MAXIMIZATION IN THE POST-BYARS AND ARTICLE 12 ERA

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This handbook was constructed to help achieve conversions to full-time status while Article 12 excessing events are occurring. It is also intended to clarify the National Level Byars Award on Article 7.3.B and provides a sound foundation to achieve the highest possible success rate for maximization grievances.

We hope you find this handbook as both an educational and useful tool.

Yours in Unionism,

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THE APPLICABLE COLLECTIVE BARGAINING AGREEMENT PROVISIONS

ARTICLE 7.3 A

Section 3. Employee Complements

A. The Employer shall staff all postal installations which have 200 or more man years of employment in the regular work force as of the date of this Agreement as follows:

1. With respect to the **clerk craft, no later than December 1, 2007, all part-time flexible employees in postal installations which have 200 or more man years of employment will be converted to fulltime regular status. Henceforth, installations which have 200 or more man years of employment shall be staffed with all regular employees.**

2. With respect to the motor vehicle craft, the fulltime to part-time ratio shall be 90% full-time in all installations (regardless of size). However, every installation will be allowed at least two (2) part-time employees.

3. With respect to all other crafts, installations shall be staffed in accordance with the provisions of this agreement.

ARTICLE 7.3.B

B. The Employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations; however, nothing in this paragraph B shall detract from the USPS' ability to use the awarded full-time/part-time ratio as provided for in paragraph 3.A. above.

ARTICLE 7.3.C

C. A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six month period will demonstrate the need for converting the assignment to a full-time position.

THE JCIM

ARTICLE 7.3.A

MAXIMIZATION

Article 7.3.A.1 requires no later than December 1, 2007, all clerk craft part-time flexible employees in postal installations which have 200 or more work years of employment be converted to full-time regular status, after which, installations which have 200 or more work years of employment shall be staffed with all regular employees.

Article 7.3.A.**2** requires **a 90** percent full-time **to part-time ratio** be maintained for the APWU **motor vehicle craft** in **all** installations. **However, every installation will be allowed at least 2 part-time employees.**

With respect to all other crafts, installations shall be staffed in accordance with the provisions of this Agreement. (7.3.A.3)

ARTICLE 7.3C

CONVERSION OF ASSIGNMENTS TO FULL-TIME POSITIONS

A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six month period will demonstrate the need for converting the assignment to a full-time position.

OFFICE SIZE

The crafts covered by the 1978 National Agreement—i.e., clerk, motor vehicle, maintenance, letter carrier and mail handler—are counted when an Agreement provision refers to the number of employees or "**work** years" in an office, facility or installation.

That is also true of the Article 8, Section 8.C call-in guarantee of four hours of work or pay "in a post office or facility with 200 or more **work** years of employment per year," and two hours in smaller facilities. An installation's classification (whether it has 200 or more **work** years of employment) does not change during the life of the Agreement regardless of whether the compliment increases or decreases.

Full-time duty assignments withheld in accordance with Article 12, Section 5.B.2 count toward the full-time staffing requirement under Article 7.3. Accordingly, management may fall below the Article 7.3 required percentage of full-time staffing when withholding full-time duty assignments in accordance with Article 12.

The 200 **work** year list is provided to the union at the national level and is based on complement during the 26 pay periods immediately preceding the effective date of the National Agreement. The total number of paid hours accumulated by career employees in an office during the 26 pay periods immediately preceding the term of the current agreement is divided by 2080 to obtain the number of **work** years. The hours of any transitional employees in that office are excluded from the calculation.

FULL-TIME FLEXIBLE MEMORANDUM

Conversions to full-time are required when the following requirements are met:

The part-time flexible employee works at least thirty-nine hours per week during the previous six months (paid leave hours count as work hours, except where taken to round out to forty hours).

The part-time flexible employee worked practically five eight hour days each service week during the six month period (consistent with the above thirty-nine hour requirement).

The employee works in an office with 125 or more **work** years .

The part-time flexible employee was not working in a withheld position during the period.

The work was performed in the employee's craft, occupational group and installation.

If a part-time flexible employee meets the above criterion, the senior part-time flexible employee must be converted to full-time flexible. Such employee has a flexible schedule which is established week-to-week and posted on the Wednesday preceding the service week. The schedule may involve varying daily reporting times, varying nonscheduled days and varying reporting locations within the installation depending on operational requirements.

Employees converted to full-time flexible status are considered unassigned (unencumbered in the clerk craft) full-time employees who may bid on posted duty assignments or be assigned to residual duty assignments. Full-time flexible assignments are incumbent only assignments and are not filled when vacated.

Note: Conversions required pursuant to the Full-Time Flexible Memorandum shall be in addition to (but not duplicative of) conversions that may be required pursuant to Article 7.3.A, B and C.

REMEDIES

Any installation with 200 or more **work** years of employment in the regular workforce, which fails to maintain the staffing ratio in any accounting period shall immediately convert and compensate the affected part-time employee(s) retroactively to the date which they should have been converted as follows:

NOTE: Effective December 1, 2007 there will be no clerk part-time flexible employees in 200 or more work year offices.

A. Paid the straight time rate for any hours less than forty hours (five eight hour days) worked in a particular week.

B. Paid the eight hour guarantee for any day of work beyond five days.

C. If appropriate, based on the aforementioned, paid the applicable overtime rate.

D. Further, the schedule to which the employee is assigned when converted will be applied retroactively to the date the employee should have been converted and the employee will be paid out-of-schedule pay.

E. Where application of Items A-D above, shows an employee is entitled to two or more rates of pay for the same work or time, management shall pay the highest of the rates.

Article 37.3.A.1

Section 3. Posting, Bidding, and Application

A. Newly established and vacant Clerk Craft duty assignments shall be posted as follows:

1. All newly established Clerk Craft duty assignments shall be posted to craft employees eligible to bid within 28 days. All vacant duty assignments, except those positions excluded by the provisions of Article 1, Section 2, shall be posted within 28 days unless such vacant duty assignments are reverted.

   Every effort will be made to create desirable duty assignments from all available work hours for career employees to bid.

   a. **Full-time duty assignments.**

(1) Newly established full-time duty assignments are posted to full-time employees eligible to bid.

(2) Vacant full-time duty assignments are posted to full-time employees eligible to bid.

Article 37.4.D.

D. Identification of Newly Established Duty Assignments

When the number of full-time regular Clerk Craft duty assignments in an installation is less than the number of full-time Clerks, a full-time employee remaining unencumbered for a period of 120 calendar days shall demonstrate the need
to post the newly established full-time regular duty assignment in accordance with Article 37.3.A.1.a.

