

**SMALL OFFICES ISSUES
UNDER THE 2010-2015
Collective Bargaining Agreement**

**PROTECTING CLERK CRAFT WORK
Cross-Craft Violations**

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ARTICLE 7

EMPLOYEE CLASSIFICATIONS

Section 2.
Employment and Work Assignments
ARTICLE 7.2.B. AND 7.2.C.
2007 JCIM
ARTICLE 7, PAGE 4

ARTICLE 7: EMPLOYEE CLASSIFICATIONS

- Section 2. Employment and Work Assignments
- 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 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.

ARTICLE 7: EMPLOYEE CLASSIFICATIONS

- **Section 2. Employment and Work Assignments**
- C. During **exceptionally heavy workload periods** for one occupational group, *[note: The term occupational group does not apply to the Clerk Craft]*
- employees in an occupational **group experiencing a light workload period may be assigned to work** in the same wage level,
- commensurate with their capabilities,
- to the heavy workload area for such time as management determines necessary.
 - [See Memo, page 206]

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MEMORANDUM OF UNDERSTANDING

BETWEEN

THE UNITED STATES POSTAL SERVICE AND THE JOINT BARGAINING COMMITTEE

(The American Postal Workers Union and National Association of Letter Carriers)

- **Re: Article 7, 12 and 13 - Cross Craft and Office Size**
- A. It is understood by the parties that in applying the provisions of Articles 7, 12 and 13 of the **2010 National Agreement**, cross craft assignments of employees, on both a temporary and permanent basis, shall continue as they were made among the six crafts under the 1978 National Agreement.
- B. It is also agreed that where the **2010 Agreement makes reference** to offices/facilities/installations with a certain number of employees or man years, that number shall include all categories of bargaining unit employees in the office/facility/installation who were covered by the 1978 National Agreement.

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Arbitrators Bloch and Mittenthal

- Inherent in Article 7.2.B and 7.2.C is the assumption that **the qualifying conditions are reasonably unforeseeable or somehow unavoidable.**
- While management retains the right to schedule tasks to suit its needs on a given day,
- the right to do this may not fairly be equated with the opportunity to, in essence,
- create "insufficient" work through intentionally inadequate staffing.
- Otherwise Management would be able to cross craft lines at will merely by scheduling work so as to create the triggering provisions of Subsections B and C.

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Arbitrators Bloch and Mittenthal

- Taken together, these provisions support the inference that Management’s right to cross craft lines is extremely limited.
- When Management makes a cross craft assignment, it must justify that assignment under the provisions of 7.2B or 7.2C.
- Management must be able to demonstrate pursuant to 7.2.B. that there was insufficient work in the employee own assignment or
- that there was exceptionally heavy work in one group and light work in another at the same time pursuant to 7.2.C.

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INVESTIGATION AND DOCUMENTATION

- What is the issue?
- What is the definition of the issue?
- What is the argument?
- The Interview(s):
 - The Management Officials
 - The Employees
- What documentation should be included?

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CROSSING CRAFTS AND/OR WAGE LEVELS

- **THE DEFINITION**
- Management may not normally make cross-craft assignments unless there is an insufficient workload in the losing craft and an exceptionally heavy workload in the gaining craft.
- **THE ARGUMENT**
- The circumstances under which cross-craft assignments may be appropriate are very limited.
- Article 7 is a general prohibition against such assignments with very limited exceptions.
- If management claims an insufficient workload in one craft and an **exceptionally heavy workload** in another, the burden shifts to the Employer to prove those claims.
- Management may not make such assignments solely to avoid overtime in one craft.

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THE INVESTIGATION

- The Initial burden of proof for the union is to prove that a cross-craft assignment took place.
- Who made the decision to make this cross-craft assignment?
- Why couldn't you have used Clerks to perform this work?
- Wasn't one of your major concerns the fact that you would have had to bring in a Clerk on overtime?
- How much overtime did the Letter Carrier Craft work on the day in question?
- How much overtime was worked in the Clerk Craft on that day?

