# IN NAME ONLY

A Case Study of Arbitral Authority on the Impact and Effect of the Continuing Existence of the Work in Question on a Management Decision to Revert, Abolish, Excess or Repost a Clerk Craft Duty Assignment

**Arbitrator Bernard Dobranski, C4C-4H-C 4484, Topeka, KS, 3-14-88**

When the incumbent retired, the USPS notified APWU of their intent to revert the vacant Information Clerk duty assignment. Less than 2 weeks after the job was reverted placed an injured employee into the assignment. Some 3 months later a Relief Window Distribution Clerk duty assignment was posted including "Relief Information Clerk" as one of its duties. The Arbitrator said (at Pages 12-15):

> "There is no doubt that the Postal Service has the right under the National Agreement to revert a position…In this case, ostensibly exercising its discretion to revert a position, the Postal Service gave notice of the reversion of the…Information Clerk position as required under Article 37.3 (A) (2)…
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> "The key question for resolution in this case is whether the Postal Service violated the National Agreement by this action. After a careful examination and evaluation of the evidence, it is my conclusion that it did.
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> "The National Agreement was violated because, in fact, there was not a reversion of a position which was vacant. Rather, the reversion, in a real sense, was illusory. What remained after the reversion was a set of duties and responsibilities which the evidence showed to be regularly scheduled during specific hours of duty. These duties and responsibilities are the same ones in the position supposedly reverted, and they constitute a a duty assignment, within Article 37.1. (B), which should have been bid by full-time employees according to mechanisms for bidding set forth in Article.1 (D). The failure to do so constitutes a violation of the National Agreement.

"The finding that a genuine reversion did not take place is based on the fact that the Union established through a preponderance of the evidence that the duties and responsibilities of the position which were filled for eight hours a day by the employee in that position before it reverted continued to be filled by different employees after the position was reverted. They were first performed after the reversion by Guffy and then by Thompson. In addition, when Guffy was absent, they were performed by relief clerk Epperson. This latter fact – the use of Epperson in relief of Guffy – is especially significant in persuading me that a full time assignment remained after the reversion. If the Postal Service was simply trying to find light duty work for Guffy, there would appear to be no need for a relief clerk to fill infor him when he was not present.

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"It is true that the Postal Service has the right under the Agreement to revert a position and once having done so can distribute the duties around to other employees. But that is not what happened here. If it had – if for example, the responsibilities had been distributed or worked significantly fewer than eight hours a day or if the responsibilities had been performed only sporadically or by a number of different employees – the result in this case might have been a different one. But that is not the case presented. Here, the Union established a prima facie case against the reversion having truly occurred, and the Postal Service did not really rebut that case, but, in the main, merely asserted its right under the Agreement to revert a position."

**Arbitrator Thomas F. Levak, W7C-5K-C 22368, Salt Lake City, UT, 3-4-91**

Two (2) former letter carriers occupied rehabilitation job offers in the box section. Upon the retirement of a bid FTR distribution clerk from the section, management reverted the position because they were overstaffed. Shortly, thereafter, management also modified the rehabilitation job offers of the two (2) injured employees, reducing their time in the box section to six (6) hours and four (4)

hours respectively. The Union argued that by reverting the duty assignment, while retaining limited duty employees in the section, this necessarily was detrimental to the remaining employees. The Arbitrator said (at Pages 5-7):

> "The Arbitrator concludes that the Union has established that the Service violated Article 37.3.A.1. No violation of Articles 13 or 19 occurred. Accordingly, the grievance will be sustained. The following is the reasoning of the Arbitrator.
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> "…[T]here was no timely Article 37 grievance filed at the time Kingery and Nielsen became full-time employees in the box section. The question thus becomes: Did the retention of Kingery and Nielsen in the box section on a less than full-time basis each, but on a combined full-time basis, after the reversion indicate that a full-time regular box position still existed? Stated another way: Was Article 37.3.A.1 violated at the time of the reversion?
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> "The question is a close one. After the reversion, Kingery and Nielsen did not perform any of the duties or responsibilities of the reverted position. Those duties and responsibilities were performed by full-time box section clerks. Also, after the reversion, neither Kingery nor Nielsen remained in the box section full-time. Rather, both received new reassignments which left Kingery in the box section for 6 hours and Nielsen for only 4 hours. On the other side of the coin, their combined hours in the box section equaled a regular full-time assignment.
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> "…The question thus becomes: Does 6 hours plus 4 hours per day, 5 days per week on a regularly scheduled basis equal one full-time position? The Arbitrator believes that those regularly scheduled combined hours create a prima facie case and rebuttable presumption that a single full-time position did remain in the box section at the time of reversion, a presumption that the Service has not overcome through evidence of its own. Thus, the Arbitrator must conclude that the

> Service violated Article 37.3.A.1. Upon Ross' retirement a vacancy came into existence that the Service was not entitled to revert."

**Arbitrator John C. Fletcher, C7C-4A-C 20645, Franklin Park, IL, 7-31-91**

Upon the retirement of a FTR Distribution Clerk, the Employer reverted the vacant duty assignment in this small office (25 FTR's, 8 PTF's & 1 casual before the retirement) and added an additional PTF. The Union's argument focused on management's obligation to maximize the number of FTR duty assignments. The Employer's argument stressed management's rights (Article 3) and their right to revert vacant duty assignments under Article 37. The Arbitrator said (at Page 10):

> "…[T]he Service did not demonstrate, indeed did not attempt to demonstrate, that any work of the job had vanished or that there were long periods of unproductive time during its assigned hours.
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> "On this record there is no question that Management of the facility desired greater flexibility in effecting schedules and sought to accomplish this result with the replacement of a FTR with one or more PTF's.
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> "It is our view, developed from careful study of the applicable provisions of the Agreement and detailed review of the Awards submitted for our consideration that reversion of a vacant FTR position with the simultaneous addition of a PTF for the stated purpose of enhanced flexibility, without more, generates an almost unrebuttable presumption that maximization commitments expressed in the Agreement are being frustrated…"

**Arbitrator Fallon W. Bentz, S7C-3C-C 34986, Oxford, MS, 3-24-92**

Upon the retirement of a FTR Distribution/Markup Clerk, the Employer reverted the vacant duty assignment. The office complement changed from 5 FTR Clerks

and 3 PTF's to 4 FTR's, 4 PTF's, & 1 casual after the reversion. The Union argued a violation of Article 7.3.B. The USPS argued their right to revert vacant duty assignments under Article 37.3.A.2. The Arbitrator said (at Pages 7-8):