This process shall continue until all unencumbered Clerks eligible to be assigned have successfully bid or been assigned to duty assignments.

Exceptions: Any full work or paid leave weeks (40 hours) during which unencumbered Clerks are: 1) detailed to non-bargaining positions; 2) identified as impacted under the provisions of Article 12.5.C (excluding 12.5.C.4); or 3) medically unsuitable for assignment, shall not be included when establishing this 120 day period.

Chapter 1

Article 12

The United States Postal Service has made an affirmative defense against maximization grievances. They have argued that when Article 12 is in effect, PTFs are prevented from conversion in anticipation of placing excessed employees into "potential" vacancies. As documentation to this argument, the U.S. Postal Service utilizes the National Level Arbitrator Mittenthal award from 1990.

We have developed arguments that have successfully rebutted these allegations. We will now look at ways which prove Article 12 and the Mittenthal award do not stop a conversion of a PTF to full-time status:

1. Mittenthal Award H7N-3D-C22267

The Mittenthal Award is not on point for conversions under Article 7.3.B and Article 7.3.C. Arbitrator Mittenthal is addressing Article 7.3.A and its relationship to Article 12. He clearly states:

> "The issue here is whether the 90-10 staffing requirement of Article 7, Section 3A must likewise defer to the withholding obligation of Article 12, Section 5".

He further elaborates that vacancies could be withheld in appropriate circumstances for a reasonable period so long as management was at the 90-10 staffing ratio at the end of the period. Such a conclusion comes as close as possible to giving full effect to the conflicting requirements of the National Agreements. Clearly this award only applies to Article 7.3.A and also contains the language "reasonable" in regard to holding up conversions based on Article 12.

2. Local Union President Notification

Article 37.3.A.3 clearly states:

> "When vacancies are withheld under the provisions of Article 12, the Local Union President will be notified in writing".

If the Local Union President has not been notified in writing that vacancies are withheld under Article 12, then our argument must be that normal provisions of Article 37 must take effect and PTFs must be converted to any residual vacancies. It is important to document with an interview or a statement from the President that this was not done and include it in your grievance file.

3. Back Filing in Withheld Vacancy

The American Postal Workers Union and the U.S. Postal Service agreed to a series of questions and answers on Article 12 on May 18, 2005. Question 18 clearly asks and answers:

> "Do PTF hours worked in withheld duty assignments count toward maximization? No. However, PTFs must be working in withheld positions for their hours to be excluded from the terms of the maximization MOU."

This in itself is an "admission against interest" by the U.S. Postal Service. The language demonstrates maximization may take place under Article 12 so long as the PTFs are not working in a withheld assignment(s). The U.S. Postal Service is obligated to argue and provide evidence that the PTFs are working in a withheld assignment in the grievance process or their affirmative defense will fail.

As you can see, the U.S. Postal Service has an obligation to maximize while under Article 12. Here are some regional arbitration awards that support our position:

AWARDS

Arbitrator Pecklers, Case A00C4AC06246518, pgs. 9 & 10, 2008:

"In that regard, the moving papers established that the only argument made by the former postmaster was related to the Article 12 withholding and that the Union's PTF hours computations were not called into question. "It is also well settled that Article 7.3B represents an independent maximization obligation on the part of Postal Management, and that as the APWU maintains, the total PTF hours may be aggregated for PTF conversion purposes.

From my perspective, however, the critical element that is lacking in Management's case, is any showing that the abundant PTF hours cited were worked in backfilling a residual vacancy that had been properly withheld under Article 12."

Arbitrator Gilder, Case G98C4GC00127475, pgs. 2 & 3, 2003:

"Article 7(3)B mandates the Service increase to the largest number possible, i.e., maximize the number of full time positions in a facility and to decrease to the smallest number possible, i.e., minimize the number of part time employees who have no fixed work schedule. In order to claim a violation of this contract clause, the Union must show that part time employees with no fixed work schedules (PTF's) are working the equivalent in hours of a full time position and the Service has failed to diminish the PTF ranks by creating full time positions out of the work the PTF's are performing.

However, no evidence was submitted to show that the PTF employees in question are currently working in residual vacancies properly withheld under Article 12 so that argument is rendered moot."

Arbitrator Gilder, Case G98C4GC00253957, pg. 3, 2002:

"Documentary evidence submitted by the Union shows the PTFs in question worked in such a manner that they met the criteria of Article 7.3 (C) and qualified for conversion. The Service did not provide any evidence to rebut

this attestation. Rather the Service asserts the affirmative defense of Article 12 withholding. This is, that if any full time positions are created then they are to be withheld for employees being excessed from other installations. While the Service proffers Article 12 as a defense to maximization/conversion, it does not offer any evidence that the PTFs in question were working in positions that were being withheld under Article 12."

Arbitrator Vaughn, Case C98C4CC07087654, page 21, 2009:

"The Postal Service has advanced the notion that in the difficult economic circumstances in which it finds itself, it should not be required to create an FTR position. However, the facts demonstrate that the aggregate hours worked by PTFs effectively constituted a full-time position, and the Agreement has not been modified to excuse Management from maximizing full-time regular positions.

The Postal Service argues that its right to withhold positions pursuant to Article 12 trumps the obligation to fill the position once created, leaving the Union with only a theoretical victory. I am not convinced . In the first instance, the obligation to create the FTR position and convert Grievant to fill its arose in 2001. There is no proof that the Facility was under Article 12 restriction at that time or that, pursuant to Article 12, some other, displaced employee might be entitled to any position thus created. The fact that Washington Crossing might, at some subsequent time, have been subject to Article 12 withholding does not obviate its obligations in 2001."

Arbitrator Gilder, Case C00C4CC06029056, pg. 3, 2010:

"The great weight of arbitral authority, both at the national and regional levels, supports the Union's aggregation of individual PTF employees' work hours to show compliance with the mandate of Article 7.3.B."

"Further, Management contends the Newark facility is under Article 12 withholding; that any position being "backfilled" by a PTF employee would have been withheld under Article 12 and if a residual vacancy was created by conversion, it would likewise be withheld under Article 12. This is essentially a moot issue since nothing was introduced during the course of

this grievance or at the grievance hearing that would show any evidence the Newark PTFs were working in positions being withheld under Article 12 or that any residual vacancies would be created by any PTF conversion."

