

ARTICLE 7 – SECTION 3. B.

ROBERT KESSLER
NATIONAL BUSINESS AGENT
APWU

ARTICLE 7, SECTION 3.B.

The provisions of 7.3.B. place a general obligation upon the Postal Service to maximize full-time employment opportunities in all postal facilities. We have been highly successful in using this section to obtain additional conversions - primarily by "combining" work hours of a number of PTF's (and casuals) to demonstrate the existence of "8 within 10" assignments which have been worked for 6 months.

Arbitrator Garrett, in National case #AB-N-3744, et al, clearly interprets management's obligations, under what is now Section 3.B., to be more significant than the Service would have us believe. Garrett addresses the general obligations to maximize in all offices in conjunction with the construction of the contract language at that time. There were no separate provisions, just separate sentences, each with meaning of its own, yet related to the others.

He basically ruled that Article 7 requires the Postal Service to maximize full-time employment in all offices, with 90% being a minimum for large offices whereas there were no realistic method to place a minimum on offices of less than 200. **He further states that the specific criteria of "8 within 10" that was added during the 1973 negotiations was "to provide concrete guidance for interpretation of the second sentence at the local level."** (The second sentence is now 7.3.B.)

A substantial portion of his interpretive opinion follows:

"Article VII, Section 3 must be read in the context of the entire Agreement and each sentence thereof also must be given reasonable meaning in light of the balance of Section 3. There should be no serious question that the second sentence in this Section requires the Postal Service at all times to maximize the number of full-time employees in all post offices. It is equally clear that the 90% minimum requirement for full-time employees applies only in larger post offices and facilities, with 200 or more man years of employment. This clear minimum standard for larger installations must have been deemed by the parties to be both desirable and practical in order to minimize problems in application of Article VII, Section 3 to larger installations. Manifestly the parties did not believe that similar fixed minimum was practical for application in smaller postal installations.

This does not mean that good faith application of the second sentence of

Article VII, Section 3 always must result in less than a 90% full-time regular complement in smaller installations, even if it is assumed that such minimum cannot practicably be approximated in most instances. Practical application of the second sentence of Section 3 is possible only in light of all pertinent conditions in the given installation.

The critical problem here is to define as precisely as possible the nature of the ultimate obligation imposed on the Postal Service by the second sentence. The words "maximize" and "minimize" necessarily imply that a standard of practicability should govern in evaluating the relevant circumstances in any given postal installation to determine the extent to which maximization should be achieved. This in no way suggests, moreover, that the Postal Service is not ultimately responsible for maintaining the efficiency of its operations. The right and duty of the Service to maintain efficiency is delineated clearly in Article III of the National Agreement "subject to the provisions of this Agreement." Nothing in the second sentence of Article VII, Section 3 suggests that the Postal Service thereby is required to maximize the number of full-time employees in any given postal installation if the consequence is a significant increase in labor cost. It follows that the Postal Service is not required by this provision to convert part-time flexible employees to full-time regular status where this would produce demonstrable increased costs, such as in unavoidable increased idle time during scheduled tours of regular employees or in overtime pay.

The maximization obligation imposed by the second sentence of Article VII, Section 3 is of a continuing nature. It hardly could be otherwise, since relevant conditions affecting the size and composition of the work force cannot be expected to remain static. The Union's comprehensive analysis of the work schedules at Taunton in the present case surely raise an inference that at least one, and possibly more, of the part-time flexible Clerks there might be converted to full-time regular status without significantly impairing efficiency. An assertion by the Taunton Postmaster that inefficiency will result, without concrete documentation of the nature and extent of such inefficiency, is not enough in the face of such Union evidence. Given the record in this particular case, therefore, and keeping in mind the present composition of the Taunton work force, it would have been appropriate for Taunton management to try to schedule at least one part-time flexible Clerk experimentally in

conformity with the standards in the third sentence of Article VII, Section 3 reasonably appears to impose a prima facie case for greater maximization in any given installation. Had such a course been followed at Taunton, the local parties easily could have ascertained whether efficiency in fact would be impaired by converting one or more of the part-time flexibles there to full-time regular status.

Since the parties have been uncertain until now as to how Article VII, Section 3 should be implemented at the local level, it would seem that their local representatives at Taunton at last should have full opportunity to settle these grievances in light of this Opinion and without further resort to arbitration."

In addition to the National interpretive award rendered by Garrett in 1976 the USPS acknowledged the meaning of Article 7.3. to be consistent with the Garrett award in a 1978 step 4 grievance settlement with the NALC. (Attachments #6 and #7.)

Unfortunately, the Union throughout the country failed to properly utilize the January 26, 1976, Garrett award or the step 4 grievance settlement for over 10 years! (See Arbitrator Larson below.)

In another National level award dated October 12, 1978, Arbitrator Howard Gamser (NC-E-9358) cites and parallels the decision by Garrett.

In this case the NALC was seeking additional conversions based on the total number of work hours and PTF's at the installation in which PTF's and casuals were employed.

Arbitrator Gamser in essence ruled that the Employer may be permitted to avoid a total maximization of the full-time work force if such action could be justified by some "standard of practicability" such as significant increased cost, increased idle time during scheduled tours, or have a detrimental impact upon the efficiency of the operation.

As in the Garret decision, Gamser directed the Postal Service to establish "experimental" full-time position on a trial basis for 6 months in order to determine the need for full-time assignments.

"COMBINING" HOURS

The use of 7.3.B. is not restricted to "combining" hours of several PTF's and/or casuals to show "8 within 10" in order to obtain additional full-time employees (but that is the most common and successful use of this section). For example:

Arbitrator Lennart V. Larson S1C-3W-C 38156

"Section 3B expresses a general obligation on the part of the Employer. The Postal Service shall maximize the number of full-time employees and minimize the number of part-time employees. Section C states one way in which the need for converting an assignment to a full-time position can be demonstrated. But Section B allows for other proofs to demonstrate that part-time hours of a number of PTF's can be converted into one or more FT positions."

