CONTRACTING OUT OF

VMF WORK

Russ Knepp, National Business Agent
National Business Agent
Motor Vehicle Services Division

19th Biennial National Convention
Las Vegas, Nevada
August 23, 2008

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

INTRODUCTION

Russ Knepp, NBA
1401 Liberty Place
1401 Liberty Place
Sicklerville, NJ 08081
(856) 740-0115

Prior to beginning the Arbitration this morning, I want to thank and acknowledge my good friend and colleague, Tommy LaFauci, without who's help and council this presentation would not be possible.

As many of you know, I have had some serious medical problems which infringed on my ability to complete this presentation. I asked To for some help and he never hesitated to give his time and knowledge to complete this program.

I had already asked Tom to participate as either an Advocate or Arbitrator, but Tom stepped up when I was unable.

Thank you Tom!

At our previous class in Las Vegas, I was amazed by the amount of people who have not attended an Arbitration Hearing.

Forewarned is forearmed!

There is no magic to the Arbitration table. We rise or fall on the case YOU have to put through the system. Our cases depend on how well the case file was prepared and how well our witnesses come across.

Postal Management will do all in their power to discredit and confuse Union witnesses and try to discredit our case. They will claim they are permitted to do anything in accordance with Art. 3 and their right to manage. They fail to recognize, however, the full text of Article 3.

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)

One of the things the Postal Service must consider is our Collective Bargaining Agreement.

We hope that you will come away with and be familiar with what you see at the table.

Have A Great Convention!

CONTRACTING OUT OF VMF WORK

As with any grievance investigation, you must know all the facts to be able to determine whether there is a violation and to what extent.

Simply claiming a violation solely because the VMF work went out the door will not pass the burden of proof needed for an arbitrator to sustain your case and overturn the Postal Service's actions, getting the work back and making the shop employees whole.

You must gather all the information surrounding the particular work being contracted out to make an accurate determination as to the depth, scope and breadth of the violation.

Below are some of the things needed in making that determination.

Remember, there are some instances where the Service could contract out work such as in the event of an accident being fixed by an outside insurance company or a warranty repair.

Also, other repairs involving work we no longer perform at the VMF such as vehicle painting will be next to impossible to recover if no grievance was field when the work was originally lost.

Requests for Information

1. The first thing you need to request is the contract between the Postal Service and the outside repair shop.

   Comment: This will establish when the contract was initially let out, the terms and conditions of the contract, whether the contract was a new contract or a renewal of an older one and the hourly rate(s) the contractor is being compensated.

   If it is a renewal, find out the older rates to determine whether the contractor is being compensated more now than before.

2. Request all documents, papers, letters, e-mails, carbon copy mails and any other communications between the Postal Service and the authorizing postal entities (such as the contracting officials in Philadelphia) that led to the outside repair shop getting this contract.

   Comment: This will establish several things:

   a. who made the initial request
   b. when the money was allocated
   c. whether or not the money allocated was used for a single contract or for multiple contracts determined by local authority
   d. most importantly, this will establish the dates each event took place and establish a time line

   Comment: Contracts have to be given "due consideration" BEFORE they are put into place (Article 32.1 A-C). Often, the dates of the e-mails will show when they initially requested the approval of funds.

3. A copy of the Log Copy Report for that contract.

   Comment: This will establish **how** and **when** the money was being spent. It will show the total amount of money initially allocated and the descending amount left in the account at any given time.

For example, if the majority of work performed by the contractor is "scheduled maintenance" rather than breakdown maintenance, then this is work normally, regularly, routinely and historically performed by the bargaining unit.

Also, if the majority of work being performed by the particular contractor is the replacement of engines, transmissions and rear end assemblies, this too, would be performed by your shop employees.

4. Once you have the Log Copy Report, you then ask for a legible copy listed on the report for each of the invoices submitted by outside repair shops for payment.

   Comment: Rule Number One is always follow the money. The Log Copy Report will list the date the bill was submitted to the Postal Service for payment, the truck number, the office that truck is assigned and the type of maintenance performed.

   What you do NOT want to include in your tally of work is the breakdown maintenance such as a jump start, a flat tire, a bulb or lens replacement or any minor repair under $250. These are supposed to be handled locally if the VMF is located too far away from the VMF to handle.

5. Request to specifically know the names and titles of the Union representatives regardless of their level that the Postal Service consulted with notifying them this work was being contracted out, whether or not the notification was for scheduled maintenance in arrears and/or for the replacement of engines, transmissions and rear end assemblies.

   Comment: Include on this request the following:

   "If there was no notification, please indicate so in writing:

   _____

   _____"

   Comment: This will force the Service to admitting at the lowest possible levels that they did not notify anyone either on the National Level (Art. 32.1B) or on the Local Level (Art. 32.1). If this isn't done, they will make up a story at Arbitration claiming they notified someone but can't remember who and the Union will be unable to prove they didn't notify anyone.

6. Request a copy of the Initial Comparative Report, the Decision Analysis Report and a copy of the statement that the Union submitted stating their views and proposals (Art. 32.1B).

   Include in this request: "If there are none, please indicate so in writing:

   _____
   _____"

   Comment: There are usually no reports generated before the contract was let out. They may generate one afterwards to cover their tracks but the dates on the e-mails allocating the money and the dates on the Log Copy Report will trip them up.

7. Request a copy of the Authorized compliment for your VMF.

   Comment: This information will tell you the number of authorized people in your VMF. It is maintained at the District Office by the Compliment Coordinator. They must share it with the Fleet Manager so don't accept an "I don't know what the compliment is" from your Fleet Manager. That is a stall tactic to avoid giving you the information.

   At the same time, request the ORPES Report for your VMF. ORPES stands for On-the-Rolls Employee Statistics and will tell you the authorized number of positions at your VMF.

   Taking these two reports and comparing them to an updated seniority list will tell you whether there are vacant duty assignments that were conveniently left unfilled while the Service contracts out your work. If you are understaffed or find positions that have gone unfilled, this is another argument that the bargaining unit, as a whole, was harmed.

8. Request anything else you may think is relevant and necessary.

   Comment: IMPORTANT! If the Postal Service claims the requests are too voluminous and tries to either ignore your request or claim the requests exceeds the 100 copies or two hour limit and tries to charge the Local for their time, there are things you can do to avoid this situation:

a. First, break down the larger requests into smaller ones either by time frames or by numbers.

b. Second, remind the supervisor filling the request that you are on Steward Duty Time and that YOU can gather this information rather than the supervisor claiming he spent over two hours going through files or pulling reports. The supervisor who tries to pull this trick is already getting his salary, so a second payment for his time is nothing more than a harassment tactic.

Once you have gathered all this information, a good trick is to put the information into chronological order to determine the chain of events.

Ask yourself:

1. Did the request for the money come before the Union's notification?

2. Was the Union at any level notified and did they have input to minimize the impact on bargaining unit work?

3. Was the approval of those vehicle repairs over $250 (PO-701) given BEFORE the work was done or after the work was completed?

WHAT WOULD BE CONDISERED A "SIGNIFICANT IMPACT TO BARGAINING UNIT WORK" AS CONTEMPLATED IN ARTCILE 32.1?

One of the things you must prove in your grievance is that the Craft, as a whole, was harmed.

1. Ask yourself: Was the number of overtime hours reduced or eliminated during or after the contract was let out?

   Comment: To easily show this, request a copy of the "Hours Type Inquiry Report" for your VMF employees. Specifically, request hour types 52, 53, and 43 for a period of time before the contract was in place to the date of your request.

   This report will list each VMF employee, the number of hours used in the requested types and the totals of each type by week. It fits on one or two pieces of paper for each week. You look at the number of overtime hours (53) and penalty hours (43) for each week before and after the contract went into place. If the number of 53 and 43 hours dropped, you can argue that the Craft lost the overtime as a direct result of the work going out the door.

2. What are the hours of operation at the VMF?

   Comment: If your VMF is a 24/7 operation, that means there are 168 hours of work each week. Most VMF's are closed on Saturday and Sunday depending on the Fleet number and many are closed on Tour 1 and a part of Tour 3.

   Using this information, many VMF's are closed more than they are open in a given service week.

VMF's should be maxed out before bargaining unit work goes out the door. We know the Postal Service is intentionally short-staffing the VMF's in an effort to justify the need to subcontract out the work.

This intentional short-staffing of the VMF's is only one of the phony justifications used to justify the use of contract repair shops.

We also know that a strict budget is imposed on VMF Managers while a blank check is given to outsource our work.

Those outside repair shops charge more than $42.24 offered as a National average in the March 22, 2006 Dockins letter to Director Pritchard. Why would the Service pay more to have the same work done by unskilled mechanics?

The Service could actually SAVE money by hiring more Technicians at the VMF since the $42.24, but they won't.

Outside mechanics do not have the training at NCED we have or the skills needed to efficiently repair these peculiar vehicles such as LLV's or FFV"s.

This shows no consideration for cost, since they pay more on the outside, the availability of equipment since the shop already has all the equipment and tools needed to maintain these vehicles, the qualifications of employees since unlike the outside contractor, we are tested before being hired by passing a written test and a bench test and then are sent to Oklahoma for specific automotive courses directly related to what we are maintaining.

Thus, no consideration as contemplated in Article 32.1.

But what exactly is "due consideration?"

There is no contractual definition in the CBA so management likes to tell you what it means to have it fit their needs.

But they would be wrong.

In a National Level case, Arbitrator Mittenthal discusses what "due consideration" means in Article 32. He wrote in case A8-NA-0481, dated April 2, 1981 on pages 6-7:

> *"Unfortunately, the words "due consideration" are not defined in the National Agreement. Their significance, however, seems clear. They mean that the Postal Service must take into account the five factors mentioned in Paragraph A in determining whether or not to contract out surface transportation work. To ignore these factors or to examine them in a cursory fashion in making its determination would be improper.*"*

He adds a footnote here:

> *"Ignoring all factors would involve a lack of "due consideration." Examining them in a cursory fashion might constitute "consideration" but certainly not "due consideration" contemplated in Paragraph A."*

He goes on with his opinion:

> *"To consider other factors not found in Paragraph A would be equally improper. The Postal Service must, in short, make a good faith attempt to evaluate the need for contracting out in terms of contractual factors. Anything less would fall short of "due consideration."*
>
> *"Thus, the Postal Service's obligation relates more to the process by which it arrives at a decision than to the definition itself. An incorrect decision does not necessarily mean a violation of Paragraph A. Incorrectness does suggest, to some extent at least, a lack of "due consideration." But this implication may be overcome by a management showing that it did in fact give "due consideration" to the several factors in reaching its decision.*"*

He footnotes here:

> *"Conversely, a correct decision does not preclude finding a violation of Paragraph A where the proofs reveal a lack of "due consideration."*

He goes on:

> *"The greater the incorrectness however, the stronger the implication that Management did not meet the "due consideration" test. Suppose, for instance, that "cost" is the only factor upon which Management relies in engaging a contractor, that its cost analysis is shown to be plainly in error and that it would actually be cheaper for the Postal Service to use its own vehicles and drivers. Under these circumstances, the conclusion would be almost irresistible that management had not given "due consideration" in arriving at its decision."*

With this in mind, what should NOT be considered when determining whether or not bargaining unit work is being contracted out?

1. Beakdown Maintenance

   Comment: Flat tires, light replacements, jump starts and any other repair under the $250 limit should not be considered.

2. Compliment Caps

Comment: If the PS Form 2608 states they are up to compliment and cannot hire additional employees, this is NOT a contractual reason to outsource VMF work.

3. Budgetary Constraints

   Comment: District and Area Managers are only interested with their budgets and the reports they generate. After all, that's how they get their end of the year bonuses. This is not a contractually sound reason to outsource work.

4. Compliance With the Instructions of Postal Superiors

   Comment: Local Managers are often told by the District and Area superiors to indiscriminately reduce hours, jobs and costs. The only avenue left open to get the scheduled maintenance completed is to outsource the work. Why else are there always funds available to the contractor and NOT for the addition of even one new duty assignment? This also is not a contractual reason to outsource the work.

What do you think would happen to the Local Manager who just went ahead and hired additional employees above his authorized compliment?

He would be replaced and wouldn't get his end of the year bonus.

It is the Postal superiors in the District and Areas that know the Union cannot make them accountable for their actions. So the Union is left with grieving Local Management.

Below is a copy of a Step 2 Appeal Form from a New Jersey local that pretty much covers all the details cited. It is a training tool to help you see how these cases can be written up.

RECENT POSTAL OPERATIONS MANUAL (POM SETTLEMENT)

Under Article 15 and 19, you have the authority to cite certain settlements if you can show that the provisions of that settlement have been violated.

One such recent settlement signed by the parties in Washington, DC involved the Postal Service's unilateral eradication of certain provisions of the Postal Operations Manual, or POM, back in 1995. This case, Q90C-4Q-C96014385 (and Q90C-4Q-C96014640) should be cited in all your VMF and HCR subcontracting cases.

The settlement restores this language within 30 days of the signing of that November 2, 2007 agreement.

In this case, the pertinent language is contained in Section 740 of the POM.

Section 741 Maintenance Objective says:

> "The objective of the vehicle maintenance program is to insure safe, dependable and economical performance of USPS–owned vehicles at a minimum cost and minimum vehicle downtime. Achievement of this objective requires an emphasis on preventative maintenance rather than on postal repair of deficiencies. Preventative maintenance provides for scheduled lubrication and examination of all vehicles in accordance with established standards as prescribed intervals."

Section 742.3, Staffing, says:

> "VMF staffing is based upon planned repair work and is established only in accordance with demonstrated need. VMF staffing must follow established guidelines by the Area. See also 715."

Section 715 deals with authorizing the position of a Vehicle Operations Maintenance Assistant, or VOMA, and the administration of that program).

Comment: Section 742.3, Staffing, tells the Postal Service they must establish a staffing package only in accordance with demonstrated needs.

You make the argument that the demonstrated need in your VMF shows well short the current established staffing.

Your documentation shows the current staffing package yet a very large number of scheduled maintenance are required to be performed are being performed by untrained, unskilled, outside repair shops with no VMF personnel oversight while being paid at a higher rate.

Regardless of what the Area may dictate, argue they have intentionally short-staffed the facility which is usually closed more hours a week than it is open (24 hours a day, seven days a week, gives you 168 hours a week).

Even if you are one of the larger facilities, do you have the same number of shop employees as you have bays? Or are bays empty each tour?

If so, this violates this Manual provision.

Section 743 Vehicles Serviced (or Vehicle Service Policy)
Section 743.1 states:

> "The vehicle maintenance program is intended to provide complete maintenance and repair service only for USPS-owned vehicles. VMFs are not staffed to perform service for other vehicles - except as provided in 743.2 below."

Comment: From this, you can assert that it is the intention of the program to staff a VMF for complete maintenance and repair service, to include the replacement if engines, transmissions and rear-end assemblies. If this work has gone out the door, this Section of the POM has been violated.

Section 743.2 deals with performing service on contract vehicles only on infrequent occasions when a bona fide emergency arises. Yes, a contractor's vehicle.

Comment: I don't think we should have time to repair a contractor's vehicle when we don't have time to repair our own.

Section 744, Types of Maintenance, defines what and where scheduled maintenance should be performed.

It states:

> "In general, commercial maintenance and repair services should be considered whenever economically advantageous to the USPS. This may include:
>
> (a) Minor repair work and lubrication for USPS-owned vehicles assigned to any office;
>
> (b) Maintenance and repair of USPS-owned vehicles assigned to any offices. Provided the estimated cost does not exceed the limit. (see 744.22);
>
> (c) Special service work as upholstery repair, glass installation, recapping and sub-assembly rebuilding. (Note: GSA contracts are given primary consideration);
>
> (d) Vehicle painting which cannot be done by USPS facilities and suitable equipment and qualified personnel."

Section 744.22 Restrictions states:

> "When the estimated contract repair of perimeter office vehicles exceeds the amount stated in the PO-701, the responsible manager must contact the VMF to which he is assigned for technical advice and to determine where the work is to be performed."

Comment: From the above, you can again assert that any type of maintenance over the $42.24 hourly compensation is not economically advantageous and thus a violation.

From (B) above and .22, any repair over the $250 limit in the PO-701 that has not had either an estimate or approved in advance is a violation.

This can be determined from the contractor submitted bills submitted for payment AND matching the dates of the approval against the date the repairs were done. In most cases, the documentation will show that the repairs were completed and then they were called in for approval. If that is the case, the Union's assertion is that no prior approval was obtained and no estimate was submitted. Another violation of this language.

November 1, 2007

Mr. Robert Pritchard
Director, Motor Vehicle Division
American Postal Workers
Union, AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

RE: Q90C-4Q-C96014385
Q90C-4Q-C96014640
Washington, DC 20260-4100

Dear Mr. Pritchard:

Recently, we met to discuss the above-referenced cases which are currently pending arbitration at the national level.

The issues in these grievances are the proposed changes to Postal Operations Manual (POM) 6, dated September 27, 1995.

The changes to Chapter 5 and 7 of the POM that were challenged by the APWU in the above-captioned cases shall be rescinded. The Parties agree that, pursuant to Article 19 of the National Agreement, within 30 days of the date of the signing of this agreement, the Postal Service shall propose changes to the POM to include the following language:

532 Basic Service Records

532.22 Regular Service Exceptions
Form 5398, *Transportation Performance Record*, or Form 5399, *Contract Route Performance Record*, is completed as documentation for transportation service. Generally, Form 5399 is used at associate offices to document service for a specific highway contract route (HCR) and Form 5398 is used to record every HCR trip scheduled to serve that facility. The administrative official reviews these forms and takes any necessary action. Forms 5398 and Form 5399 are filed at the office that completes them.

534 Exceptional Service Types

534.5 Extra Trips
The administrative official is authorized to order a contractor to perform additional trips between points regularly served. If another official requires an extra trip, he must make request to the administrative official of the route. Note: a. Form 5397. Each trip certified for payment must be supported by Form 5397. The original is retained in the office of the administrative official. When need for additional trips is anticipated, postmasters and heads of other facilities are furnished with Forms 5397 in advance. When an additional trip is required by a postmaster or other manager who does not stock Form 5397, the administrative officer provides a Form 5397 to cover the additional trip. b. Supporting Document. The supporting document is the performance record normally maintained by the installation (i.e. Form 4660 for BMCs and Form 5398 or 5399 for other installations).

710 General

711 Scope of Material
This chapter covers in a general way (a) operating policies and procedures for USPS drivers and vehicles and (b) the maintenance and repair of USPS-owned vehicles. (See 713.1 for definitions)

712 Scope of Fleet Management

712.1 Fleet Operations

Fleet operations encompasses local transportation operations, new vehicle requests, vehicle hire, vehicle assignment, vehicle utilization and requirements, accident investigation, dock and maneuvering area design, traffic flow, container operations, and driver training.

712.2 Fleet Maintenance

Fleet maintenance encompasses organization and management controls; maintenance standards and schedules; equipment, parts, supplies, and fuel; operating and budget records; and vehicle maintenance facility (VMF) management. Related definitions follow:

(a) Vehicle Maintenance Facility (VMF) – a postal facility engaged in the repair and maintenance of USPS – owned vehicles.

(b) Auxiliary VMF – a detached vehicle maintenance and repair unit functioning in a supportive capacity to VMF.

(c) Vehicle Post Office – a post office or other operating unit which has USPS – owned or hired vehicles.

(d) Perimeter Office – a post office or other operating unit which has USPS-owned or hire vehicles but which does not have management authority over a VMF. However, every perimeter office is assigned to a specific VMF for technical guidance and support on maintenance matters.

713 Vehicles Used By USPS

713.1 Postal Vehicle Service

PVS vehicles are under the jurisdiction of managers at designated offices. They are operated by USPS personnel and consist of:

(a) USPS – owned vehicles – vehicles purchased by the USPS.

(b) Hired vehicles – vehicles hired by the USPS.

1. From commercial sources
2. From letter carriers

713.2 Highway Contract Service

These vehicles are managed and operated by contract personnel, as described in part 531, *Highway Contract Routes*. Contract vehicles are not covered by the USPS fleet management program except when:

(a) Turned over to the USPS for unloading mail at its destination (see 735.1b)

(b) They require emergency maintenance (see 743.2)

714 Motor Vehicle Service

Motor vehicle service (MVS) is a specific category of vehicle service. It pertains only to vehicle movement of bulk quantities of mail. This is distinct from other vehicle operations, such as vehicle movement of mail by letter carriers for delivery and collection.

Note:

(a) MVS vehicles are usually very large vehicles, some weighing more than 5 tons.

(b) MVS drivers are motor vehicle craft employees, rather than letter carriers, etc. (See also 721.1)

715 Vehicle Personnel

715.2 Perimeter Offices

The position of vehicle operations maintenance assistant (VOMA) may be authorized at a perimeter office and is approved by the Manager, Vehicle Maintenance. The VOMA administers the vehicle operations and maintenance program.

716 Vehicle Responsibilities

716.1 Headquarters
The Office of Vehicle Operations develops vehicle operating and maintenance programs, standards, and criteria for guidance of field personnel.

716.2 Areas
The Manager, Transportation Networks, of each Area is responsible for:
(a) Enforcing the policies and directives issued by the Office of Surface Operations, and
(b) Reporting to the Office of Surface Operations at Headquarters all items which impact on the operation and maintenance of vehicles.

716.4 Manager, Fleet Operations
The Manager, Fleet Operations, is responsible for vehicle maintenance, budget management, manpower control, and driver training (See Handbook PO-701) for the VMF post office to which he reports.

716.6 Drivers
Every USPS driver, regardless of craft or position, is responsible
(a) for the proper care and handling of vehicles, in his custody by following the rules in 723 and
(b) for immediately informing his supervisor of the revocation or suspension of his state driver's license.

720 Drivers and Driving Requirements

721 Driver Categories

721.1 Vehicle Drivers
Most drivers of PVS vehicles (see 713.1 for definition) fall into two broad categories:
(a) Letter carriers who drive vehicles to deliver and collect mail
(b) Motor vehicle service (MVS) drivers who transport bulk quantities of mail. MVS drivers are motor vehicle craft employees.

There are two divisions:
(1) Motor Vehicle Operators – drive all postal vehicles except tractor-trailers and spotter tractors
(2) Tractor-Trailer Operators – drive tractor-trailers and spotter tractors.

721.2 Equipment Drivers
These employees drive rider-operated industrial mobile equipment, such as fork lifts.

722 Driver Licensing

722.1 Applicability
Driver licensing provisions apply to all offices which have motor vehicles or rider operated industrial mobile equipments operated by USPS personnel.

722.2 Requirements
.21 Minimum Requirements
Any applicant for a driving position must meet the following minimum requirements:
(a) Must be 18 years old or more
(b) Must have a valid state driver's license issued by the state in which the installation is located or the state in which the applicant currently resides.
(c) Must have his past driving record verified.
(d) Postal employees routinely receive and must respond to inquiries from supervisors and customers. Employees must therefore have a basic competence in speaking and understanding English.

722.3 Driving Privileges

.31 General Regulations

No employee may drive any vehicle or equipment on official business until he has qualified for and has been granted driving privileges.

723 Driving Rules

723.2 Passengers

National policy on passengers is reflected in the Appendix of Handbook EL-801, Supervisor's Safety Handbook. It reads as follows:

"Only authorized passengers are permitted to ride in postal owned, GSA owned, rental or contract vehicles (including employees' privately owned vehicles when used in postal operations). All passengers must use seatbelts. Where conventional passenger seats have not been provided in the vehicle, an approved auxiliary seat, facing forward, and equipped with a backrest and seatbelt must be used. Sitting in other than an approved seat or standing in a postal vehicle while the vehicle is in motion is prohibited."

723.42 Repair Tag

Drivers must check defects requiring attention on Form 4565, Vehicle Repair Tag, and indicate possible trouble, if known.

723.45 Emergency Kits/Fire Extinguishers

Emergency warning device kits and fire extinguishers (see DOT Standard 125) may be carried on any vehicle, but must always be carried on vehicles with 1 ton or more capacity used in the following services:

(a) Postal-owned motor vehicles regularly scheduled for intercity and airport runs.
(b) Postal-owned motor vehicles regularly scheduled for use as wreckers.
(c) Private, hired, contract, or leased motor vehicle equipment operated by Postal personnel or by the owner or lessor.

723.5 Accident Reports

Standard Form 91 (SF-91), *Operator's Report of Motor Vehicle Accident*, must (a) be carried in every motor vehicle owned or operated by the Postal Service and by each employee using a bicycle or light vehicle and (b) be filled out by the driver of any vehicle involved in an accident. See also 736.

724 Driver's Training

724.2 Types of Training

Types of driver training include:

(a) Initial driver training.
(b) Driver improvement training for all licensed drivers.
(c) Remedial driver training.

724.4 Motor Vehicle Service

MVS drivers (see 721.1b for definition) may need special training in the loading, securing, and unloading of containers full of mail or empty equipment. For further information on this subject see:

(a) Handbook PO-701 Fleet Management
(b) Handbook PO-502 Container Methods

724.6 Reference

Details of training for all employees who must drive vehicles are specified in Handbook P-23, *Orientation and Craft Skill Training*, or current handbook.

725 Driver Contest and Awards

Awards provide incentives to both management and driver to improve accident prevention and safe driving. The Postal Service participates in the following:

(a) The annual award for Meritorious Performance in Motor Vehicle Safety.
(b) The National Safety Council's National Fleet Safety Contest.
(c) The National Fleet Safety Council's Safe Driver Award.

730 Vehicle Operations

731 Request's for Vehicles

731.2 For New Vehicles

When new vehicle requirements cannot be met by the existing assigned fleet, submit Form 4515, Vehicle Assignment Justification and Request, in accordance with Headquarters current policies and procedures.

732 Postal Vehicle Service vs. Highway Contract Service

732.1 Types of Service

There are two general types of vehicle service – *Postal Vehicle Service and Highway Contract Service.* (See 713 for definitions).

732.2 National Agreement Provisions

The provisions of Article 32.2.F governs the subcontracting of transportation and states:

> "For all routes for which the Union submitted a cost comparison, if a contract is awarded, the Union will be furnished the cost of such contract."

733 Vehicle Schedules

The Operations manager(s) is responsible for (a) preparing PVS schedules to meet delivery and mail processing requirements and (b) preparing Form 4533, MVS Schedule, for all intracity and/or intercity service performed by PVS or letter carrier.

734 Vehicle Dispatching

734.3 Two-Way Radio Control

Managers of offices with tractor-trailer operations and nonscheduled service may request installation of two-way radio equipment. The decision is made locally.

735 Inspections and Reports

735.1 Inspection of Hired Vehicles

.11 Policy.

USPS personnel must inspect all hired vehicles and vans any time they are turned over to USPS custody.

Note:

(a) For vehicles which are hired by the USPS, use Form 4577, Leased Vehicle Condition Report.
(b) For contract vans turned over to the USPS for the unloading of mail, use Form 5201, Mail Van Inspection.

735.12 Procedure

Both forms must be prepared in triplicate. The procedure is the same:

(a) On Receipt. When accepting vehicle or van, make an inspection:
   1. Enter any defects noted during inspection.
   2. Sign the form and obtain signatures of owner's representative attesting to condition as recorded on form.
   3. Retain original and first copy and give second copy to owner's representative.

(b) On Return. When returning vehicle or van, again make an inspection:

1. Note any new damage; or state that no new damage occurred.
2. Sign the form and obtain signature of owner's representative to verify observations.
3. Return original to file and give first copy to owner's representative.

735.2 Utilization Reports

Vehicle Post Offices must document use of all postal owned and hired vehicles on Form 4570, Vehicle Time Record, or use approved current electronic data collection programs and use Form 4570/or approved program as a source document to complete utilization reports and submit the information to the office's assigned VMF.

736 Accident Investigation

736.1 General

.11 Policy

The USPS investigates all accidents involving USPS operated vehicles.

.12 Responsibility

The driver must complete SF-91 (see 723.5). The postmaster or official in charge is responsible for the onsite investigation of all accidents occurring within his area or involving his employees and vehicles.

.13 Counsel

USPS personnel involved in accidents occurring in line of official duty which result in court action may be defended in all cases, both civil and criminal.

740 Vehicle Maintenance

741 Maintenance Objective

The objective of the vehicle maintenance program is to insure safe, dependable, and economical performance of USPS-owned vehicles at minimum cost and minimum vehicle downtime. Achievement of this objective requires an emphasis on preventive maintenance rather than on repair of deficiencies. Preventative maintenance provides for scheduled lubrication and examination of all vehicles in accordance with established standards, at prescribed intervals.

742 Maintenance Organization

742.1 Definitions

The USPS maintenance organization is based on the concept of the vehicle maintenance facilities (VMF). See 712.2 for related definitions.

742.2 Establishment

Guidelines for the establishments, acquisition, or enlargement of maintenance facilities appear in Publication 190, *Capital Investment Policies and Procedures*; Publication 191, *Capital Investment Implementation Instructions*; and Handbook PO-701, *Fleet Management*.

742.3 Staffing

VMF staffing is based upon planned repair work and is established only in accordance with demonstrated need. VMF staffing must follow established guidelines by the Area. See also 715.

743 Vehicles Serviced (or Vehicle Service Policy)

743.1 USPS-Owned Vehicles – Full Service

The vehicle maintenance program is intended to provide complete maintenance and repair service only for USPS-owned vehicles. VMF's are not staffed to perform service for other vehicles – except as provided in 743.2 below.

743.2 Contract Vehicles – Emergency Service Only

VMF's may perform service for contract vehicles only on infrequent occasions when a bona fide emergency arises. If necessary to prevent serious delay to mail, on-duty USPS employees may repair a minor defect that causes a contract vehicle breakdown near a VMF but remote from the contractor's establishment or public repair facilities. When emergency repairs are necessary, all documents must be properly coded and parts accurately priced.

743.3 Private Vehicles – No Service

Under no circumstances may on-duty USPS personnel make repairs to private vehicles, except contract vehicles. This restriction also applies to private vehicles formerly owned by the USPS. (Once Standard Form 97-A, Agency Record Copy of the US Government Certificate of Release of Motor Vehicle, has been issued, the vehicle must be classified as a private vehicle).

744 Types of Maintenance

744.11 Scheduled Maintenance

Scheduled maintenance examinations allow deficiencies to be discovered and necessary repairs to be made when still minor in nature. This reduces the necessity for expensive, time consuming major repairs. It also reduces vehicle operations costs. Preventing a failure is less costly than correcting it after it occurs.

Note:

(a) Scheduled maintenance examinations and generated repairs must be performed at such times that results in the least possible interruption of regular mail transportation or delivery.

(b) Work schedules of maintenance employees must be arranged to provide the greatest number of man-hours to coincide with the periods in which vehicles are not normally in use.

.12 Repair Maintenance.

Repair maintenance consists of all repair actions resulting from malfunctions, road calls, and other abnormal breakdowns which are not corrected during scheduled maintenance examinations.

744.2 Commercial Maintenance

.21 Criteria.

In general commercial maintenance and repair services should be considered whenever economically advantageous to the USPS. This may include:

(a) Minor repair work and lubrication for USPS-owned vehicles assigned to any office

(b) Maintenance and repair of USPS-owned vehicles assigned to perimeter offices. Provided the estimated cost does not exceed the limit. (See 744.22)

(c) Special service work such as upholstery repair, glass installation, recapping, and subassembly rebuilding (Note: GSA contracts are given primary consideration.)

(d) Vehicle painting which cannot be done by USPS facilities with suitable equipment and qualified personnel.

.22 Restriction.

When the estimated contract repair of a perimeter office vehicle exceeds the amount stated in PO-701, the responsible manager must contact the VMF to which he is assigned for technical advice and to determine where work is to be performed.

745 Policies and Practices

745.2 Modification Restriction

No changes whatever may be made in the construction of a vehicle. The standard equipment furnished by the manufacturer shall not be changed or altered, nor shall any special devices used. Any request to increase the mechanical or operating efficiencies of the equipment, such as reduced driver time, greater vehicle utilization, or increased safety shall be brought, through channels, to the attention of the Office of Vehicle Operations for consideration.

745.6 Vehicle Appearance

A clean and orderly appearance of the USPS fleet is an indicator of good maintenance management and is essential to the USPS image. Consequently, vehicles should be constantly scrutinized for paint deterioration and body damage.

Note:

(a) A vehicle should be completely repainted only when the original paint cannot be restored by normal cleaning or polishing practices.

(b) If polishing does not restore luster to only one of the colors, then repainting of that color should be scheduled. Paint touch-up on an as-needed basis prevents exterior body deterioration.

(c) Repairs of minor body damage should be accomplished on the schedule maintenance service.

Please sign and return the enclosed copy of this pre-arbitration settlement as your acknowledgment of the agreement to close Case Q90C-4Q-C96014385 and Q90C-4Q-C96014640 in their entirety and remove them from the pending national arbitration list. If the proposed changes to the POM as specified in this agreement are invalidated by a National-Level arbitration award, those affected portions of this agreement are null and void. If this occurs, the APWU may reinstate the above-referenced grievances in writing, within fourteen (14) days of their receipt of written notification that this agreement has been voided.

John W. Dockins
Manager, Contract Administration
(APWU) USPS

Date: 11-2-07

Robert Pritchard
Director, Motor Vehicle Division
American Postal Workers Union,
AFL-CIO

CENTRAL NEW JERSEY
STEP 2 APPEAL FORM

Below is a copy of a Step 2 Appeal Form from a New Jersey local that pretty much covers all the details cited. It is a training tool to help you see how these cases can be written up.

STEP 2
GRIEVANCE
APPEAL FORM

American Postal Workers Union, AFL-CIO

1 DISCIPLINE (NATURE OF) OR CONTRACT (ISSUE): Subcontracting	CRAFT: MVS	DATE: 11/26/2007	LOCAL GRIEVANCE: #34MV07	USPS GRIEVANCE: Geist Garage
2 TO USPS STEP 2 DESIGNEE (NAME AND TITLE): Adele Rashid, Labor Relations Specialist	INSTALLATION / SEC. CEN. / BMC: Kilmer NJ P&DC 08899			PHONE: 732.819.4315

3 FROM: LOCAL UNION (NAME OF): Central Jersey Area Local #149	ADDRESS: P.O. Box 10027	CITY: New Brunswick	STATE: N. J.	ZIP: 08906

4 STEP 2 AUTHORIZED UNION REP. (NAME AND TITLE): Thomas M. LaFauci, MVS Director	AREA CODE PHONE (OFFICE): 732.819.4300	AREA CODE PHONE (OTHER): 732.819.3887
5 LOCAL UNION PRESIDENT: Hank Anderson, President	AREA CODE PHONE (OFFICE): (732) 819-3887	AREA CODE PHONE (OTHER): (732) 985-8054

STEP 1 MEETING & DECISION

WHERE - WHEN			MET WITH
6 UNIT/SEC/BR/STA/OFC: Kilmer NJ VMF	DATE/TIME: 11/15/07	USPS REP - SUPR: Tad Powell, Supv VMF	GRIEVANT AND/OR STEWARD: Class Action / LaFauci

7 STEP 1 DECISION BY (NAME AND TITLE): Tad Powell, Supv VMF	DATE AND TIME: 11/26/07	11:50 AM	INITIALS	INITIALING ONLY VERIFIES DATE OF DECISION

8 GRIEVANT PERSON OR UNION (Last Name First): Class Action	ADDRESS	CITY	STATE ZIP	PHONE

9 SOCIAL SECURITY NO.	SERVICE SENIORITY/CRAFT	STATUS	LEVEL	STEP	DUTY HOURS	OFF DAYS ☐ SAT ☐ SUN ☐ MON ☐ TUE ☐ W	
10 JOB#/PAY LOCATION/ (UNIT/SEC/BR/STA/OFC): Kilmer NJ VMF	WORK LOCATION CITY AND ZIP CODE: Edison, N. J. 08899					LIFETIME SECURITY ☐ Yes ☐ No	VETERAN ☐ Yes ☐ No

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.)** 1, 3, 5, 8, 19, 32.1, 39.3D&E, A8-NA-0481 et al

LOCAL MEMO (ART./SEC.) OTHER MANUALS, POLICIES, L/M MINUTES, ETC.
LMOU Article 14,21, 22

12 **DETAILED STATEMENT OF FACTS/CONTENTIONS OF THE GRIEVANT**

The Service violated the above captioned provisions when they contracted out vehicle maintenance repairs normally, regularly, routinely and historically performed by the MVS bargaining unit to an outside contractor, namely Geist Garage, located in Edison NJ. There was no credible consideration given to the five factors enumerated in Article 32.1A and as defined by Mittenthal's decision A8-NA-0481. This is an ongoing violation for work normally, regularly, routinely and historically performed by the Kilmer VMF bargaining unit.

This has had a significant impact on the bargaining unit work since bargaining unit work continues to be contracted out without any credible consideration being given to the five factors enumerated in Article 32.1. Further, there could have been no credible consideration given to the qualification of existing employees since the VMF Shop employees must pass a written test and a bench test before being deemed a qualified Auto Technician. Once hired, Auto Tech's are required to attend off-site training to update their knowledge

The Service also failed to notify the Union at the National level of this action. The only notification to the Union was a September 19, 2007 letter from Fleet Manager Rutkowski to Local APWU President Anderson expressing his intentions to utilize Geist Garage to perform these routine automotive services.

(continued on page 2)

13 **CORRECTIVE ACTION REQUESTED** -- That any/all information (files, records, documents, etc.) relied upon and/or related to this instant grievance be made available at the Step 2 hearing.

1/ Cease and desist using Geist garage as a contract repair shop with the VMF.
2/ Return the work to the Kilmer VMF shop, hire the appropriate number of employees to cover the work,
3/ Make all qualified and available shop employees whole for all lost work opportunities at the applicable overtime / penalty overtime rates. (Hour-for-hour compensation)

Thomas M. LaFauci, Shop Steward

SIGNATURE AND TITLE OF AUTHORIZED UNION REP

The requested documentation shows NO effective date, that is, no start date or ending date. The only date shown in what the Service calls a "Required Delivery Date: 7/16/07. A reasonable person would conclude that this is NOT a bona fide contract between the Postal Service and Geist Garage but a mere allocation of funds.