> "…[T]he Postal Service has established that it is indeed operating in a more efficient manner since the retirement of Mr. Hill.
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> "Turning to contractual considerations, it is concluded that while Article37, Section 3 A 1 and 2 provide the procedure to revert vacant positions pursuant to the Postal Service's Article 3 management rights, such cannot be exercised in violation of Article 7, Section 3, B that the Postal Service 'maximize the number of full time employees and minimize the number of part time employees…' Certainly, if the Postal Service suffered a diminished work load based upon technological advances or reduced volume of mail, it perhaps would be justified in reverting the vacant position. But, the undersigned cannot conclude that such was the case here. Although I am convinced from the Postal Service's presentation that it now conducting a more efficient operation, this commendable end cannot justify ignoring the mandate of Article 7, Section 3 B…"

**Arbitrator Robert W. McAllister, C7C-4U-C 26105, Delta, CO, 1-10-92**

The Employer reverted the FTR duty assignment after the incumbent accepted a disability retirement. Finding that "much of the work performed by the former employee…continues to be performed by casual and PTF employees," the Arbitrator said (at Page 7):

> "In summation, the Arbitrator finds management wanted to improve cost efficiency through the use of a flexible work force. It is important to note, however, that the Postal Service was unable to show that the work performed by [the incumbent of the reverted position] disappeared or was not shifted to casuals or PTF's. The evidence indicates otherwise. Therefore, in the absence of a sound business

reason, other than increased flexibility, the provisions of Article 7.3.B cannot be ignored. The Postal Service argued that a decline in volume supported its reversion. But, as indicated, the record establishes that the work performed by [the incumbent of the reverted position] continues to be performed by a PTF. Thus, management's position is reduced to a claimed need for flexibility which, under the narrow facts of this case, is not persuasive."

**Arbitrator Elliot Goldstein, C7C-4Q-C 31257, Carbondale, IL, 6-30-94**

Management abolished a Distribution Clerk duty assignment. The Union argued that the eight (8) hour assignment never went away but that management merely redistributed the work among other employees. The Arbitrator said (at Pages 27-28):

"[T]he employer's decision to abolish a job is always subject to the initial factual predicate that the employer prove that there was, in the first instance, less than a routine or normal eight-hour work assignment in the abolished slot. In that sense, there must be a fair and honest management conclusion that the particular slot is really 'excess' to the needs of the Postal facility and that the required work to be done which involves the particular bid position is less than eight hours. It is not enough to show that there is a need to save hours, even if that needs grows out of a Methods Improvement Survey or audit, or there is a Management determination that a reconfiguration of several jobs would save man hours, as apparently occurred here. Bid jobs give more protection than that under the National Agreement."

**Arbitrator John C. Fletcher, I90C-4I-C 94008879, Iron Mtn, MI, 12-6-95**

The Employer abolished a level 6 Accounting Technician duty assignment and posted a level 5 Distribution Clerk/Accounting duty assignment with the annotation that the incumbent would receive level 6 pay when performing accounting duties.

The impacted clerk was also the successful bidder on the new duty assignment. The Arbitrator said (at Pages 8-9):

> "Turning to the merits, the substance of several of the arbitration citations submitted by the Postal Service, emphatically teach that the Agreement does not restrict Management's privilege to abolish unneeded positions. This Arbitrator does not quarrel with this result, in fact it is embraced wholeheartedly when an unneeded position is actually abolished. This, though, is not the result of the personnel action accomplished in the abolishment under review here. In this case, the evidence is overwhelming that the reasons suggested for the abolishment of Grievant's position were pretextual. The number of occupied duty assignments within the installation were not reduced, the situation contemplated in an abolishment, as defined in Article 37.1.F. It is patently obvious, in this record, that the only thing that was accomplished, through the abolishment, was a reduction grade, from a Level 6 assignment to a Level 5 assignment. As, according to the evidence available, following abolishment Grievant (and his successor(s)) continued to do exactly the same work, both as to function, substance and amount, that he was doing before. But now, instead of being considered an Accounting Technician he was classified as a Distribution Clerk/Accounting."

**Arbitrator Joseph S. Cannavo, Jr., A90C-4A-C 94011704, Clifton, NJ, 2-6-97**

With the implementation of ETC, the Employer abolished grievant's level 5 Time and Attendance Clerk duty assignment. The Union argued that after the alleged abolishment, grievant, as an unencumbered clerk continued to work the same hours and perform all of the same duties that she had while in the bid duty assignment. The Arbitrator said (at Pages 22-25):

> "Based on these findings, the Arbitrator concludes that by clear and convincing evidence, the Union established that the Grievant's duty assignment as Time and Attendance Clerk continued to exist after it

was officially declared abolished and that Article 37 was therefore violated.

"There is no doubt but that Articles 3 and 37 of the National Agreement give Management the right to abolish jobs. The definition of abolishment requires that Management reduce duty assignments. In the instant case, the Union presented evidence that the duty assignment in place and worked by the Grievant for ten (10) years prior to June13, 1993 was not reduced after that official date of abolishment…

"…The Postal Service relied upon an audit conducted seven (7) months after the decision was made to abolish the position. This audit or time study was conducted as a result of the grievance filed by the Grievant. The fact that Management conducted an audit of the Clifton facility's time and attendance duties after the decision was made to abolish that position can reasonably and, with due respect, be characterized as: 1) putting the cart before the horse; and 2) self-serving. The Arbitrator understands that: 1) a general pronouncement was made by the District or Division Office to abolish the Time and Attendance positions in the Northern New Jersey District; and 2) local Management is not in position to ignore or overrule such a pronouncement…After the abolishment was announced and made effective there was not even a cosmetic attempt to reassign the Grievant or change her duties….The contents of this audit failed to rebut the Grievant's and the Union's contentions that she is the only person to perform time and attendance duties and that these duties comprise at least six (6) hours of the Grievant's work day; and that her duties satisfy all of the elements of the STD Position Description for the Time and Attendance Clerk. As such, the Grievant should have remained assigned as a Time and Attendance Clerk PS-05.

