agreed, stating as follows:

> 'To the extent possible', fairly read, obligated Management do more than make a token effort to cut PTF hours. Article 12.5.C.5(3) requires a meaningful and sincere effort to avoid excessing of FTR's by effecting a reduction in PTF hours.
>
> APWU's statistical evidence in this record clearly supports the Union's arguments – no meaningful reduction in PTF work hours occurred in the Jefferson City facility at the time that Thompson was being excessed. The Union's evidence clearly shows that individual PTF's continued to regularly work approximately 40 hours each week, with several working overtime. But, what is more important, the total weekly PTF (straight time and overtime) hours remained relatively constant during this time – between 350 and 400 each pay period between pay periods 13-1 and 19-2 2003.

This sound reasoning and logic applies with equal force in the instant case. The testimony and clock rings presented by the Union showed that the hours worked by the four PTF's at the Decatur installation, including regular time and overtime, held steady from June through December 2007. There is no evidence of an attempt to reduce PTF hours prior to excessing the two FTR's at Decatur.

In short, Management failed in its obligation to minimize the impact on Full time regulars

[1] USPS and APWU, Case No. J00C-4J-C 03146911, Class Action (Fletcher, 2005).

by reducing the work hours of Part Time Flexible employees. The Postal Service was required to do so "to the extent possible" and no persuasive explanation was forthcoming as to why this was not done.

My findings in this regard determine the outcome in this case and require a sustaining award.[1] With regard to the remedy, the Union did not request any sort of out-of-schedule pay for FTR's Woodard and Hickey. It did not identify any uncompensated expenses incurred by Woodard and Hickey as a result of the excessing. The grievance did request the activation of retreat rights for Woodard and Hickey and that request is hereby granted.

## VI. AWARD

The grievance is hereby sustained. The Postal Service violated Article 12.5.C.5(3) of the National Agreement when it failed to take any steps to minimize the impact on full-time positions by reducing part-time flexible hours. The two excessed clerks will be offered their retreat rights in accordance with Articles 12 and 37 of the National Agreement.

**ARBITRATOR EVANS MARCH 25, 2008 K00C-4K-C 06141766**

## III. Analysis & Opinion

I have carefully considered the entire record in this matter, including the post-hearing briefs of the parties' advocates. While there is no dispute that local management violated Article 12 in conducting its April 2006 excessing of Baltimore's Annex, there is considerable divergence between the parties over what the appropriate remedy should be and what it should include. The Union maintains that in addition to a traditional make-whole remedy, adversely affected employees (the four (4) Grievants in this matter) should be entitled to receive out-of-schedule

pay for those hours worked outside and instead of their former Annex work schedule. The Postal Service objects to any make-whole remedy, including any out-of-schedule pay because the Union was unable to prove that any Grievant was entitled to such pay and, in addition, because none of the Grievants was "temporarily" reassigned under ELM out-of-schedule pay requirements.

[1]The Union also argued that all of the available vacancies in the excessing radius of 100 miles were not offered to the impacted clerks. However, the JCIM states that "Management designates the available residual vacancies." It further states: "The Postal Service may substitute residual duty assignments to the withheld pool that are closer to the impacted office, or residual duty assignments within the same craft." As Union Local President Hines conceded, the custodial jobs in Springfield were not within the same craft as the two excessed positions at Decatur. Therefore, the Union's second argument is unpersuasive.

To resolve this dispute, two (2) determinations must be made. First, it must be determined whether employee(s) who are improperly excessed under Article 12 procedures are, generally, entitled to out-of-schedule pay as part of a remedial award. And, second, which, if any, of the excessed employees involved in this matter are entitled to be made whole for their losses, to include out-of-schedule pay. As for the first question, the Postal Service insists that out-of-schedule pay is not appropriate under the ELM, Section 434.611 because none of the involved employees was placed on a "temporary schedule at the request of management." Thus, these employees are simply not entitled to out-of-schedule pay as a remedy for local management's failure to properly adhere to contractual excessing procedures.

I do not find this argument persuasive for three (3) reasons. First, since the excessed employees at issue here all filed timely grievances challenging local management's excessing procedures, their reassignments cannot be considered as permanent because a reasonable possibility existed that their grievances would be sustained and they would be returned to work at the Annex. Second, since excessed employees, generally, are contractually guaranteed "retreat" rights in certain circumstances, the positions to which they are reassigned under Article 12 can reasonably be viewed as "temporary" until such time as their contractual "retreat" entitlements have terminated. Third, given the nature of the contact violation here and the impact it had on affected employees, an appropriate and meaningful remedy is warranted. As Arbitrator Mittenthal pointed in Case No. H1C-NA-97, *et al*, above, at page 6:

> **Arbitrators have an extremely large measure of discretion in determining how a contract violation should be remedied. They can and should consider the nature of the wrong done, the damage (or lack thereof) to the employees, the practical impact of the remedy sought . . .**