Arbitrator Kelly, Case B06C4BC07344611, pg. 7, 2010:

"However, once the Union shows that PTF's are working full-time hours, it is incumbent on the Service to show that those hours were being worked to backfill withheld residual vacancies. Otherwise, the "normal" rules of Article 7.3 apply."

Chapter Two

National Level Byars Award

In November 2009 Arbitrator Linda Byars issued a National Level decision on Article 7.3.B of our Collective Bargaining Agreement. This award clearly eliminated the use of hours of part-time regular, transitional, casual and overtime hours of full-time regular employees for Article 7.3.B "maximization." It also eliminated the potential of utilizing bargaining unit work hours performed by postmasters, supervisors, etc. What this award did not do is eliminate the combining of hours of PTF(s) to prove a full-time duty assignment exists.

1. The Postal Service's brief for the National Level case clearly did not argue PTF hours cannot be combined. Within its own text, the U.S. Postal Service clearly states on numerous occasions that the plain language of 7.3.B limits its application to full-time employees and part-time flexible employees.

2. Hub Agreement – the Questions & Answers for PTF clerks working in other installations clearly states that the parties agreed PTF hours could be combined in question 19:

   > "Do the work hours of a PTF clerk from another installation count for the purpose of maximization under Article 7.3.B of the National Agreement? Yes. The PTF Clerks hours are counted in the office when the work is performed. For the purposes of conversion under the full-time flexibles Memorandum, only the hours worked in the home office by the individual part-time flexible clerk counts.

   This Q&A was agreed to after the National Level dispute was initiated. The language is clear in that a HUB PTFs hours may be combined with a home office PTF under Article 7.3.B.

3. Step 4 settlement dated September 14, 1977:

   Step 4, page 16, 1977:

"The NALC, the APWU's Collective Bargaining partner, disagreed with what was perceived at that time as the USPS's position. The Union interpreted Article 7, Section 3 of our Collective Bargaining Agreement to obligate the Employer to maximize

> "...whenever there exists available work to be performed eight hours within ten hours on five of six days in a service
>
> week over a six-month period, notwithstanding how many different part-time flexible employees may have been performing such work over a six-month period."

Based upon the NALC's request, a Step 4 meeting was held on September 14, 1977 and a decision rendered. This Step 4 decision states in part:

"...The need to establish a full-time assignment is not determined exclusively by the third sentence of Article VII, Section 3 ...This provision merely sets forth a particular factual situation, the occurrence of which is considered to indicate that a full-time position is feasible...

This is not to say that there can not be other circumstances which might support the conclusion that a full-time position is warranted...

...Under the circumstances, we consider that the National Level grievance referenced above is resolved."

4. Article 7.3.B language undisturbed/National Awards - the language we have on Article 7.3.B has been undisputed since the beginning of the Collective Bargaining Agreement. National Level Arbitrators have been held in which multiple PTF hours were used and the U.S. Postal Service never argued that PTF(s) could not be combined. The U.S. Postal Service only advanced operational efficiency and Article 3. The U.S. Postal Service clearly is attempting in the Post-Byars-Era to achieve what it didn't bargain for, didn't argue for and never previously argued for.

Here are regional level awards that have clearly sided with the American Postal Workers Union on this argument:

AWARDS

Arbitrator Minnich, Case C06C4CC08397248, pgs. 6-7, 2010:

> "After carefully reviewing the Byars Award, it is concluded that it did not address the Postal Service's obligation to combine Part-Time Flexible hours for maximization purposes. While Part-Time Flexible hours are referenced in the Award Summary, the reasoning employed in the body of the Award indicates that other scheduled work hours were found to be not required in determining whether the conversion of a Part-Time Flexible position was appropriate. This conclusion is consistent with the first sentence of the Award Summary, stating "Article 7.3.B applies only to the relationship between full-time employees and part-time employees with no fixed work schedule." It is also consistent with the cited JCIM language and the longstanding Garrett and Gamser Awards, in which the combination of Part-Time Flexible hours are considered in determining the need for additional Full-Time Regular positions."

Arbitrator Kelly, Case C00C4CC06110587, pgs. 4-6, 2011:

> "In support of that position, the Union offered the Service brief in the Byars case and several Regional Awards issued since that decision. In the brief, the Service did not, in fact, argue that PTF hours could not be combined for the purpose of maximization under Article 7.3.B. The entire argument dealt with excluding the less than full-time hours worked by other classifications of employees, i.e., transitional and/or casual employees and the regularly scheduled overtime hours of full-time regular employees."
>
> "Byars then states:
>
> > The Postal Service position, and the decision in this case, that Article 7.3.B does not include a separate obligation to maximize full-time positions other than by minimizing part-time flexible positions does not implicate the APWU's position that Article 7.3.C is but one way to demonstrate the obligation pursuant to Article 7.3.B, i.e., to maximize the number of full-time employees and minimize the number part-time employees who have not fixed work schedules.

This not only validates the Union position that Article 7.3.B creates a separate enforceable obligation but also shows that Byars did not intend a new interpretation of Article 7.3.B that the hours of part-time flexible employees could not be combined to establish the need for a full-time position.

Finally, in her opinion, Byars' clearly sets forth the Postal Service position as follows, "Rather, it is the Postal Service's position that Article 7.3.B. does not create an obligation to maximize full-time employees other than by minimizing the number of part-time employees who have no fixed work schedules." This make it abundantly clear that the service never to position that the hours worked by part-time flexible employees could not be combined for purposes of maximization.

Indeed, while Byars' award seems to state that PTF hours cannot be combined to establish the need for a full-time assignment; a careful reading in context shows that it does not say that. The language of the award is:

> Article 7.3.B applies only to the relationship between full-time employees and part-time employees with no fixed work schedule (PTF's). The Postal Service does not have the obligation to combine the hours of non full-time employees, i.e., part-time regular, part-time flexible, transitional and/or casual employees and the regularly scheduled overtime hours of full-time regular employees, to maximize the number of full-time employees pursuant to Article 7.3.B of the National Agreement.

The initial language is important. "Article 7.3.B applies only to the relationship between full-time employees and part-time employees with no fixed work schedule (PTF's)." This means that Byars recognizes that Article 7.3.B means that to establish the need for a full-time position, the Union must show that PTF's are working the equivalent of a full-time position. There is no specific finding that this means PTF hours cannot be combined; indeed, it appears that from her Opinion that Byars believes they can be combined."