"Article 37 bestows rights, privileges and obligations on both the Service and the employees. It was designed to assure the successful bidder of a duty assignment continued employment in that assignment until such time as certain events may transpire. Article 37 gives Management the right to reduce the number of occupied duty assignments in an established section. As long as Management does not abuse its discretion or act in an arbitrary or capricious manner, it can abolish a job. All it has to do is reduce the duty assignment. But,

when Management announces that a position is abolished, and nothing changes except perhaps the work load of the position is increased and it is technically upgraded, a finding that an abolishment in accordance with Article 37 cannot be made."

**Arb. Joseph Cannavo, A94C-4A-C 96072035 et al, Eatontown, NJ,11-24-99**

Although they used terms on occasion such as 'abolishment' or 'excessing' what occurred was that Management reposted the duty assignments of four (4) senior clerks in the office, allegedly because of the introduction of CSBCS machines. Everyone agreed that the work performed by the 4 clerks was not impacted by the introduction of automation and continued to be performed by other Clerks (including PTF's). The Arbitrator said (at Pages 25-29):

"…The Arbitrator also finds it significant that the supervisor who signed the letter notifying the Grievant's of the reposting of their bid assignments testified clearly and unambiguously that: 1) PTFs came in an filled the complete shoes of the four (4) Grievants; and 2) the work that the Grievants performed prior to the repostings still existed after the repostings; and 3) the work performed by the Grievants prior to the repostings were not impacted by automation.

"Facts that establish that employees' bid assignments are being reposted while the work they performed is subsequently performed by others is certainly not in keeping with the principles and requirements of Article 12.5.B. These long term employees were dislocated and severely inconvenienced. What is more, the record established through the testimony of the supervisor and the shop steward that these Grievants were, in fact, holding a duty assignment; they were displaced or 'bumped' by junior employees, be they full or part-time. Once the Union established these facts, the burden then shifted to the Postal Service to demonstrate, in accordance with Article 37.3.A.4 that it was necessary to repost the Grievants' assignments…

. . .

"…In his Step 2 denial, the Postmaster refers to the 'rescheduling of employees by abolishment and bidding positions' on several occasions. Abolishment is defined as a 'management decision to reduce the number of occupied duty assignments in an established section and/or installation.' …[T]he decision to abolish a job is subject to the proof offered by the Service that there was less than eight (8) hour work assignments in the abolished slots…

"In the instant case, there was no showing that there was a reduction in duty assignments. Also, there was no showing that the number of hours worked in the duty assignments occupied by the Grievants were reduced…"

**Arbitrator Stephen A. Dorshaw, G94C-1G-C 98078675, Waco, TX, 5-15-00**

Management reverted a vacated FTR duty assignment. The Union argued that eight hours of work still existed and was still consistently being performed. Management argued that they had a contractual right to maintain needed flexibility. The Arbitrator said (at pp. 4-5):

"To carry out is mission to deliver the mail, Management naturally seeks to maximize flexibility in the assignment of work, and is motivated to seek the greater use of PTF's who have no guarantee of hours of work as compared to FTR's who do enjoy such a guarantee. However, while that is a reasonable and logical objective, the parties at the national level have limited this right of Management by the…language found in Article 7, Section 3.B…

. . .

"Diminution of the work load based on such factors as reduced mail volume or technological advances is certainly a circumstance that would justify the reversion of a vacant position. However, that was not the case at Waco. The result of the reversion was not a reduction in the number of authorized duty assignments, but instead, the work was performed by the existing part-time flexible employees, pool relief employees and other full-time regulars working overtime on their days

off. The work, duties and functions which previously been performed…on a full-time basis, remained unchanged."

**Arbitrator Kathy L. Eisenmenger, G98C-4G-C 00119763, Harvey, LA 9-4-01**

Acting upon the recommendation of a Function 4 Audit, the Employer reverted a vacated T-6 duty assignment, upon the retirement of the incumbent. The PM acknowledged that he assigned the T-6 duties to a single PTF clerk (who he claimed was not eligible for higher level compensation) and had not divided them up among several employees. The USPS argued that the T-6 was no longer authorized because of the audit. The Arbitrator opined (at Pages 6-8):

"The central theme contained in Article 37 is job protection. For example, the Postal Service has specified periods of time by which it must post new and vacant positions for employee's to bid upon and thereafter meet time limits to place the employee in the job. If a job exists, the Postal Service has to fill it. However, the Postal Service may abolish or revert a job for operational efficiency; i.e., technological changes have rendered the duties obsolete, workload has diminished, the work has been relocated to another installation, or other similar reasons.

"Article 37 does not impose obligations upon the Postal Service when it decides to revert a vacant position, except to give the Union an opportunity to give input prior to the decision, to give the Union notice of the reasons for the reversion of the position and that the reversion must be effected no later than 28 days after it becomes vacant. The parties' contractual arrangement maintains the Postal Service's managerial right to effect reversions to maintain the efficiency of its operations and to determine the method, means and personnel by which such operations should be conducted. Management's decision to revert a position would generally be sustained upon arbitral review, unless contractual procedures in Article 37 were not observed or the decision to revert was arbitrary, capricious or an abuse of discretion. The Union bears the burden of proof when bringing grievances of this nature.

"The Union has a large stake in the decision to revert a bargaining unit position. The reversion of a position constitutes the loss of an opportunity for a bargaining unit employee to hold a particular job, possibly a promotion. The loss of a bargaining unit position decreases the positions available for bargaining unit employees or for new hires who would join the ranks within the craft. The decision impacts directly the job security for employees in the bargaining unit. Therefore, while the Postal Service enjoys a reserved right to decide when to revert a position in the interests of efficiency, it must do for at least an operational efficiency reason.

"…The evidence conclusively shows that the T-6 duties exist as they have generally existed long before Ms. Wright's retirement, that they have been performed on a daily basis and that there is every expectation that those duties will be continued to be needed to be performed…The Postal Service merely took advantage of the timing of Ms. Wright's retirement to reduce the size of the Harvey, LA Post office workforce, without consideration as to the existing duties that Management required to be performed every business day. There is no reason why the T-6 position had to be reverted as though the duties no longer were needed. On the contrary, Management merely found itself desiring to reduce staff hours. The situation called for the T-6 position to be filled. If the number of positions truly needed to be reduced, then action subsequent to filling the T-6 position may have been appropriate, such as reverting the position of the successful bidder for the T-6 job.

