

REGULAR ARBITRATION PANEL

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IN THE MATTER OF ARBITRATION )

between )

UNITED STATES POSTAL SERVICE )

and )

AMERICAN POSTAL WORKERS UNION,  
AFL-CIO )

) GRIEVANT: CLASS ACTION  
) CASE NOS.

) USPS: B15C-4B-C  
) 17447925

) APWU: SNY 1719  
)

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Before: Prof. Robert T. Simmelkjaer, Esq.  
Arbitrator

**APPEARANCES**

**FOR THE USPS**

Wellington Espinal, Labor Relations Specialist  
Wilbert Walcott, Labor Relations Specialist  
Linda Barksdale, Labor Relations Specialist

**FOR THE APWU**

Peter Coradi, National Business Agent  
John H. Dirzius, Coordinator, Northeast Region

Place of Hearing: White Plains, NY

Date of Hearing: June 28, 2017

**AWARD**

- 1) The Service violated Article 37.3.A.2 of the CBA. As a remedy, it shall post the vacated position of Clerk Zelensky and the senior successful bidder shall be placed in the duty assignment. If there is no senior successful bidder, then the senior PTF Clerk shall be converted to FTR and placed into the position.
- 2) The Service violated Article 37.3.A.1 of the CBA. As a remedy, the Service will create a forty (40) hour FTR duty assignment at the Tarrytown Post Office. In creating this FTR position, the Service shall consider all available work hours, specifically the PSE work hours of PSEs Rolle and Richburg as identified by the MDAT analysis.
- 3) The Arbitrator shall retain jurisdiction to address any issues that may arise in the implementation or interpretation of the foregoing remedies.

August 6, 2017

**Robert T. Simmelkjaer**  
Robert T. Simmelkjaer

## **BACKGROUND**

Pursuant to the procedure for arbitration contained in the National Agreement between the United States Postal Service (hereinafter “the Service”) and the American Postal Workers Union, AFL-CIO (hereinafter “the Union”), the undersigned was selected as Arbitrator to hear and determine the following:

- ISSUES:** (1) Did the Service violate Article 37.3.A.2 when the clerk craft duty assignment vacated by Clerk Christine Zelinski was reverted?
- (2) Did the Service violate Article 37.3.A.1 of the 2015-2018 CBA when it failed to consider all available work hours, including PSE work hours, to create a desirable eight (8) hour full-time clerk craft duty assignment in Tarrytown, NY?  
If so, what shall be the remedy?

At the hearing, the parties were given ample opportunity to present their respective cases, including testimonial and documentary evidence. The record consists of three (3) Joint Exhibits and twelve (12) Union Exhibits. The parties also submitted numerous Arbitration Awards.

## **RELEVANT CONTRACT PROVISIONS**

### **ARTICLE 37 CLERK CRAFT**

#### **Section 3. Posting, Bidding, and Application**

- A. Newly established and vacant Clerk Craft duty assignments shall be posted as follows:
1. All newly established Clerk Craft duty assignments shall be posted to craft employees eligible to bid within 28 days. All vacant duty assignments, except those positions excluded by the provisions of Article 1, Section 2, shall be posted within 28 days unless such vacant duty assignments are reverted. Every

effort will be made to create desirable duty assignments from all available work hours for career employees to bid.

a. Full-time duty assignments.

(1) Newly established full-time duty assignments are posted to full-time employees eligible to bid.

(2) Vacant full-time duty assignments are posted to full-time employees eligible to bid.

2. Reversion. When a vacant duty assignment is under consideration for reversion, the local Union President will be given an opportunity for input prior to a decision. The decision to revert or not to revert the duty assignment shall be made not later than 28 days after it becomes vacant and if the vacant assignment is reverted, a notice shall be posted advising of the action taken and the reasons therefor.

### **CONTENTIONS OF THE PARTIES**

#### Union Position

The Union, which has the burden of proof in a contract interpretation grievance, initially maintains that any new arguments proffered by the Service at the instant hearing should be procedurally barred. According to the Union, the Service neither met at Step 1 nor did it meet and discuss the grievance with the Union at Step 2. Moreover, in its Step 3 answer, the Service never challenged the Union's position.

