



American Postal Workers Union, AFL-CIO

STEP 2 GRIEVANCE APPEAL FORM

1	CLASS ACTION or GRIEVANT NAME (Last Name First) Gadsden Area Local, 537		ADDRESS PO Box 1024	CITY Gadsden	STATE AL	ZIP 35902	PHONE NO. 256.547.6392	
2	EIN	CRAFT Clerk	LEVEL	STEP	DUTY HOURS	OFF DAYS	E-MAIL	
3	JOB NO./PAY LOCATION (UNIT/SEC/CR/STA/OFC)					WORK LOCATION CITY AND ZIP CODE	SENIORITY DATE	PREF. ELIGIBLE YES NO
4	STEP 2 AUTHORIZED UNION REP (NAME AND TITLE) Gary W. Ford, Steward				AREA CODE PHONE (OFFICE) 256.547.6392		E-MAIL	
5	LOCAL UNION PRESIDENT (NAME) Gary W. Ford				AREA CODE PHONE (OFFICE) 256.547.6392		E-MAIL gfpwu@bellsouth.net	
<b>STEP 1 MEETING AND DECISION</b>								
6	UNIT/SEC/BR/STA/OFC Collinsville, AL	POSTAL INSTALLATION LEVEL 18	DATE/TIME 10/27/2011	USPS REP - SUPR Rhona Adams		INITIALS (ONLY Y VERIFIES DATE OF DECISION)		
7	STEP 1 DECISION BY (NAME AND TITLE) Rhona Adams, Postmaster			DATE/TIME 10/31/2011	GRIEVANT AND/OR STEWARD Class Action / Ford			
8	DISCIPLINE Maximization		CONTRACT		LOCAL GRIEVANCE NO. G1110277CA			
9	TO: USPS STEP 2 DESIGNEE (NAME AND TITLE) Scott Brimer	INSTALLATION/ SEC. CEN./NDC Pell City, AL	PHONE NO.		USPS GRIEVANCE NO.			
10	FROM: LOCAL UNION (NAME OF) Gadsden Area Local, 537		ADDRESS PO Box 1024	CITY Gadsden	STATE AL	ZIP 35902		
11	Pursuant to Article 15 of the National Agreement we hereby appeal to Step 2 the following Grievance alleging a Violation of (but not limited to) the following: NATIONAL, (Art./Sec.) LOCAL MEMO (ART/SEC) OTHER MANUALS, POLICIES, L/M MINUTES, ETC. <b>3,5,7,15,19</b>							
12	DETAILED STATEMENT OF FACTS/CONTENTIONS OF THE GRIEVANT  PTF Clerk has maintained a regular work week consisting of a 30-48 hour work week during the period of 03/26/2011-10/07/2011. Pursuant to Article 7.3.B of the Agreement a full-time position exist.  <i>List of attached papers as identified</i> Employee time records.							
13	CORRECTIVE ACTION REQUESTED <b>Post a newly established duty assignment within the provisions of Article 37.3.A.1 of the Agreement. Convert the senior PTF, Patsy Fowler to full-time status</b>							

SIGNATURE

TITLE OF AUTHORIZED LOCAL UNION REP.

11/15/11  
DATE

## FACTS/BACKGROUND

The Collinsville, AL Post Office is a Level 18 facility. In addition, to providing delivery service to the community, this office provides P.O. Box service and is a full-service (Function 4) retail unit. The current PTF performs distribution duties and conducts window transactions.

The Collinsville facility is currently staffed with a Postmaster and one (1) PTF Clerk. During the period of 03/26/2011-10/07/2011, the PTF Clerk has maintained a basic work week consisting of six (6) days and over 30 hours per week.

On October 27, 2011, the Union initiated a grievance to convert the PTF to Full-time status. The grievance was denied at Step 1 on October 31, 2011. The Step 1 answer was received by the Union at Step 1 on November 1, 2011. The grievance is now being appealed to Step 2 for resolution.

Time Limits for the Step 2 appeal were extended by mutual consent.

## APPLICABLE CONTRACT LANGUAGE

### **ARTICLE 3 MANAGEMENT RIGHTS**

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;
- E. To prescribe a uniform dress to be worn by designated employees; and
- F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., 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.

(The preceding Article, Article 3, shall apply to Transitional Employees)

### **Section 3. Employee Complements**

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

1. With respect to the **clerk craft, no later than December 1, 2007, all part-time flexible employees**

**in postal installations which have 200 or more man years of employment will be converted to fulltime regular status. Henceforth, installations which have 200 or more man years of employment shall be staffed with all regular employees.**

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

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

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

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.

### APWU POSITION

Article 3 of the Agreement, gives management the exclusive right to assign employees into positions within the Postal Service. However, while exclusive, this right is conditional. Any such action taken by the Employer in the discharge of its managerial rights is "subject to the provisions of the Agreement" and must be "consistent with applicable laws and regulations". Therefore, once the Union has demonstrated, based upon credible and reliable evidence, that an action taken by management is inconsistent with the provisions of the Agreement, the Union must prevail in the dispute.

Article 7.3 outlines the specific obligations placed upon the Employer to maintain a Full-time Regular workforce. Article 7.3.B requires the Employer to "**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;..." The clear and unambiguous language of Article 7.3.B reflects the parties commitment to ensure that full-time employment would be maintained in all postal facilities, regardless of office size, to the maximum extent possible. It is also noted by the Union, that maximization of full-time employment refers to a number of employees in a particular facility. Moreover, this number is not based upon a percentage of employees. Rather, the number of full-time employees in a given facility is based upon "all available work hours".