"…Management's avoidance of assigning full-time clerks in a mistaken belief that it could circumvent the provisions of ELM 234.32 constitutes arbitrary and capricious action. Moreover, the every existence of the Postal Service regulation provides persuasive evidence that a reversion is appropriate when either the duties no longer exist or the duties may be absorbed by other employees due to workload reductions for them…

"Here, there is no evidence that the work responsibilities of the T-6 position had eroded or no longer existed. On the contrary, the work responsibilities were just a viable and urgent as when Ms. Wright was employed or when others were detailed to the position prior to her retirement…"

**Arbitrator Barry E. Simon, J90C-1J-C 94056266, So. Suburban, IL, 2-5-02**

The Employer abolished nine (9) different duty assignments within the installation. The Employer explained that these positions within Customer Service became overhead positions as a result of the 1992-93 restructuring. Each manager was required to justify continuation of any "overhead position." The Arbitrator dismissed the debate over which party had the burden of proving that the duties still existed, noting that the Employer at Steps 2 and 3 acknowledged that "the work did not go away" before concluding (at Pages 10- 11):

> "In the instant case, however, there is no indication a time study was performed on any of the positions. It appears, rather, that management was given a list of jobs that should be eliminated, and was then given an opportunity to argue that any of the positions should be retained…
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> "…This process of justifying the *need* for the positions is directly contradictory to the findings of various arbitrators that the Service must justify the *abolishment* of the position. Nowhere in the record is there any suggestion that anyone justified the abolishment of these positions before the Service took action.
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> "Thus, the Arbitrator concludes that, regardless of which party bears the burden or proof, the Service's admission that the 'work did not go away' is sufficient to establish that the positions were abolished without evidence of a diminution or the work performed by the incumbents. This constitutes a violation of Articles 37.1.F. and 37.3.F.3.(b) of the National Agreement…"

**Arb. Robert Bergeson, F94C-1F-C 97105493, Long Beach, CA, 2-16-02**

Union grieved to have 204-B's bid duty assignment as a General Clerk posted ever a more than 4 month detail. [Management used a limited duty Clerk with a

Rehabilitation Job Offer in SPBS to fill the General Clerk duty assignment while the 204-B was detailed.]. Local Management refused to post the duty assignment and kept the Rehab Clerk in the assignment even after the 204-B was promoted to Supervisor. When the grievance was resolved at Step 3, management posted the General Clerk with the notation that "if anyone bids on this the job will be abolished." Once a successful bidder was determined, local management abolished the General Clerk duty assignment and continued to use the Rehabilitation Clerk in the job. The Arbitrator said (at Pages 10-13):

> "…[B]ecause positions are to be reverted for purposes of operational necessity, where the union proves that the duties of the position continue to be performed by one employee (or, …one employee and another employee after that) post –reversion, management's assertion of operational necessity has been disproved…
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> "Therefore, management's rights under Article 3 in cases of this nature are by no means absolute.
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> "Implicit…is the principle that the union is not obliged to show that the duties of the abolished [duty assignment] continued to be performed for eight hours per day. Or, to put it another way, the 'successor' limited duty employee need not exclusively perform the functions of his or her predecessor in the position. That holding is logical in the sense that the classification jobs is rarely, if ever, a matter of black and white. Thus, rather than a bright line rule, the question of whether a position has actually been abolished must be decided based on the totality of circumstances.
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> "Here, the evidence indicates that although Maria Lubrano has not been performing all the duties set forth on the general clerk position description, she has been performing the great majority of them…"

## Arb. Robert Simmelkjaer, B98C-4B-C 02092638, Machester, NH, 10-30-03

The Employer abolished one (1) of two (2) Registry Clerk duty assignments, following the recommendation of a Function 4 Audit. The Arbitrator said (at Pages 7-8)

> "Considering the evidence in its entirety, the Arbitrator is persuaded that the Service improperly abolished MPO #10, a registry clerk position. Although the Service has the managerial prerogative under Article 3 to hire and allocate personnel 'to maintain the efficiency of the operations' and pursuant to that end relied upon the recommendations contained in a Function 4 Audit, the weight of the evidence indicates that this decision was ill-advised. Inasmuch as the premise on which the abolishment of the registry clerk's job was based, namely, 'it no longer met the needs of the Service,' subsequently proved erroneous, and given the Service's decision to initially assign the same functions, for the same hours, to the Grievant/incumbent as an Unassigned Regular Clerk and thereafter backfill the position with PTFs, the Arbitrator is persuaded that the need for the registry clerk position continued unabated.
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> "Notwithstanding the Service's contention that the Grievant obtained another job as a window clerk and claim that 'no time reports or data prove the afternoon job which was abolished has been replaced,' the evidence indicates that a continued need existed after the abolishment to provide the functions the Grievant had performed, such as clearing undeliverable mail and monitoring accountables for the carriers. That the Grievant continued to perform the same functions in the classification of Unassigned Regular Clerk she performed as a registry clerk after its abolishment is probative and convincing evidence that, despite the Function 4 recommendation to abolish a registry clerk positions and '[a]ssign other duties to provide 8 hours worth of work for a primary registry clerk,' the position was viable when abolished…"

## Arbitrator Eduardo Escamilla, E98C-4E-C 01185872, Bellevue, WA, 7-20-04

Management abolished the occupied Philatelic Clerk duty assignment and replaced it with a new SSA duty assignment. Grievant continued to perform the Philatelic Clerk duties as part of his new SSA assignment. The Arbitrator said (at Page 17):

> "I do find…that the Postal Service violated Article 37 by reclassifying the Grievant as a Sales Associate under the guise of abolishing his position. If in fact, the Grievant's duty assignment was abolished, this analysis and finding would be unnecessary.
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> "However, I find that all of the credible evidence, including that proffered by the Postal Service, shows that philatelic functions are still performed at the Bellevue Post Office and more importantly, those functions are primarily performed by the Grievant. Customer philatelic inquiries are directed to the Grievant while working at the window clerk area. The core function of the philatelic clerk as performed by the Grievant has not been abolished. It is still in existence and still being performed by the Grievant.
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> "Under these circumstances, I find that the abolishment of the philatelic position was a disguised reclassification and renaming of the position. It was not an abolishment of a position, 'a reduction of duty assignments', which is a permissible unilateral managerial action. Thus, the Postal Service violated Article 37 when it abolished a duty assignment and reclassified the Grievant when in actuality the duty assignment continued to exist and the Grievant continued to perform that duty assignment."