This is borne out by the dates of the e-mails between the Kilmer VMF and the Purchasing and Supply Management Specialist in Philadelphia. The Local Union was not notified until after the money was allocated.

The Union asserts that Geist Garage should NOT have performed any repairs on any postal vehicles especially without a contract in place.

The Union contends that the authorization of monies from the Postal Service's Philadelphia Contracting office does not constitute a bona fide contract with the listed repair shop nor represents credible due consideration as defined in Article 32.1 and the aforementioned Mittenthal award. It is merely an authorization of postal funds. Geist Garage is not listed as one of the repair shops covered by this allocation of funds.

It appears that Philadelphia allocated $247,155 and that amount was divided up amongst three different outside repair shops at the behest of the Fleet Manager and his supervisors.

The Union asserts the Fleet Manager holds these funds in an account and doles them out to outside contractors as he deems appropriate. This does not constitute credible "due consideration."

Further, the Labor rate afforded to Geist Garage at this time is $55 an hour is substantially more than the $42.24 being paid to the VMF shop employees. The Service could save money by hiring additional Shop employees in the VMF which is closed more hours than it is open.

The contract itself seems to cover multiple outside garages at different rates of pay.

Specifically, it appears this money is allocated to All-Star Fleet Service at $70 an hour, On-Site Fleet Service at $70 an hour and Edison Automotive at $80 an hour.

What this allocation of monies does NOT cover is Jersey Automotive, Geist Garage, Aamco Transmission or Tech Trans. Yet it is the Service's position at Step 1 that this "contract" covers all the postal repairs assigned to all six of the above mentioned garages. The Union points out that this is not what the money allocation states.

Management at the Kilmer facility has already contracted out many facets of the VMF work claiming they must keep the VMF employees gainfully employed performing PMI's. In contrast, it is the PMI's and the replacement of engines and transmissions that the Service is contracting out.

The Service is unable or unwilling to hire additional employees to handle this work. PMI's are scheduled in advance as per the maintenance schedule so this work is not of an emergent kind.

All the work being contracted is work normally, regularly routinely and historically performed by bargaining unit shop employees. There is no emergency situation.

In addition, according to the information given by the Step 1 Advocate at a recent Service talk, the Service will not be buying new vehicles until the year 2018 stretching the service life of these 13 to 20 year old LLV's another 10 years. This demands that the Service hire additional employees as the work load will steadily increase.

The removal and replacement of engines and transmissions is/was also contracted out to Aamco commencing in 2000 as well as All Star, Edison Automotive, Tech Transmission and others. The Service is using questionable unsubstantiated data to allege that it is cheaper to perform this work using an outside contractor.

The Union has requested a copy of those work orders the Service is relying upon to determine whether or not the numbers being utilized are accurate. Supv Powell claims since these work orders were generated from 2000 to 2003, the vehicle jackets have been purged and the work orders unavailable.

The Service seems only to compare the actual time used to remove and replace an engine or transmission or perform a scheduled maintenance on a postal vehicle rather than the estimated repair times or ERT's published by the Service.

This is an unfair comparison and almost guarantees that the comparison will be in favor of the contract garage. Also, VMF Shop employees fix and inspect everything on a vehicle, writing up and repairing everything they see needs repairing.

If a VMF shop employee goes over an ERT, supervisors are supposed to find out why they went over as other problems with that vehicle are often found and corrected.

For example, if during an engine replacement, the Auto Tech finds a broken wiring harness, he does not itemize the harness repair separately as a separate line item but just fixes the problem.

The same holds true for frozen bolts, studs and nuts, exhaust systems problems, cleaning up your work area multiple times, coffee breaks, wash-up time and more. The Lead Auto Tech's are instructed to cover their time with a notation in the "Remarks" area of the work order.

Contract repair shops perform only those repairs they feel needs to be done and what is profitable to them. They actually are paid to perform their own PMI's and then they pick up the parts at the VMF's parts window or they have the parts delivered by the Postal Service's VOMA's.

No postal employee, whether it is bargaining unit or non-bargaining unit, monitors what the outside repair shop claims they need to perform the scheduled maintenance nor whether or not the parts they claim they need are actually installed onto those postal vehicles. There is no oversight on the outside contractor's work to ensure the vehicles are properly fixed.

The VMF shop is not fully staffed with positions going unfilled for long periods of time because of the method used to approve the hiring of new employees to fill currently authorized positions. This slow process on filling jobs is not a contractually good and sufficient reason to contract out the repair and maintenance of postal vehicles.

The Union contends that compliment caps, budgetary constraints and compliance with the instructions of postal superiors are NOT a good and sufficient reason to contract out VMF work. To limit the number of employees and hours of operation is nothing more than a self-fulfilling prophecy and does not contractually justify the use of contract repair shops to perform this routine repair and maintenance work.

The alleged cost comparisons the Service claims to perform are unequal and slanted towards the private garage as the Service adds additional time the VMF employees go on break, wash-up and other tasks such as cleaning the bay, sweeping and mopping the floor. These additional items, many of which have been negotiated between the Union and the Service and others being instructions to the mechanics, are now being used against the bargaining unit in an effort to shift the work normally, regularly, routinely and historically performed by the bargaining unit to unqualified outside repair shops.

Further, the Service is compensating Geist Garage at the rate of $55 an hour compared to the $42.24 which the bargaining unit is receiving. That $42.24 figure is mandated by the National USPS officials and includes wages and benefits. Due consideration, as defined by Mittenthal in case #A8-NA-0481, was not given in this instance.

There is a second contract in place with the Edison NJ Postal Office and Geist Garage that allocates $370,000 a year for two years in addition to the instant contract. The Service will not hire additional shop employees to perform this work knowing the current Fleet is aging beyond normal serviceable life under the PO-701 Fleet Management handbook.

Why can't they hire additional employees to perform this work?

The compliment of bargaining unit employees has remained virtually constant over the past 20 years while the number of contractors and the amount of work they perform continues to grow.

The Service also subsidizes the contractor by supplying the needed parts from the USPS parts room much of which are often delivered by postal employees. (VOMA's and Rehab employees)

The Service is relying on outside contract garages to certify these postal vehicles roadworthy as they are not inspected by New Jersey State DMV. LLV's are peculiar to outside repair shops compared to ordinary passenger vehicles. While a VMF shop employee must pass a written test and a bench test to be deemed a qualified Automotive Technician, there is no such requirement for an outside repair shop.

VMF Shop employees are highly trained in the repair and maintenance of these specific types and years of postal vehicles and regularly attend off-site training in Oklahoma to update and increase their knowledge of them.

Outside contractors do not have access to this level and frequency of training and are deemed unqualified by postal standards. There is no guarantee that outside contractors hired cheap labor with limited automotive experience to work on postal vehicles

Yet the Service blindly trusts these contractors to perform PMI's compensating them at the higher rate then the bargaining unit is compensated while blindly accepting the contractor's word that the vehicles they work on are roadworthy. There is no assurance of the quality of the contractor's work or that the work was done at all.

The Union asserts that this contract with Geist Garage has NOT met the five factors enumerated in Article 32.1 (defined in the Mittenthal case A8-NA-0481) as this undated and unsigned so-called "contract" with a "required delivery date of 7/16/07" is NOT a bona fide contract but only an authorization for funds beyond what is authorized by handbook. (PO-701 et al)

As defined in a National level award, the Service could not have give the proper due consideration to this contractual requirement and only handled it in a cursory fashion. The Union received only a simple, vague form letter with no other explanation and no input and no required notification to the Union at the National level.

The Service's letter itself is contradictory as it claims that the VMF employees are being better utilized to perform scheduled maintenance yet virtually all of the work going to Geist Garage from the VMF IS scheduled maintenance.

The September 19, 2007 correspondence to Local President Anderson also does not meet the "due Consideration" standards defined by Mittenthal or proper National notification under Article 32.1.

Most disturbing, a shortage of qualified Shop Technicians due to off-site training, vacations, sick leave and intentional short-staffing of the shop is also being used as an excuse to somehow justify contracting out major component replacement and scheduled maintenance demands rather than hiring more employees to cover the scheduled and unscheduled repairs.

The Service's refusal to approve additional employees leading to an insufficient compliment of shop employees to cover the anticipated work is NOT a good and sufficient reason to contract this work out. The VMF is only opened for 5 days and for only two tours when this VMF could be operational on a 7 days a week 24-hour a day basis.

Lastly, the only authorized overtime for the VMF Shop employees was those volunteers on the ODL who chose to work their sixth day, Saturday. There is no before or after tour overtime available.

On both Saturdays, November 17th and 24th, 2007 there was no overtime offered at all. The Union believes that this was to bring down the overtime ratio below the self-imposed level of 10%. This also contributed to the Service's decision to contract out VMF work and the Union asserts this does not rise to the level of credible "due consideration."

With this supervisory decision, there was a significant impact to the bargaining unit work in question as the Craft, as a whole was harmed. There was no credible consideration given to the public interest, efficiency, as these vehicles are shuttled from far-away VPO's, often by contract towing companies, only to have their "A" and "B" services performed by unqualified outside labor.

The Fleet Manager having upgraded all of the equipment in the shop with includes a new front end machine, two new brake lathes, new vehicle lifts, a new compressor and new tools could NOT have given credible "due consideration" to the availability of the equipment.

And lastly, with all the Shop employees taking a written test and a bench test just to be hired and later attending many, many off-site training courses specializing in the repair and maintenance of LLV's and other vehicles, the Service could NOT have given credible "due consideration" to the qualification of the shop employees who work almost exclusively on these LLV's.

Time limits were extended by mutual consent.

The Union requests a copy of the PS Form 2608 for this case.

Robert Pritchard's Letter from John W. Dockens on $42.24

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

March 22, 2006

Mr Robert C Pritchard
Director, Motor Vehicle Division
American Postal Workers Union
AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Certified Mail
7002 0860 0006 9347 6435

Dear Bob:

This letter is in response to your March 3 correspondence regarding the appropriate rate for labor costs per hour in a Vehicle Maintenance Facility (VMF) when considering subcontracting.

All of your prior correspondence regarding appropriate labor cost per hour appeared to have questioned the Diamler-Chrysler reimbursable warranty rate that was published in the March 25, 2004, Vehicle Maintenance Bulletin V-05-04. Therefore, all prior responses from the Postal Service addressed the reimbursable warranty rate for that specific contract and not VMF labor cost per hour that should be used for cost comparison purposes when considering subcontracting. Please understand that there is a distinct difference between a reimbursable warranty rates which is tied to a negotiated contract versus the VMF labor rate used by the Postal Service when determining whether it is appropriate to subcontract.

The appropriate VMF labor cost per hour is $42.24. This is the labor rate per hour used by the Postal Service when determining feasibility of subcontracting. This represents the average rate for a PS-7 Automotive Mechanic.

If you have any additional questions regarding this matter please contact Rodney Lambson of my staff at (202) 268-3827.

Sincerely,

for John W. Dockins
Manager
Contract Administration (APWU)

RECEIVED
M.V.S. DIV.

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
WWW.USPS.COM

Vehicle Maintenance Cost Report in Dollars

A Comparison of the Actual Costs of the VMF and the Outside Contractors in Any Given Month

10-11-07

REPORT AEH600P1 — VEHICLE MAINTENANCE COST REPORT IN DOLLARS — DATE 10/10/07 — PAGE 1 OF 2
AREA 4A NEW YORK METRO AREA — VMF SUMMARY
DISTRICT 088 CENTRAL NJ DIST — ACCOUNTING PERIOD 12 FY 07 SEPTEMBER 2007 — TIME RUN: 20:14:30
VMF 030 NEW BRUNSWICK, NJ
FIN NO 33-5686 NEW BRUNSWICK, NJ

A/C CODE		********** CURRENT PERIOD ********** VMF PARTS/ MATERIALS	VMF LABOR	CONTRACT PARTS/MAT	CONTRACT LABOR	TOTAL	********** YEAR-TO-DATE ********** VMF PARTS/ MATERIALS	VMF LABOR	CONTRACT PARTS/MAT	CONTRACT LABOR	TOTAL
DIRECT MAINT & REPAIRS											
22	SCHEDULED MAINTENANCE	152,299	93,804	58	60,082	306,243	1651,213	1223,672	459	517,721	3393,065
23	ROAD CALLS	320		99	405	824	1,678	3,823	99	6,180	11,780
24	UNSCHEDULED REPAIRS	42,409	6,195	99	49,230	97,933	327,391	119,214	1,216	357,134	804,955
26	COMPONENT REBUILDING							5,245			5,245
27	BULK ISSUE PARTS & SUP.	7,315				7,315	77,224				77,224
45	WARRANTY REPAIRS	1,582	279			1,861	3,738	6,485			10,223
46	REIMBURSEMENT(WARRANTY)			2,522-		2,522-			12,015-		12,015-
73	CANNIBALIZATION										
92	EVAL/MODIF/EXPER	700	541			1,241	9,316	12,471			21,787
A.	TOTAL DIRECT MAINT	204,625	100,819	2,266-	109,717	412,895	2070,560	1370,910	10,241-	881,035	4312,264
FUEL/OIL CHARGE OTHERS											
31-34	FUEL FOR VEHICLES			100,996		100,996			1297,010		1297,010
35-36	ENGINE OIL	1,532		72		1,604	19,022		4,640		23,662
43	OPER. SUPPLIES										
B.	TOTAL OPER SUPPLIES	1,532		101,068		102,600	19,022		1301,650		1320,672
ALLIED LABOR											
25	ACCIDENT REPAIRS	14,542	357			14,899	79,816	21,934			101,750
28	SHUTTLE TIME		7,435		11,262	18,697		70,430		135,232	205,662
29	VANDALISM							449			449
30	FLEET SERVICING				4,850	4,850	155			21,118	21,273
38	WASHING VEHICLES									3,541	3,541
39	FUELING VEHICLES										
42	CHARGE OTHERS(EXC.WARR)						3,413	1,809			5,222
44	REIMBURSEMENT(EXC.WARR)										
51	VEHICLE SALE PREP							535			535
91	REPAIRS TO P.O. EQUIP		3,519			3,519		54,970			54,970
C.	TOTAL ALLIED LABOR	14,542	11,311		16,112	41,965	83,384	150,127		159,891	393,402
D.	TOTAL DIRECT, OPERATING & ALLIED COSTS	220,699	112,130	98,802	125,829	557,460	2172,966	1521,037	1291,409	1040,926	6026,338

A/C CODE		********** CURRENT PERIOD ********** VMF PARTS/ MATERIALS	VMF LABOR	CONTRACT PARTS/MAT	CONTRACT LABOR	TOTAL	********** YEAR-TO-DATE ********** VMF PARTS/ MATERIALS	VMF LABOR	CONTRACT PARTS/MAT	CONTRACT LABOR	TOTAL
DISTRIBUTED COSTS											
50	VEHICLE DEPRECIATION			7,530		7,530			82,355		82,355
52	GAIN/LOSS - SALE OF VEH			3,157		3,157			21,287-		21,287-
61	SUPERVISION		29,283			29,283		360,165			360,165
62	STOCKROOM		2,789			2,789		41,434			41,434
63	CLERKS		20,398			20,398		309,905			309,905
64	REPAIRS TO SHOP EQUIP		865			865		4,489			4,489
65	GARAGE MAINTENANCE		1,289			1,289		44,930			44,930
66	TRAINING		297			297		14,531			14,531
68	RENT/DEPRECIATION BLDG										
71	TRAVEL										
E.	TOTAL DISTRIBUTED COSTS		54,921	10,687		65,608		775,454	61,068		836,522
F.	TOTAL VEH COSTS & EXP	220,699	167,051	109,489	125,829	623,068	2172,966	2296,491	1352,477	1040,926	6862,860

1. TOT. DISTRIB COSTS LABOR TO TOT. VEH COSTS & EXP. LABOR = 32.87% (CURRENT) 33.76% (YTD)

2. SCHED MAINT LABOR TO TOTAL DIRECT MAINT LABOR = 93.04% (CURRENT) 89.25% (YTD)

3. SCHED MAINT LABOR & CONTR LABOR TO TOTAL DIRECT MAINT LABOR & CONTRACT LABOR = 73.09% (CURRENT) 77.32% (YTD)

4. TOTAL DIRECT MAINT LABOR TO TOTAL DIRECT COSTS LABOR = 89.91% (CURRENT) 90.12% (YTD)

FORMULA:

1. LINE "E" LABOR DIVIDED BY LINE "F" LABOR.

2. A/C 22 LABOR DIVIDED BY LINE "A" LABOR.

3. (A/C 22 LABOR PLUS A/C 22 CONTRACT LABOR) DIVIDED BY (LINE "A" LABOR PLUS LINE "A" CONTRACT LABOR.

4. (LINE "A" LABOR) DIVIDED BY (LINE "D" LABOR).

National Level Case A8-NA-0481

By Arbitrator Mittenthal

This arbitration award is referenced and quoted in the "What Would Be Considered a Significant Impact to Bargaining Unit Work" as Contemplated in Article 32.1? Section

ARBITRATION AWARD

April 2, 1981

UNITED STATES POSTAL SERVICE
Spokane, Washington

-and-

Case No. A8-NA-0481

AMERICAN POSTAL WORKERS UNION

Subject: Subcontracting - Highway Movement of Mail

Statement of the Issue: Whether the Postal Service's actions in selecting a contractor to handle the highway movement of mail in Solicitation No. 980-1-79 rather than having such work done by its own vehicles and drivers was a violation of Article XXXII of the National Agreement?

Contract Provisions Involved: Article XXXII, Sections 1 and 4 of the July 21, 1978 National Agreement.

Grievance Data:	Date
Grievance Filed:	December 10, 1979
Step 4 Meeting:	January 23, 1980
Appeal to Arbitration:	February 15, 1980
Case Heard:	October 28, 1980
Transcript Received:	November 17, 1980
Briefs Submitted:	February 6, 1981

Statement of the Award: The grievance is denied.

BACKGROUND

This grievance protests the Postal Service's action in engaging a contractor for the highway movement of mail in Spokane, Washington. The Union alleges that the Postal Service improperly inflated the cost of performing this mail transportation service with its own vehicles and drivers and that this cost, realistically calculated, was much less than the contractor's price for the same work. It believes the Postal Service thus failed to give adequate consideration to the factors mentioned in Article XXXII, Section 4A and to the Union's proposals. It urges that these failures constitute a violation of the 1978 National Agreement. The Postal Service disagrees with this analysis, both from the standpoint of the facts and the nature of its contractual obligations.

Solicitation No. 980-1-79 was issued by the Postal Service on January 26, 1979. It advertised for bids for a surface transportation contract for the movement of mail on certain routes in Spokane. A contractor had been performing this work. Its contract was due to expire on June 30, 1979. The Postal Service sought to determine, through this Solicitation, whether it should continue to use a contractor for this surface transportation work or whether it should convert to Postal Service vehicles and drivers. The Solicitation stated, among other things, the number and nature of the vehicles required, a schedule of the trips contemplated, and the mileage and driving time involved in each trip. It estimated total annual mileage at 88,445.

The Postal Service notified the Union that a new surface transportation contract was being considered and gave it a copy of the Solicitation. The Union then evaluated the cost of performing this transportation work with Postal Service vehicles and drivers. Its calculations were made on a Form 5505 with almost all of the relevant data being furnished by the Postal Service. However, it had to make its own determination of "Driver Cost." The crucial factor in this cost figure is the number of driver hours anticipated per year. The Union took the actual driving time on the Solicitation, added ten minutes at the beginning and end of each trip, and translated these numbers by multiplication into annual driver hours. It concluded that this transportation work would call for 10,855 driver hours (11,180 hours when adjusted for contingencies) and would represent a cost

to the Postal Service of $146,783 per year. It submitted these claims to the Postal Service in mid-March 1979.

The Western Region of the Postal Service went through the same calculations on a Form 5505 in early June 1979. Its findings, however, were quite different. It maintained that 18,705 driver hours (19,267 hours when adjusted for contingencies) were involved and the cost to the Postal Service would be $281,392 per year.

Meanwhile, contractors were submitting bids for this transportation work. The low bid appears to have been $215,488. This price was much lower than the Postal Service's $281,392 cost of converting to its own vehicles and drivers but much higher than the Union's $146,783 cost figure. Given this conflict, Postal Service Headquarters chose to make its own cost study in mid-June 1979. That was done by a Fleet Control officer in the Vehicle Operating Division. He maintained that 14,900 driver hours (15,347 hours when adjusted for contingencies) were involved and the cost to the Postal Service would be $230,061 per year. He explained that his calculations had 4,000 more driver hours because the Postal Service would have had to add drivers to its work force and would also have had to piece together schedules to make eight-hour driver days. He claimed the Union's figures were unrealistic because they failed to account for what these added drivers would do before and after their trips.

The Postal Service relied on this Headquarters cost study. It stressed that the cost of this transportation work with its own vehicles and drivers would be roughly $15,000 more than the low bid received from a contractor. It decided to contract out the work. It notified the Union of its intentions in July 1979 and provided the Union with a copy of this Headquarters cost analysis.

The Union asked the Postal Service to delay awarding the contract. It disagreed, of course, with the Postal Service's cost figures. But it also wished to send one of its consultants to Spokane to study the situation and attempt to develop a plan for the use of Postal Service vehicles and drivers on the work in question. The Postal Service agreed to the delay. A Union consultant visited Spokane in late September 1979 and spent several days reviewing the operation of this postal facility. His opinion was that this surface transportation

work could be handled by Postal Service vehicles and drivers. He suggested that clerks could be removed from their regular mail processing jobs and reassigned to driver work as needed and that other employees could be hired to handle the lost mail processing time. He built eight-hour schedules by combining mail processing and driving time into a single job. His proposal was later explained to the Postal Service.*

The Postal Service sent the Union proposal to Spokane (and the Western Region) to evaluate its feasibility. The Spokane reply was that the proposal was unworkable. Local Management asserted that it "could not afford to lose mail processing hours during crucial time periods" and that it "did not wish to add additional employees for mail processing over and above their normal complement to provide drivers [for] these routes..." It estimated that the Union proposal would mean 3,700 extra mail processing hours. It believed the proposal would prevent it from being able to meet its "customer service" commitments.

In view of this report from Spokane Management, the Postal Service decided to use a contractor for the disputed work. It met with the Union and explained its position, especially its belief that the Union proposal was not feasible. It engaged the contractor in December 1979.

The Union protested. It asserted that the use of a contractor for this surface transportation work was, under the circumstances of this case, a violation of Article XXXII, Section 4. That provision reads in part:

> "A. The American Postal Workers Union... and the...Postal Service recognize the importance of service to the public and cost to the Postal Service in selecting the proper mode for the highway movement of mail. In

* The Union made another cost evaluation in July 1979 with updated figures. Its conclusions were the same as before except that the cost of doing the work with Postal Service vehicles and drivers was increased from $146,783 to $172,079. Still another Union evaluation in September 1979 had a much lower cost figure.

selecting the means to provide such transportation the Postal Service will give due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees.

"B. For highway contracts covered by this Section and expiring on June 30, the Unions will be furnished the information enumerated in Paragraph D below by February 15 of the calendar year in which the contract is expiring. No later than April 1, the Union may request a meeting to discuss a specific contract...In situations where a meeting is requested by the Union, the parties will exchange their basic cost analyses no later than ten (10) days in advance of the actual meeting...

"D. The information will include the following:

1. A statement of service for each route, including the annual mileage, equipment requirements, and current contractual cost for all existing routes.

2. The schedule for each highway contract.

"F. The parties agree that the following factors will be used in any cost comparisons of the type of transportation mode to be selected:

1. The Motor Vehicle employee costs for Motor Vehicle Operators will be Level 5, Step 9 and Level 6, Step 9 for Tractor-Trailer Operators, as per the wages current at the time.

2. The vehicle costs will be computed from the last two quarters of the Vehicle Make/Model Cost Reports. These costs will be computed separately for each Region...

3. The Postal Vehicle Service will be charged 10 minutes at the start and 10 minutes at the end of each route, regardless of the vehicle used." (Emphasis added)

DISCUSSION AND FINDINGS

I - The National Agreement

Article XXXII, Section 4 concerns the contracting out of the highway movement of mail. Paragraph A describes the Postal Service's substantive obligation; Paragraphs B through G describe the Postal Service's procedural obligations. Some general discussion of these obligations is necessary to the resolution of this dispute.

Paragraph A recognizes that mail must be transported on the highways and that this can be accomplished in different ways. The Postal Service has done this work either with its own vehicles and drivers or through the use of contractors. It agreed in Paragraph A that, in determining which of these alternatives to follow, it would give "due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees." These factors are not weighted. Article XXXII, Section 4 does not say, for example, that "cost" is more important than "efficiency" or vice-versa. It simply requires that these factors be given "due consideration."

Unfortunately, the words "due consideration" are not defined in the National Agreement. Their significance, however, seems clear. They mean that the Postal Service must take into account the five factors mentioned in Paragraph A in determining whether or not to contract out surface transportation work. To ignore these factors or to examine them in a cursory fashion in making its decision would be improper.* To consider other factors, not found in Paragraph A, would be equally improper.

* Ignoring all factors would involve a lack of "due consideration." Examining them in a cursory fashion might constitute "consideration" but certainly not the "due consideration" contemplated by Paragraph A.

The Postal Service must, in short, make a good faith attempt to evaluate the need for contracting out in terms of the contractual factors. Anything less would fall short of "due consideration."

Thus, the Postal Service's obligation relates more to the process by which it arrives at a decision than to the decision itself. An incorrect decision does not necessarily mean a violation of Paragraph A. Incorrectness does suggest, to some extent at least, a lack of "due consideration." But this implication may be overcome by a Management showing that it did in fact give "due consideration" to the several factors in reaching its decision.* The greater the incorrectness, however, the stronger the implication that Management did not meet the "due consideration" test. Suppose, for instance, that "cost" is the only factor upon which Management relies in engaging a contractor, that its cost analysis is shown to be plainly in error, and that it would actually have been cheaper for the Postal Service to use its own vehicles and drivers. Under these circumstances, the conclusion would be almost irresistible that Management had not given "due consideration" in arriving at its decision.**

Paragraphs B through G involve the procedure to be followed when the use of a contractor is contemplated. First, the Postal Service must furnish certain information to the Union by a certain date. That information includes a description of the nature of the contractor's anticipated route - mileage, equipment, vehicle cost, wage level, etc. Second, the Union analyzes this data to determine what it would cost the Postal Service to handle the route with its own vehicles and drivers. Certain conventions are employed in this analysis. Third, the Union may request a meeting to discuss the proposed contract. In that event, the parties are expected to exchange cost

---

* Conversely, a correct decision does not preclude finding a violation of Paragraph A where the proofs reveal a lack of "due consideration."

** None of this is inconsistent with Arbitrator Gamser's observation in Case No. AB-NAT-6291 that the contracting out language "does not go on to provide that if the Employer could undertake the work as efficiently and cheaply with its own employees and its own equipment then it cannot enter the subcontracting arrangement."

analyses at least ten days prior to the actual meeting. The purpose of the meeting apparently is to give the Union an opportunity to attempt to persuade the Postal Service to change its course, that is, to use its own vehicles and drivers instead of engaging a contractor. Any failure by the Postal Service to provide the necessary information or to meet with the Union on request would be a violation of its procedural obligations.*

The emphasis on "cost" in these paragraphs indicates that the parties viewed relative cost as an important factor in the contracting out decision. That does not mean, however, that "cost" is a controlling consideration. Had that been the parties' intention, they surely would not have listed "cost" as merely one of five factors which influence the contracting out decision.

II - Cost

This dispute arises in large part from the parties' disagreement as to how the "cost" of performing the transportation work with Postal Service vehicles and drivers should have been calculated in this case.

The Union insists its cost estimate was prepared "strictly in conformity with Article XXXII..." Its calculation was based on actual driver hours required by the contemplated routes plus 10 minutes added to the start and end of each route. It asserts that Form 5505 was meant to compare only actual driving cost and that the Postal Service has incorrectly added non-driving hours to its calculation. It alleges that the true cost of performing the work with Postal Service vehicles and drivers was no more than $172,079. It emphasizes that this figure was considerably less than the contractor's price of $215,488.

The Postal Service, on the other hand, contends that actual driver hours fail to reflect the real cost of having this work done by its vehicles and drivers. It states that Management would have had to hire additional employees, that the routes in question did not lend themselves to the creation of eight-hour driving schedules, that the new employees would have spent only about one-third

* Such failure might even have some bearing on the Postal Service's "due consideration" obligation.

of their time driving, that the rest of their time would have involved mail processing, and that Management did not need these extra mail processing hours. Hence, it says its Form 5505 correctly reflected not just actual driver hours but also the non-driving hours of the additional employees. It believes all of these hours were properly part of the cost comparison. Its calculation indicated the cost of performing the work in-house would be no less than $230,061. It stresses that this figure was considerably more than the contractor's price of $215,488.

Paragraph F of Article XXXII, Section 4 describes "factors" to be "used in any cost comparisons of the type of transportation mode to be selected." Those factors concern both driver and vehicle cost to the Postal Service in having the work performed in-house. As for driver cost, two conventions are mentioned. The first is that driver cost must be based on the Level 5, Step 7 wage rate then in effect for Motor Vehicle Operators*; the second is that driver cost must incorporate "10 minutes at the start and 10 minutes at the end of each route..."

Neither of these conventions addresses the issue raised by the parties. The first simply identifies the hourly rate which is to be multiplied by total employee hours. It has nothing to do with the determination of what hours are to be used in the calculation. The second requires that employee hours include two discrete 10-minute periods at the start and end of each route. The significance of that inclusion is not at all clear. One could argue that the 10-minute periods were intended as the only permissible addition to actual driving time. But that is not what Paragraph F says. It is equally reasonable to argue that the 10-minute periods, when added to driving time, establish no more than a floor on the employee hours to be used in the calculation. Such a floor should certainly not be construed as a ceiling on employee hours. The fact is that nothing in Paragraph F precludes the addition of other non-driving time to employee hours where appropriate. Nor does Form 5505 appear to preclude such an addition.

* Or the Level 6, Step 9 wage rate when Tractor-Trailer Operators are involved.

The Postal Service included non-driving time, beyond the 10-minute periods, in its cost calculation in this case. It had some basis for doing so. It felt that new employees would have had to be hired because of the routes in question, that these routes were bunched together at the same times of day, that the new employees hence would have been driving only about one-third of the time, that the rest of their time would have been spent in mail processing, and that Management had no real need for these extra mail processing hours. Given such circumstances, it determined that the cost of having the work done in-house should include all of the new employees' hours - both driving and non-driving time. This determination does not appear to have been arbitrary or capricious.

None of this discussion should be read as blanket approval of any single method of cost calculation. Absent any clear direction in the National Agreement and absent proof of any mutual understanding as to how employee hours are to be measured, the arbitrator's inquiry is limited. I find there was some reasonable basis here for the Postal Service's action in lumping together driving and non-driving time in making its cost analysis. It follows that the Postal Service had rational grounds for concluding that the cost of performing the work in-house was greater than the contractor's price.

III - Efficiency

"Cost" was not the only matter which the Postal Service considered. It became evident in June 1979 that there were substantial differences between the parties' cost analyses. Those differences have been discussed in Part II of this opinion. The Union asked that Management delay engaging a contractor until it had an opportunity to study the Spokane situation in an attempt to devise a plan which would enable the Postal Service to perform the disputed work in-house. The Postal Service agreed to the delay. The Union made a study. Its recommendations were that clerks be removed from their regular mail processing jobs and be reassigned to driver work as needed and that new employees be hired to handle the lost mail processing hours. It built eight-hour schedules by combining mail processing and driving time into a single job. It contemplated five such jobs.

Spokane (and Western Region) Management was asked to evaluate the Union proposal. It did so.

Management's view can be summarized briefly. It believed the reassignment of clerks to driver work would mean the loss of mail processing hours during critical time periods. Those clerks would have to be taken off of scheme distribution work essential to the sorting of first-class mail. That would, of course, be disruptive. Management hence would have to fill these lost hours with a group of new hires who would have to learn scheme distribution. If the new hires were treated as full-time employees and placed on eight-hour schedules, there would be too many mail processing hours. For the clerk-drivers would only be driving about one-third of the time.* If, on the other hand, the new hires were treated as part-time employees and placed on split schedules (or less than eight-hour schedules), Management would have to create other full-time jobs to comply with its "maximization" obligation. And perhaps it would still have too many mail processing hours. Management felt the Spokane facility had been operating effectively and did not require the additional mail processing hours implicit in the Union proposal.

For those reasons, the Postal Service considered the Union proposal to be unworkable. Its position was that this proposal would detract from the "efficiency" of the Spokane facility.

IV - Due Consideration

The issue before the arbitrator is whether the Postal Service gave "due consideration" to the factors in Article XXXII, Section 4, Paragraph A in making its decision to contract out.

The answer should be obvious from what I have already said in Parts II and III of this opinion. The Postal Service did give "due consideration" here to the factors of "cost" and "efficiency." There was some reasonable basis for Management's belief that the "cost" of performing

---

* Most of the clerk-drivers would have handled two short routes in the early morning and two or three short routes in the afternoon. In some of these situations, it would have been impossible to get any mail processing work from the clerk-driver between successive routes.

the work in-house was greater than the contractor's price. There was surely good reason for Management's belief that the Union proposal would not have served the interests of "efficiency." Both factors played a role in Management's final decision in December 1979 to engage a contractor.

The Postal Service's cost analysis may or may not be correct. But even if it were incorrect and a presumption of impropriety were warranted, I find that the Postal Service's evidence of why it acted as it did is sufficient to overcome any such presumption. Management satisfied the "due consideration" test. There has been no violation of Article XXXII, Section 4, Paragraph A.

V - Procedure

The final matter relates to the procedure to be followed when the Postal Service anticipates contracting out. That procedure is set forth in Paragraphs B through G.

The Postal Service complied with this National Agreement procedure. It appears to have furnished the necessary information to the Union in a timely manner. It exchanged cost analyses with the Union. It met with the Union, at the latter's request, to discuss its intent to contract out the disputed work. Thus, it did everything Paragraphs B through G called upon it to do.

Indeed, the Postal Service went further. It agreed, after meetings with the Union, to delay the contracting out in order to give the Union an opportunity to go to Spokane and study the situation. It later received a copy of the Union's proposal which was the product of this study. It sent that proposal to Spokane Management for evaluation. It made the final decision to contract out only after Spokane Management had decided that the Union's proposal was unworkable. On these facts, it cannot be said that the Postal Service denied the Union any of its procedural rights under Paragraphs B through G.

AWARD

The grievance is denied.

Richard Mittenthal

Richard Mittenthal, Arbitrator

Passage from the AS-707A City Sections

1.3.1 and 1.4.1

Chapter 1

Policy

1.1 Purpose

This handbook provides guidance on obtaining vehicle maintenance and repair services through vehicle maintenance agreements (VMAs). A VMA is an ordering agreement entered into by the Postal Service and a supplier of vehicle maintenance services. It sets forth the terms and conditions upon which a binding contract may be entered into at a later date, through placement and acceptance of an order.

1.2 Applicability in Relation to Publication 41, *Procurement Manual* and Handbook AS-707, *Procurement Handbook*

These procedures are issued in accordance with *Procurement Manual* (PM) 8.6.2. Unless otherwise stated in this handbook, the policies and procedures set forth in the PM and Handbook AS-707, apply to procurements of vehicle maintenance services. Where the contract provisions of this handbook vary from those contained in volume 2 of the PM, Handbook AS-707, or sample documents created by the Document Generator System (DGS), those established in this handbook prevail.

1.3 Authority

1.3.1 Request

Postal Service installation heads who do not have vehicle maintenance available in-house may request VMAs in accordance with these procedures (see the restrictions in 1.4).

1.3.2 Award

VMAs may only be awarded by contracting officers having authority to establish such agreements. Awards must be made in accordance with these procedures.

1.3.3 Administration

For VMAs, contract administration encompasses order placement, inspection and acceptance of services performed, verification of Forms 4541, preparing and submitting monthly billing summaries for payment, and record keeping, as well as any necessary VMA modification, termination, or dispute resolution activities. The contracting officer is assisted in these tasks by the appointed contracting officer's representative (COR) and other individuals, as described in chapter 4.

1.4 Restrictions

1.4.1 USPS Maintenance Available

VMAs should generally not be used by offices where vehicle maintenance is available in-house. However, when the Vehicle Maintenance Facility (VMF) cannot meet its requirements, such an office may submit a VMA request that justifies the need for supplementary services. VMAs should not be used to acquire inventory items for a VMF.

1.4.2 Frequency of Service

A VMA will ordinarily be awarded only when it is determined that the requesting office requires vehicle maintenance services at least six times

per month. Less frequent requirements may be met through local purchasing authority.

1.4.3 Amount of Service

VMA procedures may be used only when an office estimates that its vehicle maintenance expenditures will exceed $2,000 per year. Requirements for smaller quantities may be met through local purchasing authority.

1.4.4 Order Limit

No single order placed under an agreement issued in accordance with these procedures may exceed $5,000.

1.4.5 Vehicle Modifications

VMAs may not be used to enhance or improve any vehicle. They may be used only to obtain the following:

a. Routine maintenance and repair services; and

b. Vehicle modifications (such as pollution control or safety equipment) required by Postal, Federal, or State laws and regulations.

1.4.6 Washing and Polishing

Under most conditions, vehicle washing and polishing services should be obtained separately from vehicle maintenance services, using either the procedures set forth in Handbook AS-707B, *Contracting for Vehicle Washing and Polishing Agreements*, or local purchasing procedures. However, in localities where only one supplier is available to provide all these services, a combined award may be made. It is suggested that the DGS format for VMAs be combined with the necessary washing and polishing elements to meet this sort of requirement.