This is the first significant and perhaps the most frequently cited award in Article 7, Section 3.B. violations. Larson referenced the Garrett award. Other arbitrators have also relied on Larson's award. The success will depend upon whether or not similar fact circumstances are present in any given office as well as documentation and, of course, the arbitrator.

"MANIPULATION" OF SCHEDULES

Article 7.3.B. can be used to counter "manipulation" of work schedules in order to avoid maximization. Most common are situations in which PTF's (and casuals) are bounced around between morning and afternoon shifts with constant rotation of non-scheduled days and reporting times. For example:

Arbitrator Edmund Schedler, Jr. S1C-3D-C 29121 / S4C-3N-C 42574

In this case the Union argued 3.B.. Management countered with their standard claim that 3.C. is controlling. The evidence demonstrated that management had "manipulated" scheduling so that no PTF could work "8 within 10." The arbitrator stated in part:

"Section 3B is a broad statement of policy. In that statement of policy, the Employer has agreed that management '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.' That statement carries the implication that management will not adopt procedures or take actions to frustrate maximizing the number of full-time employees. Section 3C is merely a guideline for an employee to justify attaining FTR status; however the crux of the matter is whether or not there is sufficient work to justify, within Postal Service standards, the appointment of an additional FTR clerk."

In addition to the above a significant body of awards have developed pursuant to 7.3.B. which clearly establish a firm requirement on the USPS to "maximize the number of full-time employees and minimize the number of part-time employees . . . in all postal installations."³ This requirement to maximize in offices of less than 200 employees is not limited by the 80/20 provisions of Article 7.3.A. (Attachment #8)

PTF - REGULAR RATIO

While there is no set ratio of full-time to part-time flexibles required by this section it can be cited as a violation in certain fact situations where there are an unreasonably large number of part-time flexibles as compared to the number of full-time regulars. For example:

Arbitrator William Eaton W4C-5G-C 31740

"If the 90% requirement of Section 3A is taken as a rough starting point and the maximization of full-time employee requirement of Section 3B as having been intended by the parties to have some meaning, it is extremely difficult to justify over 40% of the work force being composed of PTF's. That sort of ratio, on its face, demands a full and complete explanation by management, no such explanation was offered in the present dispute."

"While this is no 'magic number,' such a ratio raises a presumption that Section 3B has been violated, which requires that the Employer justify such a heavy use of part-time employees."

³A more extensive list is attached.

REVERSIONS

Article 7.3.B. can be used to challenge "reversions" where the "reverted" position is filled by hiring additional PTF's and/or PTF's are used to perform the duties that were "reverted."

Article 37, Section 3.A.1. and 2. set forth the procedures to revert vacant positions. Management often relies on their Article 3 rights to manage in support of their decision to revert a position. Those rights, however cannot result in a violation of their obligation to maximize the number of full-time employees and minimize the number of part-time employees as required by the provisions of Article 7.3.B..

Cases involving a reverted position are somewhat different from the other cases where we seek to establish additional full-time regulars. When we challenge management's decision to revert, we should argue that their decision has "triggered" a violation of Article 7.3.B.. This argument should be in addition to any of the other usual arguments that are made in instances of reversions. As in the normal maximization arguments, the documentation needed to prove the Union's case is necessary and required in order to show a violation. Some examples:

Arbitrator Robert W. Foster S4C-3C-C 64899

In many offices, when an employee retires the position is reverted which, of course, results in a decrease of full-time regulars. Management's usual argument is that the position is no longer needed due to a reduction in the work load. In support of their positions, they normally rely on the Article 3 provision that states management has a right to "determine the personnel needed to maintain the efficiency of the operation."

Arbitrator Foster stated that management quite properly seeks to maximize flexibility in the assignment of work which is certainly promoted by the greater use of PTF's who have no guarantee of hours of work over FTR's who do enjoy such a guarantee. He went on to state:

"But it is equally obvious that the exercise of this management right is subject to the provision of this agreement as also recognized by Article 3. Article 7, Section 3.B. is one such restriction in placing a general obligation on management to maximize the employment of FTR's and minimize the complement of PTF's."

In this case, the PTF complement increased by two shortly after the disputed reversion. The arbitrator found that the reversion action constituted an evasion of the agreed upon policy to maximize FTR's since it was motivated by management's desire to increase the flexibility and not a reduction in the mail volume of work needed to be performed.

Arbitrator Phillip Parkinson **E4C-2F-C 43008**

Following a reversion, PTF's sometimes assume the work or duties of the position. This can normally be proven by showing through documentation that a PTF or combination of PTF's work eight hours within the approximate time frame of the reverted position performing the same basic duties.

Arbitrator Parkinson concluded:

"As a result of the reversion, the Postal Service failed to maximize the number of full-time employees and minimize the number of part-time employees who have no fixed work schedule. Furthermore, there is no question that a full-time position is warranted under the facts. The duties and functions performed remain the same and are now assumed by the part-time flexible clerks."

Arbitrator Robert W. Foster **S7C-3Q-C 27391**

Automation which results in a reduction of mail volume can sometimes justify reversion of a vacant position. Facts and figures are needed in instances where management makes such a claim. In this case Arbitrator Foster stated:

"Diminution in the work load based on such factors as reduced mail volume or technological advances is certainly a circumstance that will justify reversion of a vacant position. But that was not the case here. What really happened is that the vacant full-time regular position was filled by the addition of part-time flexible employees while the work duties and functions that had previously been performed by the retired FTR remained the same."