Article 15.5.D. of the Agreement provides:

**D. National Level Arbitration**

1. Only cases involving interpretive issues under this Agreement or supplements thereto of general application will be arbitrated at the National level.

In National Case #AB—3744, the parties submitted the collective bargained language of Article 7.3 to National Arbitration for an interpretation. In this Award, Arbitrator Sylvester Garrett gave clear guidance upon the meaning of the terms “maximize” and “minimize” as it relates to the full-time employment requirements of Article 7.3.B. Arbitrator Garrett reasoned:

*“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.**”*

*“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...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 cost, such as in unavoidable increased idle time during scheduled tours of regular employees or in overtime pay.”*

Article 8, Section 1 of the Agreement defines the basic work week for full-time employment. Article 8, Section 1 states:

**ARTICLE 8  
HOURS OF WORK  
Section 1. Work Week**

The work week for full-time regulars shall be forty (40) hours per week, eight (8) hours per day within ten (10) consecutive hours, provided, however, that in all offices with more than 100 full-time employees in the bargaining units the normal work week for full-time regular employees will be forty hours per week, eight hours per day within nine (9) consecutive hours. Shorter work weeks will, however, exist as needed for

part-time regulars.  
[see Memos, pages 292-301]

Consistent with Article 7.3.B, the Union would normally be required to demonstrate that adequate work to maintain a forty (40) hour per work, eight (8) hours per day exist within the "practicability standard" of Arbitrator Garrett in order to prevail in this dispute. However, the Union does not have to achieve this standard in order to establish a violation of Article 7.3.B in this case.

Article 8, Section 1 of the Agreement sets the criteria for "Traditional Full-time Assignments". However, it was clearly foreseen by the bargaining representatives of the 2010-2015 Agreement, that due to economic declines, the impact of the Employer's obligation to "maximize" full-time employment in all postal installations within the "practicability standard" of Garrett was adversely affected. Under such economic conditions, conversions of PTF's to full-time in smaller installations within the provisions of Article 8, Section 1 were unobtainable.

Under the 2010-2015 Agreement, the parties reaffirmed their commitment to increase the amount of full-time employment in smaller installations. The parties collectively bargained provisions to relieve management of increased cost, idle time or incurring overtime pay in order to meet the "practicability standard" of Arbitrator Garrett. The parties simply redefined the meaning of full-time to include "Non-Traditional Assignments (NTFT). NTFT Assignments are in addition to those full-time assignments created under Article 8, Section 1. These NTFT Assignments allow management to create full-time duty assignments consisting of 30-48 hours per week, with more or less than a 5 day work week.

In the Non-Traditional Full-Time Duty Assignment MEMO the parties agreed that:

1. Management could create as many NTFT duty assignments as operationally necessary.
2. In offices level 20 and below where necessary to accommodate full-time employment, split shifts were permissible.
3. NTFT Assignments could be established that consist of flexible work schedules that change weekly.
4. NTFT Assignments may consist of more or less than 8 hours per day.
5. NTFT Assignments consisting of more than 8 hours in a day is paid at the regular rate of pay, instead of the overtime rate.

As stated by Arbitrator Garrett, "Practicable application of the second sentence of Section 3 is possible only in light of all pertinent conditions in the given installation." Article 37, Section 4 of the Agreement provides:

D. Identification of Newly Established Duty Assignments

When the number of full-time regular Clerk Craft duty assignments in an installation is less than the number of full-time Clerks, a full-time employee remaining unencumbered for a period of 120 calendar days shall demonstrate the need to post the newly established full-time regular duty assignment in accordance with Article 37.3.A.1.a.

When the number of part-time regular Clerk Craft duty assignments in an installation is less than the number of part-time regular Clerks, a part-time regular employee remaining unencumbered for a period of 120 calendar days shall demonstrate the need to post the newly established part-time regular duty assignment in accordance with Article 37.3.A.1.b.

This process shall continue until all unencumbered Clerks eligible to be assigned have successfully bid or been assigned to duty assignments.

Exceptions: Any full work or paid leave weeks (40 hours) during which unencumbered Clerks are: 1) detailed to nonbargaining positions; 2) identified as impacted under the provisions of Article 12.5.C (excluding 12.5.C.4); or 3) medically unsuitable for assignment, shall not be included when establishing this 120 day period.

[see Memo, page 366]

The record indicates that the PTF at the Collinsville, AL Post Office for the period of 03-26-2011 through 10/07/2011 has maintained a basic work week consisting of 30-40 hours per week, six (6) days per week. Consistent with the contract language contained in the Non-Traditional Full-Time Duty Assignment Memo, the criteria for a full-time NTFT Assignment and PTF conversion has been established by the Union. Moreover, since the PTF has maintained this schedule in excess of 120 days, a demonstration of the need to post a newly established full-time regular duty assignment in accordance with Article 37.3.A.1.a, as provided for in Article 37.4.D has been established.

The "practicability standard" of Arbitrator Garrett has been achieved in this case. The hours worked by the PTF at the Collinsville facility is reflective of available hours needed to meet service standards. Therefore, the creation of the Assignment is operationally necessary. Conversion of the PTF into a NTFT Assignment does not place the Postal Service into a situation that increases labor cost. Moreover, conversion to full-time can be obtained without incurring overtime cost. Therefore, consistent with the findings of Garrett, the Postal Service is required to create a full-time position within the provisions of Article 7.3.B of the Agreement at the Collinsville, AL Post office.