Referring to the National Award of Arbitrator Richard Mittenthal in Case No. H8N-52-C (1981), where the Arbitrator held that the "Postal Service's Step 2 decision must make a 'full statement' of its 'understanding of...the contractual provisions involved' and its Step 3 decision must include 'a statement of any additional...contentions not previously set forth...,'" the Union argues that pursuant to Article 15.4(c) Failure to Schedule a Meeting/Issue a Decision, "the

Union must appeal the case to the next step within the prescribed time limits if it wishes to pursue the grievance.” Given the Service’s “silence during the grievance procedure,” the Union reiterated the contractual prohibition against the Service’s introduction of any defenses not previously raised at this juncture.

With respect to the substantive issue, the Union notes that the case began with the reversion of a duty assignment and the three-prong requirements of Article 37.3.A.2 imposed on the Service within a 28-day period, namely:

JCIM Q&A @ 68.

When reverting a vacant duty assignment, what steps are required under Article 37.3.A.2?

Response: In order to comply with Article 37.3.A.2, management must take the following steps within the 28 day period:

1. Give the local union president the opportunity for input prior to making the final decision.
2. The final decision to revert must be made within 28 days of the vacancy.
3. A notice must be posted advising of the reversion and the reasons therefor.

Referring to a letter dated February 22, 2017 entitled Clerk Position Under Consideration for Reversion and a subsequent email exchange among Management officials, the Union contends that the reversion was completed within five (5) days of the position being vacated on February 18, 2017 without any Union input.

A Hiring Request Form submitted by Postmaster Catherine Hajdarovic to replace Clerk Zelensky’s position with an FTR clerk was denied on February 17, 2017. A letter from Thomas DiMargo, Westchester District, advised PM Hajdarovic that HRMB “has disapproved your request to post an FTR clerk bid to

replace C. Zelensky's vacated assignment as it is not supported by the workload. The attached reversion consideration letter must be mailed with Priority tracking after the position has been official vacated (so after 2/18/17). This letter allows the Union to provide input within 10 days." The Union was notified regarding the reversion on February 22, 2017 or five (5) days after February 17, 2017.

Alluding to the JCIM, Section 37.3.A.2, the Union notes that the Local Union President must be notified and given an opportunity to provide input prior to the final decision to revert – a decision which must be made within 28 days of the vacancy.

The Union relies on the statements of Steward Chavez and Clerk Pezzuti that Management failed to post a notice at either the Sleepy Hollow or Tarrytown Post Office – which constitutes a violation of the third prong of 37.3.A.2 (i.e., "a notice must be posted advising of the reversion and the reasons therefor)." This issue was also addressed in the Union's Additions and Corrections where the Union notes "There can be no mistake that this communication reveals a decision was made prior to giving the Local President the opportunity for input. The so-called consideration letter dated 2-22-17 addressed to Local President Smith was a sham as a decision to revert had clearly been made by District level Management as indicated by the DiMargo 2-17-17 communication. In fact, the decision to revert was made prior to the duty assignment being vacated."

The Union seeks a make whole remedy which would give the senior employee the opportunity to bid on the reverted duty assignment.

In the event, no successful bids are received (i.e., Senior Clerk or Senior PTF) the reverted position becomes a residual vacancy subject to the MOU between the parties entitled “Re: Residual Vacancies – Clerk Craft.”

The second issue before the Arbitrator concerns the Service’s purported failure to consider all available work hours, including PSE work hours, in order to create an FTR clerk craft position in Tarrytown, NY. Pursuant to this issue, the Union disputes the Service’s claim that the Tarrytown office does not “earn” the duty assignment in question. The Union refers to the language in Article 37.3.A.1 that “Every effort will be made to create desirable duty assignments from all available work hours for career employees to bid.” This language has been carried over from the 2010-2015 CBA into the 2015-2018 CBA, effective July 8, 2016.