## Arbitrator Jeanne M. Vonhoff, E00C-4E-C 03200015, St. Paul, MN, 9-30-04

Management abolished one (1) of the two (2) FTR Sales & Services Associate duty assignments at Pioneer Station. Grievant's job was abolished during the excessing. A new relief position was created, intended to work ½ time at the

station. Grievant successfully bid for the relief position but was then scheduled to work full-time at Pioneer Station, more-or less mirroring his original assignment. After several months, this grievance was initiated, challenging the original abolishment. After dismissing the Employer's timeliness arguments, by finding a continuing violation, the Arbitrator said (at Pages 15-17):

> "…Management presented information that the abolishment was proper because there was no longer a need for 24 hours at the Pioneer Station. The information provided by the Service substantiates that there was a reduction in revenue and customers. The Union did not dispute the abolishment of the position, based upon the Function 4 audit.
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> "However, the evidence is also completely clear that the hours actually were not reduced for months after the abolishment. The problem here is that local Management apparently did not convince higher level Management that a reduction in clerk craft hours was needed until nearly eight months after the Grievant's position was abolished. The Grievant continued to perform the same duties as he had previously performed on virtually the same schedule. It is difficult for the Service to argue that the Grievant's position was abolished during the period when he continued to perform exactly the same dut9ies on virtually the same schedule in the same location he had performed as before the abolishment.
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> "In Case No. C7C-4Q-C 31257 (Goldstein, Arb. 1994) the Arbitrator found that the Service had abolished the grievant's position but his duties remained and were distributed among other employees. The Arbitrator held that this action violated the contractual definition of 'abolishment,' which 'makes clear that the employer must actually make a decision to abolish or reduce 'duty assignments.'' In the case in dispute here, the Grievant's duties were not spread around, but were simply reassigned to him in his relief/pool position – for nine months. Although Management suggested that they could have performed the work at the Pioneer Station with fewer hours at that

time, the fact remains that at least 24 hours of clerk work were still being assigned during the period. Even after Management stated in the Step 2 decision that 'management will now take action to correct the situation,' that action was not taken until more than 5 weeks later.

"Under these circumstances, the Arbitrator concludes that the Service abolished Grievant's position in name only in April 2003. Management did not establish that an abolishment was needed – or undertaken – at the time of the abolishment letter. The Service argues that the Grievant was not harmed by this arrangement. However, even though the Grievant was performing the same work during this period, he did not have the security of his old position, which had stronger restrictions against changing his starting time or his location. For the period during which the Grievant was assigned to work the same duties and schedule as before the abolishment of his position, the Service violated the provisions of the Agreement regarding abolishments."

**Arbitrator John C. Fletcher, E00C-1E-C 05008809, St. Paul, MN 10-19-05**

The Employer notified the local Union that a vacated mail processing duty assignment was under consideration for reversion due to declining mail volume and workload. One day later, the duty assignment was reverted without Union input. The Union argued that management improperly reverted the duty assignment only to have casuals and TE's continue to perform the same work during the same work hours. The Arbitrator said (7-11):

"[I]t is obvious from the plethora of evidence submitted by the Union that Position No. 8485821 was reverted in name only – all of its duties remained in place and were thereafter performed by members of the non-career / supplemental workforce, TE's and Casuals. The Union's evidence, fairly assessed, not only indicates that sufficient TE & Casual hours were being worked during the previous assigned hours of position No. 8485821, but they were being worked on the same tasks that Position No. 8485821 previously worked on. It is conclusive, the reversion was merely a paper one.

. . .

"Notwithstanding persuasive arbitral authority that it is a violation to effect a reversion when *all* of the duties of the reverted job remain, before the Arbitrator the Service argued that in *any reversion* all that is necessary is that notice be given to the Union and that the decision to revert be made in good faith and is not arbitrary or capricious. The Service argues that the differing language used in the Agreement with respect to 'abolishments' vis-á-vis 'reversions' compels that a distinction be made. It stated than 'in the case of reversions, unlike abolishments, no individual is directly affected in anyway.

"In the opinion of the Arbitrator these notions are circuitous. Whether a position is eliminated through an abolishment or a reversion, the end result is the same – *a management decision was made to reduce the number of duty assignments – one occupied and one unoccupied.* And, Management cannot literally effect a reduction in the number of duty assignments *in a section or installation* when what is left after the abolishment or reversion, is the work of a full-time position being completed *regularly* by Casuals or TE's, the precise fact situation involved here. The duty assignment has not been reduced, it has been parceled out to others…

. . .

"In the case of the reversion of Job No. 8485821, while Management may have considered its conclusion to be fair and honest that the slot was really excess to its needs, by no means can it be concluded that the required work to be done was less than eight hours per day. Accordingly, the decision to revert was flawed…"

## Arbitrator Sharon K. Imes, E00C-1E-C 04199882, St. Paul, MN, 12-22-05

The USPS abolished two Relief/Pool duty assignments in the St. Paul installation in May 2003. In April 2004 management began using TE's and casuals in the same manner as the Relief/Pool clerks had been used. The Union initiated this grievance in October 2004. After finding that the JCIM language regarding "continuing violation" made the grievance timely, although limiting the remedy, the Arbitrator said (at Pages 11-13):

> "While management correctly states that an abolishment of a position is a one-time occurrence, it is incorrect when it states that management is only required to show that there is less than an eight-hour work assignment at the time it abolishes the position. The definition of 'abolishment' makes it clear that the Employer must actually decided (sic) to eliminate or reduce the duties of the position. It does not allow the Employer to say it is abolishing the position while assigning the duties to others so that the work is still being done. Consequently, if the Union can show…that the work did not go away, it may properly file a grievance alleging that the position was improperly abolished whenever the record suggests that management has taken action to circumvent the intent of having the position.
>
> . . .
>
> "On the merits, it is concluded that the Union has shown that management did hire and has used transitional employees to perform the work of the pool and relief clerks…
>
> "…This arbitrator finds, as other arbitrators have found, that the Union has the initial burden to show that work normally filled by pool and relief clerks remains, and then, the burden shifts to the Employer to show either that the work in these assignments differs from that assigned to pool and relief clerks, or, if it is the same work previously assigned to pool and relief clerks, that is less work and/or fewer duties than that which was performed by the pool and relief clerks. Management failed to meet this burden of proof. Instead, the Union has shown that currently at least two transitional employees and/or

casuals, alone or together, have been working more than forty hours per week performing work similar to that which had been assigned to the abolished pool and relief clerk positions and management has not denied that evidence."

