

MAXIMIZATION IN THE POST-BYARS AND ARTICLE 12 ERA

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

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

Yours in Unionism,

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THE APPLICABLE COLLECTIVE BARGAINING AGREEMENT PROVISIONS

ARTICLE 7.3 A

Section 3. Employee Complements

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

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

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

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

ARTICLE 7.3.B

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

ARTICLE 7.3.C

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

THE JCIM

ARTICLE 7.3.A

MAXIMIZATION

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

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

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

ARTICLE 7.3C

CONVERSION OF ASSIGNMENTS TO FULL-TIME POSITIONS

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

OFFICE SIZE

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

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

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

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

FULL-TIME FLEXIBLE MEMORANDUM

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

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

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

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

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

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

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

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

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

REMEDIES

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

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

- A. Paid the straight time rate for any hours less than forty hours (five eight hour days) worked in a particular week.
- B. Paid the eight hour guarantee for any day of work beyond five days.
- C. If appropriate, based on the aforementioned, paid the applicable overtime rate.
- D. Further, the schedule to which the employee is assigned when converted will be applied retroactively to the date the employee should have been converted and the employee will be paid out-of-schedule pay.
- E. Where application of Items A-D above, shows an employee is entitled to two or more rates of pay for the same work or time, management shall pay the highest of the rates.

Chapter 1

Article 12

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

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

1. Mittenthal Award H7N-3D-C22267

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

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

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

2. Local Union President Notification

Article 37.3.A.3 clearly states:

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

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

3. Back Filing in Withheld Vacancy

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

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

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

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

AWARDS

Arbitrator Pecklers, Case A00C-4A-C06246518, pgs. 9 & 10, 2008:

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

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

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

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

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

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

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

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

Arbitrator Vaughn, Case C98C-4C-C07087654, page 21, 2009:

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

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

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

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

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

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

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

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

Chapter Two

National Level Byars Award

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

1. The Postal Service’s brief for the National Level case clearly did not argue PTF hours cannot be combined. Within its own text, the U.S. Postal Service clearly states on numerous occasions that the plain language of 7.3.B limits its application to full-time employees and part-time flexible employees.
2. Hub Agreement – the Questions & Answers for PTF clerks working in other installations clearly states that the parties agreed PTF hours could be combined in question 19:

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

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

3. Step 4 settlement dated September 14, 1977:

Step 4, page 16, 1977:

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

“...whenever there exists available work to be performed eight hours within ten hours on five of six days in a service

week over a six-month period, notwithstanding how many different part-time flexible employees may have been performing such work over a six-month period.”

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

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

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

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

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

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

AWARDS

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

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

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

“In support of that position, the Union offered the Service brief in the Byars case and several Regional Awards issued since that decision. In the brief, the Service did not, in fact, argue that PTF hours could not be combined for the purpose of maximization under Article 7.3.B. The entire argument dealt with excluding the less than full-time hours worked by other classifications of employees, i.e., transitional and/or casual employees and the regularly scheduled overtime hours of full-time regular employees.”

“Byars then states:

The Postal Service position, and the decision in this case, that Article 7.3.B does not include a separate obligation to maximize full-time positions other than by minimizing part-time flexible positions does not implicate the APWU’s position that Article 7.3.C is but one way to demonstrate the obligation pursuant to Article 7.3.B, i.e., to maximize the number of full-time employees and minimize the number part-time employees who have not fixed work schedules.

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

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

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

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

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

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

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

Chapter Three

Grieving Article 7.3

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

AWARDS

Arbitrator Vaughn, Case D90C-4D-C96082131, pg. 11, 2001:

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

Arbitrator Klein, Case C90C-4C-C94012023, pg. 7, 1997:

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

Arbitrator Loeb, Case D90C-4D-C94006416, pgs. 14 & 15, 1996:

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

are well aware that over the last twenty years the majority of panel arbitrators who have considered the issue have concluded that Section 3.B. places an obligation on the Service to convert PTFs to full-time status and that obligation is independent of and distinct from the obligation outlined in Section 3.C. which has been held to be simply one instance which requires conversion.

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

Arbitrator Baldovin, Case S7C-3W-C22661, pgs. 8 & 9, 1992:

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

Arbitrator Marlatt, Case S7C-3E-C18642, pg. 10, 1990:

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

Arbitrator Blackwell, Case C90C-4C-C94013880, pg. 15, 1997:

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

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

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

Arbitrator Stallworth, Case J90C-1J-C94046522, pgs. 12 & 13, 1994:

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

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

Arbitrator Fullmer, Case J98C-4J-C99301108, pg. 6, 2007:

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

the Employer to the claims by the Union on the basis of the hours worked by PTFs. Once the Employer proffers the affirmative defense, then the burden returns to the Union to rebut the claim.”

Arbitrator Klein, Case C7C-4L-C22361, pgs. 7 & 8, 1991:

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

Article 7.3.B. is a “broad policy” covering maximization of full time employees, and it creates an “independent obligation” upon Management as it pertains to employee complements in all postal installations. Section 3.B. can be interpreted as allowing for various duties to be combined into one full-time assignment and allowing for part-time hours of more than one PTF to be combined into one full-time assignment.”

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

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

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

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

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

1. Article 7.3A – This section once mandated full-time employee percentages in the Clerk Craft, but in this past contract required offices of 200 man years or more be staffed with all regular employees.
2. Article 7.3.B – This is the section in which we achieve most of our conversions. It is critical when grieving for the aggregate hours of PTFs to cite this section. It is also critical to cite Article 7.3.B when grieving reversions where the job is backfilled with PTF(s). Again, it is important to demonstrate that the combination of PTF hours make a full-time duty assignment.
3. Article 7.3.C – This section is very clear in describing what must be done to be successful in the grievance process. One part-time flexible can only be used to show a job on the same 5 days a week working 8 within 10 hours and within the same assignment over a 6 month period. This places an additional burden of showing the PTF in question is working the same duties for 6 months. PTF statements and interviews are critical for meeting this burden and it is a particularly heavy and demanding burden.
4. Full-Time Flexibles Memorandum:

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

Re: Maximization/Full-time Flexible – APWU

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

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

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

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

Date: July 21, 1987"

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

Chapter Four

Remedy

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

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

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

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

Chapter Five

New Language

The New Language which will be inserted if ratification occurs in our new Collective Bargaining Agreement provides exciting opportunities for PTF(s) in Level 20 offices and below. In this chapter we will discuss strategies to achieve conversion to full-time status under the new Collective Bargaining Agreement (traditional, non-traditional and full-time flexible).

Applying these tentative provisions:

1. Article 7.1.B.4

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

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

2. Article 37.3.A.1

The New Language inserted into Article 37 states:

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

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

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

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

This Memo states:

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

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

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