Arbitrator Thomas, Case C00C4CC04084572, pg. 13, 2011:

> In other words, Arbitrator Byars' decision did not undermine the parties' prior understanding that a full-time position may be established under Article 7.3 "notwithstanding how many different part-time flexible employees may have been performing (available) work over a six month period (performed eight hours within ten hours on 5 of 6 days in a service week)."

Chapter Three

Grieving Article 7.3

It is extremely important when filing a grievance for a violation of Article 7.3 that you cite the proper section within Article 7.3. and that the evidence is included in the file and exchanged with management at Step 2 to prove your arguments. This should not only include the TACS reports for the PTFs in question but a chart, graph, etc. that proves the full-time duty assignment exists. Leave can be counted towards maximization as long as it is not taken solely for the purpose of maximization. The 8 within 9 or 9 within 10 as applicable over 5 days a week or a period of 6 months is essential to the success of your case. The U.S. Postal Service has argued Article 7.3.B is not a separate obligation to convert under the contract. Overwhelming arbitral support has determined that 7.3.B is a separate obligation. Here are some regional awards on this issue:

AWARDS

Arbitrator Vaughn, Case D90C4DC96082131, pg. 11, 2001:

> "I am persuaded that Article 7, Section 3 of the applicable Agreement establishes a general obligation on the part of the Parties to maximize full-time positions and that 3 (c) is not the exclusive circumstance in which conversion to achieve such maximization is required. To hold it to be exclusive would, as Arbitrator Baldovin pointed out, effectively gut Section 3.B. Moreover, for the same reasons."

Arbitrator Klein, Case C90C4CC94012023, pg. 7, 1997:

> "The Arbitrator is of the further opinion that Article 7.3.B. is a "broad policy" pertaining to maximization and it creates an obligation to convert PTFs to full-time status when conversion opportunities can be demonstrated. Article 7.3.B may be interpreted to included a combination of the hours of two or more PTFs to show that a conversion is warranted."

Arbitrator Loeb, Case D90C4DC94006416, pgs. 14 & 15, 1996:

"To take any other position would effectively write Article 7, Section 3.B. out of the Contract, violating the principle that all of the parties' words are to be given effect. The Arbitrators who have taken the position that Section 7.3.B. is nothing more than a declaration of intent and that Section 3.C. is the only method under the Contract by which the intent can be carried to fruition essentially argue that if the parties had intended more from Section 3.B. they would have so stated when they drafted that provision. The argument misses the point because it is just as easy to argue that if the parties intended that the only method by which PTFs could be converted to full-time status was to meet all of the criteria specified in Section3.C. then logically they should have written the two sections as one to read that the Service's goal to maximize full-time employment will occur by way of converting PTF's who meet the standards outlined in Section 3.C. If they had adopted that language or some similar wording then it would be clear that Section 3.B. does not and cannot provide a basis independent of Section 3.C. to convert PTFs to full-time status. The signatories of the National Agreement never chose to adopt that approach even though they are well aware that over the last twenty years the majority of panel arbitrators who have considered the issue have concluded that Section 3.B. places an obligation on the Service to convert PTFs to full-time status and that obligation is independent of and distinct from the obligation outlined in Section 3.C. which has been held to be simply one instance which requires conversion.

There is another reason for concluding that Section 3.B. by itself can justify the conversion of PTFs to full-time status. That reason is that because management has sole control over scheduling employees and assignment work, it would easily manipulate an employee's schedule to keep him or her just below the Section 3.C. threshold and therefore avoid the necessity of converting the position to full-time status even though the employee worked a significant number of hours in the same assignment over a significant period of time. It is doubtful if the Union ever contemplated giving the service such unbridled discretion, especially when to do so should allow management to effectively nullify the operation of Section 3.C."

Arbitrator Baldovin, Case S7C3WC22661, pgs. 8 & 9, 1992:

> "I am constrained to conclude that Section 3.B. requires conversion anytime it can be demonstrated that a full-time position can be accommodated. That is, when sufficient hours of work exist to permit one employee to work 40 hours a week in the same assignment, in lieu of two or more employees working part-time in order to cover the 40 hours. Any other interpretation would for all practical purposes result in writing Section 3.B. out of the 87/90 National Agreement."

Arbitrator Marlatt, Case S7C3EC18642, pg. 10, 1990:

> "For instance." The need to convert an assignment can also be "demonstrated" by proof of other facts and circumstances, including statistical averages or combined totals of work hours, which establish that PTF clerks are actually being utilized in lieu of full-time employees with fixed schedules and that one or more PTF clerks can be converted to such a full-time status without substantially changing the number of clerks scheduled to work at straight time rates during any given hour on any given day."

Arbitrator Blackwell, Case C90C4CC94013880, pg. 15, 1997:

> "I also reject as lacking any contract support the USPS argument that the evidentiary standard for converting the hours of part-time flexible Employees to full-time assignments under Article 7.3.B. requires proof of need to conversion based on evidence concerning the hours and schedule of a single part-time flexible Employee."

Arbitrator Stoltenberg, Case E7C2LC32545, pg. 6, 1992:

> "While several Arbitrators have held that the Union bears the burden of proving that the conversion of PTFs would not adversely impact on efficiency or the cost of the operation, I cannot fully agree. At first blush, it is not clear that the union would have access to the information in order to make that determination."

Arbitrator Stallworth, Case J90C1JC94046522, pgs. 12 & 13, 1994:

"The Service has not argued in this case that it would incur unnecessary increased costs or that employees would be idle if the part-time flexible position were converted to a full-time position. The Service did not present evidence to show that it would be adversely impacted by converting a part-time flexible position to a full-time position.

Article 7 does not contain language stating that the hours of these three types of workers cannot be combined in order to show that a conversion of a part-time flexible position to a full-time position is warranted. It is the arbitrator's opinion that the underlying purpose of Article 7, Section 3(B) would be frustrated by such a determination."

Arbitrator Fullmer, Case J98C4JC99301108, pg. 6, 2007:

"In the abstract it seems to the present arbitrator that the line of cases cited by the Union, especially the case by Arbitrator Loeb, is the better reasoned, i.e., that it is the "Union's Claimed Burden of Proof" which should prevail. This is essentially because evidence with respect to "efficiency" and costliness" are within the custody of the Employer and the subjects is within the area of managements expertise as well. The fairest allocation

then seems to be to categorize these aspects as an affirmative defense by the Employer to the claims by the Union on the basis of the hours worked by PTFs. Once the Employer proffers the affirmative defense, then the burden returns to the Union to rebut the claim."