1.5 Term

All VMAs will be awarded for an initial term of up to two years, with options to renew the agreement for four additional two-year terms for a total term of up to 10 years (see Clause OB-536, Term of Agreement).

1.6 Multiple VMAs

If it is determined that the volume of work may exceed the capacity of a single local supplier, multiple VMAs may be awarded (see 4.2.2 for ordering procedures). Contracting officers may consider awarding separate agreements for different categories of services (for example, an agreement for mechanical repairs, another agreement for body work, and so on).

Regional Level Award I90V-1A-C96020567

by Arbitrator James P. Martin

This is the case that reversed the United States Postal Services' decision to Close the Omaha Spray Paint Booth

---

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration between	)	Grievant: Class Action
	)	Post Office: Omaha, NE
UNITED STATES POSTAL SERVICE and	)	USPS Case #: I90V-1A C96020567
AMERICAN POSTAL WORKERS UNION, AFL-CIO	)	APWU Case #:OAL 30295

BEFORE: James P. Martin, Arbitrator

APPEARANCES:

For the USPS: Yolanda L. Williams

For the APWU: John B. Cychosz

Place of Hearing: Omaha, NE

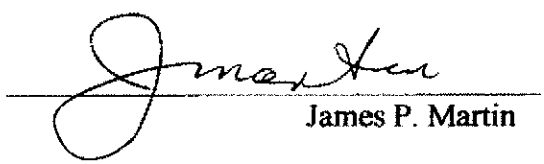
Date of Hearing: April 21, 2000
Date of Briefs May 30, 2000
Date of Award: August 18, 2000

Relevant Contract Provisions: Article 32, Section 1
ASM 535.111
Contract Year: 1990

Type of Grievance: Contract

Award Summary

The Postal Service violated the Agreement when it subcontracted the spray painting in the VMF at Omaha, NE in 1995; The work is to be restored to the Bargaining Unit, including the replacement of the Spray Booth removed in 1995; Those employees doing the spray painting when the work was improperly subcontracted are to be made whole at their overtime rate for all hours worked by the subcontractor. Jurisdiction is retained, per the request of the parties, for 30 days following this Award to determine the application of the remedy, in the event the parties are unable to resolve the matter.



James P. Martin

ISSUE

Was the Postal Service in violation of the National Agreement and in particular Article 32 when it subcontracted the Spray Painting in the VMF? If so, what is the remedy?

NATURE OF CASE

In 1993, at Omaha, Nebraska, the VMF was spray painting the postal vehicles. The spray paint booth was inadequate, and authorization was given for the construction of a new booth. For various reasons, this was deferred for several years. In February 1995, the acting manager for Contract Administration sent a letter to the Union proposing the elimination of spray painting operations at all Postal Processing Plants. Immediately following this, the Plant Manager at Omaha informed the local Union President that he was considering the de-activation and elimination of all spraying operations at the Omaha plant. This would include spray painting of postal equipment such as mail collection boxes, handled by a painter, and maintenance, and the spray painting of vehicles, handled by two repair men, not painters. The Union's response was negative, and following further communications, the plant manager did subcontract all spray painting for the VMF and at the Postal Processing Plant. A clarification was obtained almost a year later from the Manager of Contract Administration that the spray painting operations contemplated to be eliminated were at the processing plants, and specifically not including the vehicle maintenance facilities.

The Plant Manager informed the Union by letter dated March 7th, 1995 that the subcontracting of the spray painting was to be done. He listed four issues that led to the decision:

1. Safety and well being of all postal employees.

2. The risks involved if a violation of EPA specifications occurred.

3. Costs of administrating necessary paperwork inherent in maintaining a spray painting operation was prohibitive.

4. The money authorized for the spray painting operation could bedirected towards other organizational needs.

A grievance was promptly filed, which did not progress very promptly through the system. It came to a hearing on April 21, 2000.

No employees were laid off, nor were the normal hours reduced. There was testimony that overtime was substantially eliminated subsequent to the subcontracting of the spray painting in the VMF.

CONTENTIONS

According to the Union, the only argument made by Management was safety, yet this was a non-issue, and there was no problem with safety. The Manager of Vehicle Maintenance desired the spray paint booth to remain, and the Management claim that EPA violations increased the cost and risk factor is invalid. Management totally failed to observe the requirements of Article 32, Section 1A, and the instructions from Washington, D.C. which were claimed to be a basis for the decision, did not refer to VMF spray booths. ASM535.111 requires Management to perform maintenance by Postal Service personnel, with two exceptions which did not

apply. Management acted totally arbitrarily and capriciously in closing the paint booth in the VMF and subcontract the work, and a finding of a contract violation should be made, with the remedy being the return of the spray paint booth to the VMF, and the payment of overtime to the employees doing the work at the time of subcontracting, hour for hour, for all time charged by the subcontractor.

According to the Postal Service, there were no due process arguments made, and very few contested facts. The Union was informed by Management of the contemplated change, was able to respond, and the Union's position was considered prior to taking the action of eliminating the spray paint booth. The employees doing the painting were not painters, but Body and Fender Repairmen, and the painting was not their primary duty and performed only on an as needed basis. There were legitimate reasons for discontinuing the spray painting operation, safety being the major one. The work of spray painting is not covered by the Collective Bargaining Agreement, only the workers who were involved, and they lost no hours nor benefits as a result of the elimination of the spray paint booth. The grievance is without merit, and should be denied.

DISCUSSION

Arbitrator Mittenthal in Case A8-NA-0481, makes clear the requirements for subcontracting under Article 32. The case with which he was involved concerned Article 32 Section 4, but the words which he interprets are also verbatim in Section 1, involved here.

"Unfortunately, the words, 'due consideration' are not defined in the

National Agreement. Their significance, however, seems clear. They mean that the Postal Service must take into account the five factors mentioned in Paragraph A in determining whether or not to contract out surface transportation work. To ignore these factors or to examine them in a cursory fashion in making the decision would be improper.* To consider other factors, not found in Paragraph A, would be equally improper. The Postal Service, must in short, make a good faith attempt to evaluate the need for contracting out in terms of the contractual factors. Anything less would fall short of 'due consideration'."

*Ignoring all factors would involve a lack of "due consideration." Examining them in a cursory fashion might constitute "consideration" but certainly not the "due consideration" contemplated by Paragraph A.

Before going further, there is a necessity to clarify one element of this case. Throughout the processing, Management cites the action as the "elimination of the spray paint booth." This is a snare and a delusion. There was no elimination of spray painting whatsoever: the persons doing the spray painting changed. What Management did was subcontract the spray painting. Every minute of spray painting, every drop, was still done, but was done instead of by the Bargaining Union, by subcontractor employees. There was no elimination of a risk, no elimination of the spraying of volatile chemicals, no action which could be called in the public interest, because it merely moved the spray painting from the VMF to a subcontractor's shop. "Elimination" of dangerous activity is not the action complained of, it is the subcontracting of the exact same work done before.

Given that, the reasons given by the Plant Manager, four in number, must be compared to

the requirements for subcontracting set out in Article 32. The Plant Manager claimed first of all that he considered the safety and well being of all Postal Employees. This did not appear as a consideration under Article 32. Further, it is not a policy of the Postal Service at the national level. The decision to eliminate spray painting related only to painting in the plant, and specifically, per Postal Service documents, not the VMF. The Plant Manager was imposing his own idea of safety in order to subcontract, in contradiction to the policy at the national level.

The Plant Manager next raises the issue of the legal risks of spray painting. Once again, this is not a consideration which the parties contracted to be used in determining the propriety of subcontracting.

The next issue considered by the Plant Manager was that the cost of administering all the necessary paperwork inherent in maintaining a spray painting operation would be virtually prohibitive. A Postal Service document puts the lie to this: According to a response to an RFI, a Vehicle Supply Supervisor wrote: "The cost of administering the record keeping involved in operation of a painting booth cannot be determined, since we have never kept records as needed or required by the state and EPA." Rather than the cost being virtually prohibitive, the record keeping was virtually non-existent.

Finally, the fourth consideration in the Plant Manager's mind in determining to subcontract was the fact that he could use the money authorized for a new spray paint booth for other organizational needs. This is nothing less than a bizarre reason for subcontracting, especially in light of Article 32.

Those items can now be considered in the light of Arbitrator Mittenthal's interpretation of how they must be considered. These principles which require due consideration are:

1. Public Interest. Not a single item of any public interest concern was presented by the service at the hearing, nor in any of the other documents in evidence.

2. Cost. Here again, Postal Service documents totally give the lie to any claim that cost was a factor in deciding to subcontract. There is in evidence a letter from the Manager of Vehicle Maintenance, in which cost is discussed. In that response to the Manager of Operations Program Support, he states a cost of $208.00 per paint job at the VMF versus approximately $708.00 subcontracted. The additional shuttle time to bring the vehicle to the subcontractor and returning it was also set out as a major cost. This obviously requires two employees to drive separately to get the vehicle to the subcontractor, and then the two returning in the same vehicle. After repairs, the two employees must go out in a vehicle, with the two of them returning in the original vehicle and the repaired one. This does not take a ton of brain power to see a major cost in this. In fact, the Manager states: "I can see an enormous amount of labor shuttling vehicles back and forth for estimates and/or painting. Far more than the additional administrative paperwork caused by permits and records." Where the Plant Manager got the figures which caused him to think that cost would be a positive factor in subcontracting never appeared in the evidence in this case.

3. Efficiency. Not a word appeared anywhere as to Management's reasoning concerning increased efficiency. It obviously was not more efficient, giving the evidence of the letter from the Manager of Vehicle Maintenance.

4. Availability of Equipment. There was a spray paint booth in existence, which could have been made legal for painting, but the decision was made to replace it entirely

due to other problems. The new booth was authorized, the money allocated, but never used. There can be no question of the equipment not being available as a basis for subcontracting.

5. Qualification of employees. This was never discussed in the hearing, nor in any of the admitted documents. For over five years, two employees have been doing all of the painting, and there is no indication whatsoever in the record that there was a lack of qualification.

From the evidence in the record, the finding must be that four of the five factors which the Plant Manager was required, contractually, to consider, were not considered in any way. The fifth factor, cost, had to be considered a negative in deciding to subcontract, and the Manager instead, contrary to Arbitrator Mittenthal's injunction, considered four factors which had no justification for being considered whatsoever. The finding must be that the subcontracting of the spray paint work, euphemistically referred to by Management as the elimination of the booth, was a total, complete and gross violation of the Agreement.

This finding is extremely simple to make, but the remedy raises problems. The action occurred five years ago, and the world has continued to spin in that time. However, the arbitrator's jurisdiction is limited to the question raised at the time, and to the evidence in the record. There is, not surprisingly, an absolute dearth of any evidence as to what changes might have occurred in the past five years which would make the award about to be made inappropriate, if not totally out of line with today's circumstances. However, the award must be made on the bases just mentioned. The spray paint work was improperly subcontracted and removed from the employees. It must be returned. The spray paint booth must be replaced, since it was a violation of the contract to remove

it in the first place. The employees who were deprived of the work which they had done through improper subcontracting, must be made whole. The fact that they continued to work 40 hours per week did not foreclose a remedy in which they are granted overtime hours for all hours charged the Postal Service by the subcontractor. That will be the award, and it is in conformity with a string of essentially identical remedies in the following awards:

I90T-1I C94023483	Arbitrator Fletcher
C7T-4D C21543, 44, 45	Arbitrator Fletcher
E1T-2W C18967	Arbitrator Germato
H90T-1H C96024403	Arbitrator Fragnoli
H90T-1H C93038250	Arbitrator Byars
W0T-5S C9035	Arbitrator Marlatt
I90T-1I C94056229, 30	Arbitrator Stallworth

AWARD

The Postal Service violated the Agreement when it subcontracted the spray painting in the VMF in Omaha, Nebraska in 1995; the work is to be restored to the Bargaining Unit, including the replacement of the spray booth removed in 1995. Those employees doing the spray painting when the work was improperly subcontracted, are to be made whole at their overtime rate for all hours worked by the subcontractor. Jurisdiction is retained, per the request of the parties, for 30 days following this award to determine the application of the remedy, in the event the parties are unable to resolve the matter.

Regional Level Award J98T-1J-C01204583 by Arbitrator Edwin H. Benn

---

This case is on the United States Postal Service

not giving "due consideration" to the

five factors in Article 32.

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS UNION, AFL-CIO

GRIEVANT: Class Action

POST OFFICE: Chicago Metro Surface Hub

CASE NOS.: J98T-1J-C 01204583
CM201201

BEFORE: EDWIN H. BENN, Arbitrator

APPEARANCES:

For the U. S. Postal Service: Jeff Spears, Labor Relations Specialist

For the Union: Vance Zimmerman, National Business Agent

Place of Hearing:	Elk Grove Village, Illinois
Date of Hearing:	May 22, 2007
Dates Briefs Received:	June 23, 2007 (Union); June 25, 2007 (Service)
Date of Award:	July 24, 2007
Relevant Contract Provision:	Article 32
Contract Year:	2000
Type of Grievance:	Contract

Award Summary:

The grievance is sustained. The Service violated Article 32 of the Agreement when it did not "... give due consideration to public interest, cost, efficiency, availability of equipment and qualification of employees ..." until after the work for the installation of a new tray line conveyor system at CMSH was put out for bid. Article 32 requires such consideration be given "... *when* evaluating the need to subcontract", not *after* the work is put out for bid [emphasis added]. As a remedy, the matter is remanded to the parties for formulation of a remedy in accord with the procedure set forth in III(C) of this opinion.

Edwin H. Benn
Arbitrator

I. ISSUE

Did the Service violate Article 32 of the Agreement when it subcontracted the installation of a tray line conveyor system at the Chicago Metro Surface Hub ("CMSH") and, if so, what shall the remedy be?

II. FACTS

On or about April 2, 2001, a contractor, Key Handling Systems, Inc., began installation of a new tray line conveyor system at CMSH. The solicitation for bids for that work was made prior to August 18, 2000. *See* Management Exh. 4. The subcontracted work involved the installation of secure structural steel framework and columns, installation and assembling of large overhead conveyors to the framework and columns, installation of control systems and programming of interfaces and controls. Management Exh. 2. The contractor was ultimately responsible for design, engineering, fabrication and installation of the conveyor components. The system transports sacks from the dock to robots for further distribution through use of scanners. At one point during the process, the project had to be re-engineered when the Plant Manager wanted the conveyors suspended from the ceiling as opposed to being floor mounted.

According to Industrial Engineer Charles Williams, the work was not given to the CMSH Maintenance employees because of "... their lack of technical ability, their lack of people to meet the installation schedule, and their lack of skills in projects of this large magnitude." *Id.* According to Williams, "[i]nstead, a national construction firm in conveyors was selected by Headquarters Engineering to install these systems." *Id.*

The Union disputes the Service's contention that the CMSH Maintenance employees could not perform the work. The Union offered evidence that MPE

Mechanics and Electronic Technicians have performed similar work through installation of flat sorters and small parcel and bundle sorters. The Union also points out that the job descriptions for the MPE Mechanic and Electronic Technician specifically list installation of equipment. Joint Exhs. 3, 4.

The Service disputes the Union's contention that the CMSH Maintenance employees were capable of performing the work, asserting, in sum, that the project was just too large and complex for those employees to handle.

Maintenance Manager Surjit Grewal testified that the total labor cost of the job was approximately $300,000 and he was of the opinion that the job could be performed by a contractor in four to five months.

Article 32 provides:

ARTICLE 32
SUBCONTRACTING

> A. The Employer will give due consideration to public interest, cost, efficiency, availability of equipment and qualification of employees when evaluating the need to subcontract.
>
> * * *

Maintenance Manager Grewal also testified that he made the considerations called for in Article 32. Grewal testified that he considered the public interest and determined that the mail volume was high at the facility and Management wanted the project to be completed before Christmas 2001, which could not be accomplished through use of the CMSH Maintenance employees. Grewal also addressed cost and availability of equipment and testified that use of CMSH Maintenance employees would have required the purchase of tools, including welding and drilling equipment and there would have been high overtime because of the staffing at the facility. While the estimated labor cost

for the contractor to perform the work was approximately $300,000, Grewal testified that he estimated it would cost the Service $400,000 in labor for the CMSH Maintenance employees to do the work and if CMSH Maintenance employees were given the work, it also would have been necessary to hire temporary employees to keep the other machines running. With respect to efficiency, Grewal focused on the costs and the Christmas 2001 deadline which would not have been met by using CMSH Maintenance employees. With respect to qualifications of employees, Grewal testified that there were no certified crane operators in the CMSH Maintenance staff, there were insufficient employees who could weld and perform the electrical work and that because the tray line conveyor equipment was new, the CMSH Maintenance employees were insufficiently trained and they simply could not do the job.

Although the work was put out for bid prior to August 18, 2000 (*see* Management Exh. 4), Grewal testified that he made the Article 32 analysis in November 2000 — *i.e.*, *after* the work was put out for bid.

The Union grieved the subcontracting of the work. Joint Exh. 2. The parties were unable to resolve the dispute and this proceeding followed.

III. DISCUSSION

A. The Merits

This is a contract dispute. The burden is therefore on the Union to demonstrate a violation of the Agreement. To the extent set forth below, the Union has met that burden.

First, the evidence shows that the installation of the new tray line conveyor system was just too large and complex to be efficiently performed by CMSH Maintenance employees. I have no doubt, as the Union argues, that the

CMSH Maintenance employees had the skills that would have allowed them to ultimately perform the work. But this was a big job and there was a deadline. Under a plain reading of Article 32, merely because the employees *could* have performed the work does not prohibit the Service from nevertheless subcontracting the work. With respect to subcontracting work, Article 32 only mandates that the Service "... will give *due consideration* to ... qualification of employees when evaluating the need to subcontract." Article 32 has other factors which require "due consideration" — *i.e.*, "... public interest, cost, efficiency, [and] availability of equipment ...." And, Maintenance Manager Grewal persuasively testified that there was a deadline to get the work done by Christmas 2001 and if CMSH Maintenance employees did the work rather than a contractor, there would have been a need to purchase tools, resultant high overtime, the need to hire temporary employees to keep the other machines running and the labor cost of having a contractor do the work was about $100,000 less than having the CMSH Maintenance employees perform the work. Taking the Service's evidence on its face, it would appear that the Union has not met its burden.

Second, but there is one *major* problem from the Service's standpoint. The work was put out for bid prior to August 18, 2000. *See* Management Exh. 4. Maintenance Manager Grewal testified that he did the Article 32 analysis in November 2000 — *i.e.*, *after* the work was put out for bid. Consistent with that finding is Engineer Williams' memo to Manager In-Plant Support Jack DiMaio listing what appears to be Article 32 considerations. But that memo is dated October 18, 2001 — again, after the work was put out for bid. Therefore, although the analysis by Grewal and Williams was ultimately correct, because

Grewal and Williams (and thus, the Service) did not do the analysis until *after* the work was put out for bid, the Service could not have known the results of that analysis "... *when* evaluating the need to subcontract" as required by Article 32.

What Grewal and Williams did was to justify the Service's decision after the fact. That is not what Article 32 requires. Article 32 mandates that the "due consideration" be given "... when evaluating the need to subcontract" and not after the decision to subcontract is made or after the work is put out for bid. If the Service could make a decision to subcontract without first giving "due consideration" to the factors specified in Article 32, and then only be required to justify its decision after the fact, Article 32 would be rendered meaningless. The word "when" in the phrase "when evaluating the need to subcontract" in Article 32 is defined as "at the time or in the event that". *The Random House Dictionary of the English Language* (2nd ed.). "When" does not mean "after" — it means what is says — "when". Here, the Union has shown that the Article 32 analysis was performed by the Service "after" the work was put out for bid and not "... when evaluating the need to subcontract". I therefore find that a violation of Article 32 has been shown.

B. The Service's Other Arguments

The Service's other well-framed arguments do not change the result.

First, the Service argues that "[t]he Article 32 ... [considerations] were never challenged in the grievance procedure ..." Service Brief at 4. I disagree. The Union raised Article 32 in the Step 2 appeal and obviously addressed the question at Step 3 as shown by the Step 3 denial by the Service which states "... the factors of Article 32 were considered." Joint Exh. 2. Clearly, the Serv-

ice knew what the Union was complaining about and was on notice that the Union was of the opinion that Article 32 had not been complied with. Specifically worded denials to affirmative defenses such as the type required in court pleadings from lawyers are not required in the handling of grievances by laymen.[1]

Second, the Service argues that "... also included in this process is the input and consideration of many individuals, not necessarily just one person." Service Brief at 2. I have no doubt that is accurate. But in its Step 3 denial, the Service stated (Joint Exh. 2):

> ... The Managers involved in making the decision to subcontract the subject work, Jack DiMaio and Surjit Grewal, contend that maintenance employees did not possess the technical abilities or necessary skills nor were tools and equipment available. Furthermore they found that they were not staffed for the project and could not have completed the

---

[1] *See How Arbitration Works* (BNA, 5th ed.), 329-330:

> Nor will a grievant be bound rigidly at the arbitration stage by an ineptly worded grievance statement, or one which gives an incorrect contractual basis for the claim or cites no contractual provision at all. Formal and concise pleadings are not required in arbitration. ...
>
> Employees or their Union officers cannot be expected to draw their grievances artfully. If they have sufficiently apprised the Company of the nature of their complaint and if it is found that the Company has violated any portion of the contract, the employees, ... are entitled to relief.

See also, Interstate Brands Corp., 73 LA 771, 772 (Hamby, 1979) ("It is this Arbitrator's view that the parties understood the actual complaint represented by the grievance, although the grievance itself is imperfectly worded and cited an erroneous Article of the Labor Agreement."); *Black, Sivalls & Bryson, Inc.*, 42 LA 988, 991 (Abernathy, 1964) (although from a reading of the grievance, "one would be at considerable loss to know just what the grievance is all about ... the Company was not in fact in the dark or uninformed as to what this grievance was all about at the time it came to arbitration.").

> work within the time period required. Therefore, the factors of Article 32 were considered. ...

DiMaio did not testify. Grewal — one of "[t]he Managers involved in making the decision to subcontract the subject work ..." (*see* Joint Exh. 2) — testified that he made the Article 32 analysis *after* the work was put out for bid. Williams' October 19, 2001 memo to DiMaio supports that finding. "[M]any individuals" may have been involved in the decision to subcontract this big project as the Service contends, but there is no evidence that the critical Article 32 analysis — the "due consideration" requirement — was done by those involved "... *when* evaluating the need to subcontract" as required by Article 32 [emphasis added]. The demonstrated violation remains.

C. The Remedy

As a remedy, the Union requests that I should "... make the maintenance employees whole by compensating the maintenance employees for all hours worked by the contractors installing the tray transport system ...." Union Brief at 20. The Service argues that such a request is punitive, in part, because there is no evidence that there was actual harm to the employees. Service Brief at 4-5.

It has long been held that the function of a remedy is to restore the *status quo ante* and make adversely affected parties whole for a demonstrated

contract violation.[2] Further, in the formulation of remedies, arbitrators have a broad degree of discretion.[3]

Applying those considerations, the remedy in this case shall be as follows:

---

2 *See Wicker v. Hoppock*, 73 U.S. (6 Wall.) 94, 99 (1867)]:

> The general rule is, that when a wrong has been done, and the law gives a remedy, the compensation shall be equal to the injury. The latter is the standard by which the former is to be measured. The injured party is to be placed, as near as may be, in the situation he would have occupied if the wrong had not been committed.

3 *See United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960):

> When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency.

See also, Local 369 Bakery and Confectionery Workers International Union of America v. Cotton Baking Company, Inc., 514 F.2d 1235, 1237, *reh. denied*, 520 F.2d 943 (5th Cir. 1975), *cert. denied*, 423 U.S. 1055 and cases cited therein:

> In view of the variety and novelty of many labor-management disputes, reviewing courts must not unduly restrain an arbitrator's flexibility.

Additionally, *see Eastern Associated Coal Corp. v. United Mine Workers of America*, 531 U.S. 57, 62, 67 (2000) [citations omitted]:

> ... [C]ourts will set aside the arbitrator's interpretation of what their agreement means only in rare instances. ....
>
> * * *
>
> ... But both employer and union have agreed to entrust this remedial decision to an arbitrator. ....

Finally, *see* Hill and Sinicropi, *Remedies in Arbitration* (BNA, 2nd ed.), 62 ("... [M]ost arbitrators take the view that broad remedy power is implied ....").

First, the Union's broad request to pay the CMSH Maintenance employees for all hours worked by the contractor installing the tray line conveyor system cannot be granted. In the end, the evidence showed that when the Article 32 factors were considered, the subcontracting was justified.

Second, but there was a demonstrated and clear violation of Article 32 because the Service did not make the Article 32 due consideration analysis until after it put the work out for bid. Although the job was large and complex, could the CMSH Maintenance employees performed some of that work, thereby causing a reconfiguration of the bid? If the CMSH Maintenance employees could have performed some of the work given to the contractor's employees, then the CMSH Maintenance employees have been harmed by the demonstrated violation of Article 32 because they lost potential work opportunities. However, the evidence does not show that the Service even took that factor into account "when evaluating the need to subcontract" under Article 32. Perhaps that kind of consideration was done, but if it was considered, it was considered after the fact when Maintenance Manager Grewal and Engineer Williams did their Article 32 analysis after the work was put out for bid.

On the other side of the coin, perhaps there was no possible way for the CMSH Maintenance employees to perform any of the work done by the contractor's employees — *e.g.*, that no contractor would enter into an agreement with the Service to perform the work without using its own employees for most, if not all of the work. In that scenario, the actual harm to the CMSH Maintenance employees would be diminished.

The short answer to all of this is that I just don't know and it may be impossible to sort out precisely what harm has actually been suffered by the

CMSH employees that needs to be remedied so that they are "made whole". However, because the Service did not make the Article 32 analysis "when evaluating the need to subcontract", questions that remain must be resolved against the Service.

Thus, I find that the CMSH Maintenance employees have been harmed by the Service's violation of Article 32 in this case. By not following the mandates of Article 32, the Service deprived the CMSH Maintenance employees of the ability to perform the work (at worst) or to even be considered to be able perform the work (at least) as the process established by Article 32 requires. Thus, there has to be some type of remedy — one which I cannot quantify at this time.

The question of how to quantify that harm is therefore most difficult and, in the end, a precise remedy may be impossible to formulate. In the past, I have been faced with similar remedial problems between the parties and have remanded the remedial aspect of the case to the parties in the first instance to try and come up with a remedy on their own and, if they could not, to return to me and I would select one of the party's views of what the remedy should be. *See J98T-1J-C 01184386* (2006) at 10-11 quoting *J94T-1J-C 99039737* (2006) at 3:

> ... [I]n light of the difficulty of being able to precisely reconstruct the past to determine the exact amounts owed each employee, I [will] ... "baseball" any disputes which might arise under the ... [remedy]. Stated differently, ... the parties ... [are] to calculate the amounts due and discuss those calculations with each other and, should disputes arise concerning the amounts owed, I ... [will] require the parties to submit their last, best and final offers. I ... [will] then select the more reasonable offer and not engage in calculations different from those advanced by the parties. ...

That process forces the parties to be reasonable when they consider the remedy, knowing that an unreasonable offer will be rejected by me.

Given the discretion I have in the formulation of remedies, that remedial process appears to me to appropriate in this case. The matter is therefore remanded to the parties for a period of 60 days from the date of this award (or to a date agreed upon by the parties) to discuss a remedy to resolve this dispute. In the event the parties cannot agree upon a remedy, they may return this matter to me and I will select one of the party's final offers on the remedy which I feel is the most reasonable.

IV. AWARD

The grievance is sustained. The Service violated Article 32 of the Agreement when it did not "... give due consideration to public interest, cost, efficiency, availability of equipment and qualification of employees ..." until after the work for the installation of a new tray line conveyor system at CMSH was put out for bid. Article 32 requires such consideration be given "... *when* evaluating the need to subcontract", not *after* the work is put out for bid [emphasis added]. As a remedy, the matter is remanded to the parties for formulation of a remedy in accord with the procedure set forth in III(C) of this opinion.

Edwin H. Benn
Arbitrator

Dated: July 24, 2007

Regional Level Award J00V-4J-C04169827 and J00V-4J-C06016262 by Arbitrator Frances Asher Penn

---

This is the case on the United States Postal Service not giving "due consideration" when making the decision to contract out vehicle painting.

REGLAR ARBITRATION PANEL

In the Matter of the Arbitration	)	Grievant: Class Action
between the	)	Post Office: Center Chicago; VMF
AMERICAN POSTAL WORKERS UNION, AFL-CIO and the UNITED STATES POSTAL SERVICE	)	Case Nos. J00V-4J-C 04169827 0427MYM197 J00V-4J-C 06016262 0527A26

BEFORE: Frances Asher Penn

APPEARANCES;

For the Union: Merlie H. Bell

For the United States Postal Service: John H. Behnke

PLACE OF HEARING: Chicago, Illinois

DATE OF HEARING: December 12, 2006

DATE OF AWARD: January 5, 2007

AGREEMENT: Article 5; Article 32

AWARD SUMMARY

The grievance is sustained. The United States Postal Service violated Article 32.1 of the Agreement by failing to exercise "due consideration" of the factors specified in the Agreement when making the decision to contract out vehicle painting work. No monetary damages are awarded.

Frances Asher Penn

ISSUE:

Did the United States Postal Service violate Article 5 or Article 32 of the Agreement when it subcontracted painting work from June 21, 2004, to December 10, 2004?

BACKGROUND:

The Chicago district of the Postal Service has a fleet of over 2,700 vehicles. The Chicago Vehicle Maintenance Facility (VMF) is responsible for keeping postal vehicles in Chicago in operating condition. The VMF operates a body and paint shop that does both scheduled and unscheduled body repair and painting work for vehicles that need service.

In 2001 an audit of the Chicago VMF, which included on-site inspections of vehicles at a number of stations, was done. Three hundred vehicles had moderate to severe body damage, including peeling paint, damaged decals and graffiti. The Chicago VMF was instructed to implement a program to repair the damaged vehicles.

Follow up audits were done in October of 2002 and May of 2003. These audits showed little progress on repairing vehicles. The manager of the VMF, Curtis Anderson who became manager of the VMF in April of 2003, was instructed to make the needed repairs and to present a written response in September of 2003.

In February of 2004, Mr. Anderson decided that it was necessary to subcontract painting and repair work on 300 vehicles. Bid solicitations were posted, and Colorall of Naperville, Illinois, which won the contract, began the work on June 21, 2004. The designated Postal Service official in Philadelphia signed the contract on August 23, 2004. The work was completed on December 10, 2004.

On June 10, 2004, the Union filed a grievance that contends that the Postal Service violated the Agreement by subcontracting work that should have been assigned to union employees.

The parties informed the arbitrator that J00V-4J-C 06016262 was the number of the original case in this matter. This case was remanded to Step 1 and later renumbered as J00V-4J-C 04169827. Both case numbers have been used although this is a single case.

The grievance, dated July 27, 2004, alleges violations by the Postal Service of Articles 1,3,5,15,19, 32, 33, 39 and Handbooks AS 707A, and PO 701. The grievance states:

> The Service violated the National agreement, inclusive of its Handbooks and Manuals when it contracted out the repair and Maintenance (sic) of Postal-owned vehicles.
>
> Specifically, the motor vehicle craft in the Chicago Vehicle Maintenance facility, and the Chicago Western facility sustained a significant impact to bargaining unit work when the Service contracted out the painting of Postal vehicles with those same paint jobs now being performed by Colorall technologies International, Inc. at the same time this work was contracted out, there is a vacant painters position, and management has not maximized the use of the painters currently on the roll, and has used them (painters) in other areas, rather than painting. The bargaining unit normally, regularly and routinely perform those painting duties....

The Union asked as a remedy:

> Terminate the contract in question immediately. The work performed by Colorall be immediately returned to the bargaining unit. All vehicle maintenance employees qualified to perform the work that was contracted be made whole for all lost work opportunities at the applicable overtime rate.

At the hearing the parties agreed to restrict the issue to whether the Postal Service violated Article 5 or Article 32 of the Agreement. The parties agree that this matter is properly before the arbitrator for decision.

DISCUSSION:

After reviewing the entire record in detail, including all of the testimony, documents, numerous arguments of the parties and the 22 previous arbitration decisions submitted by the parties, the arbitrator finds that the Postal Service violated Article 32.1 A of the Agreement. The evidence in the record establishes that the Postal Service did not give "due consideration" to the five factors set forth in Article 32.1 A before the decision to contract out painting work was made.

Although the Union has the burden of proof overall to show that the Postal Service violated the Agreement, the Postal Service has raised an affirmative defense in presenting evidence to establish that it needed to subcontract the work. The Postal Service in presenting this defense and in presenting evidence that it complied with Article 32 has the burden of proof on this issue (Dehaney, F98V-4F-C 001139749, 2005; Hardin S7V-3W-C 32838, 1991).

Article 32.1 A sets forth five specific factors that must be considered in making a decision to subcontract. Article 32.1 A "Subcontracting" states in relevant part:

> Section 1. General Principles
> A. The Employer will give due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract.

The arbitrator finds that none of these factors was given sufficient consideration to meet even a minimal requirement of due process. The only witness to testify for the Postal Service was Curtis Anderson, the manager of the VMF who actually made the decision to subcontract the vehicle work. He testified he considered each of the five specific items before he decided in February of 2004 that the vehicle repair work needed to be subcontracted. Mr. Anderson spoke with conviction that he had fulfilled the due consideration requirements, but an examination of the evidence does not support his statements.

Mr. Anderson stated that he considered the public interest because he considered the safety concerns created by having so many vehicles that need repaired. But his testimony does not support his concern for safety, and there is no evidence to show that poor appearance, which would be improved by painting, is a safety issue.

What the testimony of Mr. Anderson does show clearly is that his main concern was not safety but adverse publicity. Twice he stated that he was afraid that, if the report were published showing maintenance deficiencies and a television reporter learned of a negative report and publicized the poor condition and appearance of the vehicles, he would be embarrassed. To avoid the possibility of bad publicity, he felt it was urgent to improve the audit score of the VMF, and he decided that the only way to do this was to contract out the work to an outside company. Mr. Anderson's concern may be understandable, but it is not proof that he gave genuine due consideration to public interest.

The evidence also fails to show that Mr. Anderson gave due consideration to cost. The only documentary evidence of the number of hours it took to prepare and paint one vehicle is a single page record. The document, form 4543, is dated June 10, 2005, and it shows that it took 49 hours of work done by different three employees.

Mr. Anderson testified that he used 49 hours as an average number of hours to paint a vehicle. Mr. Anderson testified that a painter employed by the Postal Service earns $42.42 an hour. He multiplied these two figures to show that it would cost the Postal Service approximately double the cost of the $700 to $800 charged per vehicle by Coverall, if the Postal Service had painted the vehicles using its own employees.

The arbitrator finds this calculation completely inadequate and unreliable for several reasons. One reason is that a sample of one vehicle is meaningless to establish an average cost. The second is that the 49 hour figure is contradicted by the testimony of a Postal Service painter, the only painter who testified, who stated that it would take him a much shorter time than 49 hours to paint a vehicle. The third reason is that the records on the work done by Coverall do not differentiate the hours spent on painting each vehicle versus the hours spent on other kinds of repairs. The records give codes for the work done, but the only cost figure given is a total dollar charge per vehicle for all the work done. It is, therefore, impossible to estimate how much Coverall charged for the painting work on a vehicle or to determine the total amount paid by the Postal Service to Coverall for painting. In addition, the records show that only about two-thirds of the vehicles were painted.

Most important, the arbitrator finds no convincing evidence to show that Mr. Anderson made even an approximate comparison of cost before he made the decision to subcontract. By failing to give due consideration to cost, he violated Article 32.1 A as an agent of the Postal Service.

The findings about cost are also applicable to efficiency. There is no solid evidence to show that efficiency was given due consideration. Mr. Anderson states that Coverall was more efficient because the company had two painting booths while the VMF had one. But there is no evidence in the record to show that any consideration was given to how many vehicles VMF employees could have painted, how many hours the booth the VMF had was in use or what it would have cost the Postal Service to add a second booth.

Mr. Anderson testified that the two regular Postal Service painters each had attendance problems and were absent about three months out of the year. The Postal Service presented no evidence to document this assertion, but even if it had, the evidence

would not be admissible since this argument was not raised at earlier steps in the grievance procedure.

The Postal Service has also failed to submit convincing evidence to show that due consideration was given to the availability of equipment. Mr. Anderson testified that Coverall could turn a vehicle around in one day while the VMF could not, but there is no convincing evidence to substantiate this assertion.

With regard to the qualification of employees, Mr. Anderson testified that the regular employees were qualified to perform the painting work that the vehicles needed. He stated that they could not deal with the quantity of work, but again this is an assertion that lacks supporting evidence.

The arbitrator concludes that, because the Postal Service did not give due consideration as clearly required in Article 32.1 A, it violated the Agreement. As Richard Mittenthal has written in an often quoted decision (A8-NA-0481):

> Unfortunately, the words "due consideration" are not defined in the National Agreement. Their significance, however, seems clear. They mean that the Postal Service must take into account the five factors mentioned in Paragraph A in determining whether or not to contract out...To ignore these factors or to examine them in a cursory fashion in making its decision would be improper. To consider other factors, not found in Paragraph A, would be equally improper. The Postal Service must, in short, make a good faith attempt to evaluate the need for contracting out in terms of the contractual factors. Anything less would fall short of "due consideration."
> Thus, the Postal Service's obligation relates more to the process by which it arrives at a decision than to the decision itself.... (p.6-7)

In a foot note he adds, "Ignoring all factors would involve a lack of 'due consideration.' Examining them in a cursory fashion might constitute 'consideration' but certainly not the 'due consideration' contemplated by Paragraph A." (p.6)

The parties bargained collectively for the language in Article 32.1 A, and the Postal Service has a positive responsibility to adhere to its requirements. The evidence presented in this case shows that it failed to do so, and, therefore, the substance of the grievance must be sustained.