This Arbitrator also stated that Article 37, Section 3 which sets out the procedure to be followed when a vacant position is reverted properly do not impact on the application of maximizing the number of FTR employees. He, therefore, acknowledges that a reversion may trigger a violation of Article 7.3.B..

Arbitrator Charlotte Gold **S7C-3C-C 27027**

This arbitrator stated that the Postal Service cannot revert a position with impunity. She states:

"The Service can be expected to prove that a PTF is not being required to work the same fixed schedule as a prior FTR. Absent such a showing, it might well appear that the Service in circumventing its responsibility under the Agreement to maximize full-time employment."

This decision shows that the burden of proof can be shifted to management to show that a position was properly reverted.

Arbitrator James I. Sherman **S7C-3B 20567**

This is a case where it was shown that productive work was available which PTF's could easily be assigned to. Mail was sitting around waiting to be worked prior to PTF's reporting for duty. The Union argued that in lieu of working the PTF's and casuals simultaneously, the PTF's could be scheduled in to work earlier. Arbitrator Sherman stated:

"Management contends that, if the evidence does not meet this test (8 hours in ten, 5 days, same assignment for 6 months) the grievant must be denied. The Arbitrator cannot agree. He believes that the contracting parties took a more realistic view of the part-time, full-time problem. That is, they were aware that, since management has the unilateral right to schedule the work, there is nothing to prevent management's scheduling part-time employees not for greater efficiency, but with a view to not meeting the test set forth in Paragraph C. Accordingly the Arbitrator concludes that even if the Union is unable to prove that any one employee meets the Paragraph C standard, It may still prove that Paragraph B has been violated. It may prove this by presenting convincing evidence to show that management knew of should have known that the work load was, and would be in the future, sufficient to justify utilizing a full-time, rather than a part-time employee."

Additional awards specifically addressing reversions and the Article 7.3.B. principle are: Stephens, S4C-3W-C 29776; Martin, C7C-4H-C 27415; Bentz, S7C-3C-C 34986.

ADDING PTF'S - "FOR FLEXIBILITY"

Article 7.3.B. can be used to challenge the routine hiring of additional PTF's for added "flexibility" without justification or demonstration of the need for additional flexibility upon the retirement, death, or transfer of a full-time employee. For example:

Arbitrator Elvis C. Stephens S4C-3W-C 29776

This particular office had a complement of 8 FTR's, and 11 either PTF or casual clerks. The postmaster was attempting to carry out his intention to provide a flexible work force. The arbitrator stated in part:

"As laudable as is this goal on the part of the PM, one must conclude that the PM does not have a free hand to implement his own idea of a flexible work force. The parties to the contract have agreed upon language (Article 7.3.B.) Which restricts such attempts to hire many part-time employees."

He concluded that the attempt by the postmaster to do the reverse of what the national parties have agreed upon is a violation of the contract.

AUTOMATION - "ANTICIPATED" EXCESSING

With the ongoing deployment of automation, management can be expected to argue that less full-time employees will be needed. In general, this is not a valid claim and has been rejected by some arbitrators. For example:

Arbitrator John C. Fletcher C7C-3M-C 13283

"A third point advanced by the Service in this case concerns an anticipated reduction of the work-force because of automation. While the Union has argued that this facet was never developed as a defense against conversion prior to the arbitration hearing and, therefore, it must now be rejected as new argument, it should be observed that even if the Service's contentions were timely advanced and appropriate for consideration here, they, nonetheless, would be required to be rejected on their merit. Arbitration C7C-4K-C 3576 (Penn), considered similar arguments and concluded:

'...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; its (sic) does not proved for an exemption for an anticipated reduction in the work force or an exclusion if an installation is reverting full-time positions.'" (underlining added)

Most arbitrators will likely reject the "automation argument" where it is simply speculation or a belated claim and decide the grievance based on the facts as they existed at the time of the violation.

Arbitrator Joseph Sickles **C90C-4C-C 94019732**

The arbitrator states, in part:

"My award must be limited to rectifying the violation concerning that same point of time, rather than speculation concerning later times ..."

Arbitrator Nicholas Zumas **E7C-2L-C 36680**

In another decision, the arbitrator ruled:

"In determining whether conversion is justified, the inquiry is limited to the data covered by the test period; subsequent data presented by Management indicating the impact of automation as the Swanton facility are not relevant. Moreover, Management's contention that automation will, in the future, drastically (effect) Clerk work at this facility is without merit. Management, under the provisions of Article 12, has the prerogative of excessing and reassignment."

Arbitrator Fallon Bentz **S7C-3C-C 34986**

also ruled in similar fashion:

"One further contention merits consideration. The Postal Service contends that further automation in the near future will result in further reductions. The Union correctly points out that this is speculative at this time. If such changes do occur, they can be considered at the time they are made."

OTHER ARGUMENTS

Article 7.3.B. should be cited in any situation in which work hours are being utilized over a long period of time which could go toward a full-time assignment, e.g., postmaster or supervisor performing bargaining unit work in violation of 1.6 (*Williams, 57C-3D-C 32569; Fletcher, C7C-4M-C 17812; Sickles, E7C-2H-C 32850*), injured carriers performing duties in the Clerk craft (*Klein, C7C-4C-C 22361*), or casuals working significant number of hours. In these circumstances be prepared to uphold your burden of proof. All facts and circumstances must be considered and the performance of work hours "per se" will not constitute a justification for seeking conversions under 7.3.B. but may be used in conjunction with other arguments such as combining hours, reversion, etc..