Arbitrator Klein, Case C7C4LC22361, pgs. 7 & 8, 1991:

"Although it is true that Management has the right to determine the methods, means and personnel by which it will maintain the efficiency of postal operations, the language of Article 7.3. sets forth certain restrictions and obligations regarding staffing.

Article 7.3.B. is a "broad policy" covering maximization of full time employees, and it creates an "independent obligation" upon Management as it pertains to employee complements in all postal installations. Section 3.B.

can be interpreted as allowing for various duties to be combined into one full-time assignment and allowing for part-time hours of more than one PTF to be combined into one full-time assignment."

Arbitrator Penn, Case C7C 4K C3576, last page, 1990:

"Furthermore, the language of Article 7, Section 3.B does not support the claim by the Postal Service that it was justified in using part-time employees in lieu of full-time employees. The language of Section 3.B is clear. It states, "The Employer shall maximize the number of full-time employees...in all postal installations." It includes no exception or qualifications that are applicable to the circumstances here; it does not provide an exemption for an anticipated reduction in the work force or an exclusion if an installation is reverting full-time positions."

Arbitrator Gilder, Case A06C1AC08340883, pg. 4, 2010:

"Through its mathematical analysis of the PTF work hour information provided by the Service, the Union has shown the part-time employees at the Princeton Junction post office are working in a manner consistent wit the requisites of Article 7.3.B and so place an obligation on Management to convert a number of part-time positions to full-time status."

We will now address each section of Article 7 and its application to the grievance process.

1. Article 7.3A – This section once mandated full-time employee percentages in the Clerk Craft, but in this past contract required offices of 200 man years or more be staffed with all regular employees.

2. Article 7.3.B – This is the section in which we achieve most of our conversions. It is critical when grieving for the aggregate hours of PTFs to cite this section. It is also critical to cite Article 7.3.B when grieving reversions where the job is backfilled with PTF(s). Again, it is important to demonstrate that the combination of PTF hours make a full-time duty assignment.

3. Article 7.3.C – This section is very clear in describing what must be done to be successful in the grievance process. One part-time flexible can only be used to

show a job on the same 5 days a week working 8 within 10 hours and within the same assignment over a 6 month period. This places an additional burden of showing the PTF in question is working the same duties for 6 months. PTF statements and interviews are critical for meeting this burden and it is a particularly heavy and demanding burden.

4. Full-Time Flexibles Memorandum:

"MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE AMERICAN POSTAL WORKERS UNION, AFL-CIO

Re: Maximization/Full-time Flexible – APWU

Where a part-time flexible has performed duties within his craft and occupational group within an installation at least 40 hours a week (8 within 9, or 8 within 10, as applicable), 5 days a week, over a period of 6 months, the senior part-time flexible shall be converted to full-time status.

This criteria shall be applied to postal installations with 125 or more man years of employment.

It is further understood that part-time flexibles converted to full-time under this criteria will have flexible reporting times, flexible nonscheduled days, and flexible reporting locations within the installation depending upon operational requirements as established on the preceding Wednesday.

The parties will implement this in accordance with their past practice.

Date: July 21, 1987"

The Full-Time Flexible Memorandum is similar to Article 7.3.C in that one PTF must be used for a 6 month period. The language is not as strong because it simply states performed duties within the craft rather than the same assignment language. The criteria is applied in the memo for partial installations with 125 or more man years of employment. The conversions that occur under the memo guarantee 40 hours but have flexible reporting times, days off and reporting locations within the installations depending upon operational recommendations established on the proceeding Wednesday.

Chapter Four

Remedy

In writing this guide we decided to dedicate a separate Chapter on the proper requested remedy.

First, don' ask for a particular person to be converted to Full-Time Status. The reason you wouldn't is if you ask for John Doe to be converted and he already has been converted since the grievance was filed, a proper remedy cannot be achieved.

The proper remedy is to ask for the Senior PTF(s) converted to Full-Time Status and that they be made whole in every way. We also suggest as a catch-all that you request the Union be made whole.

You should also specifically request out-of-schedule compensation pay, i.e., overtime, administrative leave, guarantee, holiday pay, etc.

Chapter Five

New Language

The New Language in our new Collective Bargaining Agreement provides exciting opportunities for PTF(s) in Level 20 offices and below. In this chapter we will discuss strategies to achieve conversion to full-time status under the new Collective Bargaining Agreement (traditional, non-traditional and full-time flexible). This language may not only be used for part-time flexible conversions but also may be used to expand full-time duty assignment hours. The language also may be applied to newly established positions, as well as, vacant position. Article 37.4.D establishes a minimum of a 120 day period to prove a duty assignment has been demonstrated. In filing your grievance, be sure to specifically show the assignment/s over the time frame.

Applying these provisions:

1. **Article 7.1.B.4**

   When the hours worked by a PSE on the window demonstrate the need for a full-time preferred duty assignment, such assignment will be posted for bid within a section.

   This language will limit the usage of PSE's in retail/customer services (Function 4) based on the fact that if the U.S. Postal Service over-utilizes PSE's, a grievance may be filed and a job created. Remember, with the creation of non-traditional duty assignments, we now only need 30 hours of work to be performed to create a full-time job.

2. **Article 37.3.A.1**

   The New Language inserted into Article 37 states:

   > "Every effort will be made to create desirable duty assignments from all Available Work hours for career employees to bid."

This language agreed to by both the U.S. Postal Service and the American Postal Workers Union places a heavy burden on management to establish full-time assignments from all available work hours. We now have language that overrides the Byars National Level Award and allows us to aggregate work hours to show a duty assignment. Overtime, PSE and PTF hours are work hours.

Supervisors and Postmasters bargaining unit work hours exceeding the limits now assigned to them are available work hours. Hours worked over the percentage cap by PSE's are available work hours. Available work hours in conjunction with Article 7.3.B provides us with strong language to proceed forward and create full-time duty assignments in Level 20 and below offices. We must utilize this language to establish bid jobs for the small office PTF(s) and provide them with protection against having their hours reduced.

3. **Memorandum of Understanding Re: Non-Traditional Full-Time (NTFT) Duty Assignments in Retail Operations, Level 20 and Below Office**

   This Memo states:

   > "The parties agree that for Retail Operations in Level 20 and below offices non-traditional full-time duty assignments may be created when the Union can demonstrate the need for such non-traditional duty assignments and it is economically and operationally advantageous to do so."