The arbitrator finds no persuasive evidence to support the contention of the Union that the Postal Service violated Article 5 or Article 32.1 B of the Agreement.

The arbitrator was asked by the Union to award the full amount of money paid by the Postal Service to Colorall as damages to remedy the subcontracting. However, the arbitrator finds no convincing evidence of specific loss of work or money by any

employee. The evidence shows that the employees who might have been assigned this work were employed 40 hours a week. The one employee who was working during the period when the subcontracting took place testified that he turned down 50% of the over time that he was offered. The Union submitted a Step1 settlement made with the Postal Service on September 2, 2004, in which a supervisor agreed to fill vacant positions. One position listed on the settlement is that of a painter, but no evidence was submitted by the Union to tie a vacant position to the damages requested by the Union. Absent evidence of monetary loss or loss of work, no money or other damages will be awarded.

AWARD:

The grievance is sustained. The Postal Service violated Article 32.1 A of the Agreement between the parties.

No monetary damages are awarded.

Frances Asher Penn, Arbitrator

January 5, 2007
Chicago, Illinois

Regional Level Award F98V-4F-C01139749

By Arbitrator Richard B. Danehy

Award on the contracting out of VFM

Work on a Continuous Basis

REGULAR ARBITRATION PANEL

In the Matter of Arbitration	(	Grievant: Class Action
Between	)	Post Office: Tucson, AZ VMF
UNITED STATES POSTAL SERVICE	(	USPS Case No: F98V-4F-C 01139749
And	)	APWU Case No. 9401
AMERICAN POSTAL WORKERS	(	
UNION, AFL-CIO	)	

BEFORE: Richard B. Danehy, Arbitrator

APPEARANCES:

For the U. S. Postal Service: Tina Aldana, Labor Relations Specialist

For the Union: Bruce Bailey, National Business Agent, Motor Vehicle Division

Place of Hearing: 1501 South Cherrybell Stravenue, Tucson, AZ 85726

Date of Hearing: November 16, 2005

Date of Award: December 15, 2005

Relevant Contract Provision: Articles 19, 32, 39

Contract Year: 1998-2000

Type of Grievance: Contract – Subcontracting vehicle maintenance work

Award Summary

The grievance was filed in a timely manner. The subcontracting of vehicle maintenance on the 30-40 LDVs was a continuing violation. APWU did not grieve the efficacy of the Voyager System, only the misuse of it by the Tucson MVF to avoid the requirements for VMAs established by Handbook AS-707A thus violating Articles 19 & 32. It was not an issue that the Union should have filed at the National level. The grievance was not procedurally deficient. The Tucson VMF is to cease & desist utilizing "A&V" Automotive and other outside vendors for the repair and maintenance of vehicles unless & until there are appropriate VMAs. Back pay is awarded to Tucson VMF mechanics on the OTDL from March 21, 2001 until the date in 2001 that "A&V" first worked on the last of the LDVs shipped into the Tucson VMF.

Richard B. Danehy 12-15-05

Facts/Background

Beginning in March 2001, several[1] "Light Delivery Vehicles" (LDVs) were shipped to the Tucson P&DC from Denver and Albuquerque. The LDVs were to replace the Jeeps in the Tucson fleet. The LDVs were not brand new vehicles and they required some maintenance and repair prior to being road worthy. George Hernandez, Manager, Vehicle Maintenance Facility in Tucson entered into an agreement with "A & V Automotive", a vehicle repair facility, to perform the repair and maintenance work needed on the LDVs. The Service (George Hernandez, Manager VMF) paid "A&V" for the work performed with the "Voyager System Fleet (credit) Card". Parts for the work "A&V" performed were provided by the VMF.

Prior to the delivery of the LDVs, every vehicle in the Tucson fleet was assigned a period of time during which preventative maintenance was to be performed depending on the size of the vehicle and miles driven. This preventative maintenance work was traditionally and customarily performed by employees in the VMF.

Joint Exhibit #9, "VMAS Reference Code Table" dated 3/21/01 indicated that the Tucson VMF had entered into contracts with outside automotive vendors as far back as 1991 for washing, fuel, body repair, radiator repair, tires and towing services. The arrangement Hernandez established with "A&V" did not show up on Joint Ex. #9 that identified all VMAs contracts in effect during March 2001. Joint #9 did identify that there were three VMAs ("John Jones" 7/19/99, "Fleetwash" 11/1/00 & "Enterprise" 12/4/00), entered into by Hernandez prior to March 2001. The Voyager System became effective in January 2000. According to Joint #9 there were VMAs with "Crunch Auto Body Center" (1992-2002), "Radiator Specialties and Auto Repair" (1997-2001), "El Campo Tire and Service Center" (1997-2002) as well as a vehicle washing/waxing/fuel vendor.

In the latter half of March 2001, three LDVs were worked on by "A&V": Safety Inspections, oil/filter changes, replaced spark plugs, brake work, replaced valve cover gasket, replace bulbs, etc. The Union filed a grievance on April 4, 2001 over the subcontracting out of the work on the

[1] Approximately 30-40 vehicles. The exact number was never fully established in the arbitration by any documents. It was never fully established over what period of time the LDVs arrived at the Tucson VMF. They were not received all at one time.

LDVs claiming that this work (regular "C" services) was scheduled maintenance that VMF employees had been performing on LDVs for ten or more years. The Union also noted on the Step 1 Grievance outline worksheet that: "Additionally, the overtime was reduced to one hour per day for employees on the OTDL at the same time the work began to be contracted out."

The grievance alleged that Articles 5, 19 and 39.3D of the CBA were violated. The grievance was denied at Step 1: "We have not contracted out work. It is being paid for with the Voyager card. This allows us to have work done. No employee of the VMF is getting less than 40 hours which is what they are authorized."

On the Step 2 Grievance Appeal Form the Union stated:

> ". . . . The USPS Q & A on the Voyager card states it will be used for commercial fuel, oil, washing, polishing and vehicle repairs. It does not state scheduled maintenance. . . ."

The Step 2 decision letter denied the grievance on two grounds. First:

> ". . . the Voyager Fleet System is a National Program and any grievance on this issue is subject to National, not local grievance procedures. Furthermore, the grievance is untimely, as the use of the Voyager Fleet System has been in place for approximately 7 months. The instant grievance is therefore procedurally defective."
>
> We have one contract with Radiator Specialties and Auto that was established in 1997. This contractor has historically done "C" service work for the USPS. The vendors are used to complement the workload in the VMF. . . In the Voyager fleet guide and Q & A section, maintenance is listed as a service that can be performed by vendors.
>
> During the use of vendor assistance the VMF was still incurring overtime at a rate of 6.44% through AP8FY01 . . . [O]vertime is not guaranteed and all FTRs were working a full 40 hour week. . . . [M]anagement determines when to use overtime when needed. With the use of subcontracting the overtime was not needed. Article 8 does not prohibit management from utilizing the subcontracting provisions of Article 32. The provisions of Article 32 were followed. . ."

Management denied the grievance at Step 3 noting that:

> "The grievance is untimely and defective. . . . [T]he union has not shown a violation of the credit card rules. How management pays for Services is outside the scope of the CBA. Local management indicates that A&V Automotive has performed similar work in the past. . . . . The Union has not shown who was available to have performed this work in the time frame it was needed or that craft employees could have performed the work more economically. . . . ."

Contentions – APWU

The Service violated the CBA when it unilaterally contracted out the scheduled maintenance and repair of Postal vehicles without giving consideration to the requirements of Articles 3 (Management Rights), 5 (Prohibition of Unilateral Action), 15 (Grievance – Arbitration Procedure), 19 (Handbook and Manuals) and 32 (Subcontracting).

The Tucson VMF had a long past practice of performing the repair and maintenance of Postal vehicles assigned to the Tucson VMF. The Union filed this grievance as soon as it became aware of the contracting in late March 2001. The sub-contracting of Tucson VMF work still continues today. In late 2000 and early 2001, management started contracting out scheduled maintenance and repair of vehicles without any notification to the Union as required by Article 32. Tucson management has not provided any evidence that it notified the National or local union about contracting out this VMF work.

Peter Sgro, Manager Contract Administration, in a letter dated July 6, 2000, to Robert Pritchard, Director Motor Vehicle Services division of the APWU regarding the use of the Voyager credit card stated:

> "This card is for payment only; it does not change any criteria for contracting out vehicle maintenance work."

Based on the Sgro letter, management is required to follow the guidelines of the CBA, including Handbooks AS-707A, "Contracting for Vehicle Maintenance Agreements" and PO-701, "Fleet Management Handbook". At Step 2, Management did not provide any documentation or

evidence to show it followed the requirements of Articles 19 or 32, or Handbooks AS 707A and PO-701. Management only stated that they gave consideration to the Article 32.1 factors and claimed it was not required to follow handbooks when they used the Voyager credit card. There is no documentation to show management gave any consideration to the factors in Article 32. Their only stated reason for contracting out the work was that the receipt of the new vehicles caused too much work.

The Arbitrator should sustain the grievance and return the vehicle maintenance work to VMF employees, provide a make whole remedy and retain jurisdiction for the union to identify the eligible employees in the event of a monetary award. The Arbitrator is asked to issue a cease and desist order regarding the subcontracting out of VMF work and an order to the Service to properly use the Voyager credit card.

The Union requested the invoices for work performed by "A&V" Automotive but only three were produced. There were some 30-40 vehicles that the Service contracted out and these invoices should have been produced as requested.

Hernandez testified that he reduced the overtime for the VMF employees and admitted that management is using less overtime due to subcontracting out the VMF work.

The VMAS "Accepted Transactions" printout (JT #10) shows only one vehicle worked on by "A&V". It was the only document produced when the Union requested all the VMAS Reports showing all of the vehicles worked on by "A&V".

The "Radiator Specialties" vendor never worked on any LDVs. As the VMAS Contract Information document indicates, there was no contract between the Service and "A&V". Hernandez did not utilize the proper Postal Service procedures when he contracted with "A&V". Management has failed to follow the established criteria for contracting out services thereby violating Article 19.

"The Voyager Fleet Card will be used to pay for commercial fuel, oil, washing, polishing and commercial vehicle repairs." (see Voyager FAQs) It is not intended for scheduled maintenance. The Sgro letter of July 6, 2000 is very clear: "[N]or will it (Voyager) change the criteria for determining whether to contact out vehicle maintenance work."

Handbook PO-701 (March 1991) Chapter 3 "Fleet Maintenance and Control", addresses scheduled maintenance and how it should be done. Programs and guidelines are furnished for all vehicles.

Handbook AS-707A "Contracting for Vehicle Maintenance Agreements" makes it clear that a MVF must submit a VMA request that justifies the need for supplementary services when a VMF cannot meet its requirements. There is no way for Hernandez to avoid using a VMA if the Tucson VMF in fact could not meet its requirements. Hernandez was unable to prove that the Tucson VMF employees could not have handled the scheduled maintenance and repairs to the LDVs which were shipped to Tucson over a period of weeks, not all at once. The VMA is mandatory when it is estimated that vehicle maintenance expenditures will exceed $2,000 per year. Performing scheduled maintenance on 30-40 vehicles would exceed $2,000. Hernandez admitted he did not use the Form 7381 as is required for a VMA request. He just awarded the business to "A&V". There is nothing in the file that indicates he "sourced" any other vendors and his testimony to the contrary in the Hearing is new argument.

Hernandez supplied only three invoices from "A&V" when the Union requested all invoices. Without all of the invoices, there is no way for the Union to prove definitively that the VMF employees could have done the same work at less cost to USPS. Hernandez only produced six weeks of time records, making a meaningful comparison of overtime worked pre and post subcontracting in March 2001 impossible. The six pay periods provided do show that there was a drop in the overtime hours after the scheduled maintenance was contracted out. There was no testimony that the LDVs were not being worked on by in-house MVF mechanics during the time that other LDVs were sent to "A&V" for repairs and maintenance.

The grievance on the subcontracting was filed in a timely manner because the Union did not learn of the contracting out of scheduled maintenance work on the LDVs until late March. The subcontracting of the LDVs did not start until mid March 2001 and is a continuing violation.

Contention – USPS

There are two problems with this grievance – timeliness and procedure. First, there are no dates for any incident of contracting out work on the LDVs. The grievance was filed April 4, 2001 and for it to be filed in a timely manner any "incident" could date back 14 days to March 21st only. The same kind of work that the Union now grieves has been done for several months if not years by outside vendors. Therefore, the grievance is not timely.

Second, the Voyager Credit Card program is a National program dating back to January 2000. If the Union believes this program violates the CBA, then it should file a grievance at the National, not local level. All facts and contentions of the Union must be developed at Step 2. There were no further allegations by the Union after Step 2 that there were any further incidents such as the one grieved in April. The Union never alleged there was a continuing violation until this Hearing. It is new argument and should not be considered.

Without waving the timeliness and procedural arguments, it is the position of the Service that it did not violate Article 32 when the Tucson MVF utilized the Voyager Credit Card to pay outside vendors such as "A&V" for services performed on the LDVs or other vehicles. The Union has the burden of proving that the Service violated the CBA. It was unable to do so.

The Tucson MVF received several LDVs over an extended period of time. They could not be deployed until these vehicles were thoroughly inspected to determine what needed to be fixed, repaired or replaced before any regular scheduled maintenance could be performed.

Maintenance services were performed in the past by an outside vendor, "Radiator Specialists". The only difference was that similar work was performed by "A&V", a different vendor and that was the only change from what was done in the past by the Tucson MVF. Both "A&V" and "Radiator" did engine and transmission work on the vehicles in the Tucson MVF fleet.

Management is not required to go through the entire subcontracting procedure of Article 32 each time a local VMF wants to change vendors. Article 32A says that: "The Employer will give due consideration to public interest, cost, efficiency, availability of equipment and qualification of employees when evaluating the need to subcontract." The Step 2 answer from the Service was clear in that the Service did give consideration to the five factors. There is no requirement that the Service is to put anything in writing that it gave "due consideration" to the five factors in Article 32A.

Article 32B is not applicable in this case. There was no significant impact on the bargaining unit and therefore no obligation to meet with the Union to consider its views. Hernandez did reduce the time allotted for PMI from 4 ½ hours to 3 hours but that was not done simply to contract out the work on the incoming LDVs. It was done to tighten up the work schedule for the regularly scheduled maintenance of the existing fleet.

There were no vacant positions in the VMF. No VMF employee lost a job or was prohibited from working 40 hours per week. No one was sent home early. There is no guarantee of overtime or any obligation on the part of the Service to maximize overtime prior to subcontracting out work.

There is no evidence in the record or file to support any of the Union's arguments. There is no evidence to support the Unions contention in this Hearing that its members always did the work. This is a new argument and should not be considered since it was never argued in the grievance process. The fact is that this type of work has not historically always been done by VMF employees.

The only argument the Union has made is that the Voyager credit card could not be used to pay for maintenance on subcontracted work. The Arbitrator should hold the Union to the allegations it made in the grievance procedure. There is no evidence to prove that the Service used the Voyager credit card improperly.

Article 3, Management Rights, gives Tucson management the right to determine the methods, means and personnel to be used in servicing and maintaining the fleet in the MVF. The Union's argument that overtime was lost is speculation.

The Union's argument that the Service did not provide all of the documentation requested is also new argument in this Hearing and should not be considered.

Issues

1. Was the grievance filed in a timely manner pursuant to Article 15.2?
2. Was the grievance procedurally defective?
3. Did the Service violate Articles 19, 32 and 39?

Analysis

The Service provided four arbitration awards to support its position and the APWU provided seven awards to support its contentions. They were instructive for my analysis of the fact circumstances in this case.

Timeliness Issue

Article 15.2 Grievance Procedure Steps, Step 1 states:

> "Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. . . . ." (Emphasis by Arbitrator)

The Union points to a 1993 National award by Arbitrator Snow (HOC-3N-C 418) to support its contention that the work contracted out was traditionally and historically performed by union employees at the Tucson MVF. The Service contends that this type of work has been contracted out for a long period of time and it was never contested by the Union. Both parties are correct. The practice of doing the work internally as well as being contracted out has clarity and consistency, longevity and repetition, acceptability and mutuality. However, the Union has the better argument in this case regarding the timeliness issue for as Arbitrator Snow stated on p. 27

of the above cited award: "It is insufficient proof to show that a right has been waived merely because no grievance resulted from the alleged violation until this case." The grievance was timely filed.

The Union did not learn until late March 2001 that the LDVs were being worked on by "A&V". The Union requested a number of documents on March 29, 2001 prior to the grievance being filed April 4th. The Union's contention that it did not receive all of the requested documents was not new argument in the Hearing.

Joint Ex. 11 shows at least one vehicle was worked on by "A&V" on March 17, 2001. One would think that at least one VMF employee must have known that the one LDV was sent to "A&V" prior to March 21st. Since the 17th was a Saturday and the Mechanics all worked a Monday-Friday schedule, I will give them the benefit of the doubt they were unaware as well until March 21st. Furthermore, it may not have been common knowledge among the VMF mechanics that there were several LDVs headed their way. In any event, it was a "continuing violation" from at least March 17, 2001. The grievance was therefore timely filed on April 4, 2001 and is not time barred.

A 1992 award by Arbitrator Caraway (S7V-3W-C 30484) cited by the Service actually supported the Union's contention that the subcontracting of work in Tucson was a continuing violation. As Arbitrator Caraway noted:

> "This principle (continuing violation) covers a situation where a party engages in an alleged contract violation which is a continuing one. Where the grievance is filed during this period, it is timely and need not be filed within the prescribed contractual period commencing from the first violations."

Procedurally Defective Issue

The grievance made no mention of the Voyager System but it was mentioned by the Service in the Step 1 denial when management stated: "We have not contracted out work. It is being paid for with the Voyager card. This allows us to have work done. No employee of the VMF is getting less than 40 hours which is what they are authorized."

The Union picked up on the "Voyager card" defense of the Service and pointed out at Step 2 that the Q&A on Voyager does not say the card is to be used for scheduled maintenance. The Union expanded its contention to say that Hernandez did not follow the policies of the Service concerning the contracting out of work and was misusing the Voyager card to take work away from VMF employees. The Union never alleged that the Voyager System per se violated the CBA. After the Service used the Voyager credit card as a defense to giving bargaining unit work to "A&V", the Union alleged that Hernandez misused the card to circumvent the Postal Service standard operating procedure for subcontracting.

The Union did not file a grievance on the efficacy of the Voyager System, only alleged misuse of the System to subcontract work on the LDVs to "A&V". The subcontracting was a local Tucson issue not a National issue and therefore did not have to be filed at the National level. The grievance is not procedurally defective.

Article 32 Subcontracting Issue

The Parties at the National level long ago bargained for the language in Article 32 of the CBA granting the Service the right to subcontract work subject to certain provisos. There is no evidence that the parties in Tucson ever negotiated or agreed that Article 32 would be anything other than what the CBA says regarding subcontracting. For example, the Parties at the local level might have agreed that the Local Union would be notified or consulted in advance before work was sub-contracted. There was no evidence that even a courtesy "heads up" was desired or was something that took place in the past.

Although the Union did not specify in the Step 1 grievance that Article 32 was violated, the language used ("suddenly being contracted out" and "contracting out to "A&V" automotive regular 'C' services") is sufficiently specific to put the Service on notice of the Unions contention. After first denying at Step 1 that it was contracting out vehicle maintenance work, the Service at Step 2 raised as an affirmative defense, Article 32 and its right to utilize vendors to compliment the workload in the VMF.

Article 32 Sections 1.A and B are the relevant provisions for this grievance. There are no ambiguities in the language.

> A. "The Employer will give due consideration to public interest, cost, efficiency, availability of equipment, and qualifications of employees when evaluating the need to subcontract."

The word "will" is mandatory not permissive language. Nothing in the above section indicates that the five factors are considered only when subcontracting is an issue at the National level. It is, therefore, applicable to the Tucson VMF. The Service at Step 2 said those five factors were considered and pointed out in the Hearing that there is no requirement that any such consideration be reduced to written form. The problem with the first argument is that it requires me to accept as fact that the five factors were considered when there is nothing to substantiate it other than Hernandez's self serving testimony. The Service, by its own procedures for subcontracting, require a process that by definition would produce a paper trail to support a contention that all five factors were considered and given something more than lip service.

The Union has misinterpreted Article 32.1.B which states:

> 'The Employer will give advance notification to the Union at the national level when subcontracting which will have a significant impact on bargaining unit work is being considered and will meet to consider the Union's views on minimizing such impact. No final decision on whether or not such work will be contracted out will be made until the matter is discussed with the Union." (Arbitrator's emphasis)

While there is no requirement at the local level for management to meet and confer with the Union prior to any decision to contract out work, it would be prudent.

Relevant Handbook Language

Handbook AS-707A "Contracting for Vehicle Maintenance Agreements"

Chapter 1 Policy

1.4.1 USPS Maintenance Available:

"VMAs should generally not be used by offices where vehicle maintenance is available in-house. However, when the Vehicle Maintenance Facility (VMF) cannot meet its requirements, such an office may submit a VMA request that justifies the need for supplementary services. VMAs should not be used to acquire inventory items for a VMF.

Chapter 3, Source Selection and Award

3.2 Method of Source Selection

"All ordering agreements must be awarded through competition when feasible. Unless a noncompetitive award is justified, the procurement office must attempt to obtain proposals from all qualified offerors to satisfy the requesting office's needs.

***

3.5.1 Price Evaluation

When proposals are received, they must be analyzed to determine whether the prices offered are fair and reasonable, and which proposal (or proposals) presents the best value. If competition was not obtained, a single-source price analysis must be performed. Prices offered maybe compare with one another, with prices under previously awarded agreements, and with the requesting office's price estimates."

The word "must" above is not permissive but mandatory. Hernandez did not comply with this Postal Service policy. As the "VMAS Reference Code Table" indicated, Hernandez was quite familiar with the VMA process.

Work on the LDVs was work that the VMF employees were capable of performing, had performed and continue to perform. There was no indication VMF equipment availability was a problem in 2001 and the VMF mechanics were qualified to do the work. An influx of 30-40 vehicles all at once would put a strain on the VMF mechanics who were performing scheduled maintenance on the existing fleet which could not be ignored for safety and operational reasons.

However, the evidence indicates that the LDVs came in over some unspecified period of time. There was no evidence that the LDVs had to be repaired by a specified date.

There were 13 mechanics in the Tucson VMF on two tours, working Monday-Friday when Hernandez became the Manager of the Tucson VMF March 1, 2001. One of the things he observed was that the Mechanics were using a standard of four and one-half hours for PMI when the vehicle manufacturer manuals said the standard should be three hours and he changed the standard to three hours. Although he did not discipline any employee he did have some "discussions" with them about adhering to standards.

It was alleged, but not substantiated by the Union that Hernandez restricted the VMF mechanics to one hour of overtime per day. Hernandez did not testify that he put a one hour per day overtime restriction on the mechanics. A review of Time and Attendance Reports for March and April 2001 indicated a 10 ½% and 6.6% rate for time off respectively. The overtime for March and April 2001 averaged about 6 ½% of hours worked. These numbers do not support the Unions contention that Hernandez reduced the overtime hours to be able to justify the LDV work being contracted out.

Documentation and Data

Although Arbitrator Caraway in the award cited above found that the Service did not violate Article 32, there are three major differences between his case and this case. First, there were ample USPS documents to prove that the Tampa VMF had reached a critical point in that preventative maintenance was substantially in arrears and that strong and urgent measures were needed to correct this deficiency. Secondly, the Service had ample documentation to support its contention that it could have the maintenance work performed at less cost by subcontracting. Third, the Service gave the Union every opportunity to provide input to a solution of the problem prior to any decision to subcontract out the work but the Union provided no input. Arbitrator Caraway concluded the Service had the better argument that cost and efficiency favored the subcontracting.

Rationale

None of the three elements considered by Arbitrator Caraway were present in the case before me. There was precious little documentation to prove that the Service could have the work done more efficiently and for less cost by "A&V" or any other vendor. There was no documentation that supported the contention that the Tucson VMF had reached a critical point and there was no involvement of the Union prior to Hernandez making the decision to subcontract the work to "A&V".

Most importantly, however, was the fact that Hernandez did not follow USPS rules and procedures for contracting out vehicle maintenance work. The Voyager credit card is simply a method of payment for services. It is not a license to ignore or circumvent Handbooks AS-707A or PO-701 which fall under the umbrella of Article 19 of the CBA.

There was no indication that the Tucson VMF equipment availability was a problem. There was no dispute that the VMF mechanics were in fact qualified to do the work.

Simply because no VMF employee was sent home early or put on lay off or could work a full 40 hours per week does not mean that they were not impacted by the Hernandez decision to subcontract. By definition, employees on the OTDL want to work overtime. Nothing cited by the Union required the Service to maximize overtime but there was no evidence that through the use of overtime for those on the OTDL and mandatory overtime for those not on the OTDL, the 13 mechanics in the VMF could not handle the regular fleet PMI as well as handling the repair & maintenance of the LDVs. There was no evidence that there was a deadline for replacing the Jeeps with the LDVs. There was no evidence that the Tucson VMF was suddenly swamped with the LDVs or had no prior warning that the LDVs were being shipped to it. There was no evidence that any alternatives to subcontracting were considered by Hernandez. For example, could not one or two experienced automotive mechanics be hired on a temporary basis to work Tour 3 for 4 hours each per night until a backlog, if any, was cleared?

The Voyager System credit card does not give the Service the right to circumvent the requirements of AS-707A. The Union has a reasonable expectation that the Service will follow

its own policies and procedures that affect the wages, hours and working conditions of its members.

Hernandez did not submit a VMA request justifying the need for supplementary services nor was his testimony that he talked to a couple of vendors to compare prices terribly persuasive. The Service did not produce any documentation to prove that "A&V" was given a contract that was "awarded through competition". Since there were no written proposals obtained by Hernandez, there was no analysis "to determine whether the prices offered are fair and reasonable, and which proposal (or proposals) presents the best value".

Burden of Proof

The arbitration awards submitted by the parties indicate there is a difference of opinion on the burden of proof question. In a contract dispute the Union has the burden of proving that the Service violated a contractual provision. The Union has presented a prima facie case that the cost and efficiency arguments of the Service were not proven because of the lack of production of documents. The burden then shifts back to the Service because it is the custodian of the records to prove its cost and efficiency argument, not the Union.

Reliance on Article 32 to justify subcontracting (although denying at Step 1 that it was subcontracting) is an affirmative defense and the Service therefore has the burden of proof that there was in fact a need to subcontract the vehicle maintenance work on the LDVs.

In 1991 Arbitrator Hardin wrote in Case No. S7V-3W-C 32838:

> "In the typical dispute over subcontracting, the Union is likely [to] come to the grievance table with only the most fragmentary information. It is Management, after all, which knows the identity of the agents of Management who gave the matter the "due consideration" required by Article 32. And it is Management, and not the Union, which knows when and where they gave it, what information they considered, and the relative weight that was assigned by them to each factor and for what reasons. The disclosure of those data to the Union no later than Step 2 enables the Union, probably for the first time in most cases, to make a fully informed evaluation of whether Article 32 has been

complied with. If it is the Unions judgment that Article 32 was violated, or probably violated, the Union may make its presentations at Step 3 and at arbitration using the information disclosed by Management at Step 2."

At Step 2 there was no disclosure to the Union the type of data mentioned in the Hardin award. Words without substantive data are simply words. Following the dictates of Handbook AS 707A would have provided substantive data.

Article 39.3D Issue

There was no violation of Article 39.3D by the Service. This section pertains to a jurisdictional issue. "All motor craft positions . . . designated to the motor vehicle craft, shall be under the jurisdiction of the Motor Vehicle Division of the American Postal Workers Union, AFL-CIO." The Service made no jurisdictional shift of any of the Tucson VMF employees.

Decision

The grievance was filed in a timely manner because the subcontracting of maintenance work on the LDVs was a continuing violation. It was not time barred. The grievance was not procedurally defective because the subcontracting pertained to the Tucson VMF only. It was not a National issue. The Service violated Article 32.1 because it could not substantiate that it in fact had complied with the "due consideration" of the five factors in 32.1. The Service violated Article 19 by not complying with its own policies and procedures for obtaining a Vehicle Maintenance Agreement with an outside vendor, "A&V". The Voyager System does not abrogate the requirements of Handbooks AS-707A or PO-701. The grievance is sustained.

Remedy

The Union asks for a cease and desist order and time to identify the employees on the OTDL to determine how much overtime they lost because of subcontracting the repair and maintenance work on the LDVs to "A&V".

"A&V" did not do the initial maintenance & repair work on all 30-40 LDVs. Some of LDVs were handled in house. All of the initial work was completed in 2001. The Service is directed to

pay, within 45 calendar days from the date of this award, an amount equal to the overtime wages that the OTDL mechanics would have received if the initial repair and maintenance work performed by "A&V" on the LDVs was done in house. The parties agreed at the Hearing that any monetary award would run from March 21, 2001 forward. The cutoff date for the back pay is the last day in 2001 that "A&V" performed any initial maintenance and repair work on a LDV.

The Tucson VMF is to cease & desist utilizing "A&V" and other outside vendors for the repair and maintenance of vehicles unless & until there are appropriate VMAs in place. I will retain jurisdiction of this matter until February 17, 2006 in the event there are questions or disputes concerning payment of this award as well as the cease and desist order.

Richard B. Danehy 12-15-05

Richard B. Danehy, Arbitrator December 15, 2005

Regional Level Award B94V-4B-C97000592

/533/535/537

By Arbitrator Herbert L. Marx, Jr.

Award on Contracting Out

Of VMF Work

Regular Arbitration Panel

In the Matter of the Arbitration	}	
	}	
between	}	**Grievant:** Ned Hogan
	}	
United States Postal Service	}	**Post Office:**
	}	Boston, MA VMF
and	}	**Case Nos.:** B94V-4B-C
	}	97000529 97000533 97000535
American Postal Workers Union	}	97000537
	}	**Union Nos.:** BO962278
		BO962276 BO962279 BO962274

Before: Herbert L. Marx, Jr.

Appearances:

For the Postal Service: Lawrence T. McDonough
Labor Relations Specialist

For the Union: Thomas M. LaFauci, National Business Agent
Motor Vehicle Service Division

Place of Hearing: Boston, MA

Date of Hearing: September 18, 1997

Date of Award: October 31, 1997

Relevant Contract Provisions: Articles 1, 32.1.A

Contract Year: 1994-98

Type of Grievance: Contract

Award Summary

Postal Service violated the National Agreement in contracting out specified maintenance repairs on Postal Service vehicles at the Boston VMF. Straight-time pay awarded to affected Mechanics.

HERBERT L. MARX, Jr.
Arbitrator

O P I N I O N

The United States Postal Service and the American Postal Workers Union agreed that the issues to be resolved by the Arbitrator are as follows:

> 1. Are any or all of the grievances not arbitrable because of failure to meet time limits?
>
> 2. If any or all of the grievances are arbitrable, did the Postal Service violate the National Agreement when it contracted out specified vehicle maintenance repairs on Postal-owned vehicles at the Boston Vehicle Maintenance Facility? If so, what shall be the remedy?

These four grievances, combined here for the purpose of rendering a single Award, concern motor vehicle repair and maintenance work performed by outside contractors at the direction of the Boston Vehicle Maintenance Facility ("VMF"). Using the last four digits of the Union case numbers, the grievances may be summarized as follows:

2278 -- Initiated July 12, 1996. "Engine work"

2276 -- Initiated June 28, 1996. "Air conditioning repairs"

2279 -- Initiated July 12, 1996. "Tire work"

2274 -- Initiated June 28, 1996. "Transmission work"

Arbitrability

The Postal Service contended that these grievances are not arbitrable based on the Union's failure to act within 14 days of the occurrences, as provided in Article 15.1, Step 1 of the National Agreement. During the course of the arbitration hearing, the Postal Service confined its timeliness argument to Grievances 2278 and 2276. In 2276 (air conditioning work), however, the Postal Service's answer at Step 1 indicated that the grievance was filed in timely manner.

In 2278 (engine work), the Step 1 answer stated the grievance was not timely, but the answer indicated no basis for such conclusion. At Step 2, the Postal Service, as indicated on the Hearing Worksheet, stated the grievance was untimely "because contracting has taken place for 18 years". While this is an argument which goes to the merits of the matter, it is not a convincing argument that a grievance may not be initiated.

More significant is the Postal Service's Step 2 reply (which was identical for all four grievances). No mention is made of the untimeliness argument in this reply, which reads in pertinent part as follows:

> The reason(s) for this decision are, Article 3 gives Management the exclusive right to determine the methods, means, and personnel by which such operations are to be conducted. And Article 32 states the Employer will give due consideration to public interest, cost, efficiency, availability of equipment and qualification of employees when evaluating the need to subcontract. This consideration is given each time the option to subcontract is used. Availability of employees, workload, needs of the

service, and availability of replacement vehicles is used in the decision to subcontract services.

Article 15.4.B reads as follows:

> The failure of the employee or the Union in Step 1, or the Union thereafter to meet the prescribed time limits of the Steps of this procedure, including arbitration, shall be considered as a waiver of the grievance. However, if the Employer fails to raise the issue of timeliness at Step 2, or at the step at which the employee or Union failed to meet the prescribed time limits, whichever is later, such objection to the processing of the grievance is waived.

On this basis, the Postal Service's argument must be dismissed, since there was no applicable reason expressed at Step 2 nor was there any mention of non-arbitrability in the Step 2 reply.

Background

The Arbitrator is hampered by the fact that none of the initial grievances mention any dates or frequency of the occurrences of the subcontracting allegedly in violation of the National Agreement. There was apparently some such discussion at the Step 3 hearing. The Postal Service Step 3 reply refers to certain dates raised by the Union either as being more than 14 days prior to the grievance (which concededly might go to appropriate remedy) or as being subsequent to the initial grievance date. At the arbitration hearing, however, there was further discussion of certain subcontracting incidents.

As noted by the Postal Service, the Union based its grievances on alleged violation of Articles 1, 5, 19, and 39.

Article 1, Union Recognition, establishes bargaining unit representation by the Union, which in many circumstances may justify the conclusion that work appropriate to the bargaining unit should, in most circumstances, be performed by bargaining unit employees. No argument was put forth as to the applicability of Articles 5 and 19. Article 39, Motor Vehicle Craft, is confined to details of seniority, posting, and "special provisions", none of which addresses the question of subcontracting.

The Postal Service argues that the Union "missed the boat" by its failure to cite Article 32, Subcontracting, and thus may not rely on this Article before the Arbitrator. The Postal Service's defense of its actions, however, relies specifically on Article 32, and thus it necessarily becomes appropriate for the Arbitrator to consider and interpret the meaning of this Article.

Article 32.2 concerns Highway Movement of Mail, and Article 32.3 refers to a joint study committee; neither of these is relevant here. Similarly, Article 32.1.B is also not relevant, since it concerns "advance notification to the Union at the national level" when subcontracting having a "significant impact on bargaining unit work is being considered". While the issue before the Arbitrator is clearly of significance to Motor Vehicle Craft employees at the Boston VMF, it hardly rises to the type of situation covered in Article 32.1.B. This leaves for consideration Article 32.1.A, which reads as follows:

> The Employer will give due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract.

The Postal Service argues, throughout the grievance procedure and at the arbitration hearing, that it met its "due consideration" requirement in the admitted subcontracting covered by the four grievances. The Union offered testimony to the contrary, particularly as to the availability of qualified employees to perform the work. Two elements are crystal clear: (1) Motor Vehicle Craft Mechanics have rights to perform certain work; and (2) nevertheless, the Postal Service has reserved the right, under Article 32, to subcontract portions of this work pursuant to the "due consideration" restriction.

This, of course, is not a case of first impression. Previous Awards have examined various aspects of subcontracting, and a number of them were provided to the Arbitrator. Some of these concerned highway transport of mail. As indicated above, this is covered by a separate section of Article 32 and is not relevant here. As to Awards concerning other than transportation of mail, some general principles evolve.

One Award (NOV-1F-C 4897 and 4988, Worcester, MA, March 12, 1993, Arbitrator Herbert L. Marx, Jr.) found subcontracting not violative of the National Agreement, owing to its temporary nature and shortage of personnel. That Award stated in part as follows:

> There is no need to emphasize here that the Postal Service is obligated in general to have work normally assigned to craft employees performed by such employees and not accomplished through contracting out the work. On the other hand, it is also clear that the contracting out of some vehicle maintenance work is not unusual and, under certain conditions, not in violation of the National Agreement. . . .

> The Mechanics at the Worcester VMF were fully occupied at the time [of the grievances]. By increasing the number of Mechanics, the Postal Service recognized that it did have certain obligations to perform work "in house" -- at least for that portion which were assignments for which the facility had the skill and equipment to accomplish.

Award S7V-3W-C 32838 (Tampa, FL, December 16, 1991, Arbitrator Patrick Hardin) examines Article 32.1.A in great detail and reads in part as follows:

> The [Postal Service's] duty is only to give due consideration to those factors, but it is not less than that. If Management makes a decision to subcontract before giving the five factors "due consideration", Management violates the National Agreement and the decision can be countermanded by the arbitrator, if necessary for a full remedy. . . .
>
> As Arbitrator James J. Sherman has written, Class Action, Case No. S4T-3T-C 15225 (Oklahoma City, Oklahoma, October 13, 1986):
>
> > This contract language . . . obligates Management to act in a reasonable manner when faced with a decision between performing certain work "in-house" or by the use of a contractor. And to make certain that Management understood its obligations, under this provision, the contracting parties used the term "due consideration".