**Arbitrator Sharon K. Imes, E00C-1E-C 04124100, St. Paul, MN, 10-21-05**

The USPS reverted a level 7 Mail Classification Clerk duty assignment after the incumbent retired. The USPS claimed that it did so because Postal Service HQ no longer authorized the filling of level 7 Mail Classification Clerk duty assignments. Grievant, a level 6 Mailing Requirements Clerk, began performing most of the duties previously performed by the level 7 Mail Classification Clerk. The Union grieved, arguing that she was entitled to the higher level pay. In this case, which was really a fore-runner or companion case for her subsequent decision, E00C-1E-C 04102628 (11-5-06 cited below) regarding the reversion, the Arbitrator sustained the grievance, saying (at Pages 8-9):

"The Union is absolutely correct when it states that the Mail Classification Clerk position description does not require the Grievant to be able to perform all of the work identified in the description. Instead, the requirement is that the Grievant spend 50% of her time performing the duties and responsibilities described in one paragraph or a combination of paragraphs 1 through 5. The Union is also correct when it states that an employee detailed to higher level work is entitled to be paid at the higher level whether or not a position exists.

"In this dispute, the Union has charged that even though the position was reverted, the Grievant is performing the duties and responsibilities assigned to the position that was reverted and, therefore, she is entitled to be paid at Level 7 rather than Level 6, the level at which she is currently being paid. To prevail the Union has the burden to show that the Grievant, in fact, is spending 50% or more of her time performing the duties identified in paragraphs 1 though 4 of the Mail Classification Clerk position description or that she is scheduled daily

to perform duties in both her Level 6 classification and in the Level 7 classification. It is not sufficient merely to assert she is doing the work. There must be a quantitative analysis of the work performed.

"…[I]t cannot be concluded that the Grievant is spending 50% of her time performing the Level 7 Mail Classification Clerk work.

"This finding, however, does not mean that the Grievant is not entitled to be paid at the Level 7 rate for the work she is performing. Section 233.3.a. of the ELM clearly states that employees who are regularly scheduled to perform work in two separately defined positions in two different grades are entitled to be placed in the position of the higher grade and evidence establishes that the Grievant is scheduled to perform work in both the Mailing Requirements Clerk and the Mail Classification Clerk positions descriptions….[T]he Grievant, daily, must perform at least some work relating to periodical bulk mail even though the Mail Classification Clerk position has been reverted and even though she may not spend 50% of her time performing those duties. This evidence is sufficient to conclude that based upon Section w234.31 of the ELM, the Grievant is entitled to compensation at the higher level."

**Arbitrator Sharon K. Imes, E00C-1E-C 04102628, St. Paul, MN, 11-5-06**

The USPS reverted a level 7 Mail Classification Clerk duty assignment after the incumbent retired. The USPS claimed that it did so because Postal Service HQ no longer authorized the filling of level 7 Mail Classification Clerk duty assignments. In this case, which was really a follow-up or companion case for her previous decision, E00C-1E-C 04124100 (10-21-05 cited above) regarding higher level, the Arbitrator said (at Pages 6-8):

"Management correctly states that under the collective bargaining agreement it has the right to revert a position. It also correctly states that it complied with all of the procedural requirements outlined in

Article 37, Section 3.A.2. when it reverted the PS-07 Mail Classification Clerk duty assignment position at issue in this dispute. Based upon these facts, alone, however, one cannot conclude that the Service did not violate the collective bargaining agreement when it reverted the position since it is implied under Article 37, Section 3.A.2. that management's decision to revert a position be neither arbitrary nor capricious.

. . .

In a separate grievance, arbitrated by this same arbitrator and decided in June 2005, the Union sought that the Level 6 Mailing Requirement Clerk whom it declared was performing the Level 7 duties of the position in dispute be paid at the Level 7 rate. In that arbitration, neither party argued that the Level 7 duties no longer existed. Instead, the Service argued that the Grievant did not deserve to be paid at the Level 7 rate since many of the duties she performed were duties assigned her at the Level 6 position occupied by her; since she was not qualified to perform the work and since she was not performing all of the Level 7 duties. The management position and argument in the previous arbitration strongly indicates that duties performed in the Level 7 position existed at the time the position was reverted even though headquarters may have declared the duty assignment position not authorized. [FN]

[FN] In this decision, it was concluded that the evidence was not sufficient to support a finding that the Grievant was performing all of the duties of the Level 7 position but that there was sufficient evidence to conclude that she was performing a mixed-duty assignment. Now, management is again arguing that duties performed by the Grievant in that previous arbitration do not support a finding that the Level 7 position job was not eliminated. It is the existence of the Level 7 duties, not which duties that Grievant in the previous arbitration performed, that determines whether the job still exists. Consequently, management's arguments pertaining to the duties performed by the Grievant in the previous arbitration are not relevant to this dispute.]"

**Arb. Robert Hoffman, H00C-1H-C 05144644, Pembroke Pines, FL, 6-11-06**

The Employer reverted four (4) mail processing automation clerk duty assignments. The parties stipulated that the USPS followed the three (3) contractual steps to procedurally and correctly revert the duty assignments.

