MEANINGFUL INPUT

Reviewing Arbitral Authority on the Union's
Opportunity for Input under Article 37.3.A.2

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Arbitrator John C. Fletcher, I94C-1I-C 98013558, Madison, WI, 5-18-99

Management notified the Union of their "intent" to revert a vacated Window Clerk duty assignment. The Arbitrator found (at Page 7):

> "[T]here can be no question that the Union was denied an opportunity for input prior to the decision to revert Position No. 21892169 was made. Accordingly, it must be concluded that the Agreement was violated."

Arbitrator John C. Fletcher, J90S-1J-C 93028691/92. Detroit, MI, 6-30-94

In an earlier decision involving the reversion of Special Delivery Messenger duty assignments, Arbitrator Fletcher amplified further on the Union's "opportunity for input" in reversion decisions, saying (at Page 13):

> "When a contract provision requires that the Union be given an opportunity for input when vacant positions are under consideration for reversion, then the opportunity for input must be timely afforded, in a meaningful way, and be weighed with other factors, or the requirement to solicit input becomes a nullity. The requirement cannot be satisfied with a *pro forma* phone call."

Arbitrator Lamont Stallworth, J98C-4J-C 00244906, Escanaba, MI, 2-3-03

Management notified the local Union that they were considering reversion of a vacant duty assignment. When the local Union President requested copies of all relevant documents the PM failed to respond to this information request but invited

the local President to provide any input she wished to provide. The Arbitrator said (at Pages 14-15)

> "Accordingly, the Undersigned Arbitrator concludes that the Service violated Article 37.3.A.2 of the National Agreement. It is not sufficient for the Service to notify the Union that it is considering reverting the position and, in pro forma manner, give the Union an opportunity to provide input. As the employer, the Service has access to information which the Union does not have...However, when the Union asked for that information in order to provide input, Benuska failed to supply it. In the Undersigned Arbitrator's opinion this is not sufficient to establish compliance with the requirement under Article 37.3.A.2 that the Union be provided an opportunity for input…To conclude that under these facts the Service has fulfilled its obligation to allow the Union the 'opportunity for input' required by Article 37.3.A.2 would render those words meaningless. Instead, in the instant case the response of the Service in analogous to refusing a meeting and did not provide a circumstance favorable to the particular activity of input."

Arbitrator Lamont Stallworth, J98C-4J-C 02019833, Iron Mt., MI, 1-16-03

On September 20th, local management advised the Union that the vacant SSPU Technician duty assignment would be reposted. On September 21st, management told the Union President that she had five (5) minutes for input before the Notice of Reversion would be posted. The Arbitrator said (at Pages 14-15):

> "Article 37 requires the Service to offer an 'opportunity' for input, which even the Union does not deny was given in the instant grievance. The Union charges that was given '[in]adequate opportunity' or insufficient time to offer input. The Undersigned Arbitrator notes that the Contract does not specify what amount of time is required for input.
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> "The record evidence in this matter persuaded the Arbitrator that the Local Union President was provided some 'five (5) minutes

> opportunity' prior to the instant reversion decision. Accordingly, to the Service and its literally reading and interpretation of Article 37.3.A.2 – five (4) minutes prior notice constitutes 'an opportunity' as by the drafters of this provision. The Undersigned Arbitrator is hard pressed to believe that the drafters of this provision did not contemplate and intend that there would be some 'reasonable' and/or 'adequate' opportunity for input prior to a reversion decision. In the Undersigned Arbitrator's opinion to conclude otherwise would effectively nullify the underlying 'prior opportunity' purpose and rationale of Article 37.3.A.2. If one were to accept the position of the Service, a one minute or less 'prior opportunity' notice would be sufficient to meet the requirements of Article 37.3.A.2. Such an interpretation and conclusion would be absurd and negate the purpose of this Article."

Arbitrator Morris E. Davis, F94C-4F-C 97109598, Vallejo, CA, 2-14-05

In this case the Union argued that it did not have a real opportunity for input because the Employer failed to respond to its information requests until after the effective date of the reversion. The Arbitrator said (at page 9):

> "Article 37.3.A.2. specifically requires that the local Union President be 'given an opportunity for input prior to the decision' to revert a vacant duty assignment. In this case a reasonable interpretation is that the parties intended for the local Union President to be given an opportunity for 'meaningful' input prior to the final decision to revert an assignment." [emphasis added]

Arbitrator Stephen Dorshaw, G94C-1G-C 98048666, Wimberley, TX, 4-16-02

Upon the retirement of a full-time employee, the Postmaster notified the Union that the duty assignment was being considered for reversion. When the Union called to request a meeting, they were advised that the job was being reverted pursuant to District instructions and that the decision could not be reversed. Noting the

"competing interests of Management and Labor," the Arbitrator said (at Pages 7-8):

> "[T]he local Union President must be given an opportunity for input. There should be a meeting between Management and Labor to discuss the reasons for the proposed reversion so that the Union can offer meaningful input as appropriate. Management may have discretion to make the ultimate decision to revert a position, but it is not sufficient to make a sham out of the contract requirement to allow input by the Union."