According to the Union, “a traditional clerk craft duty assignment should be created, posted and filled in the Tarrytown Post Office as evidenced by the Maximization Duty Assignment Tool (“MDAT”). The Union’s MDAT analysis of two (2) Clerk Craft PSE (E. Richburg and S. Rolle) work hours at the Tarrytown installation concludes that from a total of 90.22 hours, one (1) FTR position could be created. The Maximization Bar Chart shows that E. Richburg’s 41.23 hours and S. Rolle’s 48.99 hours could be combined to create this FTR position.

The MDAT was developed as a result of the 2010-2015 CBA. MDAT is a software program “strictly using USPS data, specifically clock rings in the traditional PDF format and CSV format.” “The USPS has an opportunity to compare the clock rings and to do their own review to verify the accuracy of the

reports at step two of the grievance procedure, in accordance with Article 15.”  
(U. Ex. #6).

Inasmuch as the Service cannot cite any contractual provision that recognizes the concept of “earning” a full-time duty assignment and, in contrast, the parties have mutually accepted the use of the MDAT developed in conjunction with Article 37.3.A.1, including the use of PSE hours, the Union argues that it has presented a prima facie case, thereby shifting the burden of proof to the Service.

As a remedy, the Union seeks the creation of a 40 hour FTR duty assignment at the Tarrytown Post Office. The remedy proposed would further enable the second most senior employee to become the beneficiary of a “ripple effect” or a “domino effect.” This employee would also obtain relief due to the violation of his/her bidding rights. In support of this “residual” remedy, the Union relies on the decision of Arbitrator Stephen Goldberg in National Award Q10C-4Q-C 15174956 (April 21, 2017) as follows:

- B. The Postal Service shall make whole all employees affected by its violation of the MOU by providing each with all pay and benefits lost as a result of that violation. Employees affected by the violation include those employees who would have successfully bid on one of the promised administrative or technical positions at the time that position should have been filled. Also included among the employees affected by the violation are those who would have been the successful bidders on the vacancies created by the employees who would early have been placed in an administrative or technical position had the Postal Service complied with the MOU in a timely fashion.



### Testimony

Mr. Kevin Smith ("Smith"), Local President, testified that he filed the Step 2 grievance appeal. He recalled that neither the supervisor at Step 1, Manuel Borrero, nor the Supervisor at Step 2, held a meeting or issued a decision at their respective levels. Smith testified that Management cited no contractual provision with respect to an earned complement. PM Hajdarovic was not involved in the grievance processing.

Smith acknowledged the 5-day gap between the denial of the Postmaster's request to revert the Zelensky position (2/17/17) and the notification to him (2/22/17) that the position was being considered for reversion. Smith disputed the Service's claim that the job was vacated on 2/18/17 because PS Form 50 shows that a new employee was placed and processed in the job on 2/7/2017. The effective date was 2/18/2017. (Jt. Ex. #2 @ 19).

Referring to the JCIM (Q65), Smith testified that all vacant duty assignments must be posted within 28 days "unless the vacant duty assignment is reverted in accordance with Article 37.3.A.2."

Alluding to his Request for Information ("RFI") and the TAC reports provided, Smith relied on the MDAT analysis and Maximization Bar Chart to calculate the hours of the two PSE employees. He disputed any Service contentions that there was insufficient work in Tarrytown or that these two PSEs were working in other offices. From these data analyses, Smith maintained that one (1) FTR duty assignment, 40 hours per week, could be created. In his recollection, the Service did not challenge these reports.

On cross-examination, Smith, referring to the TAC Rings Data Table Report for PSE Richburg 2016 PP 23, Week 1, acknowledged that the location of the Post Office is not provided.