HIRING "FREEZE"

Article 7.3.B. can be used to obtain conversions even though management justifies their failure to maximize due to self-imposed hiring freezes. For example:

Arbitrator Robert J. Ables 35-89 89-17129 / 17189

In addition to its usual 7.3.C., argument the Employer in this case claimed that it could not convert a PTF due to a "freeze." In rejecting this argument, Arbitrator Ables states:

"The Employers' argument that it is restricted from converting a PTF position to that of regular employee because of a freeze ordered by headquarters is alien to the collective bargaining agreement and to applicable grievance and arbitration procedures. The argument is a throw-in by the employer. It cannot be - and it is not - the case that the employer, for reasons of budget, may declare unilaterally, and absolutely, that no job can be filled, even if it is found that the Employer has violated the contract."

OTHER REGIONAL ARBITRATION AWARDS

Numerous regional level arbitrators have addressed the various arguments related to maximization within the context of 7.3.B., consistent with Garrett's observations. A

few examples follow. Awards cited are available through your NBA's office.

Arbitrator Arnold M. Zack **N1C-1M-C 185**

In denying the grievance, the arbitrator stated:

"The only evidence presented by the Union to support its position was the listing of the grievant's hours from July, 1980 to March 1981. The Union had no other exhibits or evidence as to hours worked by other PTFs or as to what portion of the working hours had been devoted to clerical tasks."

This decision tends to suggest that a mere showing of total work hours by a PTF is not sufficient to demonstrate the need for a full-time position. All facts and circumstances regarding scheduling must be addressed in light of management's ever present allegation of needs for "flexibility."

Arbitrator Ernest E. Marlatt **S4C-3V-C 19161**

The Postal Service, as in many other cases, contented that the Union must prove that at least one PTF employee at the installation has met each and every one of the conditions set forth in Article 7, Section 3.C. and that in absence of such proof there is no contractual obligation to convert. Some arbitrators have held that Section 3.B. and C. go hand-in-hand. For example, the requirement to maximize does not come into play until after the conditions of 3.C. are met.

Arbitrator Marlatt agreed with the position of Arbitrator Larson and states in part:

"Section (C) is not the sole and exclusive criteria for conversion but that the need to convert positions to meet the goal of maximization set out in Section (B) may come from other proof that PTF employees are in fact being utilized in a full-time basis."

Arbitrator Edmund W. Schedler **S4C-3W-C 57213, 16589**

Even though the principles of 7.3.B. are well established, the Employer continually relies upon the criteria of 7.3.C. in support of its position. This award demonstrates the necessity of charts. The Arbitrator stated:

"The union provided bar graphs for every day each PTF clerk worked between the dates of September 12, 1987 and March 11, 1988. After carefully reviewing all the data, I do not find that the work load would

support 3 FTR positions; however, I do find that the work load would support 2 FTR positions."

The Employer cited a regional level award to support its 7.3.C. position but the arbitrator found the majority of the awards follow the line of reasoning of Arbitrator Garrett.

Arbitrator J. D. Dunn S7C-3U-C 10450

Management may sometimes argue that the Union's data covered period of high mail volume. If they can prove their case, it may cause the Arbitrator to apply the Garrett principle of "experimentation." Arbitrator Dunn ruled in this case:

"Since the duration of time in question was during a 'high volume' period, and testimony cautioned against possible drops in mail volume, this Arbitrator believes experimentation is appropriate."

GRIEVANCES ARTICLE 7.3.B.

The burden of proof regarding alleged violations of 7.3.B. is a heavy one. There must be substantial evidence in regards to the facts and circumstances involved. Postal managers seem to be intelligent enough to know and cite their rights under Article 3 to "manage," yet are unable, unwilling, too lazy, or just too dumb to actually manage, without flexibility to cover their incompetence - at least that seems to be their standard claim at the arbitration table.

Our grievances must therefore contain sufficient documentation to rebut their claimed inability to manage without flexibility. When "combining" hours of PTF's to argue a violation of 7.3.B. we suggest that the grievance cite a violation of 7.3.B. and 7.3.C..

DOCUMENTATION / REMEDY ARTICLE 7.3.B.

- ◆ Any documentation such as work schedules, hours, time cards, etc., should be summarized and presented in chart form (examples attached).
These charts must be presented to management no later than step 2.

Article 17.3 gives the steward the right to chart (or graph) on the clock - subject to the "reasonable" provisions of 17.3. This right has been addressed at step 4 and in arbitration. Examples: Step 4, H8C-3D-C 21690 (Attachment # 9); Arbitrator Stephens, S4C-3W-C 28984 (Airs #400861).

- ◆ Employee complement of the office, i.e., the number of PTF's, FTR, etc.
- ◆ Office work schedules by week including total hours of PTF's (including AO's) and when they were worked. Also, work schedules and hours of casuals and T.E.'s.
- ◆ Information regarding any decrease or increase of the number of PTF's or full-time regulars.
- ◆ Union's work schedules for the "proposed" full-time positions.

- ◆ Any other information which supports your claim that additional regular schedules could be "carved" out of the PTF's hours without impairing efficiency.

REMEDY:

Conversion of the appropriate number of PTF's to full-time with those converted to be made "whole."

Part-Time Flexibles do have *RIGHTS!*

By Lu-Ann J. Glaser, President Keystone Area Local, APWU

Unilaterally Changing a Previously Approved Sick Leave Day to an Off Day

In circumstances similar to those described in the previous section on Annual Leave, management will sometimes unilaterally discount a previously approved request for sick leave in the early part of the week, if the employee goes on to work overtime at the end of the week. This is also improper. Section 513.421.c of the ELM states,

"Limitations in 513.421.b apply to paid sick leave only and not a combination of sick leave and workhours. However, part-time flexible employees who have been credited with 40 hours or more of paid service (work, leave, or a combination of work and leave) in a service week are not granted sick leave during the remainder of that service week."