   This language once again gives us the right to grieve for job assignments. Remember you can grieve for 30 hours and above assignments. Forty hour assignments do not have to be eight hours over five days. They may be different hours on each day now. For example, a duty assignment may be 10 hours on Monday, 7 hours on Tuesday, 7 hours on Wednesday, 6 hours on Thursday and 10 hours on Friday with Saturday and Sunday off. You may also show a job assignment over a six-day period now. The hours minimum is now 4 hours a day and to get conversion a split-shift may also be utilized.

As you can see, the door has been opened to convert PTF(s) in Level 20 and below offices and we must take advantage of the new contractual opportunities.

The following awards have used the new language in Article 37.3.A.1 with great success in achieving desirable duty assignments:

AWARDS

Arbitrator Reeves, Case E10C1EC12356198, pg. 7, 2013:

"Article 37.3.A.1.

The language agreed to by the Parties in the last sentence of this Article is clear, unambiguous, and written in bold font for obvious emphasis, **"Every effort will be made to create desirable duty assignments from all available work hours for career employees to bid."** In addition to the bold font, this sentence emphasizes its directive by stating "every" effort will be used by management, "all" available work hours will be considered, with the objective of constructing "desirable" duty assignments, i.e. two consecutive days off, etc. The negotiators' language indicated their primary concern to be the creation of desirable duty assignments for career employees, not PSEs.

The Agency offered no evidence in testimony or exhibits that appropriate managers even considered this requirements delineated in Article 37.3.A.1. Certainly, the creation of the PSE position was intended to provide management with greater flexibility of staffing and efficiencies of cost. However, the negotiators clearly did not propose to use PSEs and revert full-time positions to the detriment of career employees."

Arbitrator Duncan, Case G104GC12377892, pgs. 2-3, 2013:

"Based upon the record and the evidence presented it is clear that the Service has not made every effort to create duty assignments from all available work hours for career employees to bid as required by Article 37.3.A.1.

As stated by Arbitrator Holley in case number G11C-4G-C 11342805 "the category of full time regular employees is no longer is (sic) confined to employees assigned to traditional schedules that do not comport with the

language (or the language in Article 8). The category of full time regular employees is no longer confined to employees assigned to traditional schedules as defined in Article 7".

Arbitrator Holley goes on to state "the Memorandum of Understanding on page 310 has no set formula for creating an NTFT duty assignment. The language states that an NTFT duty assignment may be created when the Union can demonstrate the need for such non traditional duty assignments and it is economically and operationally advantageous to do so."

The Union has demonstrated based upon the record and the evidence contained therein that there is a need for a non traditional full time duty assignment.

AWARD

The grievance is sustained. Grievant shall be converted to a NTFT position and made whole."

Arbitrator Holley, Case G11C4GC11342805, pgs. 18-20, 2012:

"Now turning to the present matter under new language in Article 7.3.1, Article 37.3.A.1, Memorandum of Understanding on page 310, and memorandum of Understanding, pages 311 to 315, the Dadeville AL Post Office employs 1 traditional full-time employees (sic), 1 part-time flexible employee, and 1 PSE. Article 7.3.b. requires the Employer to "maximize the number of full-time employees ..." ... article 7.3.C. states that

> A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six month period will demonstrate the need for converting the assignment to a full-time position.

The new language of the 2010-2015 creates additional opportunities for creating full-time duty assignments positions, the Non-Traditional Full-Time (NTFT) Duty assignment and Article 37.3.A.1 states:

> Every effort will be made to create desirable duty assignments from all available work hours for career employees to bid.

The Memorandum of Understanding on page 310 has no set formula for creating a NTFT duty assignment. The language states that a NTFT duty assignment may be created when the Union can demonstrate the need for such non-traditional duty assignments and it is economically and operationally advantageous to do so." Under the MOU on pages 311-315, the NTFT duty assignment allows for

- split shifts
- flexible work schedules
- more or less than 8 hours per day
- working more than 8 hours per day without overtime
- 30 to 48 hours per week
- over 6 days

When Ms. Ray was asked about the NTFT duty assignments, she testified that she was <u>not</u> aware that a person holding a NTFT position could be assigned a schedule of more than 5 days, that there could be split shifts, or that the person could be assigned a schedule to report to work at different times.

In addition, when a PTF clerk retired, this clerk was not replaced. Instead, the Grievant was assigned additional hours. Then later, a new PSE was hired to work during hours when the Grievant did not. The parties agreed in the new 2010-2015 Agreement in Article 37.3.A.1:

> Every effort will be made to create desirable duty assignments from all available work hours for career employees to bid.

The parties have created another avenue for establishing the need for a full-time duty assignment, the non-Traditional Full-Time (NTFT) duty assignment. In the present matter, the evidence supports conversion to a PTF to a full-time duty assignment."

Arbitrator Fletcher, Case E10C4EC12345580, pgs. 5-6, 2013:

"What is involved in the instant matter the question of appropriateness of excluding non-career work hours when "(creating) desirable duty assignments from all available work hours for career employees to bid" when doing a Function 4 review of a particular station. A fair reading of the newly added language to Article 37.3.A.1 forces the conclusion that "all available work hours" must be used to create "desirable duty assignments". Had the parties intended that the phrase "all available work hours" mean something less than its clearly understood meaning, they were most certainly capable of indicating this result with plainly understood language. That they did not exclude a single work hour from the phrase "all available work hours" forecloses this Arbitrator from doing so.

Accordingly, to now embrace Management's arguments on the application of Article 37.3.A.1 as a correct reading of the provision, the additional language the parties negotiated would be effectively nullified. The phrase, "every effort", has to mean something. "All available work hours" also has to mean something. This language cannot be ignored when doing a Function 4 matrix.

The requirements of Article 37.3.A.1. were violated when the Postal Service failed to include all available clerk Craft work hours in the development of its staffing package for Industrial Station. The Union's grievance will be sustained."

Arbitrator Kelly, Case C11C4CC12075102, pgs. 7-10, 2013:

"Discussion

The operative language of the MOU is paragraph 19 which added to Article 37.3.A.1, the following language:

> Every effort will be made to create desirable duty assignments from all available work hours for career employees to bid.

NTFT employees are career employees. PSEs are not.

Article 37.3.A.1 applies to all newly established or vacant Clerk Craft duty assignments to be posted, not jut NTFT assignments. The MOU provides that vacant traditional FTR duty assignments can be posted as non-traditional full-time assignments.