In response to a Service question implying that the MDAT data was inaccurate or incomplete, the Union argued that these claims should have been presented at the grievance steps below. Comparing the TACS Rings Data Table Report for Richburg for 2016 PP 24, WK 1 to MDAT data for the same time period, the Service discerned a discrepancy in the Finance Numbers for Tarrytown. A similar comparison was made for Rolle. For Richburg, a Finance No. of 358350 2410-00 is denoted whereas for Rolle the Finance No. is 357525 0790-00. Smith testified that the differences could be attributable to different duty stations. The possible assignments for Richburg/Rolle for 2016 PP 25-1 to 02-2 and 2017 03-1 to 04-2 were averaged on a daily basis ranging from 8 hours on Sundays to 21 hours on Wednesdays.

On redirect examination, Smith testified that he did not request any data from post offices other than Tarrytown in his RFI. He also requested Loaner Clerk hours.

#### Service Position

With respect to the Union's first grievance, namely, that the Service violated the CBA when it reverted Clerk Zelensky's position on March 16, 2017, the Service contends that the Postmaster reverted the position when it became vacant on February 18, 2017. According to the Service, "the position was reverted because the current workload did not support the position."

The Service further contends that it followed the 3 steps within the 28-day period set forth in Article 37.3.A.2 to facilitate the reversion as follows:

- The postmaster sent a letter dated February 22, 2017 to the union president soliciting input. Mr. Smith's Inputs were received 15 days later via letter dated March 9, 2017.
- The postmaster made the final decision to revert the assignment on March 16, 2017, within the 28 days as stated above.
- The postmaster posted a notice at the Tarrytown Post Office on the Clerk's bulletin board of the reversion and the reasons therefor as stated above.

Having complied with the requirements of Article 37.3.A.2, the Service argues that the decision to revert is a "management decision" defined in Article 40.1.D.9 and thereby governed by Article 3. The Service relies on the decision of Arbitrator Marlatt in Case No. 575-3A-C 33439, "that there is nothing in the National Agreement which would prevent the Postal Service from reverting a vacant position even where there is enough work to justify the retention of such a position on a full-time basis...The Postal Service need not explain or defend its reasons for reverting a position, and the Union has no contractual grounds to object unless the Postal Service fails to follow the prescribed procedures."

Considering the second issue, alleging a violation of Article 37.3.A.1 for failing to establish an FTR position utilizing available PSE hours, the Service argues that an average of 85 hours per week is not "quite enough to maintain the position." The Service continues:

The reliance on the PSEs workhours is misplaced for several reasons. First, not all of the hours accounted in this average were worked at the Tarrytown office (PSEs worked in various offices throughout the District). Secondly, the PSEs were working hours outside of Ms. Zelensky's bid. The PSEs were scheduled in such a

manner that both ends of the spectrum were covered. They were scheduled to report very early in the morning and late in the afternoon with extended breaks in the middle of the day.

### Testimony

Mr. Thomas DiMargo (“DiMargo”), District Complement Coordinator, testified that his office fills positions as soon as they become vacant. Once a vacancy arises, as in the case of Clerk Zelensky’s transfer, the Postmaster sends the information to the Manager of Finance and HR Operations (“HRMB”) who analyzes the requisite factors, such as customer service variance, workload, etc., to determine whether it is necessary to fill the vacancy.

Alluding to the letter he sent PM Hajdarovic, indicating that “HRMB has disapproved your request to post a FTR clerk bid to replace C. Zelensky’s vacated assignment as it is not supported by the Tarrytown workload,” DiMargo testified that the Union was given the opportunity to “present valid reasons to support retention of the position within the 10-day period. A second, and final reversion letter must be mailed within 28 days from the vacancy date (2/18/17.” In the letter, DiMargo noted that “Tarrytown currently earns 6.71 (rounded to 7) Function 4 employees and will have 8 on the rolls after Ms. Zelensky’s transfer is effective.”

Referring to the SF50, Notification of Personnel Action, DiMargo testified that the job was vacated on the effective date of 2/18/17. The processed date of 2/7/2017 refers to the date the vacancy was submitted to the District for processing.