Another Step 4 agreement dealt with a similar circumstance where an employee had requested sick leave on a Monday, but due to the fact that the employee's workhours, added to the sick leave, totaled in excess of 40, management unilaterally voided the sick leave. The parties agreed,

"We mutually agreed that based upon the circumstances of this case, the grievant shall receive six (6) hours approved sick leave for May 9, 1981. If the granting of this leave causes the total paid hours for the week to exceed forty (40) hours, overtime shall be paid for the excess."

HOLIDAY ISSUES

Article 11

Holiday Schedules MUST Include PTFs

The ELM and Article 11 require that the holiday schedule be posted no later than the Tuesday of the week preceding the Holiday. It was also agreed by the parties in Step 4 agreement N-E-2574 that,

"The posting of a holiday schedule on the Wednesday preceding the service week in which the holiday falls, shall include part-time flexible employees who at that point and time are scheduled to work on the holiday in question."*

* Subsequently the day was changed to Tuesday

Part-Time Flexibles do have *RIGHTS!*

By Lu-Ann J. Glaser, President Keystone Area Local, APWU

Minimum and Maximum Hours To Request

The only "minimum" number of hours listed as what an employee is restricted to requesting is .01 units. In a letter dated May 8, 1985, USPS representative William E. Henry wrote,

"The leave regulations in Chapter 5 of the Employee and Labor Relations Manual allow leave charges for full-time, part-time regular, and part-time flexible employees in minimums of one hundredth of an hour. We are not aware of any positions being taken with regard to minimal use of annual leave or any other paid leave or which restricts the right of employees to request leave in minimal amounts for non-consecutive days."

As for the maximum, a PTF is limited to the eight (8) hours in a day of leave or combination of work and leave per day as stated in section 512.522 of the ELM.

SICK LEAVE

Minimum and Maximum Allowable Hours of Sick Leave to Request

A problem which arises with some frequency regarding PTF sick leave requests, is the number of hours a PTF may request and/or be paid for. In addition to the previously stated position of the USPS as found in the May 8, 1985 William Henry letter, the ELM Section 513.421.b details the specifics concerning PTF requests for sick leave:

"b. Except as provided in 513.82, paid sick leave may not exceed the number of hours that the employee would have been scheduled to work, up to:

- (1) A maximum of 8 hours in any day.*
- (2) 40 hours in any 1 week.*
- (3) 80 hours in any one pay period.*

If a dispute arises as to the number of hours a part-time flexible employee would have been scheduled to work, the schedule will be considered to have been equal to the average hours worked by other part-time flexible employees in the same work location on the day in question."

Part-Time Flexibles do have *RIGHTS!*

By Lu-Ann J. Glaser, President Keystone Area Local, APWU

Approval of Leave

The procedures for the submission of and approval of annual leave requests is controlled by the provisions of the Local Agreement for your office. If you do not have a local memorandum of understanding, please consult with your Union representative to discuss the specifics of any problems you may be having and to arrange for the negotiation of an LMOU during the next Local Implementation period.

Seniority for Approval of Annual Leave

If the LMOU for your office divides the installation up by section, then your seniority is determined within your section, regardless of full-time or part-time status. The same goes for a Local Agreement that declares the installation a "section" for annual leave. Step 4 agreement H1N-2B-C 2563 states,

"Leave which is applied for consistent with the National Agreement and Local Memorandum of Understanding is awarded by seniority without regard to full-time or part-time status."

Management Unilaterally Changing Approved Annual Leave to Day Off

Many times, a PTF, who requests and takes leave in the early part of their week, prior to their working or accruing 40 hours of work or a combination of work and/or leave, will find that their supervisor or postmaster will unilaterally discount the leave request to avoid the requirement to pay overtime for hours worked at the end of the week. This is improper and was dealt with in a Step 4 agreement, H1C-3Q-C 21492.

"The parties at this level agree that if a PTF makes a valid request for annual leave for a specific day, and such leave is approved, then the leave will be recorded for that specific service day. When a PTF has been previously granted annual leave, the annual leave will not be unilaterally changed to an off day, solely to make the PTF available for an extra day of work at straight time."

Instructions for Use of Max Charting Software

- 1) Do not alter Week 1 Chart or Week 2 Chart Worksheets. If you click onto the chart itself, it will NOT print out the start date, Pay Location or Pay Period at the bottom of the page. To correct it, please click on a cell at the bottom of the page outside of the chart area. The software will chart the information entered under Step 2 below. The Chart sheets are protected - Do Not Remove Protection for these pages.
- 2) To record clock rings enter the employee's name under the column named "Saturday." The software will record the employee's name for the entire week. Then enter the clock rings as hours and hundreths for each employee; for example: the clock rings say "05.75" Enter as "5.75." 10.00 can be entered as 10 and 10.50 as 10.5. And so on. The software will total weekly totals for each employee and daily office totals.
- 3) To record Annual or Sick Leave on the chart: Total the hours for the day, for example: 6 hours work hours and 2 hours AL would be recorded as if the employee worked the entire 8 hours. The amount of the shift that was AL or SL would be recorded on the same line as the employee's name under the column header entitled: Day Total. Other leave is listed as SL, LWOP, COP and so on.