Arbitrator Hardin found that the Union presented a case as to previous performance of the work by bargaining unit employees; the presence of full staffing; and equipment availability. He found, however, that the details of Management's "due consideration were never brought forward". This resulted in an Award sustaining the grievance and awarding a monetary award (although somewhat modified from the Union's remedy request).

With this background, attention now turns to the four grievances.

Merits

2278 (Engine Work): The Union alleges that the VMF "arbitrarily and capriciously contracted out engine work . . . [which] the bargaining unit consistently and routinely performs". According to the Step 3 Postal Service reply, the Union referred to instances on July 1, 2, 8 and 16, 1996. (The grievance was initiated on July 12, not June 28, as indicated in the Step 3 reply.)

The evidence and testimony here is too inexact for the Arbitrator to determine if a violation has occurred. The discussion concerned "removal and replacement" of vehicle engines. which would appear to be a normal maintenance function. The evidence presented, however, concerns two instances of a contractor engaged to "rebuild" engines. The Postal Service argued that this been an established practice "for 18 years". Since the grievance does not distinguish between "removal and replacement" and "rebuilding", the Arbitrator has insufficient information to determine if the grievance has merit.

2276 (Air Conditioning Repairs): The Union presented copies of four contractor bills for air conditioning work on Postal vehicles on May 3, 22, 31 and June 26, 1996. According to Union testimony, there are eight VMF employees who have been trained by manufacturers' representatives and qualified to perform such vehicle air conditioning work.

Postal Service testimony was that for air conditioning work, "Some has been contracted, some sent to the vendor, and sometimes we do it." It was stated that the type of work under the repair order dated June 26 had been unsuccessfully attempted by VMF Mechanics.

2279 (Tire Work): On June 26 and 29, 1996, the VMF engaged a contractor to come to the VMF to "repair vehicle tires as needed". There is a position classification of Tire Repairman. At the time, the employee in this position was on leave, so, according to Postal Service testimony, "We had people come in to take care of it." No indication was given that there were no other Mechanics qualified to do tire replacement work.

2274 (Transmission Work): There is no dispute that this work is regularly performed by VMF Mechanics. At issue is one instance of contracting out transmission on one vehicle on June 11, 1996. Postal Service testimony was that, at the time, the VMF "could not handle" all the required transmission work. This appears to be an exception, perhaps necessary, to the usual procedure.

Discussion

The contracted work here under review must be measured against the Postal Service's need to give the "due consideration" discussed in detail above. The Arbitrator concludes that some of the work was contracted out as a matter of simple convenience, rather than under the conditions specified in Article 32.1.A. As one example, the use of a contractor to do the work at the VMF, using VMF equipment, can only be explained by the failure to provide for

temporary replacement for the absent Tire Repairman. As another example, the Postal Service offered no evidence of "due consideration" in contracting out three instances of air conditioning work.

As a general conclusion, the Arbitrator finds that the Boston VMF has given insufficient attention to Article 32.1.A restrictions. Simply asserting that the Article 32.1.A factors were considered does not bless subcontracting; there must be a reasonable showing that deliberate considertion did, in fact, occur. As a result, a portion of the grievances must be sustained, as provided in the Award.

A W A R D

1. The grievances are arbitrable.

2. In certain of the instances specified, the Postal Service violated the National Agreement when it contracted out vehicle maintenance repairs on Postal-owned vehicles at the Boston Vehicle Maintenance Facility. The remedy shall apply to the following only: (a) Air conditioning work contracted on May 3, 22, and 31, 1996; and (b) Tire repair work on June 26 and 29, 1996. Pay shall be granted at straight-time rate for the amount of time charged by contractors for this work. The Union is to advise the Postal Service whether such pay shall be divided (a) among all Boston VMF Mechanics or (b) granted to specific individual employees who are qualified for air conditioning work or tire work and who were available VMF employees at the time the work was performed.

HERBERT L. MARX, Jr., Arbitrator

DATED: November 3, 1997

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

On this third day of November, 1997, before me personally came and appeared HERBERT L. MARX, JR., to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.

ELEANOR C. PULEO
NOTARY PUBLIC, State of New York
No. 31-4702237
Qualified in New York County
Commission Expires May 31, 19[illegible]

Regional Level Award B98V-4B-C99245644

By Arbitrator Harry R. Gudenberg

Award on Contracting Out

Of VMF Work

REGULAR ARBITRATION PANEL

In the matter of the Arbitration	GRIEVANT: Class Action
between	POST OFFICE: Albany, NY
UNITED STATES POSTAL SERVICE	USPS CASE #B98V-4B-C99245644
and	APWU CASE #VMF014
AMERICAN POSTAL WORKERS UNION, AFL-CIO	

BEFORE: HARRY R. GUDENBERG, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Martin Rothbaum
Labor Relations Specialist

For the A.P.W.U.: Thomas M. LaFauci
National Business Agent

Place of the Hearing: Albany, New York

Date of Hearing: September 20, 2000

Date of Award: December 11, 2000

Relevant Contract Provisions: Articles 14, 15, 32, 39.

Contract Year: 1999

Type of Grievance: Contract

AWARD: The grievance is sustained in part and denied in part for the reasons discussed in the full opinion.

Arbitrator:

Harry R. Gudenberg

This arbitration resulted from a grievance filed contesting the Postal Service's subcontracting certain vehicle maintenance repair work.

In accordance with the terms of the National Agreement the parties appointed this Arbitrator to hear this case and issue a decision and award.

At the hearing the parties were afforded full opportunity to present oral and written evidence, examine and cross examine the witnesses who testified under oath, engage in oral argument, and otherwise support their positions.

The evidence of the parties and their positions and arguments presented at the hearing have been fully considered in the issuance of this opinion and award.

THE ISSUE

The parties could not agree on the issue to be resolved. The Union stated the issue as: Whether or not the Postal Service violated Articles 14, Sections 1-2, 15, 19, 32.1, and 39 when they contracted out body and fender repair work to outside body shops. The Union sought a cease and desist order to have the work being given to the contractor returned to bargaining unit employees and compensation for the level 7 body and fender mechanics for all work performed by the subcontractor.

The Service stated the issue as: Did the Postal Service violate the National Agreement when an outside body shop contractor performed substandard work? The Service maintained no remedy was

proper since no contractual violation had occurred.

BACKGROUND

In August 1999 the Union filed a grievance seeking to have automobile repair work which was subcontracted to a body shop returned to the bargaining unit. The Union based this position, primarily, on the fact that much of the work of the contractor was substandard, had to be redone by bargaining unit employees and was in their opinion a violation of the safety provisions of the Agreement.

Management responded as follows:

> ..."management feels that the work being performed by the contractor's body shop is not "sub standard". The work that they perform is guaranteed for the life of the vehicle and any problems we find with their workmanship at any time will be repaired free of charge. The only work we are sending out to a contractor in Albany is for accident repairs that are account code 42, to be reimbursed by insurance companies. This is no different from sending out any other work that is reimbursable, such as warranty repairs on our Ford Vans, or Mack Tractors etc. The hours saved by doing this frees up our employees to perform our primary task, the preventive maintenance scheduled services that are currently contracted out. We will continue to do all other types of body work at the VMF."

The Union appealed to step 3. At this step the grievance said, in pertinent part:

> ..."management's choice to sub-contract out critical body work that when this work is not properly done (substandard) could jeopardize the safety of a driver when involved in an accident"...

Management responded, in pertinent part, by saying:

> ..."only the work that was being contracted out in this instance appears to be work that is relative to insurance coverage due to accidents not caused by the Postal Service. The Postal Service has the right to do such work. There is nothing in the agreement which says that work that is being

paid for by others should not be done in the cheapest and best manner possible. There is no showing in this grievance that the work is substandard as claimed"...

At the hearing the Union introduced a video recording taken of the vehicle in question (vehicle #0216715) as well as testimony from two employees, a level 6 mechanic who was also the steward who filed the grievance and a level 7 body and fender repairman.

These witnesses explained the vehicle which gave rise to the grievance had many defects after being repaired by the subcontractor. The witnesses testified as to the defects which were observed on vehicle #0216715 by them. They said defects included rivets were not properly tightened, postal logo stripes had bubbled, improper fasteners were used, and so on.

PS Form 1767, REPORT OF HAZARD, UNSAFE CONDITION OR PRACTICE were completed by the steward in August 1999 contending the work done by the contractor was improper. Management denied these contentions.

The Union submitted an extract of the LLV BODY SERVICE MANUAL at the hearing which they said explains the proper procedures to be followed in repairing these vehicles.

A copy of a vehicle maintenance work order for this vehicle dated September 24, 1999 was also introduced by the Union to support their contentions. The work order showed that a number of repairs had been made to this vehicle by employees from the vehicle maintenance facility after the vehicle was repaired by the subcontractor. This report indicated 3.7 hours were used to perform these repairs.

The Service presented no testimony to explain the quality of the work performed by the contractor or to contradict the position of the Union.

The Postal Service contended the burden of proof in a contract case rested with the Union. Unrefuted evidence can be determined to meet such burden.

ANALYSIS AND FINDINGS

The Union introduced a number of prior arbitration awards to support their position. These awards generally supported the contentions of the Union when work was subcontracted in violation of the provisions of Article 32 Section 1 A. This provision states:

> "The Employer will give due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract."

These awards upheld contract violations when subcontracting proceeded without "due consideration" as required by this provision. See, for example, Case # B94V-4B-C97000529 et al, (1997), Arbitrator Marx; and Case #90V-4A-96021662 (1997), Arbitrator McCabe.

It is worth repeating a statement made by Arbitrator Marx in his explanation of Article 32, Section 1. A, as follows:

> ..."That is, the National Agreement accepts the principle that the Postal Service retains a managerial right to subcontract craft work, but there remains the requirement of "due consideration" of the elements specified therein. Section 1. A, in other words, does not permit subcontracting simply by management choice; rather, it limits it to situations after the mentioned factors have been given "due consideration".

In the instant dispute the Union did not claim management failed to give "due consideration". The Union did not request any data which management may have relied on to make their decision. What was primarily grieved was a violation of the safety provisions in the Agreement, and contained in Article 14.

Article 14, Section 2. Cooperation, states:

> "The Employer and the Union insist on the observance of safe rules and safe procedures by employees and insist on correction of unsafe conditions. Mechanization, vehicles, and vehicle equipment, and the work place must be maintained in a safe and sanitary condition, including adequate occupational health and environmental conditions. The Employer shall make available at each installation the appropriate forms to be used by employees in reporting unsafe and unhealthful conditions. If an employee believes he/she is being required to work under unsafe conditions such employee may:
>
> (a) notify such employee's supervisor who will immediately investigate the condition and take corrective action if necessary:
>
> (b) notify such employee's steward, if available, who may discuss the alleged unsafe condition with such employee's supervisor
>
> (c) file a grievance at Step 2 of the grievance procedure within fourteen (14) days of notifying such employee's supervisor if no corrective action is take during the employee's tour, and/or
>
> (d) make a written report to the Union representative from the local Safety and Health Committee who may discuss the report with such employee's supervisor.
>
> Upon written request of the employee involved in an accident, a copy of the PS Form 1769 (Accident Report) will be provided.
>
> Any grievance filed in accordance with Section 2. (c) above which is not resolved at Step 2 may only be appealed to the local Safety and Health Committee for discussion and decision. Any such appeal must be made within fifteen (15) days after receipt of the Employer's Step 2 decision unless the parties agree to extend the time for appeal. The committee shall meet to discuss the grievance at the next regularly scheduled local Safety and Health Committee meeting. Any grievance not resolved by the committee may be appealed directly to

arbitration with 21 days of the committee's review.

> Any grievance which has as its subject a safety or health issue directly affecting an employee(s) which is subsequently properly appealed to arbitration in accordance with the provisions of Article 15 may be placed at the head of the appropriate arbitration docket at the request of the Union.

From the evidence and testimony, neither party sought to follow this language; perhaps because of the other contractual provisions of the Agreement which were referenced in the grievance.

The evidence, which was unrefuted, did establish serious safety questions. The validity of these safety matters must be credited to the Union since no other explanation was presented nor was the Union's testimony refuted.

The Union, sought as a remedy, to have this work returned to vehicle maintenance employees, and compensation for all hours the outside contractor spent in repairing this LLV.

Compensation is not appropriate. The Service has not been charged with a "due consideration" violation and no evidence was presented that such a violation occurred. Neither was any evidence presented as to the number of hours of work performed by the subcontractor or the repairs made to the vehicle by the subcontractor. Therefore, no equity consideration can properly be determined.

The Union's safety concerns as defined by the provisions of Article 14 are meritorious. The Service is directed to comply with the provisions of Article 14 and the observance of safety rules and procedures in the performance of work.

No allegation of improper subcontracting, except for the

safety issue was alleged or supported nor were the other listed claimed contract articles defined or explained.

This grievance should have been processed under the provisions of Article 14, supra. Article 14 insists on the correction of unsafe conditions. The Union's position of having substandard work which affects safety corrected has face validity. Therefore, the Service is directed to cease and desist from having work performed by this subcontractor which does not meet the safety requirements defined in the National Agreement.

December 2000

Harry R. Gudenberg
Arbitrator

Regional Level Award G00T-1G-C03170209 By Arbitrator Leroy R. Bartman

---

Subject: Article 32 Factors Must Be Considered Prior to Final Subcontracting Decision

The Arbitrator sustained the Union's grievance and found the Postal Service did violate the requirements of Article 32, Section 1.A and the ASM 535.111 and 535.112 when Management failed to give due consideration to the maintenance craft employees prior to making its subcontracting decision. The Arbitrator ordered compensation to the affected maintenance craft employees who were eligible at the time to be equally compensated at a straight time rate for all man hours expended by the outside contract.

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	( )	Grievant: CLASS ACTION
between	( )	Post Office: SAN ANTONIO TX P&DC
UNITED STATES POSTAL SERVICE	( )	USPS Case No: G00T-1G-C 03170209
and	( )	APWU Case No: DEYM 03018
AMERICAN POSTAL WORKERS UNION, AFL-CIO	( )	

BEFORE: Leroy R. Bartman, Ed. D., Arbitrator

APPEARANCES:

For the U. S. Postal Service:	ERNEST J. PARFAIT
For the Union:	CHARLIE ROBBINS
Place of Hearing:	1 POST OFFICE DRIVE, SAN ANTONIO TX
Date of Hearing:	MAY 23, 2007
Hearing Closed:	JULY 2, 2007
Date of Award:	AUGUST 6, 2007
Relevant Contract Provision:	ARTICLE 32
Contract Year:	2000 - 2003
Type of Grievance:	CONTRACT

AWARD SUMMARY

The Arbitrator sustains the grievance finding that the Postal Service did violate the requirements of Article 32.1A and the ASM 535.111 and 535.112 when Management failed to give due consideration to the maintenance craft employees for the reasons contained herein.

As remedy, the affected maintenance craft employees who were eligible at the timewill be equally compensated at a straight time rate for all man hours expended by the outside contract. This will not include any man hours expended on asbestos abatement portion of the contractt.

The grievance is sustained. The Arbitrator will retain jurisdiction until the parties have agreed on the above remedy computation of man hours.

LeRoy R. Bartman

LEROY R. BARTMAN

HEARING

The parties were present and ably represented on May 23, 2007 for the hearing on the referenced matter in San Antonio, Texas. The parties mutually agreed that the matter was appropriately before the Arbitrator. Ample opportunity was given for the parties to submit their proofs, witnesses, and to cross examine same.

At the conclusion of the hearing the parties agreed to submit post-hearing briefs and citations to the Arbitrator postmarked no later than June 30, 2007. The briefs appropriately postmarked were received on July 2, 2007 and the hearing was declared closed as of that date.

MATTERS OF FACT AND BACKGROUND

On or about May 23, 2003 the Contracting Officer at the P&DC issued a Notice of Intent to award a contract to the Entech Sales & Service Company of Dallas, Texas to upgrade the security system at the San Antonio, Texas P&DC. The contract was in the amount of $655,641.10 and was signed on May 30, 2003. On or about July 2, 2003 a Class Action grievance, Article 32. Subcontracting was filed by the Union. The grievance stated as follows:

> ". . . On June 25, 2003, the Union was notified that the security upgrade was contracted to a private company. It is the Union's contentions that the contracting other than the asbestos abatement is well within the abilities of the maintenance personnel whose job is to install or alter building equipment and circuits (item 4 BEM Standard Position Description). The BEM is also responsible for the installation of building safety systems, support systems, and equipment. A security upgrade falls within this category. Management in its Article 32 review has failed to show any cost saving by contract workers and has failed to meet the due consideration of the bargaining unit as mandated in Article 32 . . . ." (JX 2, p. 13).

Management denied the grievance and the Union filed a Step 2 appeal which was also denied by Management on or about July 24, 2003.

The Union submitted to Management its Corrections and Additions, on or about July 29, 2003, and filed a Step 3 appeal. The Union received Management's Step 3 denial of the grievance on or about November 21, 2003. The letter from Mr. Porter L. Kimmel, Southwest Area Labor Relations, stated as follows:

> "Mr. Robbins:
>
> This Step 3 grievance was discussed with you on November 18, 2003.
>
> Union challenges Management subcontracting upgrade of the security system at the San Antonio, TX P&DC.

After a full review of the facts in this case, and based upon the particular circumstances, I have decided to **DENY** this grievance.

Project (sic) required planning and design skills not possessed by the craft employees, and some new construction. Postal employees were not qualified to handle the entire job and to allow the Union to pick and choose which tasks of the project they might have been qualified and able to efficiently perform would be disruptive and inefficient to the completion of the overall project. Local Management analysis and explanations shared with the Union support their decision to subcontract. Grievance denied for lack of merit.

In my judgment, at this time, the grievance does not involve any interpretive issue pertaining to the National Agreement or any supplement thereto which may be of general application. Unless the Union believes otherwise, the case may be appealed directly to regional arbitration in accordance with the provisions of Article 15 of the National Agreement."

The Union raised a threshold issue at the hearing alleging that the Postal Service violated a Step 2 grievance settlement agreement dated September 30, 1998, when it failed to give advance notification to the Union when it considered subcontracting of work normally accomplished by maintenance craft employees.

The Arbitrator's decision was to hear the parties' arguments on the threshold issue before proceeding to hear the merits of the case at bar.

The parties agree that there are no procedural errors and that the matter is properly before the Arbitrator.

THRESHOLD ISSUE

UNION

Did the Postal Service violate the settlement agreement of September 30, 1998, when it failed to give the Union an advance notice of considering to subcontract out maintenance craft work? If the answer is yes, what is the appropriate remedy?

RELEVANT LANGUAGE CONTRACT PROVISIONS

ARTICLE 15 – Grievance-arbitration Procedure

Section 2. Grievance Procedure Steps

Step 2:

(d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or

documents in accordance with Article 31.

(c) Any settlement or withdrawal of a grievance in Step 2 shall be in writing or shall be noted on the standard grievance form, but not be precedent for any purpose, unless the parties specifically so agree or develop an agreement to dispose of future similar or related problems.

(f) Where agreement is not reached the Employer's decision shall be furnished to the Union representative in writing, within ten (10) days after the Step 2 meeting unless the parties agree to extend the ten (10) day period. The decision shall include a full statement of the Employer's understanding of (1) all relevant facts, (2) the contractual provisions involved, and (3) the detailed reasons for denial of the grievance.

Step 3:

(c) The Employer's written Step 3 decision on the grievance shall be provided to the Union's Step 3 representative within fifteen (15) days after the parties have met in Step 3, unless the parties agree to extend the fifteen (15) day period. Such decision shall state the reasons for the decision in detail and shall include a statement of any additional facts and contentions not previously set forth in the record of the grievance as appealed from Step 2.

ARTICLE 17 – Rights of Stewards

The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.

ARTICLE 19 – Handbooks and Manuals

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are non inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

ARTICLE 31 – Union – Management Cooperation

Section 3. Information

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information provided . . . .

ARTICLE 32 – Subcontracting

Section 1. General Principles

A. The Employer will give due consideration to public interest, costs, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract.

535.111 Postal Equipment

Maintenance of postal equipment should be performed by Postal Service personnel, whenever possible. Exceptions are:

a. Where capable personnel are not available.

b. When maintenance can be performed by contract and it is economically advantageous.

c. When a piece of equipment is a prototype or experimental model or unusually complex, so that a commercial firm is the only practical source of required maintenance expertise.

ADMINISTRATIVE SUPPORT MANUAL (ASM)

535.112 Facility and Plant Equipment

Facility and Plant Equipment Contract service is encouraged for Postal Service-operated facility and plant equipment maintenance, when economically advantageous.

535.412 Maintenance Responsibilities

The Postal Service is responsible for:

c. Replacing complete plant equipment units when necessary or economically desirable.

c. Making necessary changes, modifications, repairs, and improvements to facilities.

STANDARD POSITION DESCRIPTION

BUILDING EQUIPMENT MECHANIC, PS-07 (currently PS-08)

FUNCTIONAL PURPOSE:

Performs involved trouble shooting and complex maintenance work on Building and Building Equipment systems, and preventive maintenance and preventative maintenance inspections of building, building equipment and building systems, and maintains and operates a large automated air conditioning system and a large heating system.

DUTIES AND RESPONSIBILITIES:

1. Performs, on building and building equipment, the more difficult testing, diagnosis, maintenance, adjustment and revision work, requiring a thorough knowledge of the mechanical, electrical, and electronic, pneumatic, or hydraulic control and operating mechanisms of the equipment. Performs trouble shooting and repair of complex supervisory group control panels, readout and feedback circuits and associated mechanical and electrical components throughout the installation; locates and corrects malfunctions in triggering and other electro mechanical and electronic circuits.

2. Observes the various components of the building system in operation and applies appropriate testing methods and procedures to insure continued proper operation.

3. Locates the source of and rectifies trouble in involved or questionable cases, or in emergency saturations where expert attention is required to locate and correct the defect quickly to avoid or minimize interruption.

4. Installs or alters building equipment and circuits as directed.

5. Reports the circumstances surrounding equipment and failures, and recommends measures for their correction.

6. Performs preventive maintenance inspections of building equipment to locate incipient mechanical malfunctions and the standard of maintenance. Initiates work orders requesting corrective actions for conditions below standard; assists in the estimating of time and materials required. Recommends changes in preventive maintenance procedures and practices to provide the proper level of maintenance; assists in the revision of preventive maintenance checklists and the frequency of performing preventive maintenance routes. In instances of serious equipment failures, conducts investigation to determine the cause of the breakdown and to recommend remedial action to prevent recurrence.

7. Uses necessary hand and power tools, specialized equipment, gauging devices, and both electrical and electronic test equipment.

8. Reads and interprets semantics, blue prints, wiring diagrams and specifications in locating and correcting potential or existing malfunctions and failures.

9. Repairs electro-mechanically operated equipment related to the building or building systems. Repairs, installs, modifies, and maintains building safety systems, support systems and equipment.

10. Works off ladders, scaffolds, and rigging within heights common to the facility. Works under various weather conditions outdoors.

11. Completes duties and tasks related to building maintenance as required.

12. Observes established safety practices and requirements pertaining to the type of work involved; recommends additional safety measures as required.

13. In addition, may oversee the work of lower level maintenance employees, advising and instructing them in proper and safe work methods and checking for adherence to

instructions; make in-process and final operational checks and tests of work completed by lower level maintenance employees.

14. Performs other job related tasks in support of primary duties.

OTHER RELEVANT LANGUAGE

STEP 2 GRIEVANCE SETTLEMENT – September 30, 1998

Based on the information presented and contained in the grievance file, and as a full and final settlement to this matter, the parties agree on a non-citable, non-precedent basis to the following resolvement:

The issue: SUBCONTRACTING

> Any work within the San Antonio Station and Branches and P&DC Complex (10410 Perrin Beitel Rd.) That is within the realm of Maintenance Craft work will first be sent to Maintenance via the work order system. Management will then determine the method of accomplishment. The employer will give advance notification to the APWU/SAAAL Maintenance Officers considering subcontract of work which would normally be accomplished by maintenance craft employees.

POSITION OF PARTIES

THRESHOLD ISSUE

UNION:

The Union argues that the Service at the hearing raised for the first time an argument it had not previously raised at any level of the grievance procedure. That argument being the Step 2 level "Settlement Agreement" of September 30, 1998. Management contended that the agreement is non-precedent setting and non-binding on the parties. Both the Doctrines of Res Judicata and Stare Decisis apply to the issue of the propriety of the settlement agreement. Arbitrators Dorshaw and King referenced this agreement and based their decision on the failure of the Service to give advance notification to the Union. To consider this agreement non-binding, not only contravenes the full disclosure language of Article 15, but also casts a chill on future settlements in San Antonio. The Union argues that the "Settlement Agreement" has been the focal point in at least two arbitration hearings and resulting decisions. The Union argues that the Postal Service raising the Settlement Agreement for the first time at the hearing and is in violation of Article 15, Section 2, Step 2 and constitutes new argument that should not be considered by the Arbitrator.

POSTAL SERVICE:

Management contends that the National Agreement is clear and concise and unless the

Step 2 Level parties specifically agree, Step 2 settlements shall not be precedent setting. The cited Step 2 agreement of September 30, 1998, specifically contains language ". . . the parties agree on a non-citable, non-precedent setting basis to the following resolvement". The Postal Service argues that the parties did not intend the agreement settlement to be precedent setting. There can be no other interpretation of the language found in the settlement.

DISCUSSION AND ANALYSIS

THRESHOLD ISSUE

The Union's principle contention is that the Postal Service violated Article 15, Section 2, Step 2(d) of the National Agreement when it failed to make a full and detailed statement of facts relied upon in denying the grievance. The Union specifically points to a failure by Management to raise or argue, prior to the hearing, or at any step of the grievance procedure, that the September 30, 1998 Step 2 agreement was non-precedent setting and therefore had no life beyond the grievance settled by the parties in 1998..

The language of Article 15, Section 2, Step 2d is clear and unambiguous when it states that both parties share an equal responsibility to make a full and detailed statement of fact. The Union and the Service are each required to make a full disclosure of the facts they are relying upon.

The Union's Step 1 grievance in its detailed statement of facts/contentions stated in pertinent part as follows:

> "On 6/25/2003 the Union was notified that the security upgrade was contracted to a private company. It is the Union's contentions that the contracting other than the asbestos abatement is well within the abilities of the maintenance personnel whose job is to install or alter the building equipment and circuits (Item 4 BEM Standard Position Description). The BEM is also responsible for the installation of building safety systems, support systems, and equipment. A security upgrade falls within this category. Management in its Article 32 review has failed to show any cost savings by contract workers and has failed to meet the due consideration of the bargaining unit as mandated in Article 32." Id.

The Union's initial filing of its grievance there makes no reference to any CBA violation other than that of Article 32. Subcontracting. The matter of a reliance by the Union on the settlement agreement obviously does not appear in its initial filing of its grievances.

The Union's Step 2 grievance appeal stated as follows:

"The Unions are the same as Step 1 with the following additions:

> The Step 1 designee stated since the tragedy of 9/11 security must be performed by certified contractors. Management furnished no documents supporting the position. The Union contends that the building modification is within the abilities of

the BEM workgroup, and should have been assigned to the postal workforce. Management has yet to show that consideration was given to the Maintenance Craft as required in Article 32 and ASM 533.412 e. 535.111." Id.

Again, the above Step 2 appeal by the Union also makes no reference to the 1998 agreement; but, now has been expanded to include the ASM 533.412 and 535.111 as a part of the grievance. Id.

It is clear that the Union's appeal relied only upon the language of Article 32 and the ASM 533.412 and 535.111 as the Union's point(s) of contention that an alleged grievance had occurred. In both the Step 1 and Step 2 grievance steps again no mention is made of the prior Step 2 grievance settlement of 1998. Management at this point, in the opinion of the Arbitrator, does not have any formal, in writing, statement from the Union that it considered the settlement as an integral part of its grievance.

Management's response in its Step 2 decision rendered on July 24, 2003 to the Union properly answered the Union's grievance appeal as presented:

"On July 16, 2003. The above captioned grievance was discussed. The Union submitted no additional documentation at the Step 2 meeting.

Issue: Did Management violate Article 32 when it contracted out the installation of an Access Control (security system) at the San Antonio P&DC? If so, what is the appropriate remedy?

Facts: Management notified the APWU on June 25, 2003, of their intent to contract out the installation of a Security System at the San Antonio P&DC.

In accordance to Administrative Support Manual (ASM), Section 530, an Article 32 Review was conducted. Based on the judgment of the review process, all agreed that the scope of the construction and modification to be completed on this project could not be completed with our present Postal Maintenance work force. Part of the project included asbestos removal. Postal employees are prohibited from doing this type of work.

Union Position: The Union contends that the Postal employees should be afforded the opportunity of doing this work. They are capable of doing the installation of the security equipment, excluding the removal of the asbestos tile.

Management Position: The Union is trying to pick apart various parts of the contract they felt they are capable of doing. Projects of this magnitude are bid from A to Z, not just what we want the contractor to accomplish versus the postal employees. The Union admits not to be capable of performing the removal of the asbestos tile.

An Article 32 review was conducted in accordance with ASM Section 530." Id.

Project Name: Security Upgrade San Antonio TX P&DC
Participants: A. W. Hixenbough, Wayne Shinn, Tim Keating
Date: March 7, 2003

Management as required in Article 15, Section 2 included in its Step 2 decision to give a full statement of the Employer's understanding (emphasis added) of the grievance including (1) all relevant facts, (2) the contractual provisions involved and (3) the detailed reasons for denial of the grievance. The Arbitrator is of the opinion that the Union, if it considered the agreement of 1998 a grievable matter should have made such a disclosure. As the eminent Arbitrator Carlton Snow wrote in National Award, H0C-NAC-12, "The employer's response demonstrated it's awareness of the nature of the dispute." (p. 25)

The Union for the first time (emphasis added), on July 29, 2003, approximately four (4) days after receiving the Step 2 Management denial, made a reference to the settlement agreement of 1998, in its "Corrections and Additions" when they stated as follows: (JX 2, 4, 5)

> . . . It was only during the final stages of the approval for the contract and just prior to work beginning at the facility, did Management provide to the local an Article 32 review as required in USPS #G94T-1G-C 98117578 Step 2 Settlement dated September 30, 1998 (emphasis added).
>
> It states, "any work within the San Antonio Station and Branches and the P&DC Complex (10410 Perrin Beitel Rd.) That is within the realm of Maintenance Craft work will first be sent to Maintenance via the work order system. . . . The employer will give advance notification to APWU/SAAL (emphasis added) Maintenance Officers when considering subcontract of work which would normally be accomplished by maintenance craft employees . . . ."

For whatever reason it is readily apparent to the Arbitrator that the Union did not consider the Settlement Agreement as a focal point of this case until the twelfth (12th) hour. The Arbitrator must discount the Union's theory that Management because of prior grievances could have prophesied that the Union believed the settlement agreement was being relied on.

Management's response to the Union at Step 3 rendered after the Union's additions and corrections stated:

> This Step 3 grievance was discussed with you on November 18, 2003.
>
> Union challenges Management subcontracting upgrade of the security system at the San Antonio, TX P&DC.
>
> After a full review of the facts in this case, and based upon the particular circumstances, I have decided to **DENY** this grievance.
>
> Project required planning and design skills not possessed by the craft employees, and some new construction. Postal employees were not qualified to handle the

entire job and to allow the Union to pick and choose which tasks of the project they might have been qualified and able to efficiently perform would be disruptive and inefficient to the completion of the overall project. Local Management analysis and explanations shared with the Union support their decision to subcontract. Grievance denied for lack of merit.

In my judgment, at this time, the grievance does not involve any interpretive issue pertaining to the National Agreement or any supplement thereto which may be of general application. Unless the Union believes otherwise, the case may be appealed directly to regional arbitration in accordance with the provisions of Article 15 of the National Agreement.

Management at this point technically, as Snow called it, failed to answer the Union's allegation concerning the settlement agreement. However, as shown in the chronology of events during the entire grievance process, the Union from its initial filing of the grievance until its corrections and additions of July 29, 2003, never raised (emphasis added) as a focal point the 1998 settlement agreement. The Union, as Article 15 clearly enunciates has the identical obligation as that of the Postal Service to make a full and detailed statement of facts relied upon. The Step 1 and 2 Level grievances both stated the nature or contract issue as being a "Class Action 32, Subcontracting (emphasis added). The narrative portion of the standard grievance form recited that the Union contended that the work subcontracted, with the exception of asbestos abatement, was all within the abilities of the maintenance personnel. The Union's Step 3 appeal again cited Article 32, Subcontracting as the nature of the contract issue. In its corrections and additions previously discussed, the Union for the first time raised the allegation that the 1998 agreement had been breached.

NEW ARGUMENT:

Management, as the Union pointed out, never raised the settlement agreement during the grievance process. However, the Union was equally negligent in not raising the agreement until it was very late the grievance process. It was only after the Union raised the Settlement Agreement of 1998 in its Step 3 appeal of additions that Management was put on notice that the agreement letter was being relied upon by the Union. In short, Management's response to the Union's alleged contract violation(s) was given in kind until the Step 3 Management decision when the Postal Service did not address the 1998 agreement. The Union's and Management's arguments are in contraposition on the same agreement. The Union, reading the same settlement agreement as the Postal Service, infers it was first in importance when the Postal Service's violated the sentence requiring advance notice of contract issuance with cause to sustain their grievance. On the other hand, when Management raised at the hearing their non-citable, non-precedent portion and were

objected to as not only new argument and unenforceable by the Union.

It is the opinion of the Arbitrator that the Union and Management were both in error in that the Union over and over, until the twelfth (12th) hour did not identify the settlement agreement as a part of the grievance. Similarly, the Postal Service wrongly introduced a portion of the agreement favorable to Management at the hearing for the first time and technically was new argument. However, it is a mitigating fact that it was the Union who failed until late in the game to notify Management of the 1998 settlement agreement being a part of the grievance.

The Arbitrator cannot find any reference or requirement in the National Agreement which would allow a Step 2 settlement agreement to abridge the CBA as the controlling document. In the opinion of the Arbitrator, the settlement agreement does not have the weight of the CBA and, regardless of when it was raised by the whom, it is of no consequence to the Arbitrator.

In addition, the Arbitrator finds Arbitrator Dorshaw's and King's awards distinguishable from this case in that a signatory to the 1998 agreement testified to the intent of the document before Dorshaw. This Arbitrator has not heard or seen any evidence of the document's intent and does not find instructive the previous decisions of Dorshaw and King. In the opinion of this Arbitrator on the issue of advance notice to the Union and whether or not the subcontracted work was, or was not, work that could normally be done by maintenance craft employees is a matter this Arbitrator will decide in weighing the merits of the case.

It is the conclusion of the Arbitrator that, given the above facts and an extensive review and consideration of the National Awards of Arbitrators Shyan Das, Richard Mittenthal, Aaron and Snow and numerous regular awards that both Management and the Union cited the settlement agreement issue was not timely raised by either party and will not be considered by the Arbitrator.

The Union has also argued the Doctrines of Res Judicata and Stare Decisis apply to this matter. The Arbitrator does not agree that the doctrines apply to the instant matter. The Settlement Agreement of 1998, again will not be considered by the Arbitrator as relevant to the present case.

STIPULATED ISSUE

MERITS

Did the Postal Service violate the National Agreement when it subcontracted out the installation of a security system at the San Antonio Processing and Distribution Center? If the answer is yes, what is the appropriate remedy?

POSITION OF PARTIES

UNION:

The Union contends that the building modifications at the San Antonio P&DC are within the

abilities of the BEM work group and should have been assigned to the postal work force. The Union argues that the subcontracting with the exception of asbestos abatement were well within the abilities of the San Antonio P&DC maintenance.

The Union requests to sustain the grievance in its entirety and to award the bargaining unit the hours at the overtime rate that the subcontractor took to upgrade the security system. The Union would also ask that if the hours are not available, the cost of the contract be awarded the bargaining unit.

MANAGEMENT:

Management contends as a contract case, the Union must prove a contractual violation. Management further contends the National Agreement is clear and concise and provides, unless the parties specifically agree to the contrary, Step 2 settlements are not precedent setting and cannot be referenced in subsequent cases. Alternatively, Management contends the Step 2 settlement is inapplicable as the work was neither within the "realm" of maintenance nor would the work have been normally accomplished by the maintenance craft.

Notwithstanding these arguments Management contends it notified the Union as soon as the decision to subcontract had been made. Management further contends a true "due consideration" in accord with Article 32 was done prior to beginning the work. Finally, the Union has failed in its ultimate burden of providing a violation of the National Agreement and has failed to provide any evidence supporting the requested remedy.

DISCUSSION AND ANALYSIS

The Union has contended that the facts in the instant matter support their position that employees with the Standard Position Description as a Building Equipment Mechanic (BEM). PS-07 and the accompanying Qualification Standards, EL 303, TL 2, should have been utilized to perform the installation of the Security Access Control System at the San Antonio TX P&DC. The Union concedes that the only work that was outside the scope of the Maintenance Craft employees was that of asbestos abatement and removal. The Union has cited two National and 48 regular arbitration decisions in support of its position while the Service has cited 5 regular awards..

The Union's central argument is that the Postal Service subcontracted the installation of the Security System without giving due consideration (emphasis added) to the qualifications of Maintenance Craft employees' capabilities to do the work is a significant point.

The Article 32 of the National Agreement and the Administrative Support Manual (ASM) 535.111 and 535.112 must be read in conjunction with each other. Article 32 states the five (5) general areas for due consideration while 535.111 details specific requirements for consideration.

Article 32, Section 1A provides as follows:

The employer will give due consideration (emphasis added) to public interest, cost efficiency, availability of equipment and qualifications of employees when evaluating the need to subcontract.

ASM.535.111 Postal Equipment

Maintenance of postal equipment should be performed by Postal Service personnel, whenever possible (emphasis added). Exceptions are:

a. Where capable personnel are not available.

b. When maintenance can be performed by contract and it is economically advantageous.

c. When a piece of equipment is a prototype or experimental model or unusually complex, so that a commercial firm is the only practical source of required maintenance expertise.