On cross-examination, DiMargo reiterated that the employee was not placed in Zelensky's position on 2/7/2017, but rather this date represents the date the Service processed the vacancy. The phrase on the SF Form 50, "Employee placed in position per PPAR HR SSC RES 02/07/17" is a "form submitted to shared services to process an automated placement bidding site."

Referring to the Hiring Request Form, DiMargo testified that the request to fill the vacancy was denied on 2/6/17, with 2/18/17 the effective date that the position would be vacated. "The denial occurred before the effective date." His letter to PM Hajdarovic dated 2/17/17 confirms that the position was officially vacated on 2/18/17 and the reversion consideration letter must be mailed to the Union after 2/18/17. Absent valid reasons from the Union to support retention of the position, HR would determine whether the position should be reverted.

Whereas the Handbook EI-312, Section 211-3, Evaluating Vacancies, states "[w]hen a vacancy is anticipated, the installation head must determine if there is a continuing need exists for the position," PM Hajdarovic at the Tarrytown position made the determination in the instant case. The Union advocate asserts that "Nowhere does it state that the HR Committee made this determination."

DiMargo's response to the Union's inquiry that the term "earned complement" is not mentioned in the CBA was twofold: "(1) Management has the right to determine staffing; (2) I am not a labor specialist."

On redirect examination, DiMargo testified that employees are never placed in a new assignment in the middle of the week but "always at the

beginning of a pay period.” He noted that February 7, 2017 was a Tuesday and therefore not the beginning of a pay period.

Postmaster Catherine Hajdarovic (“Hajdarovic”) testified that she had no personal knowledge of Clerk Zelensky’s job assignment other than it was vacated and then reverted. The Westchester Customer Service and Sales District denied her request to hire a replacement clerk. On February 22, 2017, she notified that Union that the position was under consideration for reversion and she invited their input. PM Hajdarovic recalled that the Union provided its input two weeks later on March 9, 2017. She testified that the reversion notice was posted in the Main Post Office on the Union bulletin board.

In her response to the Union’s RFI, Item No. 5, PM Hajdarovic indicated that she had no loaner clerks from PP 23 WK to present. With respect to the Union’s claim that two PSE employees were averaging 85 hours per week during the period at issue, PM Hajdarovic testified that “not all the hours worked were in Tarrytown as they also worked in other offices such as Mt. Vernon, Scarsdale and Ossining.” Over the objection of the Union that the Service, specifically PM Hajdarovic, had failed to provide the Union with loaner hours, PM Hajdarovic testified that “the employees (PSEs) took their time cards with them and they swiped in at those offices.”

On cross-examination, PM Hajdarovic acknowledged an error in responding to the Union’s RFI when she omitted PSE loaner hours. “I thought it meant regular clerks.” She had no proof that she posted a notice advising of the reversion of the vacant duty assignment. In response to the statement of

Steward Chavez regarding the Sleepy Hollow Post Office, PM Hajdarovic testified “nothing gets posted in Sleepy Hollow.”

She further testified that PSE Richburg was hired “way before Zelensky vacated her position.”

## **DISCUSSION**

### Article 37.3.A.2.

Considering the evidence in its entirety, the Arbitrator is persuaded that the Service violated one of the three-prong requirements of Article 37.3(A)(2) for reverting a vacant position.

A Hiring Request Form dated 2/6/2017 indicates that Clerk Zelensky’s position was vacated on 2/18/2017. Postmaster Hajdarovic sought a vacancy replacement, namely PSE Erica Richburg, on 2/6/17. By letter dated 2/17/2017, PM Hajdarovic was informed by Manager Thomas DiMargo that “HRMB has disapproved your request to post a FTR clerk bid to replace C. Zelensky’s vacated assignment as it is not supported by the workload.”

At the same time, Manager DiMargo attached a reversion consideration letter “to be mailed after the position has been officially vacated (so after 2/18/17). This letter allows the Union to provide input within 10 days.” On February 22, 2017, PM Hajdarovic wrote to Local Union President, Kevin Smith, to inform him that Clerk Zelensky’s vacant position was “under consideration for reversion as the current workload does not support this position.”