Arbitrator Otis H. King, H94C-4H-C 98002133, Greenville, MS, 3-31-99

Management reverted a vacated Scheme Examiner duty assignment. The Postmaster claimed to have spoken to the local Union President about the pending reversion. The local President could not recall any such conversation. There was never any written record. The Union argued that the work was still being done by other Clerks. The Arbitrator said (at Pages 3-5):

> "The Arbitrator has carefully read Article 37.3.A.2 several times and he is struck by the very specific wording of it as to what is required before a vacant position is reverted. All the parties have correctly set forth the three requirements as being: 1) there is a 28 day time limit, 2) the Union President must be given an opportunity to give input before the decision to revert is made, and 3) if the position is reverted, an announcement which includes the reasons for the reversion must be posted. The Arbitrator, however, is drawn inexorably to what he considers to be the obvious substantive spirit of the provision and that is the input to come from the President of the Union is to be meaningful and not simply a hollow observance of a bothersome nominal procedural requirement. In this ,he is impressed with the notion parties do not mandate the performance of useless acts in collective bargaining agreements. The Article states, first of all, that the Union President will be notified. '[w]hen a vacant assignment is *under consideration* for reversion [emphasis added (in original)]." To

the Arbitrator, this means notice will be given as soon as the Postal Service begins its review of a vacant position and realizes it might wish to consider reverting it. The key element here is one of timing. That is as soon as the possibility of reversion comes 'under consideration,' the Union President is to be notified. The provision goes on to validate this interpretation when it unequivocally sets out this notice is to be given in such a manner as to afford the Union President 'an opportunity for input *prior to a decision* [emphasis added (in original)]." This is also further revealing in that there must not be simply notice for the sake of notice, but there must be notice for the purpose of giving the Union President 'an opportunity for input' and most important of all that input must be received an, presumably, considered 'prior to a decision' being made.

"…Of course, in the final analysis, the Postal Service is not bound to subscribe to the Union's view, however, it must earnestly seek it, listen to it open-minded-ly, and reject it only after thoughtful consideration, never doing so arbitrarily or capriciously. Most important of all, this must be done prior to, not after, a decision is made regarding whether the position is to be reverted. If this is not what is required, why the provision at all? …

"In this case it does not matter whether the postmaster ever mentioned the reversion to the Union President. It is clear to the Arbitrator, the Union President was never afforded a meaningful opportunity to discuss the matter with anyone prior to the time the Postal Service made its decision regarding the Rainwater position. Furthermore, it appears the decision had already been made by the Postmaster's boss prior to discussion with the Union President and the Postal Service was not going to provide a real opportunity for input in any event. This failure, standing alone, without any consideration of the notice requirement was a violation of the Agreement and justifies sustaining the grievance.

"The opportunity for input regarding whether a position is to be reverted must be more than a passing conversation on the workroom floor. It should entail as much solemnity as the process of collective bargaining demands and deserves. It is an important interchange between the Union and Management on a crucial subject. It cannot be relegated to such an ad hoc chance encounter that the memories of a

> postmaster and a Union President are all that marks it having occurred. There should be record of proposals, counter proposals, reasons and position statements regarding the desirability and necessity of, and alternatives to abolishing the position, even if done informally. And, of this, or some reasonable approximation thereof, must occur before a decision to revert is made.
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> "Thus, in his reading of the Article, the Arbitrator sees it as more than simply a set of rules which are to be complied with in a purely technical and perfunctory manner. Even if it is accepted that the postmaster did speak with the Union President and simply informed him there was no need to talk about the matter of the reversion as his boss had already decided to abolish the position, this did not comply with the mandates of Article 37.3.A.2."