Management initially asserted that the reason for reversion was data from the Labor Scheduler, although ultimately they acknowledged that the system did not work and had been scrapped by the time these reversions occurred. The Union argued that management's reasons for reversion were invalid and that the jobs still really existed, being backfilled by PTF's and casuals who were scheduled to work the same duties, days, and hours of the reverted bids. The Arbitrator said (at Pages 6-7):

> "…Without having to delve in this decision into the vast documentation, suffice it to say that this arbitrator has closely examined it and finds the Union has shown that each of the four bids covered by the grievance continued to be filled on a full time basis and thus the assignments still exist…"

**Arbitrator Christopher E. Miles, C00C-4C-C 04095516, Bristol, VA, 7-12-06**

The Employer reverted a vacant duty assignment in Tour 1 Automation, alleging declining mail volume. The Union grieved, arguing that the work was still being performed by PTF's and TE's, as well as FTR overtime. While acknowledging that the USPS complied with the technical requirements of Article 37.3.A.2, the Union argued that the USPS reason for reversion was pretextual and that the work remained. Citing Arbitrator Fletcher, E00C-1E-C 05008809, 10-19-05, extensively, the Arbitrator said (at Pages 12-13):

> "In this case, as pointed out above, there were no procedural flaws with the decision to revert the position in question. However, the record reveals that the reason given by the Postal Service was not established; i.e., that there was a continuing decline in the mail volume. Albeit slight, there was actually an increase in mail volume. Moreover, it is evident from the documentation submitted in this case that the work performed in this preferred assignment was still there. The Union showed through documentation that significant overtime

was worked at the facility in Automation before and after the reversion. Also, PTF's and TE's regularly worked 40 to 50 or more hours per week…

"Consequently, after review and consideration of the particular circumstances surrounding this case, it is found that the work regularly performed in position 1004-A continued to be performed after the reversion. This was accomplished by using overtime in Automation or having the duties performed by PTF's or TE's. Thus, it is found that there was a violation of Article 37, Section 3.A.2 when the position was reverted and the grievance is sustained…"

**Arbitrator James Odom, Jr., H00C-1H-C 05086674, Lake Mary, FL 8-23-06**

The Employer reverted a vacant duty assignment in the PL 345 Flat Automation Section. The Union argued that this reversion was improper because the duties of the reverted job remained, with PTF's, casuals, TE's and employees from other sections supplementing bid employees to perform the work. Although he denied the grievance, after an exhaustive review of other arbitral authority, the Arbitrator did comment (at Page 17):

"…There is one situation in which many, if not most, arbitrators have not permitted Management a free hand in reallocating the duties of the reverted job. This occurs when, after the reversion, (1) the duties are such that they constitute a full-time job, and (2) the duties continue to be performed in the same manner and during the same hours as before, by one (or even two) individual. The logic is that here the reversion would be a sham to allow a vacant job to be filled without putting it up for bid…

. . .

"…Although there is no consensus among Postal Arbitrators, there does seem to be a discernable pattern that where, as here, the procedural requirements of Article 37 have been met, and where, as here, the Service has exercised good faith in determining that

> reversion will bring about operational efficiencies, the reversion will withstand contest. This pattern is subject to one exception, where the reverted duties constitute a full-time job."

**Arbitrator Peter R. Meyers, E00C-4E-C 06108811, Edmonds, WA, 3-19-08**

The USPS reverted a vacated duty assignment. The Union charged that the work was now being done by PTF's and an injured Letter Carrier. The Postal Service argued that they had reverted the job properly. The Arbitrator said (at p. 8)

> "At the outset, it is important to note that the Joint Contract Interpretation Manual (JCIM) states that the only difference between an abolishment and a reversion of a duty assignment is that a duty assignment is abolished if its occupied and it is reverted if is vacant…
>
> "Of all of the testimony and evidence that went into the record, the most significant testimony which appeared to be agreed upon by both sides was about the fact that the work of the job that was reverted is still being performed…
>
> "A review of the numerous awards that were presented by the Union makes it clear that it is a violation to effect a reversion when all of the duties of the reverted job remain…"

**Arbitrator Michael J. Pecklers, C00C-4C-C 03147041, Wildwood, NJ 3-27-08**

As the result of a Function Four Audit, Management excessed two (2) FTR's and hired two (2) PTF's in this office, changing the complement from 6 FTR – 1 PTF to 4 FTR – 3 PTF. Relying upon the Comparative Work Hour Summary (CWHR), one month later, the Union challenged the excessing, asserting that the Employer had improperly replaced full-time employees with part time flexibles, noting that PTF work hours had (instead of decreasing) increased by over 300 hours in the 30 days since the excessing. The Arbitrator said (at Page 17-18):

"…As a practical matter, the APWU's *prima facie* burden has been satisfied by reference to the Function Four Review, and the…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…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 proposed to maintain the current complement of 7 at the Wildwood Post Office, but recommends 4 FTR and 3 PTFs rather than 6 FTR-1PTF, as was previously present…

. . .

"Instead, it appears that the work was merely shifted from the career to the part-time and supplemental work force…"

**Arbitrator Otis H. King, K00C-4K-C 05121326, Pleasant Garden, NC 5-5-08**

The only FTR in this small office [whose duty assignment had previously been established through a maximization grievance] retired. Management reverted the vacant duty assignment. The Union stipulated that the USPS followed the procedural requirements of Article 37.3.A.2. , but argued that the FTR duty assignment remained, with the work and hours absorbed by PTF's. The Arbitrator said (at Pages 6-8):

"The Arbitrator is impressed with the Union's argument that the reversion was illusory in nature, that it only existed on paper. While the individual who occupied the position had retired, the work of the position still existed. The Union goes on to point out that if the Arbitrator were to accept the Postal Service's interpretation of when a

reversion is justified, it could revert any position that became vacant, i.e., the person who occupied it having left, whether it was vacant in the sense of the work, which made it an FTR position in the first place, no longer being available.

"The Postal Service seems to take the position that as long as it has followed the technical requirements of Article 37.3.A.2, given the Union proper notice and reverted not later than 28 days after the position became vacant, there can be no challenge to the propriety of its action. It goes further and suggests that the Union's only recourse is to file a maximization action under Article 7, which it claims was not done in this case and is not before this Arbitrator for his consideration as it was not timely raised in the grievance.

"The Arbitrator rejects this line of reasoning as, if accepted, it would do violence to the spirit of the Collective Bargaining Agreement and its requirement of honest and fair dealings by both parties. What the Arbitrator believes is the requirement of Article 37 is that for a reversion to be proper there must be a lack of an occupant and additionally, and most importantly, there also must be shown to be a lack of sufficient work to constitute a full-time position. In fact every reversion decision carries with it an obligation to consider whether there is sufficient work available once a position becomes vacant to maintain a full-time position. That is an inherent obligation imposed on Management by the Agreement…As this Arbitrator understands it, the essential underpinning of a decision to revert, that which, in truth, is the only basis for such an action, the *sine qua non* as it were, is that which has occurred has so changed the available hours that they are no longer sufficient to maintain a full-time regular position…

. . .