Illustration:

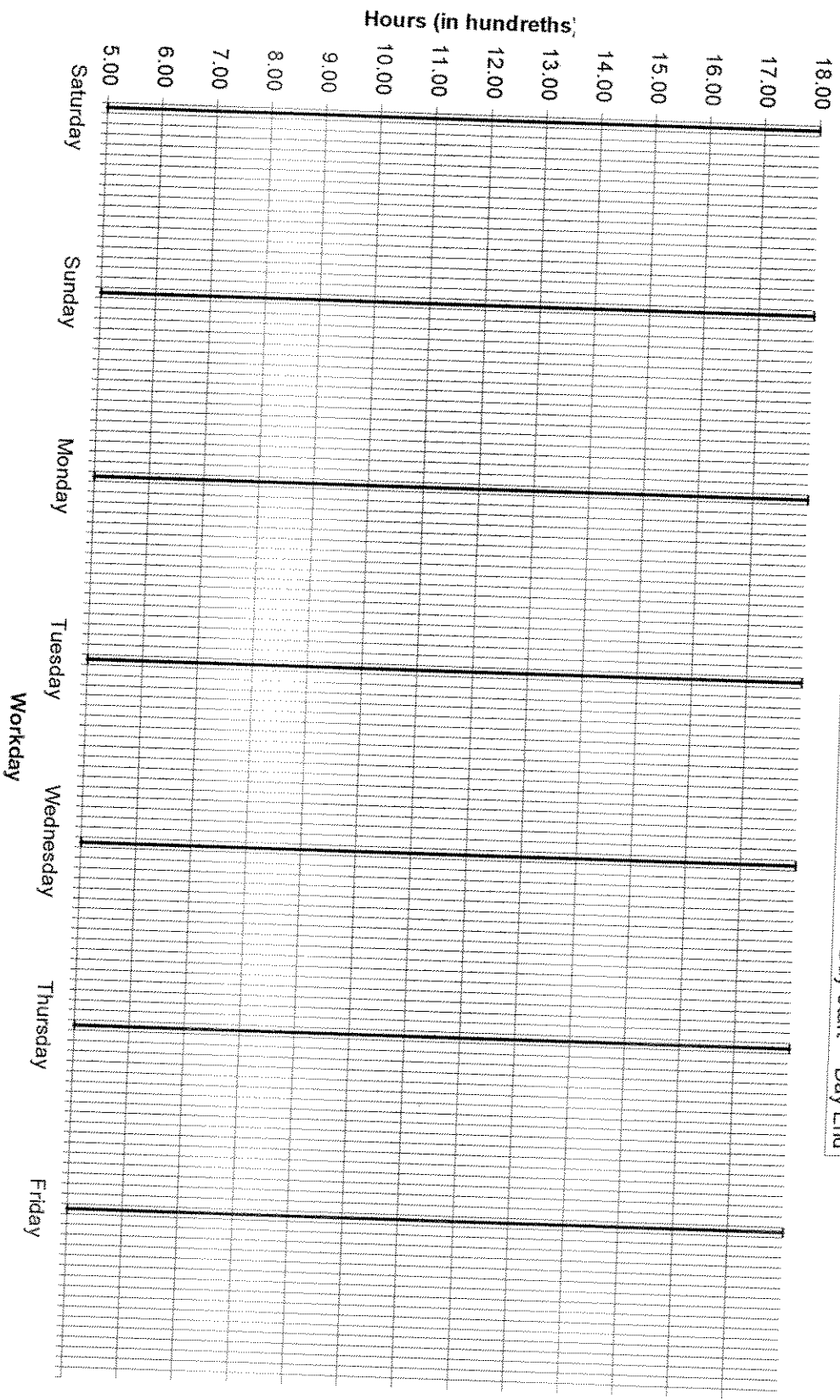
	Shift Start	Break Start	Break End	Shift End	Hours Worked	Day Total
Saturday						
Employee A	7.50	11.00	11.50	16.00	8.00	2.00AL

Note: It does not matter where the leave is recorded during the day as long as you have recorded the total time that the employee can be credited for maximization purposes. Usually, you will record the normal start time that the employee regularly works; on ETC or TACS systems, there will be a start time recorded on the Employee Everything Report. Use it. There are Step 4 decisions that allow the use of leave for Maximization.

- 4) After you have recorded the clock rings for up to sixteen employees for the Pay Period, save the record under FILE - Save As (on the Menu) by listing it, for example, as PP16-02 - Name of Office. Direct the save to the folder of your choice.
- 5) To print the Workbook, go to File - PRINT. When the requester window comes up there will be three choices under the section entitled: print what. Choose Entire workbook. Click "OK." To print multiple weeks, select a range of worksheets by clicking on a Tab and holding down the "Shift" key, and then clicking on the last page (Tab) of your selection. Click on OK and print.
- 6) To print out these instructions repeat Step 5, but chose "Active Sheet" instead of Entire Workbook.

Time Analysis

▲ Shift Start ✱ Break Start ▲ Break End ◆ Shift End - Day Start - Day End



Start Date: 1/0/1900

PL: 0 PP: 0 WK: 1

Week 1 Chart

Employee Totals for Week

[illegible]

Monday

Tuesday

Wednesday

Thursday

Friday

Part-Time Flexibles do have *RIGHTS!*

By Lu-Ann J. Glaser, President Keystone Area Local, APWU

2. Loaner PTFs should not be used in lieu of available employees from the home office.

A Step 4 decision letter from the USPS clarifies their position and states,

"In the interest of harmonious Labor-Management relations, it would appear reasonable to employ the people from the home office to their fullest capacity and when possible, be assigned the preferred work hours. The borrowed employee should be used to supplement the local work force when the workload requires additional people."

EQUALIZATION OF PTF HOURS

Another question which generates much interest is whether there is any requirement to either equalize the hours of PTFs in an installation, or whether the hours should be distributed by seniority.

Although there is no specific language in the National Agreement stating a requirement to do either, the distribution of PTF hours should be based upon mutually accepted past practice. If the history in the office is that the hours of the PTFs are equally distributed, then that is the practice to be recognized. Conversely, if the senior PTF historically is given the majority of the hours, then that practice, unless negotiated with the Union otherwise, should be recognized as controlling.

In defining what "equalizing" the hours means, it does not mean that the hours must be exactly the same for all PTFs. There must be some reasonable equity.