ASM.535.112, Facility and Plant Equipment provides Postal Service management with the following directive:

Contract service is encouraged for Postal Service – operated facility and plant equipment maintenance, when economically advantageous.

The Union has the initial burden of proof to establish a prima facie case that the Postal Service's decision to subcontract out the installation of the security system at the San Antonio P&DC was in violation of Article 32 of the National Agreement. In this case, the elements of such a prima facie case include proof of the following: (a) the service did contract with a subcontractor to perform the work in questions; (b) the work in question was work which bargaining unit could have performed; and (c) the maintenance craft employees were available to perform the work in question.

In the opinion of the Arbitrator, the Union has established its prima facie case for the reasons that follow. There is no dispute between the parties that the work in question was subcontracted. The Union's argument and the testimony of its witnesses was that the Maintenance Department was available and could have performed the work with the acknowledged exception of asbestos abatement as borne out by the PS-p8 job descriptions of the maintenance craft; there being no evidence to the contrary. Id. The Union's proof of these two facts constitutes a prima facie case in the Arbitrator's opinion.

At this point, the burden shifts to the Postal Service to provide supportive evidence in its affirmative defense that it complied with the provisions of the Article 32, review of the five (5) general factors and also the more specific requirements of ASM 535.111, 535.112, and 535.113.

ARTICLE 32

Management must demonstrate that it duly considered the five (5) factors prior to subcontracting the work in question. Implicit in the requirement for due consideration, however, is that such consideration be given before letting out the subcontracting work. In 1981, in a national arbitration case A8-NA C0481, Arbitrator Mittenthal gave a specific interpretation of the standard by which the words "due consideration" in Article 32 are to be applied, by observing: Id. pp 6-7

> Unfortunately, the words "due consideration" are not defined in the National Agreement. Their significance, however, seems clear. They mean that the Postal Service must take into account the five factors mentioned in Paragraph A in determining whether or not to contract out surface transportation work. To ignore these factors or to examine them in a cursory fashion in making its decision would be improper (footnote: ignoring all factors would involve a lack of "due consideration"). Examining them in a cursory fashion might constitute "consideration" but certainly not the "due consideration" contemplated by Paragraph A. To consider other factors, not found in Paragraph A, would be equally improper. The Postal Service must, in short, make a good faith attempt to evaluate the need for contracting out in terms of the contractual factors. Anything less would fall short of "due consideration."
>
> Thus, the Postal Service's obligation relates more to the process by which it arrives at a decision than to the decision itself. An incorrect decision does not necessarily mean a violation of Paragraph A incorrectness does suggest, to some extent at least, a lack of "due consideration." But the implication may be overcome by a Management showing that it did in fact give "due consideration" to the several factors in reaching its decision. [footnote: Conversely, a correct decision does not preclude finding a violation of Paragraph A where the proofs reveal a lack of "due consideration."] the greater the incorrectness, however, the stronger the implication that Management did not meet the "due consideration" test. Suppose, for instance, that "cost" is the only factor upon which Management relies in engaging a contractor, that its cost analysis is shown to be plainly erroneous, and that it would actually have been cheaper for the Postal Service to use its own vehicles and drivers. Under these circumstances, the conclusion would be almost irresistible that Management had not given "due consideration" in arriving at its decision.

As Mettenthal stated he considered the requirements of Article 32 consisted of five (5) general factors which constitute the process (emphasis added) which must be followed by the Service in meeting its "due consideration" to subcontract out craft work. Each factor is of equal weight and a lack of proofs that one factor was considered with more weight than another, could constitute a violation of Article 32, 1A. A process is generally defined as a combination of people, properties and things.

Maintenance Manager, Arthur W. Hixenbaugh, in his Step 2 denial reply dated July 24, 2003, detailed analysis of the factors listed in Article 32, 1A as follows:

A. Public Interest: This project does not directly impact the delivery of the

mails, so any public interest items can only be considered as impacting the public. The Facility does not have a BMEU where the public deposits mail. Better security measures for the public entering the P&DC compound will be enhanced. Contracting would better facilitate construction because it would provide the engineering skill needed, accompanied by faster completion by a firm who could dedicate specialized resources to meet measurable construction standards. Also, it is in the public's best interest to contract personnel who are expert in the design and installation of security systems or perform asbestos abatements.

B. Cost: Detailed cost comparisons showing Postal labor vs. contracted labor costs, were completed at the time that this review was conducted. Budgeted costs of this project exceeds $800,000. Based on the judgment of the individuals involved in the review process, all agreed that the modifications to be completed on this project could not be completed using in house labor due to the complexity of the work and the expertise needed for installation. Installation requires expertise in large security systems to include but not limited integrating surveillance cameras and electronic badge readers. An asbestos abatement must be completed as part of this project due to vinyl asbestos tile in the employee entrance where turnstiles are to be installed. Postal employees are prohibited in doing this type of work and do not have the expertise in this arena. Also, in-house labor could not complete the project in the time allowed with our present Postal maintenance work force. There is sufficient workload to fully employee all maintenance employees 40 hours per week, with minimal overtime opportunities, during the time period scheduled for this project. Even if it could be shown that Postal labor is the least expensive alternative to complete this project, the delays we anticipate we would encounter, should we attempt this complex project in-house, would consume any savings the Service would realize by considering this project in the first place.

The National Agreement between the USPS and the American Postal Workers Union does not require Management to utilize overtime to complete projects such as this one. Furthermore, the USPS is not required to add employees and the maintenance unit has no ability to use a temporary work force (casuals or TE's) for this type work.

C. Efficiency: Based on the judgment of the individuals, the following conclusions have been made: Contracting provides for skilled installation by companies who regularly work with security systems installations and companies who are approved to remove asbestos on a regular basis. To be able to complete this installation with our present Postal maintenance work force, and complete the project in a reasonable time frame, managers need to delay other necessary maintenance work.

D. Availability of Equipment: Equipment required to do this work could be rented or purchased.

E. Qualifications of Employees: The San Antonio Plant employs Maintenance Mechanics, Building Equipment Mechanics, and a Blacksmith/Welder who are fully occupied at all times performing preventative and corrective maintenance. None of the employees have experience installation of large

> security systems required to complete this project. All employees are scheduled for 40 hours of work per week with minimal overtime opportunities. An asbestos abatement must be completed as part of this project due to vinyl asbestos tile in the employee entrance where turnstiles are to be installed. Postal employees are prohibited in doing this type of work and do not have the expertise in this area.

The Arbitrator is persuaded by the evidence and testimony presented that the Postal Service failed to give "due consideration" as required before awarding the subcontract. Most damaging to the Union's case was the testimony of Timothy Keating, Postal Service Industrial Engineer at the P&DC. When asked whether or not the maintenance craft employees were ever considered (emphasis added) to do the work in question, he answered, "no, they were never considered." He also testified he was never a party to the Article 32 review. (JX 2, p.28) Id 7

The chronology of the contract award which began on February 2, 2001, when a solicitation for bids on the work was sent out. The actual contract was signed by the parties on June 2, 2003.. As indicated above, the Article 32 review was completed on or about June 24, 2003 and sent to the Union. Mr. Hixenbaugh submitted on July 24, 2003 in his Step 2 denial citing the same Article 32 review he sent to the Union on June 2, 2003. It is obvious that the Postal Service had determined long before the Article 32 review was addressed to let out a subcontract without due consideration as required by Article 32.1A, ASM 535.111, and 535.112. The review was done after the fact and showed bad faith contrary to the spirit and intent expressed in the National Agreement.

If the Postal Service wished to demonstrate that it had considered the five factors of Article 32 with due consideration, prior to awarding the contract, no evidence or proof that was produced and presented to the Arbitrator. The matters of fact are that Management's intent to award the contract on May 23, 2003 was cast in stone with no intent by Management to consider the maintenance craft employees to do the work.

It is evident to the Arbitrator that the Postal Service did not show good faith throughout its planning and awarding of the subcontract to upgrade the P&DC security system. The Service again produced no evidence or proofs to show the costs analysis made by Management in their Article 32 review to show that it was more cost effective to go outside with the contract. The analysis of Article 32 by Mr. Hixenbaugh that the maintenance craft employees were not capable of doing the work was his personal opinion unsupported by fact.

The Service's argument concerning the maintenance craft 's ability to do asbestos abatement work is not in dispute. The Service, however, has contended that not having one contractor do all of the work would curtail its wish to have a turnkey project. As Arbitrator Hoffman in H0OT-1H-C 96015618, March 26, 1998, in a matter similar to this case stated:

"Management argued in that arbitration and here that the contract cannot be

broken-up once it is entered into. In other words, Management maintains that the Union cannot pick apart a contract well after its making and claim which work employees can do . . . . No authority could be found by Management to support this position in that case or here. This defense was rejected since Management failed to establish that the contract could not be divided in such a way to assign work to the bargaining unit, where employees are qualified and available.

The undersigned Arbitrator cannot find any CBA provision or requirement in the ASM 535 which would have prevented the Postal Service from rightfully subcontracting out the asbestos abatement portion of the work to a qualified firm.

As stated by Arbitrator Rodney Dennis case number H95T-1M-C 99286425:

". . . In order to justify contracting out of bargaining unit work, Management must have a sound basis for its decision. It must be able to prove, for example, that it is more economical to contract out the work than perform it with bargaining unit members. This cannot be based on just the say-so of Management. It must be based upon a cost analysis of the situation with justifiable comparative figures. In the instant case, no such analysis was done . . . ."

The Arbitrator finds, as did Dennis, that the Article 32 review conducted by Management provided no justifiable comparative figures upon which a decision was made. The ASM 353.112 as Arbitrator Massey noted in her decision #E98T-1E-C 01078746, stated:

"It also seems that the requirements of ASM 535.112 must be met before moving on to the requirements of Article 32, Section 1A. While Article 32, Section 1A makes cost a factor to be evaluated when giving subcontracting due consideration, ASM 535.112 dictates that subcontracting of building equipment maintenance is appropriate when economically advantageous."

Management failed to produce any financial cost analysis comparatives and/or any man hour studies upon which to base their decision to capriciously determine that the maintenance craft employees could not do the work in questions.

In this case, ASM 353.111 is a specific provision of a collective bargaining agreement which takes precedent over a general provision as found in Article 32.1A. Thus, Section 535.111 and 535.112 of the ASM which specifically governs the subcontracting of maintenance work, takes precedent over Article 32 of the Agreement. The Arbitrator is persuaded that the Postal Service violated Article 32, 1A and also violated ASM 535.111 and 535.112 a part of the agreement.

Article 32.1A, thus Section 535.111 and 535.112 of the ASM which specifically governs the subcontracting of maintenance work, takes precedent over Article 32 of the Agreement. The Arbitrator is persuaded that the Postal Service violated Article 32.1A and also violated ASM 535.111 and 535.112, a part of the agreement.

The Arbitrator sustains the grievance finding that the Postal Service did violate the agreement of Article 32.1A and ASM 535.111 and 535.112 when Management failed to give due

consideration to the maintenance craft employees for the reasons contained herein.

As a remedy the affected maintenance employees who were eligible will be equally compensated at a straight time rate for all man hours expended by the outside contract. This will not include any man hours expended on the asbestos abatement portion of the contract.

AWARD

The grievance is sustained. The Arbitrator will retain jurisdiction until the parties have agreed on the above remedy computation of man hours.

Signed this 6th day of August, 2007.

LeRoy R. Bartman

Regional Level Award J98T-1J-C01204583

By Arbitrator Edwin Benn

Subject: Consideration to Article 32 Factors Not Given Until After Decision to Subcontract

Award regarding the failure of the Postal Service to give due consideration to public interest, cost, efficiency, availability of equipment and qualification of employees until after the work in question was put out for bid.

The Arbitrator sustained the Union's grievance and ruled that Article 32 requires such consideration is given.

Subject: Consideration to Article 32 Factors Not Given Until After Decision to Subcontrac

This is a summary of Arbitrator **Edwin Benn**'s decision in case **J98T-1J-C-01204583** regarding the failure of the Postal Service to give due consideration to public interest, cost, efficiency, availability of equipment and qualification of employees until after the work in question was put out for bid. The arbitrator sustained the Union's grievance; he ruled Article 32 requires such consideration be given "... *when* evaluating the need to subcontract", not after the work is put out for bid [emphasis added].

In this case the Postal Service installed a tray line conveyor system with contract employees rather than bargaining unit employees. The subcontracted work involved the installation of secure structural steel framework and columns, installation and assembling of large overhead conveyors to the framework and columns, installation of control systems and programming of interfaces and controls. The contractor was ultimately responsible for design, engineering, fabrication and installation of the conveyor components.

The Union contended that Maintenance employees could perform the work, The Union *offered* evidence that MPE Mechanics and Electronic Technicians have performed similar work through installation of flat sorters and small parcel and bundle sorters. The Union also points out that the job descriptions for the MPE Mechanic and Electronic Technician specifically list installation of equipment. Important to the resolution of this case was the fact that the work was put out for bid prior to August 18, 2000 and the Postal Service made the Article 32 analysis in November 2000 – i.e., *after* the work was put out for bid.

The arbitrator ruled the Postal Service violated the Collective Bargaining Agreement when if failed to give consideration to the factors listed in Article 32 until after the decision to subcontract the work was made.

> Therefore, although the analysis by Grewal and Williams was ultimately correct, because the Postal Service did not do the analysis until after the work was put out for bid. the Service could not have known the results of that analysis when evaluating the need to subcontract" as required by Article 32. What Grewal and Williams did was to justify the Service's decision after the fact. That is not what Article 32 requires. Article 32 mandates that the "due consideration" be given "... when evaluating the need to subcontract" and not after the decision to subcontract is made or after the work is put out for bid. If the Service could make a decision to subcontract without first giving "due consideration" to the factors specified in Article 32, and then only be required to justify its decision after the fact, Article 32 would be rendered meaningless. The word "when" in the phrase "when evaluating the need to subcontract" in Article 32 is defined as "at the time or in the event that". *The Random House Dictionary of the English Language* (2nd ed.). "When" does not mean "after" – it means what is says - "when". Here, the Union has shown that the Article 32 analysis was performed by the Service "after" the work was put out for bid and not "... when evaluating the need to subcontract". I therefore find that a violation of Article 32 has been shown. . . However, because the Service did not make the Article 32 analysis "when evaluating the need to subcontract", questions that remain must be resolved against the Service. Thus, I find that the CMSH Maintenance employees have been harmed by the Service's violation of Article 32 in this case. By not following the mandates of Article 32, the Service deprived the CMSH Maintenance employees of the ability to perform the work (at worst) or to even be considered to be able perform the work (at least) as the process established by Article 32 requires. Thus, there has to be some type of remedy one which I cannot quantify at this time. . . . Given, the discretion I have in the formulation of remedies, that remedial process appears to me to appropriate in this case, The matter is therefore remanded to the parties for a period of 60 days from the date of this award (or to a date agreed upon by the parties) to discuss a remedy to resolve this dispute. In the *event the* parties cannot agree upon a remedy, they may return this matter to *Me* and I *will* select one of the party's final offers on the remedy which I feel is the most reasonable.

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS UNION, AFL-CIO

GRIEVANT: Class Action

POST OFFICE: Chicago Metro Surface Hub

CASE NOS.: J98T-1J-C 01204583
CM201201

BEFORE: EDWIN H. BENN, Arbitrator

APPEARANCES:

For the U. S. Postal Service: Jeff Spears, Labor Relations Specialist

For the Union: Vance Zimmerman, National Business Agent

Place of Hearing:	Elk Grove Village, Illinois
Date of Hearing:	May 22, 2007
Dates Briefs Received:	June 23, 2007 (Union); June 25, 2007 (Service)
Date of Award:	July 24, 2007
Relevant Contract Provision:	Article 32
Contract Year:	2000
Type of Grievance:	Contract

Award Summary:

The grievance is sustained. The Service violated Article 32 of the Agreement when it did not "... give due consideration to public interest, cost, efficiency, availability of equipment and qualification of employees ..." until after the work for the installation of a new tray line conveyor system at CMSH was put out for bid. Article 32 requires such consideration be given "... *when* evaluating the need to subcontract", not *after* the work is put out for bid [emphasis added]. As a remedy, the matter is remanded to the parties for formulation of a remedy in accord with the procedure set forth in III(C) of this opinion.

Edwin H. Benn
Arbitrator

I. ISSUE

Did the Service violate Article 32 of the Agreement when it subcontracted the installation of a tray line conveyor system at the Chicago Metro Surface Hub ("CMSH") and, if so, what shall the remedy be?

II. FACTS

On or about April 2, 2001, a contractor, Key Handling Systems, Inc., began installation of a new tray line conveyor system at CMSH. The solicitation for bids for that work was made prior to August 18, 2000. *See* Management Exh. 4. The subcontracted work involved the installation of secure structural steel framework and columns, installation and assembling of large overhead conveyors to the framework and columns, installation of control systems and programming of interfaces and controls. Management Exh. 2. The contractor was ultimately responsible for design, engineering, fabrication and installation of the conveyor components. The system transports sacks from the dock to robots for further distribution through use of scanners. At one point during the process, the project had to be re-engineered when the Plant Manager wanted the conveyors suspended from the ceiling as opposed to being floor mounted.

According to Industrial Engineer Charles Williams, the work was not given to the CMSH Maintenance employees because of "... their lack of technical ability, their lack of people to meet the installation schedule, and their lack of skills in projects of this large magnitude." *Id.* According to Williams, "[i]nstead, a national construction firm in conveyors was selected by Headquarters Engineering to install these systems." *Id.*

The Union disputes the Service's contention that the CMSH Maintenance employees could not perform the work. The Union offered evidence that MPE

paid for by others should not be done in the cheapest and best manner possible. There is no showing in this grievance that the work is substandard as claimed"...

At the hearing the Union introduced a video recording taken of the vehicle in question (vehicle #0216715) as well as testimony from two employees, a level 6 mechanic who was also the steward who filed the grievance and a level 7 body and fender repairman.

These witnesses explained the vehicle which gave rise to the grievance had many defects after being repaired by the subcontractor. The witnesses testified as to the defects which were observed on vehicle #0216715 by them. They said defects included rivets were not properly tightened, postal logo stripes had bubbled, improper fasteners were used, and so on.

PS Form 1767, REPORT OF HAZARD, UNSAFE CONDITION OR PRACTICE were completed by the steward in August 1999 contending the work done by the contractor was improper. Management denied these contentions.

The Union submitted an extract of the LLV BODY SERVICE MANUAL at the hearing which they said explains the proper procedures to be followed in repairing these vehicles.

A copy of a vehicle maintenance work order for this vehicle dated September 24, 1999 was also introduced by the Union to support their contentions. The work order showed that a number of repairs had been made to this vehicle by employees from the vehicle maintenance facility after the vehicle was repaired by the subcontractor. This report indicated 3.7 hours were used to perform these repairs.

for the contractor to perform the work was approximately $300,000, Grewal testified that he estimated it would cost the Service $400,000 in labor for the CMSH Maintenance employees to do the work and if CMSH Maintenance employees were given the work, it also would have been necessary to hire temporary employees to keep the other machines running. With respect to efficiency, Grewal focused on the costs and the Christmas 2001 deadline which would not have been met by using CMSH Maintenance employees. With respect to qualifications of employees, Grewal testified that there were no certified crane operators in the CMSH Maintenance staff, there were insufficient employees who could weld and perform the electrical work and that because the tray line conveyor equipment was new, the CMSH Maintenance employees were insufficiently trained and they simply could not do the job.

Although the work was put out for bid prior to August 18, 2000 (*see* Management Exh. 4), Grewal testified that he made the Article 32 analysis in November 2000 — *i.e., after* the work was put out for bid.

The Union grieved the subcontracting of the work. Joint Exh. 2. The parties were unable to resolve the dispute and this proceeding followed.

III. DISCUSSION

A. The Merits

This is a contract dispute. The burden is therefore on the Union to demonstrate a violation of the Agreement. To the extent set forth below, the Union has met that burden.

First, the evidence shows that the installation of the new tray line conveyor system was just too large and complex to be efficiently performed by CMSH Maintenance employees. I have no doubt, as the Union argues, that the

CMSH Maintenance employees had the skills that would have allowed them to ultimately perform the work. But this was a big job and there was a deadline. Under a plain reading of Article 32, merely because the employees *could* have performed the work does not prohibit the Service from nevertheless subcontracting the work. With respect to subcontracting work, Article 32 only mandates that the Service "... will give *due consideration* to ... qualification of employees when evaluating the need to subcontract." Article 32 has other factors which require "due consideration" — *i.e.*, "... public interest, cost, efficiency, [and] availability of equipment ...." And, Maintenance Manager Grewal persuasively testified that there was a deadline to get the work done by Christmas 2001 and if CMSH Maintenance employees did the work rather than a contractor, there would have been a need to purchase tools, resultant high overtime, the need to hire temporary employees to keep the other machines running and the labor cost of having a contractor do the work was about $100,000 less than having the CMSH Maintenance employees perform the work. Taking the Service's evidence on its face, it would appear that the Union has not met its burden.

Second, but there is one *major* problem from the Service's standpoint. The work was put out for bid prior to August 18, 2000. *See* Management Exh. 4. Maintenance Manager Grewal testified that he did the Article 32 analysis in November 2000 — *i.e.*, *after* the work was put out for bid. Consistent with that finding is Engineer Williams' memo to Manager In-Plant Support Jack DiMaio listing what appears to be Article 32 considerations. But that memo is dated October 18, 2001 — again, after the work was put out for bid. Therefore, although the analysis by Grewal and Williams was ultimately correct, because

Grewal and Williams (and thus, the Service) did not do the analysis until *after* the work was put out for bid, the Service could not have known the results of that analysis "... *when* evaluating the need to subcontract" as required by Article 32.

What Grewal and Williams did was to justify the Service's decision after the fact. That is not what Article 32 requires. Article 32 mandates that the "due consideration" be given "... when evaluating the need to subcontract" and not after the decision to subcontract is made or after the work is put out for bid. If the Service could make a decision to subcontract without first giving "due consideration" to the factors specified in Article 32, and then only be required to justify its decision after the fact, Article 32 would be rendered meaningless. The word "when" in the phrase "when evaluating the need to subcontract" in Article 32 is defined as "at the time or in the event that". *The Random House Dictionary of the English Language* (2nd ed.). "When" does not mean "after" — it means what is says — "when". Here, the Union has shown that the Article 32 analysis was performed by the Service "after" the work was put out for bid and not "... when evaluating the need to subcontract". I therefore find that a violation of Article 32 has been shown.

B. The Service's Other Arguments

The Service's other well-framed arguments do not change the result.

First, the Service argues that "[t]he Article 32 ... [considerations] were never challenged in the grievance procedure ..." Service Brief at 4. I disagree. The Union raised Article 32 in the Step 2 appeal and obviously addressed the question at Step 3 as shown by the Step 3 denial by the Service which states "... the factors of Article 32 were considered." Joint Exh. 2. Clearly, the Serv-

ice knew what the Union was complaining about and was on notice that the Union was of the opinion that Article 32 had not been complied with. Specifically worded denials to affirmative defenses such as the type required in court pleadings from lawyers are not required in the handling of grievances by laymen.[1]

Second, the Service argues that "... also included in this process is the input and consideration of many individuals, not necessarily just one person." Service Brief at 2. I have no doubt that is accurate. But in its Step 3 denial, the Service stated (Joint Exh. 2):

> ... The Managers involved in making the decision to subcontract the subject work, Jack DiMaio and Surjit Grewal, contend that maintenance employees did not possess the technical abilities or necessary skills nor were tools and equipment available. Furthermore they found that they were not staffed for the project and could not have completed the

---

[1] *See How Arbitration Works* (BNA, 5th ed.), 329-330:

> Nor will a grievant be bound rigidly at the arbitration stage by an ineptly worded grievance statement, or one which gives an incorrect contractual basis for the claim or cites no contractual provision at all. Formal and concise pleadings are not required in arbitration. ...
>
> > Employees or their Union officers cannot be expected to draw their grievances artfully. If they have sufficiently apprised the Company of the nature of their complaint and if it is found that the Company has violated any portion of the contract, the employees, ... are entitled to relief.

See also, Interstate Brands Corp., 73 LA 771, 772 (Hamby, 1979) ("It is this Arbitrator's view that the parties understood the actual complaint represented by the grievance, although the grievance itself is imperfectly worded and cited an erroneous Article of the Labor Agreement."); *Black, Sivalls & Bryson, Inc.*, 42 LA 988, 991 (Abernathy, 1964) (although from a reading of the grievance, "one would be at considerable loss to know just what the grievance is all about ... the Company was not in fact in the dark or uninformed as to what this grievance was all about at the time it came to arbitration.").

> work within the time period required. Therefore, the factors of Article 32 were considered. ...

DiMaio did not testify. Grewal — one of "[t]he Managers involved in making the decision to subcontract the subject work ..." (*see* Joint Exh. 2) — testified that he made the Article 32 analysis *after* the work was put out for bid. Williams' October 19, 2001 memo to DiMaio supports that finding. "[M]any individuals" may have been involved in the decision to subcontract this big project as the Service contends, but there is no evidence that the critical Article 32 analysis — the "due consideration" requirement — was done by those involved "... *when* evaluating the need to subcontract" as required by Article 32 [emphasis added]. The demonstrated violation remains.

C. The Remedy

As a remedy, the Union requests that I should "... make the maintenance employees whole by compensating the maintenance employees for all hours worked by the contractors installing the tray transport system ...." Union Brief at 20. The Service argues that such a request is punitive, in part, because there is no evidence that there was actual harm to the employees. Service Brief at 4-5.

It has long been held that the function of a remedy is to restore the *status quo ante* and make adversely affected parties whole for a demonstrated

contract violation.[2] Further, in the formulation of remedies, arbitrators have a broad degree of discretion.[3]

Applying those considerations, the remedy in this case shall be as follows:

---

2 *See Wicker v. Hoppock*, 73 U.S. (6 Wall.) 94, 99 (1867)]:

> The general rule is, that when a wrong has been done, and the law gives a remedy, the compensation shall be equal to the injury. The latter is the standard by which the former is to be measured. The injured party is to be placed, as near as may be, in the situation he would have occupied if the wrong had not been committed.

3 *See United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597 (1960):

> When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency.

See also, Local 369 Bakery and Confectionery Workers International Union of America v. Cotton Baking Company, Inc., 514 F.2d 1235, 1237, *reh. denied*, 520 F.2d 943 (5th Cir. 1975), *cert. denied*, 423 U.S. 1055 and cases cited therein:

> In view of the variety and novelty of many labor-management disputes, reviewing courts must not unduly restrain an arbitrator's flexibility.

Additionally, *see Eastern Associated Coal Corp. v. United Mine Workers of America*, 531 U.S. 57, 62, 67 (2000) [citations omitted]:

> ... [C]ourts will set aside the arbitrator's interpretation of what their agreement means only in rare instances. ....
>
> * * *
>
> ... But both employer and union have agreed to entrust this remedial decision to an arbitrator, ...

Finally, *see* Hill and Sinicropi, *Remedies in Arbitration* (BNA, 2nd ed.), 62 ("... [M]ost arbitrators take the view that broad remedy power is implied ....").

First, the Union's broad request to pay the CMSH Maintenance employees for all hours worked by the contractor installing the tray line conveyor system cannot be granted. In the end, the evidence showed that when the Article 32 factors were considered, the subcontracting was justified.

Second, but there was a demonstrated and clear violation of Article 32 because the Service did not make the Article 32 due consideration analysis until after it put the work out for bid. Although the job was large and complex, could the CMSH Maintenance employees performed some of that work, thereby causing a reconfiguration of the bid? If the CMSH Maintenance employees could have performed some of the work given to the contractor's employees, then the CMSH Maintenance employees have been harmed by the demonstrated violation of Article 32 because they lost potential work opportunities. However, the evidence does not show that the Service even took that factor into account "when evaluating the need to subcontract" under Article 32. Perhaps that kind of consideration was done, but if it was considered, it was considered after the fact when Maintenance Manager Grewal and Engineer Williams did their Article 32 analysis after the work was put out for bid.

On the other side of the coin, perhaps there was no possible way for the CMSH Maintenance employees to perform any of the work done by the contractor's employees — *e.g.*, that no contractor would enter into an agreement with the Service to perform the work without using its own employees for most, if not all of the work. In that scenario, the actual harm to the CMSH Maintenance employees would be diminished.

The short answer to all of this is that I just don't know and it may be impossible to sort out precisely what harm has actually been suffered by the

CMSH employees that needs to be remedied so that they are "made whole". However, because the Service did not make the Article 32 analysis "when evaluating the need to subcontract", questions that remain must be resolved against the Service.

Thus, I find that the CMSH Maintenance employees have been harmed by the Service's violation of Article 32 in this case. By not following the mandates of Article 32, the Service deprived the CMSH Maintenance employees of the ability to perform the work (at worst) or to even be considered to be able perform the work (at least) as the process established by Article 32 requires. Thus, there has to be some type of remedy — one which I cannot quantify at this time.

The question of how to quantify that harm is therefore most difficult and, in the end, a precise remedy may be impossible to formulate. In the past, I have been faced with similar remedial problems between the parties and have remanded the remedial aspect of the case to the parties in the first instance to try and come up with a remedy on their own and, if they could not, to return to me and I would select one of the party's views of what the remedy should be. *See J98T-1J-C 01184386* (2006) at 10-11 quoting *J94T-1J-C 99039737* (2006) at 3:

> ... [I]n light of the difficulty of being able to precisely reconstruct the past to determine the exact amounts owed each employee, I [will] ... "baseball" any disputes which might arise under the ... [remedy]. Stated differently, ... the parties ... [are] to calculate the amounts due and discuss those calculations with each other and, should disputes arise concerning the amounts owed, I ... [will] require the parties to submit their last, best and final offers. I ... [will] then select the more reasonable offer and not engage in calculations different from those advanced by the parties. ...

That process forces the parties to be reasonable when they consider the remedy, knowing that an unreasonable offer will be rejected by me.

Given the discretion I have in the formulation of remedies, that remedial process appears to me to appropriate in this case. The matter is therefore remanded to the parties for a period of 60 days from the date of this award (or to a date agreed upon by the parties) to discuss a remedy to resolve this dispute. In the event the parties cannot agree upon a remedy, they may return this matter to me and I will select one of the party's final offers on the remedy which I feel is the most reasonable.

IV. AWARD

The grievance is sustained. The Service violated Article 32 of the Agreement when it did not "... give due consideration to public interest, cost, efficiency, availability of equipment and qualification of employees ..." until after the work for the installation of a new tray line conveyor system at CMSH was put out for bid. Article 32 requires such consideration be given "... *when* evaluating the need to subcontract", not *after* the work is put out for bid [emphasis added]. As a remedy, the matter is remanded to the parties for formulation of a remedy in accord with the procedure set forth in III(C) of this opinion.

Edwin H. Benn
Arbitrator

Dated: July 24, 2007

Hours of Type Inquiry

This is a list of "Hours Type Inquiry Report" for 20 weeks.

It shows a significant reduction of overtime hours

between

2008-04-2 and 2008-0501.

Hours Type Inquiry Report
New Brunswick, NJ VMF
January 1, 2008 thru May 8, 2008

YrPPWk	52, S/T	53, OT	043, POT	
2008-01-1	1011.42	219.52	0.00	
2008-01-2	1090.84	116.94	0.00	
2008-02-1	1526.57	148.22	0.39	
2008-02-2	1559.39	153.78	0.00	
2008-03-1	1401.24	137.72	0.00	
2008-03-2	1608.76	156.42	0.00	
2008-04-1	1523.19	147.71	0.00	
2008-04-2	1548.11	151.18	0.00	Reduction of overtime
2008-05-1	1033.92	10.43	0.00	2 204-B's
2008-05-2	1479.48	15.95	0.00	8 Hrs Mannifield In Trenton VMF
2008-06-1	1422.98	9.09	0.00	2 204-B's
2008-06-2	1386.44	7.30	0.00	3 204-B's
2008-07-1	1327.66	6.01	0.50	2 204-B's
2008-07-2	1311.60	6.02	0.00	2 204-B's
2008-08-1	1395.33	4.57	0.00	2-204-B's
2008-08-2	1480.80	21.39	0.00	3 204-B's
2008-09-1	1454.88	20.85	0.00	Mannifield 1.21 Trenton Travel Time NCED
2008-09-2	1417.45	8.68	0.00	2 204-B's
2008-10-1	1465.58	4.20	0.00	Mannifield .51 Trenton 1 204-B
2008-10-2	1477.69	7.69	0.00	204-B's

UNITED STATES POSTAL SERVICE

Report: TAC120R3 v1.10
YrPPWk: 2008-01-1
Fin. #: 33-5686

Restricted USPS T&A Information

NEW BRUNSWICK VMF
Hours Type Inquiry Report

User ID: BG2ZD0
Date: 05/14/08
Time: 12:04 PM
Page: 1

Sub-Unit: 0000
YrPPWk: 2008-01-1

Weekly

Selection:

Hours Code	Description
043	PENALTY OVERTIME
052	WORK HOURS
053	OVERTIME

Employee ID	Employee Last Name	FI	MI	D/A	RSC	043 Hours	052 Hours	053 Hours
01886931	LEE	R		15-1	P0	0.00	48.00	16.00
01754614	WAGNER	R	W	15-1	P0	0.00	24.00	8.00
01920589	SLAUSCIUS	B	M	15-1	P0	0.00	48.00	16.00
01904716	WOLFF	T	J	15-1	P0	0.00	24.00	0.00
01634521	ROBERTS	K	L	15-3	P0	0.00	31.68	4.62
01710807	SKINNER	R	C	15-3	P0	0.00	32.00	0.00
03605707	SLEDGE III	F	D	15-1	P0	0.00	32.00	0.00
01855683	PERRINO	C	X	15-1	P0	0.00	22.29	15.98
01813741	BEREZNEY	J	C	13-4	Q0	0.00	30.68	0.00
01863389	CRAIG	D	P	05-3	E0	0.00	27.00	0.00
01692253	YOUNG	V		15-3	P0	0.00	32.00	0.00
01828847	HESTER	F	W	15-1	P0	0.00	32.00	16.00
01713340	WILLIGES	W	H	15-1	P0	0.00	48.00	16.00
01548154	HILL-HOLMES	M		15-3	P0	0.00	6.00	6.00
01698948	MUENCH	C	W	15-1	P0	0.00	48.00	16.00
03595431	MANNIFIELD	J	H	15-1	P0	0.00	32.41	0.41
01697490	SCALETTI	R	R	13-4	Q0	0.00	22.00	0.00
03498409	CICERO	J	D	15-1	P0	0.00	31.00	0.00
01584311	ROMERO	T		15-1	P0	0.00	32.00	0.00
01749127	GEORGE	D	L	05-3	E0	0.00	16.00	0.00
01849946	CUEVAS	A		15-1	P0	0.00	60.01	28.01
01668937	ROMASCINDO	S		15-1	P0	0.00	40.00	8.00
01822343	JEVIC	M	G	15-1	P0	0.00	38.50	22.50
01744189	BARRE	B	F	15-1	P0	0.00	29.57	6.00
01528137	LAFAUCI	T	M	15-1	P0	0.00	43.50	16.00
01918689	HINTON	D	J	15-1	P0	0.00	16.00	0.00
01555767	WOLFF	T	J	15-3	P0	0.00	16.00	0.00
01536673	POWELL	T	E	05-3	E0	0.00	24.00	0.00
01661147	NOBILE	A	J	15-1	P0	0.00	40.00	16.00
01856663	FANUCCI	R	J	15-1	P0	0.00	23.78	0.00
03595437	CONRAD	R	A	15-1	P0	0.00	40.00	8.00
01777889	HOWATT	R	A	11-0	P0	0.00	13.00	0.00
01729753	PSUTY	S	P	15-1	P0	0.00	8.00	0.00

Sub-Unit: 0000 Weekly
YrPPWk: 2008-01-1

Selection:

Hours Code	Description
043	PENALTY OVERTIME
052	WORK HOURS
053	OVERTIME

Employee ID	Employee Last Name	FI	MI	D/A	RSC	043 Hours	052 Hours	053 Hours

Summary

	043 Hours	052 Hours	053 Hours
Total T&A Hours	0.00	1011.42	219.52
Total Borrowed	0.00	0.00	0.00
Total Finance Unit ID	0.00	1011.42	219.52

Total # of Employees with code 043 = 0
Total # of Employees with code 052 = 33
Total # of Employees with code 053 = 17

	043 Hours	052 Hours	053 Hours
Report Total T&A Hours	0.00	1011.42	219.52

Report Total # of Employees with code 043 = 0
Report Total # of Employees with code 052 = 33
Report Total # of Employees with code 053 = 17

Section 722.31C

See Section 722.31C about the use of Postal Service

Credit cards for the repair and maintenance

Of Postal Vehicles.

7 Supply Management

71 General

Supply Management is responsible for maximizing the Postal Service's use of supply chain management business practices, continually improving customer service, and reducing costs. This includes combining strategic and tactical buying and supplying processes and managing customer and supplier relations so that they further the business and competitive interests of the Postal Service. Supply Management is organized around a group of portfolios made up of category management centers (CMCs), an Operations organization focused on supply matters, and several strategic support organizations.

72 Purchasing

721 General

The *Purchasing Manual* (PM), issued and maintained by the vice president of Supply Management, establishes Postal Service policies and procedures for the purchasing aspects of supply management.

722 Local Buying Authority

722.1 General

Local buying authority is the right to buy and pay for day-to-day operational needs. Do not use local buying authority when sound fiscal management principles make another form of purchasing more advantageous to the Postal Service. These priority sources include satisfying operational needs from Postal Service excess, the Material Distribution Center (MDC), and mail equipment shops, or from servicewide or area contracts and ordering agreements. Many of these contracts are included in eBuy and their use is mandatory. To learn more about eBuy, visit the eBuy home page at *http://ebuy.usps.gov*. If you have questions regarding servicewide and area contracts, contact your servicing Purchasing Service Center (PSC), the appropriate CMC, or the National Materials Customer Service (NMCS) in Topeka at 800-332-0317.