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THE INVESTIGATION

- What type of work was performed?
- Who (what craft) performed the work other than clerks?
- How long did the other craft employees perform clerk craft work?
- Can management prove that there was insufficient work in the employee's own scheduled assignment(7.2.B.)?
- Was there a heavy workload in the clerk craft and a light workload in the losing craft (7.2.C.)?
- Is there proof of "**exceptionally**" heavy workload?
- "Exceptionally" defined as "unforeseeable"; unavoidable

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THE INVESTIGATION

- Could the work have been accomplished by clerk craft employees, even to the point of overtime?
- Is the crossing craft violation a consistent occurrence?
Hourly? Daily? Weekly?
- (Volume reports, overtime records, work schedules)

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THE DOCUMENTATION

- Position description(s) of employees assigned across crafts, occupational groups or levels
- Position description(s) of employees normally performing this work
- Clock rings of employees assigned across crafts, occupational groups or levels
- Clock rings or work hour summary for all members of craft working in APWU craft or occupational group (overtime level in losing craft or occupational group)
- Clock rings or work hour summaries in gaining craft (overtime level in gaining craft)
- PS Forms 1723 [Assignment Order] if used
- PS Form 1230 A or B if used [usually in smaller offices]

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THE DOCUMENTATION

- Mail volume reports
- Identify or document work available in employee's own craft
- Witness statements or interviews
- Supervisor interviews or statements
- Light / limited duty job offer (if applicable)
- Medical restrictions of employee (if any) being assigned across craft lines
- Transfer hours report
- Leave records to document employees on AL, LWOP, etc

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What Shall the Remedy Be?

- JCIM Article 7, page 4
- Generally, when the union establishes that an employee was assigned across craft lines or occupational groups in violation of Article 7.2.B. or 7.2.C.
- A "make whole" remedy requires the payment (at the appropriate rate) to the available and qualified employee(s) who would have been scheduled to work but for the contractual violation

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THE REMEDY

- Overtime compensation for the full-time employees who should have performed the work
- Compensation at the straight-time rate for any PTFs who did not work eight hours in a day or forty hours in a week
- Compensation at the straight-time rate for any PSEs who did not work eight hours in a day or forty hours in a week
- Management cease and desist from utilizing other craft employees to perform clerk craft duties
- When no one can be identified request "make whole" to APWU

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Arbitration Awards

- Arbitrator awards remedy to APWU
- **Michael J. Pecklers award dated January 2011**
- In this case letter carriers and maintenance employees were improperly performing clerk craft duties.
- The arbitrator awarded substantial pay.
- It is especially noteworthy that the arbitrator also awarded pay to the local union for periods when no clerks were available.
- Quoting from the USPS and APWU award of Arbitrator Byars, 2010, "A monetary award to the APWU is the only reasonable mechanism for protecting the integrity of the Agreement in the instant case,..."

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Arbitration Awards

- **Arbitrator Richard B. Danehy, dated October 2007**
- In this the APWU claimed exclusive right to the semi-annual inspections of NDBCUC based on a long standing practice which was unilateral changed and assigned to carriers by written notice to APWU.
- The arbitrator found, "that the inspection work belongs to APWU because of the long standing practice at that office which was supported by testimony from the Carriers, the USPS policy memo..."
- Citing the JCIM as guidance on "past practice"
- "The grievance is sustained as to the past practice argument."

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Arbitration Awards

- **Arbitrator Lamont E. Stallworth, dated Sept. 2008**
- In this award the arbitrator found that USPS violated the National Agreement by allowing City Carriers to spread mail from the clerk cases.
- The mail in question was bulk mail or third class mail which was not as time-sensitive as first class mail.
- In order to preserve and protect the work of clerks, the grievance must be sustained.
- The withdrawing of mail from clerk cases is “clerk work” contrary to the USPS position that M-41 and M-39 allows carriers to withdraw mail.
- The number of withdrawals by each carriers was more than the “pull downs” by clerks.

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Questions ???

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