NOTE: In some offices, there may be a written agreement between the Union and management concerning whether or not the hours are to be equalized or the majority given to the senior PTF(s). If this is so, such as in the Harrisburg GMF, Shamokin Dam and Three Springs, this is the controlling language.

OVERTIME FOR PTFs - BEFORE or AFTER ODL REGULARS?

With the exception of the MVS Overtime agreement (page 7, Harrisburg MOUs), management is not controlled by any language requiring the use or non-use of Part-Time Flexibles prior to using an overtime desired list and although it doesn't make sound business sense, that includes a PTF who has not yet accrued a 40 hour workweek. Nor is there any obligation to use the overtime desired list prior to giving overtime to a PTF.

Part-Time Flexibles do have *RIGHTS!*

By Lu-Ann J. Glaser, President Keystone Area Local, APWU

This provision prohibits management from working a PTF on any day, outside of a 12 hour window, regardless of the total hours worked. For example:

If a PTF is scheduled to begin tour at 4:00am and works until 9:30am, clocks out and returns at 3:00PM, it would not be permissible to work them past 4:00PM because that would extend their day outside of the 12 hour window.

MEALTIME

The ELM also sets forth a requirement to provide a meal break. Section 432.33 of the ELM states,

"Mealtime

Except in emergency situations or where service conditions preclude compliance, no employee may be required to work more than 6 continuous hours without a meal or rest period of at least one-half hour."

INAPPLICABILITY OF THE 8 WITHIN 10 CRITERIA

Although Article 8 provides that an employee's normal workweek consists of five (5) service days, with each day consisting of "...eight (8) within ten (10) consecutive hours.", the parties agree that this does not apply to part-time flexibles. Step 4 agreement H4T-3U-C 43451 states that,

"There is no dispute between the parties at this level that Article 8.2.C does not apply to part-time employees."

"ON CALL" STATUS

Some PTFs have been told to "...stay by the phone.", waiting to be called in to work as needed. This is improper and the parties agreed in several Step 4 agreements that,

"...there is no contractual provision, nor is it intended, that part-time flexible employees be required to remain at home or to call the post office to ascertain whether their services are needed."

"LOANER" PTFs

The use of loaner PTFs is quite common in associate offices. Although there is very little in the CBA concerning their use, two things should be noted:

1. Working in another office should only be on a voluntary basis; and

Part-Time Flexibles do have *RIGHTS!*

By Lu-Ann J. Glaser, President Keystone Area Local, APWU

How to calculate a PTFs straight-time hourly rate

According to Article 11, Section 7 of the National Agreement (page 51, CBA) states,

"A part-time flexible schedule employee shall not receive holiday pay as such. The employee shall be compensated for the ten (10) holidays by basing the employees regular straight time hourly rate on the employee's annual rate divided by 2,000 hours."

The reason for this is that holiday pay for the ten holidays is included in the basic rate of pay for part-time flexible employees, who only get paid for the days they work, not the holidays they do not work. A full-time employee's hourly rate is determined by dividing the annual rate by 2080, which includes the 80 hours of holiday pay.

To illustrate: For both a part-time flexible and full-time regular at level 5, step 0, the annual rate is: \$37831.00. To determine the PTF's hourly rate, divide that figure by 2000 (hours), which equals \$18.92/per hour. To determine the full-time employee's hourly rate, divide that same figure by 2080 (hours), which equals \$18.19 per hour.

Now, since holiday pay has no effect on an employee's overtime rate, the overtime rate for both the PTF and Full-time Regular is calculated by taking the full-time hourly rate times 150%. If a part-time flexible employee were to be paid for their overtime hours, one and one-half times their higher "equalizer" base hourly rate, they would be paid more than regular employees for doing the same amount of work and the principle of equal pay for equal work, which the differential rates established, would be upset.

MAXIMUM ALLOWABLE HOURS PER DAY

The ELM Section 432.32 states,

"Maximum Hours Allowed

Except as designated in labor agreements for bargaining unit employees or in emergency situation as determined by the PMG (or designee), employees may not be required to work more than 12 hours in 1 service day. In addition, the total hours of daily service, including scheduled work hours, overtime and mealtime, may not be extended over a period longer than 12 consecutive hours."

Part-Time Flexibles do have ***RIGHTS!***

By Lu-Ann J. Glaser, President Keystone Area Local, APWU

This provisions sets forth the workhour guarantees for PTFs in small offices (2 hours) and large offices (4 hours). These guarantees raised additional questions which were answered by the parties at the headquarter level in Step 4 agreements such as H1N-3P-C 4870, which states in part,

- "1. When a part-time flexible employee is notified prior to clocking out that he should return within two (2) hours, this will be considered as a split shift and no new guarantee applies.*
- "2. When a part-time flexible employee, prior to clocking out, is told to return after two (2) hours, that employee must be given a minimum or two (2) hours work or pay.*
- "3. All part-time flexible employees who complete their assignment, clock out and leave the premises regardless of intervals between shifts, are guaranteed four (4) hours of work or pay if called back to work. This guarantee is applicable to any size office."*

There have also been other agreements concerning guarantees during the first and last part of a "split shift."

Step 4 agreement H1N-1N-C 69 dealt with a dispute over whether an employee who worked only 1 and 1/2 hours during the first part of a "swing shift" but was brought back one hour later and worked another 2 and 1/2 hours. The Union asserted that the employee was entitled to a full 2 hour shift for the first part. The parties agreed that

"Under the circumstances described, this employee is entitled to a two (2) hour guarantee for his initial tour of duty."

Another Step 4 agreement, H4V-4B-C 411 dealt with whether another guarantee of two (2) hours is required after an employee returns for the second part of a split shift. The parties agreed that

"When a part-time flexible employee prior to clocking out, is told to return after two hours, that employee must be given another minimum guarantee of two hours work or pay."