Arbitrator Robert W. McAllister, I94C-1I-C 97113976, Madison, WI, 11-30-98

District management decided to revert a Complaints and Inquiry Clerk duty assignment in Madison when the incumbent was promoted to an EAS position, since the work was now to be done at the District office in Milwaukee. *The Postmaster intended to repost the vacant duty assignment but was instructed that the position was no longer authorized in Madison.* [See Page 9] The Union argued that local management acknowledged that the work was still being done in Madison and that the local President was not given an opportunity for input since the decision had already been made at the District level. *The Arbitrator found that the decision to revert the duty assignment was made before Union was notified*. [Page 8] As a result the Arbitrator awarded (at Page 13):

> "Accordingly, Madison Management will be required to restore the status quo ante by posting the position of Complaints and Inquiry Clerk. If thereafter, Management chooses to take steps to abolish that position, it must do so strictly in accordance with the applicable provisions of Article 37."

Arbitrator George Sulzner, B98C-1B-C 99142412, Hartford, CT, 6-25-04

On February 8th management posted a notice that a vacated Personnel Clerk duty assignment was being reverted. On February 10th the Local Union President received notification that the duty assignment was *under consideration for reversion*. The Arbitrator said (at Pages 6-7):

> "The particular specifics of the procedural violation of Article 37.3.A.2 is a serious one. The failure to provide the local Union President with an opportunity for input prior to the decision to revert a position goes to the heart of the labor-management relations. The APWU is not in a position under the contract to engage in a co-partner management relationship with the Service. The reversion of positions, as it aggregates over time, clearly threatens the viability of the APWU and, as such, is a decision in which they have a vital interest. Article 37.3.A.2. provides them with a consultative role in this process. It does not mean that their perspective on reversion will necessarily be followed but it does provide the APWU with access to the process and a corresponding opportunity to make their voice heard and on occasion, if it is persuasive enough, to produce an alternative to the impending decision to revert a position. Thus the apparent neglect of management to follow the consultative aspect of the reversion procedure is not a minimal oversight. If the designated position was one in which the work involved was still being engaged in at the facility, a make whole remedy would definitely be appropriate."

Citing *McAllister*, the Arbitrator awarded (at Page 7):

> "The Arbitrator orders the following remedy. Management at Hartford will be required to restore the status quo ante by posting for bid the position of Personnel Clerk, PS-5. If Management subsequently decided to revert the position it must be done in accord with the procedures set forth in Article 37.3.A.2 of the National Collective Bargaining Agreement." [emphasis in original]

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 State President was not given an opportunity for meaningful input, the Arbitrator said:

> "…What occurred here is that, sometime in January 2007, Postmaster Kelly became aware that Mr. Bauder was to retire. The process was begun in January 2007 to apparently obtain the transfer of Faye Vanderlugt, a part-time flexible clerk. At about the same time, the process was begun to consider a second part-time flexible clerk. However, the review process did not take place following the senior manager review until March, at about the same time as Postmaster Kelly was inviting APWU State President Bruce Clark, via letter dated March 8, 2007, to have input.
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> "The Area Vice President authorization was dated March 12, 2007. Postmaster Kelly was seeking input from Mr. Clark by April 9, 2007. The vacancy was not to take place until April 1, 2007.
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> "…The fact is the decision was made within four days after Postmaster Kelly sent Mr. Clark a letter…dated March 8, 2007. Mr. Clark would have had to respond almost instantaneously to have input…
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> "…The fact is a decision was made in March 2007 at the very time Mr. Clark was being asked for input.
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> "This is a *fait accompli* situation because the notice to Mr. Clark and the invitation to have input, under these facts, was perfunctory and not consistent with the language or spirit of Article 37.3.A.2…"

Arbitrator Irving Tranen, C00C-4C-C 05059216, Ashville, NC, 07-14-08

Based upon a Function 4 recommendation, and subsequent to a retirement, the Postmaster decided to revert a FTR duty assignment, and hire another PTF. The Union argued that the opportunity for input was not meaningful since the PM's mind was already made up. The Arbitrator said:

> "A careful reading of Article 37.3.A.2 leads this Arbitrator to recognize the spirit of the agreement was to allow the Union a meaningful opportunity to discuss the intent to revert the vacant position, an opportunity that could lead to a possible change. To invite the Union to meet with Management and not have its opinion carefully considered, or to meet with Management after it had made its final decision, this Arbitrator finds would be a violation of the National Agreement.
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> "It is clear to this Arbitrator that the National Agreement, when it requires in Article 37.3.A.2 that Management furnish the Union with prior notice of a contemplated reversion has not, unless it has furnished the Union with an opportunity *to have input which would be considered in a meaningful manner* prior to the final decision, complied with the National Agreement.
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> "A Function Four Review should not be construed as an order that the complement of a facility must conform to its conclusions. When determinations as to staffing are made it is clear that the recommendations of a Function Four Revue should be considered, but the requirements of the facility at the time of the Intent to Revert should be paramount."