722.2 Delegations of Authority

722.21 General

Delegations of local buying authority, per transaction (which may be redelegated as necessary) are shown below. All redelegations must be in writing.

Amount	Position	Commodity
$10,000	Officers/Vice Presidents	Supplies, Services, and Capital Equipment
$10,000	Plant Managers, Processing and Distribution	Supplies, Services, and Capital Equipment
$10,000	District Managers, Customer Services	Supplies, Services, and Capital Equipment
$10,000	PCES Postmasters, Supplies and Services	Supplies and Services
$10,000	Inspectors in Charge	Supplies and Services
$2,000	Postmasters, CAGs A–J, and Vehicle Managers	Supplies and Services
$1,000	Postmasters, CAGs K–L	Supplies and Services

722.22 Authority and Transaction Limit

Only individuals who are delegated local buying authority in writing may make local buys. Unauthorized local buys are subject to the procedures contained in Management Instruction AS-710-1999-2, *Unauthorized Contractual Commitments*. In addition, a single transaction may not exceed an individual's delegated authority. A single transaction may comprise the purchase of a single item or multiple items from a merchant, and is the total of the items being purchased.

722.23 Approval Authority

Information on requirements approval authority is contained in instructions updated and issued periodically by the vice president and controller, Finance. Direct your questions regarding this authority to that organization.

722.3 Prohibited and Restricted Purchases

722.31 Prohibited Purchases

Do not use local buying authority to obtain the following:

a. Building or land rental, lease, or purchase.

b. Construction services, including facility repairs and alterations (such as repair of elevators, HVAC, switch gear, and other plant systems) valued at $2,000 or more. Contact your Facilities Service Office (FSO) for assistance.

c. Services covered by the Service Contract Act when the requirement exceeds $2,500 per one-time expenditure or when an office estimates that a particular service provided by the same supplier will exceed $2,500 per year. Examples are ash, trash, and rubbish removal; snow and ice removal; lawn and grounds maintenance; vehicle washing, polishing, repair, and maintenance; maintenance of elevators, HVAC, and switch gear; window cleaning; and cloth and laundry service. Certain types of maintenance (e.g., calibration and repair of automated data and word processing equipment and office business machines) that are exempt from the Service Contract Act may be purchased from the manufacturer or supplier up to the limits of delegated buying authority. Contact the assigned PSC or applicable CMC for guidance.

Note: Do not use Postal Service credit cards to purchase vehicle washing, polishing, repair, and maintenance services. (Reference U.S. Bank/Voyager Fleet Card program.) For more information visit the Supply Management Web site at http://blue.usps.gov/purchase, click on Credit Card User, and then eFleet Card System.

d. Medical services. Contact the area medical director.

e. Mail transportation services.

f. Services or products for which more formal contracting procedures apply. Contact the appropriate Supply Management organization for information concerning contract postal units (CPUs), food services, and vehicle leasing. For CPUs, contact the Category Management Center (CMC) in Denver. For food services, contact the Eastern Services Category Management Center in Memphis. For long-term (89 days or longer) leasing of delivery and PVS vehicles, contact the Philadelphia CMC. For policies concerning all short-duration (less than 90 days) vehicle rentals, long-term delivery and PVS vehicle leasing, and GSA vehicle leases, refer to: *http://blue.usps.gov/purchase/supplies/sup_veh_leasing.htm.*

Note: Short-duration vehicle renting required for special events, administrative and delivery purposes, not exceeding 89 days in duration and under $10,000, is allowed under local buying authority and use of the I.M.P.A.C. purchase expense credit card for payment is authorized.

g. Professional/technical, consultant, or personal services. (Contact your servicing PSC or the Professional Services [CMC] and see the *Purchasing Manual,* sections 4.5.3 and 4.5.4).

h. The services of former Postal Service employees. (Contact your area Human Resources office, your servicing PSC, or the Professional Services CMC).

722.32 Restricted Purchases

Some goods and services are controlled by specific functional areas and may require prior special management approvals before they can be bought under local buying authority. These controls are communicated in manuals, handbooks, management instructions, and memorandums. Carefully review requests for restricted purchases to ensure that appropriate management

approvals have been obtained and other policy and procedural issues are addressed. The following list is not all-inclusive but provides some guidelines. (Also see section 722.42 for a discussion of purchases from Postal Service employees and their immediate family members.)

a. Capital equipment (equipment with a service life of over 1 year, costing $3,000 or more). You may purchase capital equipment only when authorized by officers, vice presidents, plant managers, and district managers and their direct reports (if delegated local buying authority). The Postal Service capital purchase card is the only local buying means of purchasing capital equipment. Always check for supplemental capital commitment policies issued by the vice president/controller prior to using the capital credit card.

b. Hazardous waste clean-up and disposal services. You may obtain these using local buying authority only under one of the following circumstances:

(1) Use of local buying has been approved by the area or district environmental coordinator in writing.

(2) means of placing delivery orders under a contract or agreement issued by a Supply Management organization. These records must be retained in accordance with federal regulations or contract requirements, whichever is longer. For additional information and guidance, contact the following source:

ENVIRONMENTAL AND MRO CMC
7800 N STEMMONS FREEWAY STE
DALLAS TX 75247-4223

TELEPHONE: 800-241-6927

c. Supplies containing hazardous substances. You may purchase these as approved in Handbook AS-553, *Hazardous Waste Management.*

d. Computer hardware and software. You may purchase these by using local buying authority, but you must check with Information Technology or area contracts and/or local policy governing the items being purchased.

e. Training/membership fees and dues. You may buy or pay for these by using local buying authority, subject to the requirements of *Employee and Labor Relations Manual* (ELM), chapter 7.

f. Employee awards. You may buy or pay for these by using local buying authority, subject to the requirements of ELM, subchapter 470. Also see Management Instruction FM-640-2000-1, *Employer Tax Reporting Responsibilities — Conference, Meeting, and Training Session Mementos or Gifts.*

g. Meals and refreshments. You may purchase these by using local buying authority, subject to the guidelines in Management Instruction FM-640-2001-4, *Payment for Meals and Refreshments.*

h. Employee personal events. The purchase and payment of flowers, gifts, and food or refreshments for the purpose of celebrating personal events, retirements, changes in work assignments, and holiday gatherings is generally prohibited. In most instances, these events are

not considered to be official Postal Service functions. Limited exceptions to this policy are covered in Management Instruction FM-640-2001-4, *Payment for Meals and Refreshments.* Any other requests for exceptions not covered by this policy must be approved by the responsible requesting officer with concurrence from the vice president/controller; or by the postmaster general, deputy postmaster general, or chief operating officer.

i. Electrically operated convenience items. Check with your maintenance or building services personnel before buying personal electrically operated convenience items. There are specific electrical and wiring codes and safety standards that must be met.

j. Printing, copying, and duplicating. Printing, copying, and duplicating policies and procedures are covered in subchapter 37. Before buying these types of products and services, be sure that all policies in this section are followed.

722.4 Standards of Ethical Conduct and Purchases from Postal Service Employees and Their Immediate Families

722.41 Standards of Ethical Conduct

The ethical standards published in part 2635 of Title 5, *Code of Federal Regulations,* and restated in the booklet *Standards of Ethical Conduct for Employees of the Executive Branch,* apply to all employees of the Postal Service. (This booklet is available from Human Resources offices and Law Department offices, and on the Internet at *www.usoge.gov.*) Employees who are delegated local buying authority may seek ethics advice by calling the Law Department's Ethics Helpline at 202-268-6346 or sending an e-mail message to "Ethics Help" (internal) or *ethicshelp@email.usps.gov* (external) or by telefax at 202-268-6279.

722.42 Purchases from Postal Service Employees and Their Immediate Family Members

Local buys may not be made from Postal Service employees, their immediate family members, or business organizations substantially owned or controlled by Postal Service employees or their immediate family members. *Postal Service employees* refers to all Postal Service officers and employees, whether in full-time, part-time, career, or noncareer positions, including specifically persons in temporary positions such as postmaster and rural carrier reliefs. *Immediate family members* refers to spouse, minor child or children, and individuals related to an employee by blood and who are residents of the employee's household.

722.5 Questionable Purchases and Misuse

The appropriate authority must review and approve all local buys. See Handbook AS-709, *Credit Card Policies and Procedures for Local Buying,* regarding actions to take when a purchase is deemed questionable or misuse is suspected.

722.6 Procedures

722.61 General

Local buys may be made only under the following conditions:

a. By employees delegated local buying authority in writing.

b. When requirements cannot be satisfied by other priority sources, including Postal Service excess and eBuy (see section 722.1 for additional information).

c. With a properly approved purchase request. All employees who have Web access must use eBuy for all requisitions in lieu of a hard copy PS Form 7381, *Requisition for Supplies, Services, or Equipment.*

d. At the best value for the Postal Service. Best value is obtained by evaluating the price, quality, and any other factors necessary to meet the requester's needs. When prices and other factors are equal, rotate your buys among different merchants when making recurring purchases.

722.62 Competition and Supplier Identification

Local buys are not subject to the same regulations as contracts. However, when doing so is cost-effective, solicit suppliers, including small, minority-, and woman-owned businesses, and compare prices before making a local buy. Contact the assigned PSC or area diversity development specialist for sourcing assistance or see section 333.42 of Handbook AS-709 for guidance on identifying local small, minority-, and woman-owned business suppliers.

722.63 Payment

722.631 General

The approved payment method hierarchy is as follows:

a. Electronic data interchange (EDI) via eBuy.

b. I.M.P.A.C. credit cards.

c. Payment by the ASC through PS Form 8230, *Authorization for Payment.*

d. No-fee money order (one-time emergency only, up to $500).

e. Cash (one-time emergency only, up to $100).

f. Imprest fund check.

When operational needs cannot be satisfied through eBuy or other consolidated payment processes approved by Finance, the I.M.P.A.C. credit card serves as the primary means of buying and paying for day-to-day operational needs under local buying authority.

For noncapital items, when you cannot use eBuy, consolidated payment processes, or the I.M.P.A.C. card, you may pay by any of the following methods (preference is listed in descending order):

a. Submitting the invoice with PS Form 8230, *Authorization for Payment,* to the Scanning and Imaging Center.

b. No-fee money orders (for one-time emergency payments less than $500).

c. Cash (for one-time emergency payments less than $100). If payment must be made from the imprest fund, see Handbook F-19, *Accountability of Disbursing Officers*. If a cash-fixed credit is used, see Handbook F-1, *Post Office Accounting Procedures*.

d. Imprest fund check (if less than $2,000).

For more information on these means of payment see Handbook F-1 and other related finance documents.

722.632 **Advance Payment**

Do not make advance payment under local buying authority, except as described in Management Instruction FM-610-96-1, *Advance Payments*, and Handbook AS-709, *Credit Card Policies and Procedures for Local Buying*.

722.64 Documentation and Reconciliation

In accordance with applicable policies and procedures, maintain appropriate documentation to reconcile all local buys. Reconciliation requires verifying that the item or service ordered was received and paid at the agreed upon price. You must retain proper documentation (electronic or hard copy) to support this reconciliation process. This typically includes sales and credit receipts, delivery tickets or packing slips, buying logs, capital property records, dispute documentation, and payment records. When capital property is bought with the Postal Service capital purchase card, you must complete PS Form 8162, *Capital Property Record,* and forward it to the San Mateo ASC. Document retention requirements are available in AS-709, *Credit Card Policies and Procedures for Local Buying;* AS-701, *Material Management*; and Handbook AS-305, *Records Control* and, when applicable, in *Material Logistics Bulletins* (MLBs).

722.65 Assistance

Contact the assigned PSC, or the Topeka NMCS for guidance on local buying authority or the Postal Service purchase card program. Direct questions about approval authority or non-credit card payment methods to district Finance.

722.7 Cleaning Services Valued at less than $10,000

Local agreements for janitorial services up to $10,000 a year may be made utilizing a self-employed individual. If the agreement will be for longer than 1 year, PS Form 7355, *Cleaning Agreement,* is used, and a one-page payment agreement is made directly with the St. Louis ASC. If the agreement is for a shorter period, PS Form 8230 is used and a copy of the form and the original invoice are sent to the Scanning and Invoice Center, PO Box 9000, Sioux Falls, SD, 57117-9000, which processes the form and invoice for payment by the relevant ASC.

73 Supply Management Operations

731 Policy Authority

731.1 Vice President, Supply Management

The vice president of Supply Management is responsible for establishing and maintaining national material management policies, programs, and procedures issued in this subchapter; Handbook AS-701, *Material Management;* and other Headquarters purchasing and materials directives.

731.2 Manager, Supply Management Operations

The manager of Supply Management Operations develops the following:

a. Policies and procedures for controlling and managing Postal Service supplies, equipment, parts, and inventories listed under 39 CFR 226.2 and Handbook AS-701.

b. Postal Service warehousing, freight transportation, and distribution policies and procedures, which are in 39 CFR 226.2 and Handbook AS-701.

c. Fiscal policy and maintains fiscal responsibility of the Supply Management Operations budget activities.

732 Other Responsibilities

732.1 Managers, Materials Service Centers

The managers of Material Service Centers (MSC) provide technical guidance and support to the district, Headquarters field units, and other field material management personnel in their respective geographic areas. They also perform the following material management functions:

a. Provide support to systems implementation.

b. Perform customer assistance visits.

c. Monitor and provide guidance on the Excess Item Catalog (EIC) in eBuy.

d. Manage data gathering, reporting, and analysis for performance measurement.

e. Provide employee development training in material management functions.

732.2 District Material Management Specialists

District material management specialists implement material management policies and procedures in customer service offices, processing and distribution plants, stations, branches, and Post Offices within their respective geographic areas.

732.3 Material Accountability Officers

All facility and activity managers have material accountability for all assets within their facility. As such, they are designated as material accountability officers responsible for the security and proper use of Postal Service property under their jurisdiction. This authority may be delegated, in writing, to other Postal Service employees, but the responsibility remains with the manager.

732.4 Postal Service Managers and Supervisors

Postal Service managers and supervisors at all levels must actively support and promote the Postal Service material management program. Although technical direction and coordination of material management flows from Supply Management Operations, implementation of all material management matters is vested in those with material management responsibility at each facility and level.

732.5 Postal Service Employees

All Postal Service employees must protect and maintain Postal Service material. This individual responsibility applies to material for which the employee has direct functional responsibility and includes all Postal Service property.

733 Policy

733.1 Purpose and Scope

Material management is the process of directing and controlling personnel or procedures to accomplish the organizational objectives of providing quality supplies, parts, and equipment in a responsive, cost-effective manner through requirements development, acquisition or repair, property control and disposal, warehousing, distribution, and transportation.

In this context, *material* refers to all Postal Service-owned material, other than buildings, real estate, mail transport equipment, and mail movement vehicles (i.e., all supplies, repair parts, administrative vehicles, and equipment). Thus, the objective of material management is to provide materials to all Postal Service elements when they are needed and at the lowest total costs of ownership (TCO). Implementation of the material management aspects of Supply Management policy (i.e., business processes and procedures) is found in Handbook AS-701. The functions of Supply Management Operations are also described in this chapter.

733.2 Safety and Security

733.21 General

Sound and efficient material management involves protecting personnel safety and health and Postal Service property. Two other major prerequisites are good housekeeping and fire prevention practices. See the *Employee and Labor Relations Manual;* Handbook EL-801, *Supervisor's Safety Handbook;* and current management instructions on these subjects.

The safety and security of most items depends on proper storage and handling. Protect material against deterioration caused by temperature extremes, humidity, dust, insects, pests, and other natural phenomena. Conduct periodic inspections to detect deterioration and ensure that proper safety and security measures, including sound care and preservation practices, are being enforced.

733.22 Safety

733.221 General

A safety program must be developed and supported at all levels to control hazardous acts and to eliminate unsafe conditions. Identify and correct unsafe practices and conditions before they cause accidents.

733.222 Hazardous Commodities

Hazardous commodities, such as grease, paints, oils, thinners, kerosene, and other flammable liquids, require special handling and storage. Make adequate provisions to handle and store these items following Occupational Safety and Health Administration (OSHA) standards and Postal Service regulations. Material Data Safety Sheets (MDSS) are available at *www.msdssearch.com*.

733.23 Security

Enforcement of good security practices is essential to an efficient and economical operation. All material management operations must follow the security instructions in Handbook EL-801, *Supervisor's Safety Handbook.*

733.24 Specialized Security Devices

The Mail Equipment Shops (MES) are the sole authorized source for Post Office box locks and keys and high-security locks used in mail transport. Questions regarding orders for these devices should be directed to the National Material Customer Service Center in Topeka.

733.3 Asset Management and Investment Recovery

733.31 Asset Management

733.311 Accountability

The user is responsible for the safe and proper use of assigned Postal Service-owned supplies and equipment. Part 732 lists formal accountability assignment and procedures.

733.312 Asset Tracking

The Postal Service does not try to track all supplies and equipment in use at any one time because this is too complex; however, the following are tracked:

a. Capital equipment (over $3,000) and selected sensitive items. These items are tracked by the Property and Equipment Accounting System (PEAS). PEAS procedures and guidelines can be found in Handbooks AS-701, *Material Management;* and F-8, *General Classification of Accounts.* Assets that are no longer required at a specific Postal

Service site are tracked via the Excess Item Catalog in eBuy (see section 733.322).

b. Repairable and warranted parts using Handbook AS-701 procedures.

733.313 **Maintenance**

Maintenance policies and procedures are coordinated with Supply Management Operations and can be found in subchapter 53, Chapter 7 of the *Postal Operations Manual* (POM), and the F-66 Investment Policies and Procedures series of handbooks.

733.32 Investment Recovery

733.321 **General**

Investment recovery is a systematic, centralized organization effort to manage excess equipment or material and scrap recovery, marketing, and disposition activities in a manner that recovers as much of the original capital investment as possible.

733.322 **Purpose and Value**

It is critical for the Postal Service to execute an effective and efficient Investment Recovery Plan for the products and supplies it acquires. A well-managed plan will complement the profit margin that is achieved in the up-front process of the Supply Chain Management (SCM) plan. By maximizing the return on these assets after they become excess, the Postal Service can realize significant cost savings and additional revenue and avoid costs, while providing for environmentally safe disposal. Information is available at blue.*usps.gov/purchase/operations/ops_recovery_home.htm.*

Investment recovery can be accomplished by increasing the visibility of available assets, avoiding the costs of purchasing new material, and a reducing storage and holding costs of inactive assets. Investment recovery includes recycling programs, hazardous material programs, obsolete equipment disposition, asset recovery, excess inventory, recalls, salvage, seasonal inventory, and acquisition planning.

733.323 **The Role of Suppliers**

Postal Service suppliers can provide contract-specific investment recovery processes and procedures to include environmental issues and laws, and ensure the plan takes an approach which measures and attempts to minimize the ecological impact of Postal Service activities. They can also help ensure that any product or supplies decomposition, recycling, and material disposal methods used are consistent with environmental requirements. SCM teams must add end-of-life considerations into all material acquisition plans and work with suppliers to identify ways to reduce the amount of assets needing disposal (e.g., by using modularity or take-back options when initially acquiring and upgrading equipment).

733.324 **Life Cycle Requirements**

Effective and efficient investment recovery starts during the conceptual planning phase. All requiring offices must consider materials to be used and their potential environmental impact during use, repair, and eventual disposition. Planning documentation and budgets must reflect this.

Disposition of the replaced supplies or equipment must also be included in the planning and budgetary actions. Through its market research and partnerships with high-quality suppliers, the SCM team will provide suggestions and alternatives to reduce concerns and obtain the best TCO.

733.325 Excess Reporting

Material no longer required for a Postal Service activity is considered excess. Serviceable material should be reported in the EIC portion of eBuy for possible reutilization within the Postal Service. Non-serviceable material should be reported to the local material management specialist or responsible MSC for disposition assistance. See Handbook AS-701 for specific processes and reporting requirements.

733.326 Surplus

Material exceeding the Postal Service's foreseeable needs is considered surplus. While the Postal Service strives to eliminate or minimize sending materials to landfills, this is not always achievable today. Therefore, the Postal Service has identified and used several processes that can minimize environmental impact. Handbook AS-701 lists disposal processes and reporting requirements.

733.4 Transportation

733.41 General

Transportation costs are often "hidden" (i.e., they are often buried in the cost of the product itself). However, transportation and distribution can represent significant costs that can be reduced by analyzing and selecting the best TCO means. Therefore, Postal Service policy is as follows:

a. Postal services or transportation are the primary means of moving material unless precluded because of the nature of the product (such as hazardous material) or the material is needed urgently.

b. When necessary and cost-effective, assigned carriers are used to move material of Free on Board (F.O.B.) origin using the Postal Service's purchasing power to obtain best prices and services. At other times, suppliers may arrange transportation and retain material custody until delivery at the using site (F.O.B. destination).

733.42 Resources

The Freight Traffic Management System (FTMS) provides an automated means for Headquarters and field users to access available carriers and prices and to arrange for the actual transportation. Handbook AS-701 provides specific instructions on how to get access to and use FTMS. In addition, the Non-Mail Freight Transportation Team under Supplies Material Management will provide transportation planning, coordinate co-utilization opportunities with Mail Transportation, and provide comparative evaluation assistance to major programs and initiatives. This team can also help implement and manage approved plans.

733.5 Inventory Positioning

Inventories are an essential part of doing business. The Postal Service uses a variety of decision-making systems and appropriate processes to determine where to place inventory and in what quantity to maximize operating efficiencies and service while minimizing total costs. There are also opportunities to accomplish this using a combination of internal and supplier resources. Handbook AS-701 provides the processes and procedures to order, track, accept delivery, and account for needed material.

733.6 Stockroom/Warehouse Management

Supply Management Operations Production and Distribution must approve requirements before warehouse facilities are leased or rented from contractors for the storage of supplies, repair parts, or equipment held in Postal Service inventories anywhere in the Postal Service distribution system. This ensures that space is used to the fullest extent (see Handbook AS-701 for reporting procedures).

Managers must plan and lay out all warehouse and storage space to support the receiving, storing, and packing of material; planning for shipment; and for performing the administrative functions necessary for smooth, quick, and cost-effective material handling (see Handbook AS-701).

734 Organization Overview

The Supply Management Operations process consists of the management, movement, and disposal of all Postal Service supplies, repair parts, equipment and related services. It includes production capabilities for specialized printing, Post Office locks and keys, and high-security mail locks. Handbook AS-701 contains detailed responsibilities and processes of Supply Management Operation's organization.

The following are Supply Management Operations' major activities:

a. National Supply Management programs.

b. Production and distribution.

c. Capital equipment material management.

d. Supplies material management.

734.1 National Supply Management Programs

National Supply Management Programs has the following responsibilities:

734.11 Customer/Supplier Relations does the following:

a. Enters routine and emergency orders.

b. Operates call center.

c. Manages customer feedback (complaint resolution and reporting and survey preparation and analysis).

d. Maintain Supply Management Operations Web page.

e. Maintains customer address database (i.e., FEDSTRIPS, We Deliver, and LPC customer addresses).

f. Acts as a field liaison for Supply Management Operations activities.

g. Sponsors and operates Customer Councils.

h. Coordinates Material Logistics Bulletins and Repair Parts Bulletins.

i. Collects and analyzes data.

734.12 MSC does the following:

a. Represent supply chain management field relations.

b. Provides field inventory management assistance.

c. Provides freight transportation assistance/FTMS.

d. Manages investment recovery.

e. Manages storage space for assigned geographic areas.

f. Provides distribution services.

g. Provides property accountability assistance.

734.13 National Program Support does the following:

a. Manages national credit card program (I.M.P.A.C.).

b. Acts as liaison for eBuy implementation.

c. Provides new program support (statement of work/decision analysis report (SOW/DAR) review, new program evaluations, inventory positioning, investment recovery plans, policies, and procedures).

734.2 Production and Distribution

Production and Distribution (P and D) does the following:

a. Ensures order fulfillment.

b. Arranges material distribution.

c. Achieves and sustains service-level agreements for delivery time and inventory accuracy.

d. Provides and operates warehousing and distribution facilities and services.

e. Oversees asset accountability.

f. Oversees electronic ordering interfaces.

g. Helps resolve due-in discrepancies.

h. Identifies and coordinates special distributions.

i. Provides notice of delivery of large shipments.

j. Coordinates changes in issue increment and unit of measure.

k. Serves as Contracting Officer Representative for contract storage, packaging, and services contracts.

l. Provides shipping alternatives.

In addition, P and D oversees the following four operations that support specialized requirements for the entire Postal Service:

a. Mail Equipment Shops, which provides expertise on keys and locks.

b. Label Print Center, which provides manufacturing expertise on labels and other printed material.

c. MDC, which:

(1) Receives and ships material.

(2) Coordinates repackaging.

(3) Provides support for special projects.

(4) Processes warehouse requests.

(5) Conducts disposals.

(6) Reviews SOWs for warehousing and distribution requirements.

(7) Performs special distribution functions (kitting).

d. Critical Parts Center, which:

(1) Provides expedited delivery of critical parts.

(2) Processes repairable items.

(3) Interacts with contract repair facilities.

(4) Provides shipping alternatives.

734.3 Capital Equipment Material Management and Supplies Material Management

734.31 General

Capital Equipment Material Management and Supply Management support Supply Management Category Teams and Category Management Centers. While supporting different Portfolio organizations, the two offices have the following similar responsibilities:

a. Understanding basic support policies.

b. Performing strategic planning and demand management for new systems.

c. Understanding budgetary analysis to support funding requirements.

d. Providing input to DAR.

e. Providing input to SOW.

f. Planning and provisioning requirements.

g. Determining the range and depth of spares.

h. Directing and controlling all phases of material support.

i. Managing material requirements for optimum availability.

j. Supporting operational systems and sites.

k. Recommending management of customer inventory of spares.

l. Analyzing and approving return authorizations.

m. Developing and analyzing material support plans.

n. Screening requisitions.

o. Supporting the end of life-cycle issues (i.e., disposals).

734.32 Cataloging

In addition, Cataloging does the following:

a. Provides technical data support/cataloging functions.

b. Assigns stock numbers.

c. Reviews purchase requests for technical data requirements solicitation.

d. Acts as liaison with engineering on technical issues.

e. Publishes Publication 112, *National Electronic Catalog,* and Publication 247, *Supply and Equipment Catalog Supply Price List.*

Regional Level Award A00V-4A-C06126017

by Arbitrator Michael J. Pecklers, Esq.

This case involved the shuttling of vehicles historically done by the Trenton mechanics.

As you know, there is an ongoing hassle with shuttling in too many places in the American Postal Workers Union

Hopefully, this case may help you in any case you are prepping for on the same issue.

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	GRIEVANT:	Class
between	POST OFFICE:	Trenton VMF
UNITED STATES POSTAL SERVICE	USPS CASE NO.	A00V-4A-C 06126017
and	APWU CASE NO.	TNJ06062V
AMERICAN POSTAL WORKERS UNION, AFL-CIO		

BEFORE: Michael J. Pecklers, Esq., Arbitrator

APPEARANCES:

For the U.S. P.S.:	Gwendolyn DuPree, Labor Relations Specialist
For the A.P.W.U.:	Russ Knepp, National Business Agent
Place of Hearing:	Trenton, New Jersey
Date of Hearing:	March 7, 2007
Record Closed:	March 14, 2007
Date of Award:	April 10, 2007
Relevant Contract Provisions:	(Articles 3; 5; 19; 39)
Contract Year:	2000 – 2006
Type of Grievance:	Contract (Shuttle Work)

AWARD SUMMARY

The grievance is arbitrable. And for the reasons expressed in greater detail in the body of this opinion and award the grievance is sustained. The APWU has established by a preponderance of the credible evidence, that the Postal Service violated Article 5 regarding the shuttling of vehicles for the installation of cameras. The case is therefore remanded for remedy discussions, as detailed within.

Dated: April 10, 2007

MICHAEL J. PECKLERS, ESQ., ARBITRATOR

IN THE MATTER OF THE ARBITRATION	)
	) GRIEVANT : Class
between	) POST OFFICE: Trenton VMF
	) USPS CASE # A00V4AC06126017
UNITED STATES POSTAL SERVICE	) APWU CASE # TNJ06062V
	)
and	)
	) **OPINION & AWARD**
AMERICAN POSTAL WORKERS UNION AFL-CIO	)
	)

ARBITRATOR: Michael J. Pecklers, Esq.

APPEARANCES:

For the Postal Service:

Gwendolyn DuPree, Labor Relations Specialist
Keith L. Reid, Esq., Manager Labor Relations/TA
Carl Sauerborn, Manager Trenton VMF
Ron Rutkowski, Manager VM Central New Jersey

For the Union:

Russ Knepp, National Business Agent
Tom LaFauci, Witness/TA
Mike Strano, MVS Director Trenton
Elena White, APWU/TMAL

BACKGROUND OF THE CASE

The instant case arises at the Trenton VMF, and pertains to the shuttling of vehicles to the Kilmer VMF, for the installation of rear mounted safety cameras by a subcontractor. The subcontracting decision undertaken by the United States Postal Service was memorialized in an April 7, 2006 letter from VMF Manager Carl Sauerborn to the TMAL APWU President. This provided in whole:

> [i]n accordance with Article 32 of the Agreement between the US Postal Service and the APWU, this letter serves to inform TMAL APWU of the Central NJ's VMF's due consideration of public interest, cost, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract.

The Central NJ VMFs have decided to optimize and consolidate the installations of the rear vision cameras at the Kilmer VMF through a Vehicles Category Management Center (CMC) supply chain management initiative. A Vehicle Maintenance Repair Agreement (VMRA) for the initial installation/retrofitting of rear vision cameras has been awarded to JMNC Safety Corp. This contractor specializes in the installations of this type of equipment and has the trained personnel with appropriate security clearances complying with Inspection Service guidelines. Contract # 1 DVPMS-06-B-0 has been awarded through the Vehicle CMC.

The public interest demands we find ways to control cost, maintain, and improve service in a secure manner while focusing on the core function of the Post Office's VMFs; which is to provide a safe, reliable vehicle through an operationally efficient fleet management program. This fleet management program includes Preventive Maintenance Inspections (PMIs) and the mechanical repair of the USPS vehicle fleet while supporting the delivery of mail throughout the nation.

To install the rear vision cameras using highly skilled USPS employees (automotive technicians) detracts from time spent actually performing PMIs and other mechanical repairs of the vehicle fleet. At the end of last month (March 06), the Trenton VMF had 115 vehicles that were late, or past due, for their scheduled maintenance. Additionally, VMF technicians have been, and are being offered the opportunity to work overtime (on a volunteer basis). APWU employees will continue to be utilized to perform (PMIs) and the mechanical repair of the USPS vehicle fleet. As such, this one time subcontracting of the initial installation of rear vision cameras on the thirty 151 series 2 ton vehicles in the Trenton VMF's fleet will not have a significant effect on the bargaining unit work at the Trenton NJ VMF.

The NY Metro Area has directed that these rear vision cameras, which are a safety enhancement designed to reduce vehicle accidents, be operational no later than April 17, 2006. Contracting the install[ation] of the rear vision cameras to a vendor with personnel specifically trained to perform this type of electronics installation is the only possible way to attempt to meet this deadline, while permitting VMF technicians to be utilized for their core function to maintain/repair the Postal vehicles in a safe, reliable condition.

Even if VMF technicians were available to perform the installation in the timeframe required, review of a prior installation of a rear vision camera system at a VMF showed that it was more efficient to utilize a contractor that specializes in this type of work to perform the installations than using VMF techs.

The APWU initiated the grievance in this matter at Step 1 on April 20, 2006, with the Union alleging that the Postal Service violated the award of Arbitrator Torres when Kilmer VMF employees shuttled Postal vehicles to/from the Kilmer VMF in support of this safety project contract to purchase and install rear view vision cameras in the 2001 2-ton vehicles. In denying the grievance, the Postal Service demurred that the Torres award dealt with the shuttling of vehicles for maintenance or repair, and that this was a safety project in both the employees' and the public interest. *See*, PS Form 2608, Exhibit J-4 at page 7.

On April 26, 2006, the APWU perfected its STEP 2 GRIEVANCE APPEAL FORM in the case. *Id.*, at page 5. This alleged *inter* alia violations of Articles 5, 7, 15, 19 & 39 of the National Agreement and argued that:

> [o]n or about Friday, April 7, 2006 VMF management unilaterally started a daily shuttle by utilizing non Trenton, NJ VMF employees to shuttle vehicles that are normally assigned to the Trenton, NJ VMF to the Kilmer VMF so that a contractor could install a rear vision camera on the 152 series 2-ton vehicles. In accordance with manager Carl Sauerborne's letter dated April 7, 2006 received by the Union on April 12, 2006 there are 30 of these vehicles. It takes approximately two hours round trip to complete the shuttle with paperwork. This work has always been done by the APWU Bargaining Unit Trenton, NJ VMF employees. The Union was never notified until after the violation had already begun. This action violates Ms. Torres' decision in Arbitration A94V-4A-C 69047032 TNJ 96-022V.

The parties met to argue their respective positions at Step 2 on May 12, 2006, at which time documents were also exchanged. *Id.*, at page 6. Thereafter on May 23, 2006, the Union executed its STEP 3 GRIEVANCE APPEAL FORM, without a Step 2 Answer being received from Management. The Union substantially reiterated its arguments made below, and went on to argue that the 2608 was completed by Mr. Sauerborn, who did not do the Step 1. *Id.*, at page 4. In conjunction with an August 9, 2006 ARBITRATION, DIRECT APPEAL & STEP 3 REVIEW, the parties then agreed to arbitrate the dispute. *Id.*, at page 2.

Then, on September 22, 2006, the Union appealed the matter to arbitration,

pursuant to Article 15, Sections 2 and 4 of the National Agreement. *Id.,* at page 1. Upon the case's assignment to the Regular Panel, I was appointed to act as Arbitrator. A hearing was held on March 7, 2007, in Trenton, New Jersey, at the headquarters of the APWU Trenton Metro Area Local, and proceeded before in orderly manner. At the time, the parties were provided with a full opportunity for oral argument; for the presentation of relevant documentary evidence; and for the examination and cross-examination of witnesses. The witnesses were sworn or affirmed before testifying.

No post-hearing briefs were filed, however the record was held open until March 12th, to permit Mr. Reid to submit a National award. The record was closed on March 14, 2007, when no award was received. In reaching the within award, I have thoroughly reviewed all evidence of record, and carefully considered the respective arguments as well as the award of Arbitrator Torres in United States Postal Service and American Postal Workers Union, Case No. A94V-4A-C 96047032/TNJ 96022V (Torres, 1998). This award is issued in compliance with the thirty (30) day time period prescribed by Article 15 of the National Agreement, and as provided for in my contract with the parties.

ISSUES AS FRAMED

1) *Is the grievance arbitrable?*

2) *Did the Postal Service violate the CBA regarding the shuttling of vehicles for the installation of the cameras, and if so, what shall be the remedy?*

RELEVANT CONTRACT LANGUAGE [Exhibit J-1]

* * * *

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:

* * * *

C. To maintain the efficiency of the operation entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted;

* * * *

ARTICLE 5
PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8 (d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

* * * *

ARTICLE 19
HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions. ****

* * * *

ARTICLE 39
MOTOR VEHICLE CRAFT

* * * *

[*emphasis added in original*].

CONTENTIONS OF THE PARTIES

The United States Postal Service

The Postal Service relies upon parallel arguments made in the first case heard this date. It emphasizes that under the VMO, installation of the cameras would only have properly been done at the Trenton VMF if it was during the regularly scheduled preventive maintenance on the vehicles or "PMI." Management believes that the Union knows this is true, and submits that nothing in the moving papers has the Union taking a position that a PMI was done on the vehicles either right before or after the retrofit. A position was also not taken by the Union that an improper management official made the decision.

The Postal Service argues that based upon the clear language of Exhibit J-3, the initial subcontracting grievance is not arbitrable, as I do not have jurisdiction to reach the merits of the case. On this basis, the Postal Service concludes that if the Union had no jurisdiction to do the modification, then it had no jurisdiction over the shuttling work. By reference to Exhibit M-3, the Postal Service maintains that it has been clear since at least 1973, that Management must consider five (5) factors in a subcontracting case, and discusses the same.

Management goes on to recall the testimony of Mr. LaFauci, concerning the question of whether it was a violation of the National Agreement concerning Kilmer, to have its employees performing the shuttle function. And after confirming its understanding that Mr. LaFauci took the position that it was not a violation within his facility, the Postal Service asks rhetorically, if a contract is a contract, how can there be a violation in the Trenton VMF, and not at the Kilmer VMF. The Union is further accused of inflating the time to shuttle a vehicle, and submitting inaccurate figures.

In conclusion, the Postal Service urges that if the grievance in the first case is sustained and the craft did the modification, then there would have been no shuttle to Kilmer. Sustaining the second grievance as well would then be an

improper windfall. As to the *Torres* award, the Postal Service acknowledges that in that case the Union did the shuttle work. It recalls, however, that Mr. LaFauci did not think that it was a violation to have his people do the work. Upon these arguments, the Postal Service requests that the grievance be found not to be arbitrable and dismissed, or denied in the event that the merits are reached.

The American Postal Workers' Union

The Union clarifies that Mr. LaFauci testified that there was no problem with his bargaining unit at Kilmer, and offers the common sense explanation that a local APWU officer can't file a grievance outside his own installation. Summarizing his unrebutted testimony, the Union reasons that he has a lot of experience. It goes on to recognize his testimony that much of the shuttle work was done on overtime, and allows that somebody decided this was a safety thing, that the cameras had to be done now.