In this matter, the heart of the parties' disagreement hinges on three issues. The first is the definition of "desirable duty assignments". As can be seen above, the Union takes the position that a desirable duty assignment is 40 hours/5 days a week; the traditional FTR assignment. The Service approach is that a desirable duty assignment can vary from individual to individual, but that a 40 hours/5 day schedule is not the only desirable duty assignment. The Service agrees that traditionally, a desirable duty assignment for a FTR has been a 40 hours/5 days a week schedule, but the parties created the NTFT position knowing that those schedules would not necessarily be 40 hours/5 days a week schedules. Indeed, in a Function 4 office, "Management may create as many clerk NTFT assignments of 30-48 hours in the facility as operationally necessary." The parties also disagree on what it means to be "operationally necessary" and who has the burden of establishing that.

The final related issue is what the parties meant by "all available work hours". Again, the Union takes the position that, "The only work hours that would not be 'available' are the hours of an already existing FTR assignment. "All available work hours' would include: **all PSE hours, all NTFT hours,** and **all FTR overtime hours."** The most significant of these hours for present purposes are those of the PSE. The Service position is that the PSE hours are being utilized to maximize flexibility in the office, just as the new contract contemplated, and are not "available" to give to NTFTs.

The only available guidance on these issues is one of the Questions and Answers provided by the APWU unilaterally. As noted by the APWU, these Q&As have not been agreed to by the Service and are provided to the Union membership for their guidance. Question 87 states as follows. I must note here that this language is contained in the MOU for NTFT Assignments in Retail Operations, Level 20 and below.

> 87. The parties have agreed that NTFT duty assignments may be created when the Union can demonstrate the need for such

> NTFT duty assignments and it is economically and operationally advantageous to do so. What is the significance of the "economically and operationally advantageous" provision?
>
> ANSWER: This MOU must be read in conjunction with the Service's Article 7.3.B requirement to maximize and/or Article 37.3.A.1 obligation to make "every effort to create desirable duty assignments from all available work hours for all employees to bid." The "economically and operationally advantageous" provision was included as the result of the Union's recognition that there may be installations with significant seasonal fluctuation in volume and work hours (e.g., college towns, seasonal resort areas, snow-bird locales).

Based on this Q&A, it appears that the Union recognizes that it has the burden of demonstrating the need for NTFT assignments in these smaller offices; that such assignments should be full-time, i.e., 40 hours/5 days a week (Article 7.3.B and Article 37.3.A.1); and that NTFT positions might not make sense in those facilities with "significant seasonal fluctuations". Again, the language only applies to Level 20 and below offices and the Service has not agreed to these views. I, too, am only using it for some guidance in that absence of anything else.

The first question, then, is whether management had to minimize or eliminate the PSE hours when creating the new NTFT assignments under the new language in Article 37. "Every effort will be made to create desirable duty assignments from all available work hours for career employees to bid." In conjunction with that language, Article 7.3.B provides, "The employer shall maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedules in all postal installations."

The new contract eliminated Casual and TE employees and also PTF positions in larger facilities. In their place, the parties created the new Postal Support Employees (PSE) category. PSEs non-career bargaining unit

employees. Like the Casuals they replaced, they have no daily or weekly work hour guarantees. They have a term of 360 days. Also of interest, the MOU provides that:

> When the hours worked by a PSE on the window demonstrates the need for a full-time preferred duty assignment, such assignment will be posted for bid within the section.

Thus, for the purposes of Article 37.3.A.1 and Article 7.3.B, which apply to the creation of NTFT assignments, PSEs should treated the same as Casuals. I have held in the past that Article 7.3.B requires that management minimize or eliminate Casual hours to created a full-time position and I hold the same with PSE hours. By analogy, the new language of Article 37.3.A.1, that applies to NTFT employees as career employees, means that management has to minimize or eliminate PSE hours to create full-time positions for NTFTs. The new provision in the PSE MOU quoted above also strongly indicates that this was the intent of the parties.

Finally, I find that the phrase "operationally necessary" refers to management's ability to create NTFT assignments usually to replace FTR assignments.

Having held that the new contract language means that management had to minimize or eliminate PSE hours to create full-time, 40 hours/five days a week, NTFT positions, I find that management violated the collective bargaining agreement. I am directing that at least two of the NTFT positions have the number of weekly hours increased to 40 with 2 N/S days per week. The parties are directed to meet within 30 days to negotiate the status of the third NTFT a fixed or flexible schedule. Those positions are to be reposted. Management is directed to cease and desist from not minimizing PSE hours to create full-time (40 hours) NTFT assignments."

Arbitrator Brown, Case B10C4BC13053867, pgs. 5,6,7, 2014:

"As to substance: The last sentence of National Agreement Art 37 3A1, newly added in the current version of the National Agreement, imposes a new obligation on the Service, and was added in the same agreement that permits the Service to create and post Non-Traditional Full-Time (NTFT)

Duty Assignments that may range from 30-48 hours per week. Taking these together, it is apparent that the Service acquired the right to assign regular employees shorter or longer hours than the traditional 40 hours, five days a week, but also acquired the obligation to use that right, to a specified extent, to create new duty assignments that would be cobbled together from hours worked by non-career employees and employees working overtime.

The Service asserted as this grievance worked its way up through the process that it had no obligation to add personnel, but that assertion misses the point here. The obligation that it does have is to post career duty assignments in preference to using non-career employees and regular employees working overtime to cover the work, and those postings in turn may protect jobs, or even force the addition of personnel, in a variety of ways beyond the scope of this hearing. The Union provided a very substantial analysis of data that it obtained from management, and that data established, on its face, that there were sufficient hours worked by non-career employees and on overtime to justify the shifting of some (or even all) of those hours to new career postings.

Once that showing was made, the Service, in order to participate in the contractually required meaningful way in the grievance procedure, was required to rebut (or by default accept) the Union's showing. It did not rebut with any facts or analysis of the numbers or assignments, and merely bluntly denied that the obligations asserted by the Union to exist, existed at all. It asserted that the Union had failed to take all relevant factors into account when assembling its figures, but made no showing whatsoever as to how those factors would have produced a result favorable to its position. It could and should (if it believed that it should prevail) have performed its own analysis of the number, which might conceivably, for example, have shown that the actual PSE assignments were so fragmented or intermittent that positing of duty assignments to perform the work was not practical.