But for awarding out-of-schedule pay as part of a make-whole remedy, I do not see that any other remedy fits the instant facts and circumstances. A "cease and desist" order falls far short of remedying the instant contract violation. It was management which failed to follow mutually understood and unambiguous procedures regularly used in conducting excessing transactions. A make-whole remedy without an out-of-schedule pay requirement would essentially render meaningless the make-whole remedy – involved employees might be entitled to some monetary relief but it likely would be minimal and would not address the fundamental deprivation they were forced to endure. The Postal Service's notion that any remedy of any consequence would not be appropriate here is belied by what happened. At lease several of the four (4) distribution clerks were improperly reassigned from duty assignments they had bid on and "preferred" through no fault of their own. They had to give up non-scheduled days and duty hours they had sought and received through the bidding process. The impact on their personal lives is obvious. Thus, a remedy reasonably above "nothing" is in order and warranted and could, in no way, be considered as punitive. I thus find that as part of a make-whole order, those Grievants entitled to a remedy shall be entitled to receive out-of-schedule pay.

Moreover, there is nothing in the contract that indicates the CWHR is the exclusive means to challenge the need for excessing. The decision to excess employees is fundamentally a management decision, except for it is limited by the law and the collective bargaining agreement. Generally, the Union may challenge a management decision by showing it was arbitrary, capricious, or made in bad faith. But the parties here agreed that the Union could also challenge the correctness of the decision using the CWHR. If the parties had agreed that the CWHR – and not the usual means of challenge – was the only permissible means to challenge a decision to excess, they could have said so, either in the National Agreement or in the Joint Contract Interpretation Manual issued in 2007. Since they did not, this Arbitrator interprets the contract to allow either an "arbitrary, capricious and bad faith" attack and/or a fact based challenge examining actual hours worked without regard to the good faith or the discretion ordinarily allowed to management. Thus, the Arbitrator permitted the Union to present a case challenging the need for excessing without reliance on the CWHR.

The 60-day notice requirement is qualified by the phrase, "if possible," but it has not been shown here that it would have been impossible to delay the effective date for 50 days. While the Union has not proven that the excessing was an unreasonable action to take in the face of declining mail volume, it has shown that there was plenty of work for the clerks who were at the plant, so much so that mail handlers and supervisors were performing clerk work in order to get the work done. Mail handler Allen, for example, testified he performed clerk work regularly throughout the summer after the clerks were excessed. This evidence indicates that the workload could have supported the clerks a few weeks longer.

For most of the impacted employees, the lack of timely notice apparently did not cause much harm. However, for those who were forced to move or who did not have transportation, the short notice had harmful consequences. According to the evidence, management did not meet with the employees who were eligible for relocation expenses for nearly a week, leaving employees five or six days, while working in Oakland, to arrange new housing. While there is evidence that two employees eligible for relocation benefits received extra time to report to their new duty assignments, there is no evidence that any other employees were told of the possibility of delaying their reporting date if they requested it.

Sampson testified he was unable to take advance round trip leave to look for housing. He incurred temporary housing costs, which were not fully reimbursed. Novencido testified he had no time to look for a place to live. Hatlen did not have time to buy a reliable car before he had to report for work. Smith testified she was not paid for the one day of advance sick leave she took. Since she had no transportation, it was difficult to find a place to live while working.

Clerks Carriaga and Clemmons also testified about the difficult transition process. It does not appear to the Arbitrator, however, that Carriago's decision to become a PTR would have been any different if given more time to think about it. The evidence was not sufficiently clear that Clemmons would have remained in Salinas if given 60 days' notice, since it is unclear whether she resigned or was removed for failing to qualify for window clerk duties.

# PART FOUR

## IN CONCLUSION

# IN CONCLUSION

The Local Union must be the diligent watchdog in enforcement of Article 12. Without that diligence, the USPS will violate the Collective Bargaining Agreement without remedy for the violation and with harm to our members. Article 12 clearly gives us the basis upon which it can be enforced. It is up to the Local Union to use the tools provided herein for that enforcement.

As stated at the beginning, these Strategies are not meant to address every possible Article 12 scenario, issue or violation. They will, however, provide a solid basis from which to launch successful pursuit of enforcement of the Collective Bargaining Agreement and the best chance to prevent excessing of our members.

It is strongly recommended that you review both the Interviews as Evidence and Road Map to Winning Strategy Books as well as the Jackson-Romanowski-Kehlert Stand-By Time Strategy Book as you conduct your Article 12 investigation and assemble your arguments.

The strategies contained therein will, I believe, afford you the best possible chance for successful prevention of improper involuntary reassignment of our Members.

If you have any questions – or need more information – on this or any of the Strategy Books, please contact me at (856) 740-0115 or at jeffkehlertapwu@aol.com or jkehlert@apwu.org.

Only through the flame which is education within our Union will the torch of Representation burn brightly.

Yours in Unionism,

Jeff Kehlert
National Business Agent
American Postal Workers Union