The crux of the Union’s claim that Prong No. 1 of Article 37.3.A.2 was not satisfied, namely, “Give the local Union President the opportunity for input prior

to making the final decision.” The Union asserts that the February 22, 2017 letter to Smith was a “sham” because “HRMB makes the decision and that the decision to revert this position was made prior to asking the Union for input since the Union received the letter on February 22, 2017...It is clear that the decision was made to revert the position by the HRMB and Postmaster Hajdarovic had to follow the orders of her supervisors at the Westchester District and the whole process of asking for input was perfunctory. Management had no intentions of posting the position no matter the input from the Union.”

Insofar as Prong No. 1 is concerned, the Arbitrator is not persuaded that the Union has met its burden of proof. The Union relies upon an unsubstantiated assertion that the February 22, 2017 letter from Hajdarovic to Smith was bogus because the District had already made the decision to revert the vacant position. In the Arbitrator’s opinion, the Union, with respect to the February 22, 2017 letter, has speculated regarding the Service’s intent. Since the Hajdarovic letter on its face states that reversion is “under consideration” and solicits Union input, the Arbitrator is disinclined to attribute motives to the Service not supported in the record.

The Union position on this point is further disputed by evidence that, contrary to the testimony of Local President Smith that a new employee was placed in Zelensky’s position effective 2/7/2017, the position was actually vacated on 2/18/2017. Although the SF Form 50 indicates a “processed date” of 2/7/2017, the Arbitrator credits the testimony of Manager DiMargo that



Zelensky's job was vacated on 2/18/2017, with 2/7/2017 referring to the date the vacancy was submitted to the District for processing.

By letter dated March 16, 2017, PM Hajdarovic acknowledged President Smith's response, dated March 9, 2017, which stated "We are not supplying you with ample time for the Union to study operational data." As a result, PM Hajdarovic reverted the position on March 16, 2017 within 28 days of the February 18, 2017 vacancy.

Notwithstanding the Service's ostensible compliance with prongs one and two of Article 37.3.A. 2, there is no credible evidence that the Service complied with the third prong, namely "A notice must be posted advising of the reversion and the reasons therefor."

The unrebutted statements of Steward Chavez and Clerk Pezzuti respectively that no notice of the reversion was posted in the Sleepy Hollow Post Office as of 3/27/17 or in the Sleepy Hollow or Tarrytown Post Office as of 3/27/17 constitutes, in the Arbitrator's opinion, prima facie evidence that the Service did not comply with Prong No. 3 of Article 37.3.A.2. The testimony of PM Hajdarovic that she posted the reversion notice in the main Post Office on the Union bulletin board was not supported by documentary evidence. With respect to PM Hajdarovic's testimony that "nothing gets posted at Sleepy Hollow," Clerk Pezzuti wrote an email stating "I did not see a notice posted at the Sleepy Hollow or Tarrytown Post Office as of today, Monday, March 27, 2017."

Accordingly, the Arbitrator finds that the Service violated Article 37.3.A.2.

Article 37.3.A.1

The Arbitrator is also persuaded that the Service violated Article 37.3.A.1 when it did not consider all available work hours, including PSE work hours, in order to create a full-time, forty (40) hour clerk craft position in Tarrytown, NY. The Service's failure to consider all available PSE work hours violates Article 37.3.A.1, specifically the language that "Every effort will be made to create desirable duty assignments from all available work hours for career employees to bid." This contract language has been reinforced by a Settlement Agreement dated 11/24/2015 Re: Q10C-4Q-C 15066902 / HQTC 20150219 and is derived from a Step 4 Settlement Agreement, dated February 25, 2015 "obligating the Postal Service to make every effort to create desirable duty assignments from all available work hours for career employees to bid; however, this provision does not require the conversion of Postal Support Employees (PSEs) to career." (U. Exs. #8, #9).