The Union cited to a National arbitration award issued by Arbitrator Stephen B. Goldberg (Q10C-4Q-C 1232079, June 17, 2013) in support of its case. That award was not new law, as it merely applied classic contract principles to the new language of the agreement. The Union in that case was asserting that Art 12.5.B.2 of the agreement, which requires that the Service "identify duty assignments" held by PSEs and post them for the

benefit of excess career employees, required that such assignments be aggregated to create full time jobs, while the Service maintained that the word identify meant just that, i.e., to identify and make available assignments as they already existed.

Arbitrator Goldberg decided in favor of the Service, and supported his reasoning in part by reference to the language invoked by the Union in this case, which uses the term "create" rather than "identify." He notes that this demonstrated that the negotiators understood the difference between the two words, and said that the term create meant what it said, which in the context of that case meant cobbling together hours to create new desirable duty assignments where those assignments do not presently exist. While the issue here was not the issue in that award, Arbitrator Goldberg's dicta in that case carries much weight, and in any event, based on my own analysis (which is what matters here) I hold that his analysis is correct. The prevailing principle here is that where PSE hours are worked to a great enough extent to provide the basis for assembling new career assignments, every effort must be made to make the latter assignments. "

Arbitrator Vaile, E10C1EC 13013167, pages 11,12), 2014:

"However, all of these cases predate the new language in Article 37.3.A.1, that "[e]very effort will be made to create desirable duty assignments from all available work hours for career employees to bid." Similarly, all of the cases cited here by the Service to support its position that it acted reasonably and/or not arbitrarily or capriciously in reverting position #70410047 also predate the new language in Article 37.3.A.1

Today, in contrast, the new language of Article 37.3.A.1 makes clear that there is a higher standard imposed on reversions where PSEs are also being utilized, as evidenced by the phrases "every effort," to create desirable duty assignments," and "from all available work hours." Additionally, this language must be read together with other contract provisions:

- Article 7.3.A.1, abolishing all part-time regular (PTR) positions, and part-time flexible (PTF) positions in large facilities, and subjecting non-regularly scheduled PTFs in smaller facilities to the minimization requirements under Article 7.3.B;

- Article 7.3.B, requiring the Service to maximize full time employees while minimizing part-time employees who lack a fixed schedule; and

- The PSE MOUs, creating a new flexible non-career position whose schedule can be changed, to replace all other casual, transitional and supplemental positions.

Reading all of these provisions together compels the conclusion that the parties intend the Service shall now combine the hours of both non-regularly scheduled PTFs and PSEs (who are inherently non-regularly scheduled but may or may not be part time) where appropriate, to maximize the number of full-time employees. See Arbitrator Reeves, Case No. - 6198 (2013), supra, and cites therein. This is in sharp contrast to results under prior contracts. As the Service points out, National Arbitrator Linda S. Byars previously concluded that Article 7.3.B did not require the combining of hours of non full-time positions such as PTRs, PTFs transitional and/or casual employees, or of regularly scheduled part-time employees. See Case Nos. Q94C-4Q-C96096822,-6823 AT 1, 7, 13(2009). However, the National Byars authority is no longer relevant here because the non full-time positions cited therein no longer exists for the most part, and PSEs are by definition not regularly scheduled.

Similarly, National Arbitrator Byars concluded that "the record does not demonstrate that the Postal Service assumed in the 1971 National Agreement, or at any time later, the unqualified obligation to maximize the regularly scheduled full-time work force under Article 7.3.B of the National Agreement." Id. At 12. However, the record *does* now demonstrate that the Service has assumed such an obligation under Article 37.3.A.1 and elsewhere to maximize the regularly scheduled career or full-time work force and minimize its reliance on PSEs.

Thus, the undersigned rejects the Service's argument at Step 3 that Article 37.3.A.1 "applies only to 'how' and 'when' newly created or vacant positions **should be posted**, not "when Management must **create** new positions." (Jt. 2, at 4, emphasis in original). For the reasons already discussed, Article 37.3.A.1 clearly goes well beyond mere procedural directives."

Arbitrator Parker, Case B10C4BC 13170539, pgs. 5, 6, 2013:

"There was nothing in the moving papers to suggest real economies were achieved, especially when the PTF was actually working more hours. It is hard to argue there is less work unless demechanization has occurred, taking longer to do the same work.

Management position that what it needed was flexibility seems to be disingenuous when the PSE works the same, but longer hours, than the FTP the flexible replaced.

Although the union did not originally challenge the reversion, when the union learned the real intent was not to downsize the workforce, but rather, upsize the FPT staff, then the union grieved. "

Arbitrator Gomez, Case E10C4EC 11325714, pg. 14), 2014:

"The evidence demonstrated that the Tecumseh Post Office is a Level 20 and below office, and that the Grievant is a part-time employee who has no fixed work schedule. The above language and Article 7.3.B, to which it specifically refers, obligate the Postal Service to maximize the number of full-time employees and minimize the number of PTF employees who have no fixed work schedules. Moreover, new language added to Article 37.3.A.1 directs that "every effort will be made to create desirable duty assignments from all available work hours for career employees eligible for opportunities and benefits not available to PTFs, yet which give Management scheduling flexibility without substantially increasing costs."

Arbitrator Neveu, Case G10C4GC 12112973, pgs. 12, 13, 16, 2013:

"A review of the record reveals that upon filing the grievance, the Union contended that Management violated the collective bargaining agreement through its assignment of an RCA to perform clerk work, and that Management also violated that agreement when it failed to aggregate the hours worked by the RCA in the clerk craft to maximize full time employment by creating and posting a full time position. Although Management admitted that it assigned an RCA to perform clerk craft duties in violation of the collective bargaining agreement during the grievance

process, it denied that the remedy requested by the Union-- the posting of a full-time position—is appropriate. The Parties have stipulated that monetary payments have been made to all employees at the Trussville, Alabama Post Office affected by the violation, that the Union is not seeking any further monetary award.

At Step 3 of the grievance process, Management argued that the Union had not demonstrated the need for non-traditional duty assignments and it is not economically and operationally advantageous to do so.

However, the hours of the PTF's on loan to the Trussville Office, supervisor and postmaster/OIC must be added to the hours worked by the RCAs in the clerk craft.

AWARD

The grievance is sustained. Based on the undisputed and stipulated facts in the record, the Union has met its burden of proving that the Service is not in compliance with its duty to maximize full-time assignments from all available work for bidding by career employees as required by Articles 7.3.B and 37.3.A.l. Management at the Trussville, Alabama Post Office is hereby directed to convert a PTF to a traditional or nontraditional full-time position. The Arbitrator retains jurisdiction over this matter for at least 90 days solely for the purpose of implementation of the remedy."