

**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 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 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

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NUMBER I

ARTICLE 12

PRINCIPLES OF SENIORITY

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.

NUMBER II

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 CONTRACT 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.

Further, 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 mandatory information, 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.

NUMBER III

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.)

NUMBER IV

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.

NUMBER V

THE ISSUE

**REDUCIBLE HOURS – PTF, CASUAL, LIGHT AND LIMITED DUTY, FTR
OVERTIME – TO PREVENT FULL TIME REGULAR 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	L/LD Hours	Reducible Total
PP 1/Wk 1					
Saturday					
Sunday					
Monday					
Tuesday					
Wednesday					
Thursday					
Friday					
PP 1/Wk 2					
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 invariably 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, aka involuntary reassignment. Remember, it is critical that you begin your tracking process as soon as the 6-month notice occurs. Your Request For Information must document your progress in obtaining and tracking the USPS efforts (or lack thereof) to reduce the reducible.

NUMBER VI

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.

NUMBER VII

THE ISSUE

EXCESSING TO MORE DISTANT INSTALLATIONS WHILE CLOSER “LANDING SPOTS” EXIST.

THE COLLECTIVE BARGAINING AGREEMENT

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.

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

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 locations – while closer landing spots exist – the USPS is in violation of the basic principle of Article 12. Closer is less disruptive - and inconvenient - than 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.

NUMBER VIII

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 burden is upon the USPS to prove – with tangible bonafide evidence – that it 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.

NUMBER IX

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

NUMBER X

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.)
- Mileage
- Travel Time Pay
- Holiday Work Pay/Leave Credit
- Conversion of PTFs to FTR

We must be as specific with our requested remedies as possible. General, vague and/or confusing remedies will only afford management and/or our employee arbitrators the opportunity to reduce and/or deny violation remedies.

NUMBER XI

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, whichever 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 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 exceeded.

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.

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.² 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.

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.

² 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.

NUMBER XII

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.