The Union has reasonably relied on the Maximization Duty Assignment Tool ("MDAT") which established that the work hours of PSEs Richburg and Rolle, respectively 41.23 hours and 48.99 hours, could be combined to create one (1) FTR position.

The parties' mutual acceptance of the MDAT format to identify the most desirable duty assignments is described in the MDAT Mission Statement as follows:

By requesting the clock rings in the traditional PDF format and the CSV format, the USPS has an opportunity to compare the clock rings and to do their own review to verify the accuracy of the

reports at step two of the grievance procedure, in accordance with Article 15. (U. Ex. #6).

Given the data analysis provided by the MDAT, specifically the work hours of PSEs Richburg and Rolle, based on Management's evidence (CSV and PDF formatted clock rings) for the period PP 23-16, Week 1 through PP 4-17, Week 1, the Arbitrator is persuaded that one (1) FTR, forty (40) hour Clerk Craft position can be created in Tarrytown, New York.

The Service's position largely consists of new evidence strictly prohibited by Article 15.4(C) of the CBA and National Arbitrator Mittenthal's decision supra. Whereas the Service declined to meet at Step 1, meet or discuss the issue at Step 2 or challenge the Union position at Step 3, it has belatedly sought to defend its actions during the Arbitration hearing with new evidence. Although the Service at Step 2 could have challenged the MDAT data at Step 2, despite the fact that the MDAT is a mutually accepted analytic software program utilized by the parties since the 2010-2015 CBA, it did not offer any evidence during the grievance steps.

Instead, it has argued at the hearing that "the reliance on the PSE work hours is misplaced for several reasons." For example, the Service, for the first time, has claimed that "not all of the hours accounted in this average were worked at the Tarrytown office (PSEs worked in various offices throughout the District. Secondly, the PSEs were working outside Ms. Zelensky's bid)."

While the Arbitrator acknowledges some discrepancies in the Compensated Value ("CSV") data, such as different financial office numbers for Richburg and Rolle, this data analysis is not only new evidence it is also

insufficient to negate the prima facie case provided by the Union in reliance on MDAT. Similarly, the Service's claim that the PSE loaner hours were not considered in the data analysis, which concluded that one (1) FTR position could be established, is offset by the fact that PM Hajdarovic did not provide loaner hours in her response to the Union's RFI. Her testimony that "I thought it meant regular clerks" cannot suffice at this juncture.

Finally, the Arbitrator concurs with the Union that the concept of "earned complement" has neither been identified in contract language nor in case law as a rationale that can be used to eliminate a duty assignment otherwise promulgated by MDAT.

#### Remedy

As a remedy for the Article 37.3.A.2 violation, the Service shall post for bid the vacated position of Clerk Zelensky, and the senior successful bidder shall be placed in the duty assignment. If there is no senior successful bidder, then the senior PTF Clerk shall be converted to FTR and placed into the position.

As a remedy for the Article 37.3.A.1 violation, the Service will create a forty (40) hour FTR duty assignment at the Tarrytown Post Office. In creating this FTR position, the Service shall consider all available work hours, specifically the PSE work hours of PSEs Rolle and Richburg, identified by the MDAT analysis.

This remedy is consistent with National Arbitrator Stephen Goldberg's Award in Case No. Q10C-4Q-C 12320729 (2013) where he found that "the negotiators of the 2010 Agreement knew how to impose on the Postal Service

the obligation to combine PSE hours when doing so would yield duty assignments for career employees. They did so for bidding purposes in Article 37.3.A.1.”

Insofar as the so-called “ripple effect” remedy the Union delineates in its Additions and Corrections and derives from Arbitrator Goldberg’s Award in Case No. Q10C-4Q-C-C 15174956 (2017) where he orders the Service to provide the APWU “bargaining unit with 800 administrative and technical positions,” this Arbitrator discerns no nexus between the creation of one (1) FTR Clerk Craft position from PSE hours pursuant to an MDAT analysis and the extensive Goldberg remedy.

The Arbitrator shall retain jurisdiction to address any issues that may arise with respect to either remedy in the instant case.