PTF OVERTIME RATE

One question which is raised often is why a PTF's overtime rate is not 1 and 1/2 times their base pay.

To understand the overtime rate, you must first understand how the PTF straight time rate is determined, which makes it greater than a full-time straight time rate at the same level and step.

Part-Time Flexibles do have *RIGHTS!*

By Lu-Ann J. Glaser, President Keystone Area Local, APWU

Article 7.3.B

(page 21, CBA)

"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;" (emphasis and underscoring added)

This provision applies, as it states, to all installations and sets forth an obligation of the USPS to ensure that if a full-time assignment can be established, it MUST be established. The Union has been successful in achieving the conversion of PTFs by charting out the hours of PTFs, 'loaner' PTFs and casuals, showing that a full-time duty assignment could be created.

Article 7.3.C

(page 21, CBA)

"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."

This provision goes one step further than 7.3.B in that it sets forth a specific time frame and framework for the creation of a "duty assignment" through a PTF's scheduled workhours.

MOU re: Maximization/Full-time Flexible-APWU

(page 313, CBA)

"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."

Part-Time Flexibles do have *RIGHTS!*

By Lu-Ann J. Glaser, President Keystone Area Local, APWU

level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule."

This provision allows management to utilize employees from another craft, limited to mailhandlers, city carriers or another APWU craft employee, to perform APWU craft work outside of their own craft. **PLEASE NOTE: Rural Carriers are prohibited from performing APWU craft work under this provision.**

It is also important to note that this assignment can be for one and only one reason, that is "...in order to maintain the number of hours of the employee's basic work schedule." Using a PTF from another craft to perform APWU craft duties would be in violation of this provision if that employee already achieved their workhour guarantee for that day. Also, management may not use a PTF from a non-APWU craft on a recurring basis up to their guarantee, because that would be beyond other limits set forth in the contract such as those found in Article 3 ("*...an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.*") or Article 7.2 which limits the establishment of mixed craft assignments.

MAXIMIZATION/CONVERSION OF PART-TIME FLEXIBLES

Article 7.3.A

(page 21, CBA)

"Section 2. 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 combined bargaining units represented by the APWU, as set forth in Article I -- 80% full-time employees."

This provision sets forth the ratio of full-time to part-time APWU employees which the USPS must abide by in installations with 200 or more APWU employees, that is 80% full-time and 20% part-time. This ratio includes all APWU craft employees

Part-Time Flexibles do have *RIGHTS!*

By Lu-Ann J. Glaser, President Keystone Area Local, APWU

wise be scheduled for 40 hours during the service week; or (c) if the part-time flexible employee is not qualified or immediately available when the work is needed to be performed."

The bottom line is that if management is utilizing a casual employee or employees to perform work you are "...qualified" and "...available" to perform, and you have not been afforded a 40 hour workweek, a violation has occurred.

Many times management will use the argument that the PTF and the casual were used side by side at the same time. At that point, we would have to prove that the work being performed could have been performed at a time either prior to your tour, or after, such as work that was not subject to specific dispatch times.

SENIORITY FOR PREFERRED ASSIGNMENTS OVER CASUALS

*THE FOLLOWING APPLIES ONLY TO PTFs
IN THE HARRISBURG GMF:*

The Harrisburg LMOU contains language which gives PTFs a right to assert their career status over a casual with regard to the type of work they are assigned:

ITEM 22. Section 3 of the Harrisburg LMOU (page 14) states,

"Casuals shall not be given preferred assignments to the detriment of employees in the regular work force."

Article 7.1.A.2 of the CBA (page 18) includes part-time employees in the "...regular workforce."

CROSSING CRAFT VIOLATIONS

Article 7.2.B

(page 20, CBA)

"B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage

Part-Time Flexibles do have *RIGHTS!*

By Lu-Ann J. Glaser, President Keystone Area Local, APWU

POSTMASTER LEAVE REPLACEMENTS a.k.a. "PMLRs"

In some offices, the USPS hires a PMLR to work as coverage for the Postmaster when he/she is absent. There are numerous restrictions with regard to the hiring and use of PMLRs that are many times violated. These restrictions include a prohibition against their use in a level 18 or above office; at a time when the Postmaster is also on duty; or in an office that also employs a career clerk. It has also recently been discovered that PMLRs are also being used in a manner similar to a "loaner" PTF, being used in offices other than the one they were hired for. The same restrictions as stated above apply to any office a PMLR works in.

If you are aware of any violations such as the ones described above, please notify the Union. These are non-career, no-benefit workers and the Union strives to have these employees replaced with a career position. Depending upon their standing on the appropriate register, sometimes the PMLR is the recipient of the career position.



CASUAL EMPLOYEES

CASUALS vs PART-TIME FLEXIBLES

Article 7.1.B.2

(Page 18 CBA)

"During the course of a service week, the Employer will make every effort to insure that qualified and available part-time flexible employees are utilized at the straight time rate prior to assigning such work to casuals." (emphasis and underscoring added)

Additionally, in a letter dated June 22, 1974, from USPS Headquarters representative James Conway, a more detailed explanation was provided:

"This provision requires that the employer make every effort to ensure that qualified and available part-time employees with flexible schedules are given priority in work assignments over casual employees. Exceptions to this priority could occur, for example, (a) if both the part-time flexible and the casual employee are needed at the same time; (b) where the utilization of a part-time flexible required overtime on any given day or where it is projected that the part-time flexible will other-

PTF Hours PP

Week 1

Name	Sat	Sun	Mon	Tues	Wed	Thur	Fri	Total
Total								

Name	Sat	Sun	Mon	Tues	Wed	Thur	Fri	Total
Total								

Week 2