"The Postal Service may have desired the flexibility of using only PTF's and having no FTR clerk in this small post office. However, that was not its choice under the CBA. It had to show that when Alston left, there also was no longer sufficient work available to constitute a full time position. This, could not do as by its own admissions there was sufficient work for a full time position in existence at Pleasant Garden Post Office at the time it went through with its reversion. That proof was sufficient for the Union to establish that there was a violation of

Article 37 as Management's decision to revert is inextricably linked to its being able to show that there is no longer sufficient work available to constitute a full-time position…"

**Arbitrator Joseph Cannavo, Jr., J00C-1J-C 05020193, Palatine, IL, 5-5-08**

The Employer reverted a Tour 1 letter automation duty assignment. Although acknowledging that their was no procedural violation, the Union argued that the duty assignment was improperly reverted because of the large amount of overtime being worked in the unit; that clerks from other sections were being routinely moved into the unit to work; that clerks were being routinely scheduled to work alone on the machines; that 13 PTF's had been recently maximized because of their work hours in the unit; and, that the Employer had proffered no reasons for the reversion. The Arbitrator said (at Pages 23-24):

"The Arbitrator finds that the Union established that Management did not properly revert the job…In this regard, the Arbitrator notes that Article 37.1 defines a reversion as reduction in a duty assignment. However, the Arbitrator also finds that the Union presented sufficient evidence to establish that the duty assignment….was not, in reality, reduced from the total of all duty assignments. In this regard, the Arbitrator notes that the Union established that not only was there a large amount of overtime being assigned following the vacating of the position, but also employees were being brought in from other units to perform work in automation. What is more, the Union demonstrated that this occurred on a regular and recurring basis both before and after the position was vacated. Additionally, the Arbitrator notes that Union established that 13 PTF positions were converted to full-time regular positions…[T]he Arbitrator finds that the Union definitely made its case that the reversion was not proper and that the duty assignment was not, in fact, reduced...In this regard, the Arbitrator notes that Postal Service used as its justification for the influx of overtime and other employees after the reversion the fact that 10.64% of Annual Leave was being used at this facility. The Arbitrator will take notice, and as pointed out by the Union, that the LMOU entitles

employees 14% of Annual Leave; and as stated by the Advocate for the Union, Management should take this account when staffing. Furthermore, the Arbitrator also agrees with the Union when it states that Management should take other leaves into account when staffing its duty assignments. Were the Arbitrator to sustain the position of the Postal Service in its Step 2 denial, it would be impossible for the Union to ever challenge a reversion and any job could be left susceptible to reversion…

"The Arbitrator notes that the Postal Service established that it followed all of the procedures for reverting a duty assignment. However, simply following procedures does not validate the reversion. The purpose of the procedural requirements of Article 37 are to compel Management, if challenged, to justify its action. In the instant case, the Arbitrator notes that Management failed to justify its action; and that it simply stated that the position was being vacated for the needs of the Service/Section; and that it justified the reversion on leave that should have already been taken into consideration so that proper staffing could [be] made."

**Arbitrator George Roumell, Jr., E06C-4E-C 07188953, Hawarden, IA, 6-30-08**

Upon the retirement of the only clerk (FTR) in this level 18 office, the Employer sought to revert the duty assignment and hire two (2) PTF's. In evaluating the Union's argument that the action violated Article 7.3.B in that all of the work performed by the FTR was still there, and was now being done by the two PTF's, the Arbitrator said (at pp. 15-16):

"But this is not a conversion case. This is a case where, for a number of years, Mr. Bauder has worked 40 hours a week or more performing window clerk work. The work still needs to be done after his retirement. It is a full-time position. Because the work is there, it has not vanished. There was concern about the overtime aspects particularly on Saturday. But, with the background of Mr. Bauder's

work still being there to be performed, and the fact that this is a Level 18 facility, it is difficult to overcome the argument, based upon the authority cited by the Union, including cases coming from small facilities, that the Union in this case is seeking only 'what we've had.'"

**Arb. Linda DiLeone Klein, E06C-4E-C 07183020, Warrensburg, MO, 10-01-08**

The Employer reverted a FTR SSDA duty assignment after it was vacated. There was no dispute that the local Union President was given the opportunity for input or that a decision to revert was made within 28 days and an appropriate notice posted. The Union contended that the work still existed and was just given to PTF Clerks. Management asserted that another FTR duty assignment was not justified. The Arbitrator said (at pp. 22-30):

"…Although it is true that pursuant to the terms of Article 3, Management has the right and responsibility to operate efficiently and Management has the right to determine the methods, means and personnel by which its operations will be conducted, Article 7.3.B expresses and imposes a separate obligation to '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 Arbitrator also recognizes that 'reversion' is a Management decision; the decision to revert must be accomplished in accordance with the contract; clearly, the evidence presented here establishes that the Union President was given the opportunity for input before the decision was made; the final decision to revert was made within 28 days of the position becoming vacant and the Employer posted a notice announcing the decisions and the reasons therefor…

"However, as stated by Arbitrator Allen in Case No. E00C-4E-C 04214195, 'The more persuasive arbitral authority indicated that the Employer is also constrained by substantive considerations when deciding to revert FTR duty assignments. This line of opinion requires that reversion decisions cannot be made for arbitrary and capricious reasons.'

. . .

"…[B]oth the Union's witness and Management's witness testified that the work of Clerk position #5 is 'still there' and both agreed that the PTFs generally work 8 hours per day and 40 hours per week. The Arbitrator will rely on the corroborative and credible testimony of the Supervisor in this regard rather than accept Union documentation from 2008 which was never shared with Management. Nevertheless, the Arbitrator recognizes that 'proof' in a reversion case generally extends to a period after the act itself.

. . .

"…Management never considered posting and filling the vacant position with hours which complemented or strengthened the existing schedule of the five current full time employees. Management simply redistributed the work of Clerk position #5 to full time and part itme employees and one or two loaners. The evidence clearly and convincingly establishes that the work in question still exists; the evidence also establishes that the reversion provisions of Article 37 were implemented without justification."