The Union credits the testimony of Mr. Strano, who discussed the variable costs associated with: getting the truck keys; making sure no personal items were in the truck; and occasionally removing mail. The APWU questions the efficiency of such an arrangement, as they drove these trucks all over the world. The work was then done right on Postal property. The Union likewise accuses Management of having Kilmer employees perform the shuttles, when it knew Trenton should have done them under *Torres.* In the Union's view, that award, if nothing else, shows a clear past practice of shuttling being done within Trenton.

In conclusion, the Union explains that scheduled maintenance is not the only work performed by unit members at the Trenton VMF. They do road calls to pick up wrecks, as well as other things. Upon the foregoing arguments, the Union prays that the grievance be sustained, and that the relief sought at Step 2 of the grievance process be ordered.

STATEMENT OF THE CASE

The American Postal Workers Union, AFL-CIO ("the APWU" or "the Union") and the United States Postal Service ("the Postal Service" or "Management") are signatories to a National Agreement, which has been entered into evidence herein as Exhibit J-1. The instant grievance has been brought pursuant to the same. The moving papers appear at Exhibit J-4. Before reaching the merits of the case, a threshold consideration raised by the Postal Service must be addressed. This argument is premised upon its belief that the subcontracting case is not arbitrable, because the VMO provides that the VMF can be used for installation purposes only if the installation is done in conjunction with the vehicle's normally scheduled PMI.

I have previously dismissed that grievance on those narrow grounds. *See,* United States Postal Service and American Postal Workers Union, Case No. A00V-4A-C 06126031/TNJ06063V (Pecklers, 2007). Management urges that under such a scenario, the instant grievance must be treated in similar summary fashion. The rationale for this assertion, is the Postal Service's belief that the craft cannot have jurisdiction over the shuttling, if it does not have jurisdiction over the work. Management's argument certainly has surface appeal. However, in light of the fact that a prior Regular Panel Regional award by Arbitrator Torres at this installation found that a past practice of motor vehicle craft members performing shuttling work existed in the instance of subcontracting, I find that the camera installation issue is severable from the shuttling issue. *See,* United States Postal Service and American Postal Workers Union, Case No. A94V-4A-C 96047032/TNJ 96022V (Torres, 1998). The grievance is therefore arbitrable.

The subject matter of the dispute relates to a matter of contract interpretation. The Union accordingly bears the preliminary burden of making a *prima facie* showing of a contractual violation by a preponderance of the credible evidence. The burden will then shift to the Postal Service to attempt to establish its affirmative defenses. After careful analysis of the record evidence, and consid-

eration of all arguments offered, I find that the grievance must be sustained, as the Union's prima facie showing has gone unrebutted.

The facts of this case are simple and undisputed. JMNC Safety Corp. of Nanuet, New York was awarded a subcontract in the amount of $78,450, for the installation of rear vision cameras in the remaining 2001 2-ton fleet in six (6) districts in the New York Metro area. In the case before me, Trenton VMF employees were utilized to bring the vehicles in question from the stations to the Trenton VMF. Kilmer VMF employees were then utilized to shuttle the trucks to the Kilmer VMF where the retrofit was performed and then back to Trenton. The PS Form 2608 at page 7 of Exhibit J-4 (which I have accepted as an internal Management document as discussed in the prior subcontracting case) confirms that this was a Management decision per Article 3, based upon a backlog of PMIs at Trenton, and none at Kilmer. As to the application of *Torres*, the Postal Service distinguished it from the instant fact pattern, as it involved the shutttling of vehicles for maintenance and repair. *Ibid.*

At the outset, I do not credit the Postal Service's logic as to how there could be a contractual violation at the Trenton VMF, but not Kilmer, per Mr. LaFauci's testimony. Moreover, the Union has correctly observed that a local APWU official can't file a grievance outside of his own installation. I am also of the firm opinion that a Regular Panel award is binding upon the installation where it was issued, but only persuasive in others. I expressed this at hearing, and the Postal Advocate took issue with the contention, promising to provide a National Award or Step 4 providing an alternate and binding interpretation. The record was kept open, but none was received.

At pages 5-6 of her Award, Arbitrator Torres found that:

> It is undisputed that at the VMF, prior to 1995, the employees of the motor vehicle craft (including the garagemen, the mechanics and truck operators), performed all shuttling work that arose during the scheduled tour. The VMF houses two (2) tow trucks and one (1) new car carrier that are used to perform shuttling services. On rare occasions, when no employees were available, management contracted with a private towing company to perform a specific

> job. **** Therefore, the past practice at the Trenton VMF is undisputed, when a postal vehicle from the VMF or a perimeter post office broke down on the road, the Garageman, a VOMA or an Auto Mechanic would shuttle the vehicle.

At pages 12-13, Arbitrator Torres went on to say that:

> [a]lthough the alleged unilateral change in this case concerns the contracting out of bargaining unit work, the parties agree that Article 32 ("Subcontracting") was not raised at the lower steps of the grievance procedure and is not at issue here. However, Article 5 of the Agreement prohibits unilateral action under national labor law.

Finally, Arbitrator Torres opined at page 14:

> I find that management engaged in a unilateral change in violation of Article 5 of the National Agreement. This change in practice affected the amount of overtime hours worked by the bargaining unit, decreased the frequency of shuttle work assignments for the members of the bargaining unit and decreased the bargaining by one employee. Therefore, management is ordered to cease and desist from engaging in the unilateral action of contracting out shuttle service work performed by the bargaining unit during the scheduled tour.

Upon the totality of the foregoing circumstances, I find that the Postal Service violated Article 5 of the National Agreement when it utilized Kilmer VMF employees to shuttle the vehicles to be retrofitted from the Trenton VMF to the Kilmer VMF and back. Parenthetically, it appears to be patently inconsistent with *Torres* to allow the Trenton VMF craft to shuttle the buses in from the stations, then utilize Kilmer VMF employees to shuttle the vehicles to and from the retrofit. As to remedy, my close review of the record evidence reflects that there is sharp dispute between the parties as to the amount of time spent and the total cost of the shuttling. Under these circumstances, a remand of limited duration is appropriate, to provide the parties with the opportunity to agree upon an appropriate amount of damages. Should they be unsuccessful, I will award the position I believe to be the most reasonable, in light of the record evidence.

CONCLUSION

The American Postal Workers Union has demonstrated by a preponderance of the credible that the grievance is arbitrable, and that the Postal Service violated Article 5 of the National Agreement regarding the shuttling of vehicles for the installation of cameras.

AWARD

THE GRIEVANCE IS ARBITRABLE.
THE GRIEVANCE IS SUSTAINED.
THE CASE IS REMANDED TO THE PARTIES FOR A PERIOD OF 30 DAYS FOR THE PURPOSE OF INITIALLY DETERMINING THE TOTAL AMOUNT OF HOURS SPENT BY THE KILMER VMF EMPLOYEES IN PERFORMING THE SHUTTLING FUNCTION, AND WHETHER THESE WERE PERFORMED AT THE OVERTIME OR STRAIGHT TIME RATE. THE PARTIES SHALL THEN AGREE UPON A MONETARY FIGURE TO BE PAID TO THE APWU TO COMPENSATE THE CRAFT FOR THE CONTRACTUAL VIOLATION. IN THE EVENT THE PARTIES CAN NOT AGREE UPON A FIGURE, THEY SHALL EACH SEND ME THEIR LAST, BEST, OFFER FOR SETTLEMENT, WITH A WRITTEN JUSTIFICATION FOR THE SAME, BASED UPON THE RECORD EVIDENCE. THE WRITTEN SUBMISSION SHALL NOT EXCEED 5 PAGES AND NO AWARDS MAY BE SENT. MY AWARD ON THE REMEDY WILL THEN ISSUE WITHIN 30 DAYS. JURISDICTION IS RETAINED FOR THE PERIOD AND PURPOSE DETAILED ABOVE.

Dated: April 10, 2007
North Bergen, New Jersey

MICHAEL J. PECKLERS, ESQ., ARBITRATOR

Regional Level Award K00V-4K-C03066402

by Arbitrator Lawrence Roberts

This is the case where management refused to compensate a member for doing higher level work. Our grievant's duties mirrored the higher level employees; consequently, management decided they did not have to pay.

Arbitrator Roberts sustained the grievance with compensation and higher level.

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	*	
	*	
between:	*	Grievant: W. Foster
	*	
United States Postal Service	*	Post Office: Norfolk, VA
	*	
and	*	USPS Case No: K00V-4K-C 03066402
	*	
American Postal Workers Union, AFL,CIO	*	APWU Case No: 02288

BEFORE: Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Linda Powers

For the Union: Russ Knepp

Place of Hearing: Postal Facility, Norfolk, VA

Dates of Hearing: January 4, 2007

Date of Award: April 8, 2007

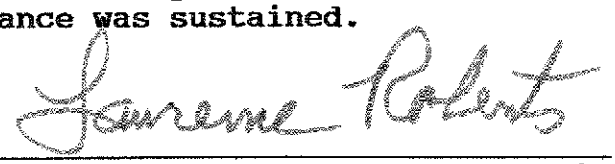
Relevant Contract Provision: Article 19

Contract Year: 2000

Type of Grievance: Contract

Award Summary:

The dispute in this case involves a claim of the Grievant performing work at a higher level. The evidence shows the Grievant was consistently performing tasks normally associated with the Storekeeper position. The grievance was sustained.



Lawrence Roberts, Panel Arbitrator

SUBMISSION:

This matter came to be Arbitrated pursuant to the terms of the Wage Agreement between United States Postal Service and the American Postal Workers Union, AFL-CIO, the Parties having failed to resolve this matter prior to the arbitral proceedings. The hearing in this cause was conducted on 4 January 2007 at the postal facility located in Norfolk, VA, beginning at 9 AM. Testimony and evidence were received from both parties. A transcriber was not used. The Arbitrator made a record of the hearing by use of a tape recorder and personal notes. The Arbitrator is assigned to the Regular Regional Arbitration Panel in accordance with the Wage Agreement.

OPINION

BACKGROUND AND FACTS:

The Grievant in this case began his Postal career in 1980. In 1993, he transferred to the Motor Vehicle Craft as a Tool and Parts Clerk, Level 5.

This case came to rise when the Motor Vehicle Craft challenged the job level of the Grievant.

The Union asserts the Grievant should be upgraded from a Tool and Parts Clerk, Level 5 to a Storekeeper Level 6 position. Management maintains the job duties normally performed by the Grievant are consistent with those of his Level 5 position. And, according to the Employer, when the Grievant fills in during the Storekeeper's absence, he is reimbursed at the higher rate of pay.

The Parties were unable to resolve the instant dispute. The record shows the matter has been properly processed through the prior

steps of the Parties Grievance Arbitration procedure outlined in Article 15.

The matter is now properly before the undersigned for final determination.

Both Parties were afforded a full and fair opportunity to present evidence and testimony, examine and cross examine witnesses and to provide closing arguments.

At the close of the hearings, the Parties collectively chose to provide written briefs in lieu of oral closing arguments.

Post hearing briefs were received in a timely manner from both parties and the record was officially closed on 8 March 2007.

JOINT EXHIBITS:

1. **Agreement between the American Postal Workers Union, AFL-CIO and the US Postal Service.**
2. **Moving Papers**

UNION'S POSITION:

According to the Union, in this case, the Union seeks a fair day's work for a fair day's pay.

The Union claims the evidence presented in this case will clearly show the Grievant has been assigned and working at a higher level.

According to the Union, the Grievant has been assigned additional duties with the introduction of a credit card. The Union implies the Grievant's assignment now equals the job duties of a Storekeeper.

Not only should the Grievant have been compensated, but, in addition, the Union argues the Grievant should have been upgraded.

At the conclusion of the hearing, the Union asks the Grievant be upgraded and made whole in all respects.

COMPANY'S POSITION:

Management claims the job duties performed by the Grievant is already included in his current job description.

According to the Employer, the Grievant's job performance does not equate to the duties associated with that of a Storekeeper.

The Service claims the filing of this grievance occurred at the same time the Grievant was issued a credit card. The Agency claims the credit card merely facilitated the work already being performed by the Grievant. Management claims the issuance of the credit card did not add to the job duties of the Grievant whatsoever.

As pointed out by the Employer, the job description of Storekeeper does not mention the use of a credit card. The Agency mentions the fact the Grievant began using a credit card did not change the job function.

The Postal Service argues the burden of proof will be on the Union to prove the duties performed by the Grievant are that of a Level 6 position. Instead, the Employer claims those job duties are already a part of the Level 5 position already being performed by the Grievant.

Management insists the Union will be unable to meet their burden of proof and respectfully requests the instant grievance be denied.

THE ISSUE:

Whether or not the Grievant should be upgraded to higher level? If so, what is the proper remedy?

PERTINENT CONTRACT PROVISIONS:

ARTICLE 19
HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions. Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. At the request of the Union, the parties shall meet concerning such changes. If the Union, after the meeting, believes the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Union upon issuance.

Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to transitional employees only to the extent consistent with other rights and characteristics of transitional employees negotiated in this Agreement and otherwise as they apply to the supplemental work force. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to transitional employees pursuant to the same standards and procedures found in Article 19 of this Agreement.

DISCUSSION AND FINDINGS:

The controlling language in this case is found in the ELM, Section 234.31. In pertinent part, the language denotes:

> "When a full-time employee is scheduled every work day to perform the work of two separately defined positions in two different grades, the employee is placed in the position of the higher grade. The duties of the lower grade position, while included in the work assignment, represent extra duties in relation to the official position and do not affect the pay grade of the employee."

The language itself is unambiguous. However, it's application to the instant case has brought the facts and circumstances of this particular case to a third party for resolution.

The Grievant is classified as a Tool and Parts Clerk. The dispute arose when the Grievant came to believe his job duties were more akin to that of a Storekeeper, a Level 6 position.

According to the Grievant's own testimony, fifty percent (50%) of his daily duties involve the ordering of parts from local vendors. Another twenty five percent (25%) of his time is spent logging invoices, job orders and generating reports via the VMAS computer. The remainder of his work involves dealing with vendors, issuing parts and maintaining the stock room.

Management failed to offer any first hand testimony regarding the actual work the Grievant performs. And the Employer did not directly dispute the Grievant's testimony. Instead, a Labor Relations Specialist provided definition to the terms "requisition" and "order". A Supervisor, who also managed

three (3) other similar facilities, delineated between the job descriptions of a Tools and Parts Clerk and a Storekeeper.

However, the record in this case lacked any direct contradiction from the Service to the Grievant's testimony. The Storekeeper, with whom the Grievant works on a daily basis, would have been able to provide direct testimony regarding the Grievant's everyday work procedures. However, that Storekeeper failed to appear at the hearing.

And the Employer failed to offer any other contradiction to the Grievant's credible detailing of his everyday job functions.

In my considered opinion, many job functions performed by the Grievant on a daily basis, are clearly that of a Storekeeper. The ordering of parts from local vendors is one of the unique functions to a Storekeeper. Management failed to contradict the Grievant's claim of doing that type of work on a daily basis. Also, the Grievant testified that his duties on a regular basis involve the input of invoices and the generation of various reports, both via computer.

The Employer did not challenge any of the Grievant's testimony in that regard. Instead, testimony from Management witnesses only claimed the work performed by the Grievant was that of a Tools and Parts Clerk. And when the Storekeeper was on

leave, the Grievant was already being reimbursed the Level 6 pay grade.

In my view, the Grievant routinely and habitually performs the duties of the Storekeeper. The Employer never challenged that aspect of the Union's case in chief. There was no claim by Management, either via testimony or otherwise, the Grievant did not routinely order parts form local vendors. Nor was any opposition offered by Management regarding the Grievant's testimony of his logging of invoices and report generation on a daily basis. I was convinced the Grievant accomplished these duties regardless of whether or not the Tour 2 Storekeeper was at work. And according to the Job Descriptions, these duties are exclusive to the Storekeeper position.

I agree with the Opinion of **Arbitrator Claude D Ames (Case Number W7T-5R-C 18745)** wherein he explained:

> **"The Employer's arguments, taken as a whole, are not supported by Section 234.31 of the ELM or the VOMA job description. Neither of which include the term "core duties" as a criteria for evaluating mixed assignments. The term "core duties", as coined by Management, is not a criteria for determining whether a full-time employee is scheduled every work day to perform the work of two separately defined positions in two different grades. The only criteria set forth in this Section is whether an employee is scheduled to perform the mixed assignments. Nothing more is required. In the absence of any specific "core duty" language of Section 234.31 requiring an employee to perform all the duties of the higher grade position, the Arbitrator lacks both the authority and power to give any other interpretation to this provision, other than its plain meaning."**

In this case, there was no evidence the Grievant was "scheduled" to perform certain assignments, instead, over a course of time, it simply became the manner in which things were done. It seems to me the Grievant in this case, began at some unknown point in time, to share some of the Storekeeper duties. Via acquiescence, it became an acceptable way of doing things at this Norfolk facility. And there is no doubt the Grievant should be reimbursed at that higher level.

This grievance will be sustained in it's entirety and the Grievant shall be elevated to the Level 6 grade of pay. The Grievant shall also be made whole for all days in which he was not reimbursed the higher level. However, this order only goes back to 1 December 2002, which was fourteen days prior to the filing of the Step 1 grievance.

AWARD

The Grievance is sustained in accordance with the above.

Dated: April 8, 2007
Fayette County

Regional Level Award B98V-4B-C99169594

by Arbitrator William J. Miller, Jr.

This was one of the nastiest and disgusting issues I was ever involved with.

The Postal Labor Representative did everything and anything to avoid the payment of an issue that he had agreed to.

There was no way it was going to go unpaid.

However, I was still not happy, as Arbitrator Miller did not award overtime.

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	Grievant: Class Action
	)	
Between	)	Post Office: Buffalo, NY
	)	
UNITED STATES POSTAL SERVICE	)	USPS Case No: B98V-4B-C 99169594
	)	
	)	
And	)	
	)	APWU Case No: HA 24 C
	)	
AMERICAN POSTAL WORKERS UNION	)	
	)	
	)	

BEFORE: William J. Miller, Jr., Arbitrator

APPEARANCES:

For the U.S. Postal Service:	Francis E. McNamara NEA/Labor Relations Specialist
For the Union:	Russ Knepp National Business Agent
Place of Hearing:	Buffalo, NY
Date of Hearing:	December 12, 2007
Record Closed:	February 1, 2008
Date of Award:	March 1, 2008
Relevant Contract Provisions:	Article 15
Contract Year:	1998-2000
Type of Grievance:	Contract

AWARD SUMMARY

The determination of the remedy is to be made consistent with the opinion provided herein.

William J. Miller, Jr.
Arbitrator

I. THE GRIEVANCE

A class action grievance was filed on behalf of the Motor Vehicle Craft at the Buffalo, NY location of the United States Postal Service (hereafter referred to as the "Postal Service") by the Buffalo, NY Local of the American Postal Workers Union (hereafter referred to as the "Union"). The grievance was filed on April 1, 1999 and contended early collection by carriers A.0.1 through A.0.7 is Motor Vehicle work, and should be performed by Motor Vehicle employees. The grievance, which was filed in accordance with the applicable provisions of the 1998-2000 National Agreement between the United States Postal Service and the American Postal Workers Union (hereafter referred to as the "Agreement") also contended that the work involved a route of travel between offices to pick up bulk first class mail to be transported back to the D.P.O. Also, it was alleged by the Union that the route of travel includes arrival and departure times for pick up of mail to be transported. The grievance requested a cease and desist of this practice occur, the applicable employees be paid at the applicable overtime rate for all hours lost, the return of all work to the MVS craft and to make the grievants and class whole.

It was the position of the Postal Service that there was no violation of the Agreement, and carriers are entitled to pick up collection mail and bring it back to the office. The grievance was denied. This arbitrator was selected to hear and decide the issue. A hearing was scheduled for this case in Buffalo, New York on June 3, 2004. Prior to the commencement of the hearing, the parties advised the arbitrator that the Postal Service and the Union had resolved the grievance. The resolution, agreed to by the parties, prior to the commencement of the arbitration hearing was as follows:

(01) It is agreed to establish the actual number of hours entailed for the seven runs for the period between March – December, 1999.

(02) An amount per hour will be negotiated between the advocates.

(03) The APWU advocate will ascertain the employees who are to be involved in this Award.

(04) Following the completion of the first three items above, the payment will be processed in a timely manner.

Even though there had been a resolution of this case, and the Postal Service and Union representatives had certain communication subsequent to such resolution, the final implementation of such resolution had not occurred. Such dispute, concerning the final resolution of this matter, was placed before this arbitrator.

At the arbitration hearing on June 3, 2004, the Union alleged the matter at issue should have been resolved. The Union contended, because of the delay in resolving this case, it requested that exemplary damages be paid. The Postal Service claimed the case was not resolved because it had been attempting to determine the number of hours involved, but it has been unsuccessful in making such determination. After reviewing the entire record, on January 1, 2005 a decision was made by this arbitrator for the parties to conclude the settlement, directing the advocates to agree upon the actual number of hours entailed for the seven runs for the period between March and December, 1999, to agree upon an amount per hour, for the APWU advocate to ascertain the employees to be involved in this award, and to process the appropriate payments in a timely manner.

The record reflects on January 7, 2005 the Union took the following position with the Postal Service regarding the implementation of the January 1, 2005 arbitration award for this case.

I have received Arbitrator Miller's award in the above referenced case.

With regard to his instructions, I call your attention to Joint Exhibit 4 which, as provided by management, contains the hours of letter carrier transport in this case. Simple math brings me to the figure of 18.5 per day per the information supplied by management.

According to Robert Del Roy, Manager of Customer Service Operations, Buffalo, NY, who was the installation head designee at the time, the violation began in March 1999 and ended the third week of December of 1999, for a total of 214 hours, less 6 holidays, which equals 208 hours. Applying the rate of 18.5 x 208 hours equals 3,848 actual hours of the violation.

In order to arrive at the Postal Service total liability, I apply the hours to the overtime rate at the 1999 pay scale using a mid-salary rate: Level 5/6 ($36,996 annual rate) divided by 52 weeks, times 40 hours ($17.79), which makes the overtime rate $26.69. This simple math then multiplied by the hours results in 2,848 hours, times $26.69, which equals $102,703.12.

After you have agreed to meet this U.S. Postal Service financial obligation, I will, per Arbitrator Miller, ascertain the Buffalo MVS Operators are compensated.

Your cooperation in finally getting this issue resolved is greatly appreciated.

The record reflects there was no substantive response made by the Postal Service to the Union position, as stated in its January 7, 2005 letter. The matter remained unresolved, and was returned to this arbitrator for final review, argument and disposition. Accordingly, a hearing was held concerning this matter in Buffalo, New York on December 12, 2007. During the hearing, the parties made argument concerning the implementation of the settlement the parties previously made regarding this case. The Postal Service requested, and was given the opportunity to file a post hearing submission regarding this case. The Postal Service submitted its post hearing brief during the early part of January, 2008. On January 15, 2008 the Union was given the opportunity to respond to the Postal Service brief. The Union declined to file a post-hearing submission, and indicated it was going to rely on its previously stated position concerning the

implementation of the settlement made between the parties. All submissions, including a number of previously decided arbitration decisions, have been carefully reviewed and considered. The record was closed on February 1, 2008.

II. UNION POSITION

It is the position of the Union that the hours of Letter Carrier transport in this case results in 18.5 hours per day. The determination of this information, according to the Union, came from data provided by management, and contains the hours of Letter Carrier transport during the specific time period in question. The Union contends the violation in this case began in March, 1999 and ended the third week of December, 1999. It is the position of the Union, by making the appropriate calculation, there were 3848 actual hours of violation in this specific case. The Union asserts the mid salary rate, level 5/6 ($36,996 annual rate) divided by 52 weeks, times 40 hours ($17.79) makes the overtime rate $26.69. The Union argues this overtime rate $26.69 times 3848 hours would result in a settlement amount of $102,703.12. This is the amount the Union contends needs to be distributed to MVS Operators. The Union therefore requests that $102,703.12 be divided among the MVS Operators so as to constitute full resolution of the previous settlement made by the parties for this case.

III. POSTAL SERVICE POSITION

It is pointed out by the Postal Service that in 1999 it made the decision to bring in more mail to the plant earlier each day in order to start up the cancellation process, the first stage of the mailing distribution process for new mail being brought into the system.

The decision was made to add six or seven runs to the collection routes, and have this work performed by carrier craft employees working collections, the same craft employees assigned to collections within the City of Buffalo and several of the nearby associate offices adjacent to the City of Buffalo. The Postal Service would point out a grievance was filed, and prior to the case going to arbitration, the case was reviewed by the Postal Service and Union. The Postal Service contends the case was remanded for exploration and implementation of remedy, but neither party had exact information as to what the various collection runs entailed, and whether or not the runs were the offices which the Motor Vehicle Craft usually visited on their runs. It is the position of the Postal Service that there was never an agreement, nor was it the intention of the Postal Service to agree that the MVS craft was entitled to all of the work which the runs entailed.

The Postal Service contends it has highway contract drivers, non postal employees driving private company rigs, who visit a number of associate offices within the Western New York area on a daily basis, bringing the mail to both the Buffalo and Rochester plants for cancellation and distribution. The Postal Service argues it cannot agree that the motor vehicle drivers have an entitlement to all hours of the runs, because this is simply not true. It is the position of the Postal Service that there would be no reason to pay Motor Vehicle Service Drivers who may or may not have been available for work, which would have been considered an assignment to HCR contractors, and without proof that the work in question was the kind of work Postal Service Motor Vehicle Service Operators would perform.

It is argued by the Postal Service that there is no proof which would substantiate that the Motor Vehicle Service Drivers historically had ever picked up the mail from any

of the city or associate offices cited in this grievance. The Postal Service argues the offices in question would never have been part of motor vehicle route runs, and those offices would have been included in the HCR runs, made earlier in the day rather than the usual times. The Postal Service argues there would be no basis whatsoever for having the seven runs in question handled by the Postal Service MVS Drivers, as such runs were part of the HCR runs, which were driven by non-postal employees. It is also noted by the Postal Service that there would also have been a serious question as to the availability of Postal Service MVS Drivers to perform the early collections. The Postal Service also submitted a number of previously decided arbitration decisions in support of its contention that there is no basis to the position which is being advanced by the Union. In conclusion, the Postal Service contends because the Union has failed to support its position with sufficient evidence, there is no basis to the remedy request made by the Union.

IV. RELEVANT CONTRACTUAL PROVISIONS

Section 4. Grievance Procedure – General

A. The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in settlement or withdrawal of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. Every effort shall be made to ensure timely compliance and payment of monetary grievance settlements and arbitration awards. The Employer agrees that upon receipt of necessary paperwork from the grievant and/or union, concerning a grievance settlement or arbitration award, monetary remuneration will be made. The necessary paperwork is the documents and statements specified in Subchapter 436.4 of the ELM. The Employer will provide the union copies of appropriate pay adjustment forms, including confirmation that such forms were submitted to the appropriate postal officials for compliance and that action has been taken to ensure that affected employee(s) receives payment and/or other benefits. In the event that an employee is not paid within sixty (60) days after submission of all the necessary paperwork, such employee, upon request, will be granted authorization from management

to receive a pay advance equal to the net amount due, or seventy (7) percent of the gross payment owed the employee, whichever is less. In the event of a dispute between the parties concerning the correct amount to be paid, the advance required by this section will be the amount that is not in dispute.

V. OPINION

Upon reviewing the relevant record which has been established, it becomes readily apparent that the parties had made a resolution concerning this grievance, for the purpose of avoiding the necessity to arbitrate the issue which is present in this case. Unfortunately, as the record reflects, while the parties set forth their intention to resolve this case, for whatever reason, they were unable to conclude the implementation of their settlement. As a result, the parties were directed to follow the terms of their settlement, and to conclude the necessary implementation. While the Union has attempted to comply with the mandate of the January 1, 2005 arbitration award, the Postal Service has taken the position that the bargaining unit employees who grieved the issue are not entitled to the hours requested, because the work in question would never have been performed by employees of the bargaining unit, but rather was HCR runs, which would be completed by non-postal employees. The Postal Service asserts the work at issue simply did not belong to the bargaining unit, and therefore, there would be no basis for providing any hours for such bargaining unit employees. I have carefully considered the arguments of the Postal Service in conjunction with the established record. While I cannot find fault with the arguments raised by the Postal Service, and it may be as it has asserted that its arguments are valid, the fact of the matter is, the Postal Service made the decision, of its own accord, to forgo such arguments, and enter into a settlement agreement with the Union, to resolve the instant grievance. If the Postal Service believed it had justifiable

arguments regarding the issue presented in this case, it should have made such arguments before it entered a settlement agreement with the Union. In my considered opinion, it is inappropriate for the Postal Service to raise arguments at this time, concerning the merits of the grievance, because the parties have previously agreed to resolve this case and implement a settlement. If in fact the Postal Service had valid arguments concerning the work in question, and it believed the runs in question was work which did not belong to the Motor Vehicle Craft employees, it should have raised such arguments with the Union prior to agreeing upon a settlement of this grievance. The record clearly establishes the Postal Service entered a settlement agreement with the Union to resolve this case, but only subsequent to such settlement did it contest the merits of the grievance. As I previously indicated, the Postal Service may have had justifiable reasons for contesting the merits of the issue presented in this grievance, but to do so after a settlement was reached with the Union is inappropriate. Consequently, in my considered opinion, the contention of the Postal Service regarding who had jurisdiction to the work cannot be dispositive of the remedy issue, as such contention was not raised at the time the case was settled, but only raised during the implementation of the settlement agreement. It is therefore necessary to fashion a remedy which is consistent with the terms of the settlement agreement made by the parties prior to bringing this case to arbitration.

The settlement agreement requires a determination of a number of hours. Upon reviewing the best evidence which has been submitted, that is the early collection for the seven AO runs, shows there were 18.5 hours per day which were used for the early collections. In my considered opinion this would be an appropriate number to use for each day. The record reflects the time period involved was from March 1999 up until the

third week in December, 1999. This calculates to 40 weeks, and at 5 days each week, there were 200 days involved. The record shows there were 6 holidays, so this would result in 194 days. 194 days times 18.5 hours would result in 3589 hours for the seven runs. Since there was no amount per hour negotiated by the parties, it is my determination that the rate proposed by the Union of $17.79 is reasonable and would be the appropriate rate as it is a mid salary rate, level 5-6. With respect to the Union's request for overtime, there has been no evidence to establish that the work would have been completed on an overtime basis. Accordingly, the straight time rate should be used to calculate the total amount due. The APWU representative will designate the employees who are to be involved in sharing the remedy. Once the APWU advocate provides the names of the MVS employees who are to share in the remedy, the Postal Service is directed to process the appropriate payments in a timely manner.

Regional Level Award K00V-1K-C05102871/04100650/08100657/05006519

by Arbitrator Lawrence R. Loeb

This case came about because of the ANTHRAX attack at the former Brentwood Station in Washington, DC.

Postal Management, for no contractual reasons, gave four (4) MVS runs to HCR's.

Arbitrator Loeb sustained our grievance, returning the work and awarding compensation for all hours the HCR performed.

Management is still fighting with us and attempting to avoid the penalty, which is quite substantial.

Craft Director, Kevin Basil, was very instrumental in the winning of this issue, providing excellent testimony, along with the documentation needed for the Union to prevail.

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	CASE NOS: K00V-1K-C 05102871
	)	K00V-1K-C 04100650
	)	K00V-1K-C 08100657
between	)	K00V-1K-C 05006519
	)	
THE UNITED STATES POSTAL SERVICE	)	LOCAL UNION NOS: KB0904
	)	CM505
and	)	KB1004
	)	KB4504
THE AMERICAN POSTAL WORKERS UNION AFL-CIO	)	
	)	CLASS ACTION GRIEVANCES
	)	
	)	POST OFFICE: Washington, DC

BEFORE: Lawrence R. Loeb, Arbitrator

APPEARANCES:

On Behalf of the Postal Service:	Brian Fletcher Labor Relations Specialist
On Behalf of the Union:	Russ Knepp National Business Agent
Place of Hearing:	Washington, DC
Dates of Hearing:	July 13, 2007
Record Closed:	July 22, 2007
Contract Provision:	Articles 15, 19, 32 & 39
Date of Decision:	January 8, 2008
Decision:	The grievances are sustained.

SYNOPSIS

The Postal Service violated Article 32 and the Procurement Manual when it contracted out work to highway contractors that MVS personnel had been performing. The Employer's failure to respond to the Union's request for information resulted in Management being unable to establish that it had adhered to the terms of Article 32 when it contracted out the work.

I. STATEMENT OF FACTS

On March 19, 2004 the Union submitted a request for information as the initial step in a grievance investigation. The document sought copies of Form-4572's for three individuals along with the outbound log sheet for the thirty day period from February 12th and March 12th, 2004 as well as a copy of the notice the Employer sent to the National Union advising it of the decision to contract out the work. The Local Union also sought copies of the Comparative Analysis Report and Decision Analysis Report. Ten days later the Union appealed the first of four grievances growing out of the belief that Management was improperly subcontracting work to highway road contractors (HRC) that belonged to the bargaining unit. The Step 2 Grievance Appeal Form indicated that Management did not want to meet at Step 1. After repeating that the Service had failed to turn over the information the Union sought by way of the March 19th request for information and that the Acting Manager of Transportation had instructed the Step 1 class action designee not to discuss the grievance with the Union, the Step 2 appeal went on to declare that:

> ...Management has violated Article 32 when they subcontracted transportation duties previously performed Curseen-Morris Postal Vehicle Service. On 3-8-04 management stopped DC transportation (tour 1) from delivering mail to the Baltimore Post Office and started letting a contractor haul the mail. Management never notified the union at the national level or the local level. (sic)

Sometime over the ensuing week the parties met to discuss the matter following which the Employer quickly denied the grievance.

In the course of doing so Management took the position that the Union was told by the acting general supervisor that in order to initiate a Step 1 class action grievance it had to meet with the Manager of Transportation, but refused to do so. In addition, the Employer argued that the Union failed to establish that the Service's actions had harmed the wages, hours or working conditions of any employee in any way. The Step 2 designee also maintained that Management did not violate the Contract even though it had failed to turn over the information the Union sought on the grounds that the Union had been able to initiate a grievance and had not brought up the issue of Management's failure to turn over the information at the Step 2 meeting. On the substantive question of whether the Employer had violated Article 32 of the

National Agreement when it contracted out hauling certain mail runs, the Step 2 official declared that the Service had given advance notification to the Union at the national level:

> ...when sub-contracting which will have a significant impact on bargaining unit work is being considered. The five factors were considered, public interest, cost, efficiency, and availability to equip and qualification of employees. Notification is done through the APWU's National Office.

Two days after the Service denied the grievance the Union filed additions and corrections in which it took issue with almost all of Management's claims. Specifically, the Craft Director argued that the individual he attempted to meet with at Step 1 to initiate the grievance had been designated as the Step 1 class action official for the Motor Vehicle Service on all tours in December 2002, but that individual would not discuss any grievances with the Union because he was told not to by the Acting Manager of Transportation. The Union also maintained that it brought up the Service's failure to respond to the request for information at the Step 2 meeting, pointing out that the Step 2 official did not even have a copy of the request and had to ask the Union for it. Finally, the Craft Director strenuously denied that Management had provided any information to either the National Union or the local regarding subcontracting mail transportation to and from the Curseen-Morris facility, work that had been performed by a driver in the DC motor vehicle craft who was hauling mail to the Baltimore mail facility. The parties eventually met to discuss the matter at Step 3 at which time both sides raised the exact same arguments that they had put forward at Step 2. None of those were any more persuasive at Step 3 than they had been before with the result that the Union appealed the matter to arbitration.

The same day it filed the first grievance the Union initiated a second one followed by a request for information on June 21, 2004, again for the purpose of a grievance investigation. Like the initial one, the June 2004 request sought copies of specific documents covering the period from February 12, 2004 through March 12, 2004. In addition, it demanded that Management supply a copy of the official notice sent to the National APWU informing the Union of the decision to subcontract motor vehicle work between Northern Virginia and Baltimore as well as a copy of the Comparative Analysis Report and Decision Analysis Report. A week later the Union followed up that request with a second, typewritten one in which it

sought the same information that it demanded Management produce a week earlier. As with the first grievance, the Union appealed the matter to Step 2 alleging that the Acting Manager of Transportation instructed the Step 1 class action designee not to discuss any grievances with the Union. In addition, it complained that the Employer had not turned over the information the Union had requested. Finally, on the substantive issue it complained that:

> ...Management has violated Article 32 when they subcontracted transportation duties previously performed Curseen-Morris Postal Vehicle Service. On 3-8-04 management stopped DC transportation (tour 1) from delivering mail to the Northern Virginia Post Office and started letting a contractor haul the mail. Management never notified the union at the National level or the local level.

If the Union's complaints at Step 2 were almost identical to those it raised in the first grievance, Management followed suit, not deviating from the reasons it turned aside the initial grievance, denying the second one on April 6, 2004. Not to be outdone the Union filed additions and corrections two days later that were almost identical to the additions and corrections it filed in the first grievance. The only difference was that in regard to the second grievance the Union pointed out that a particular driver had been hauling mail to the Northern Virginia P&DC.

The grievance was appealed to Step 3 and subsequently remanded to Step 2 at which time Management took the position that the Union had refused to remand the grievance back to Step 1 for development in accordance with the parties' Contract. Of greater significance, the Employer asserted that it had turned over letters from Headquarters notifying the National Union of the change in service. In addition, the Step 2 designee maintained that copies of the Comparative Analysis Report and the Decision Analysis Report were given by the headquarters labor relations office to the national office of the APWU. The Step 2 designee then went on to note:

> This grievance on the same issue was appealed to Step 4 Level...in accordance to the parties (sic) collective bargaining agreement. This makes the grievance moot.

Although the grievance was allegedly moot, Management nevertheless denied it on the basis of the identical arguments that it raised at Step 2 in this matter and had been put forward at Step 2 in the first grievance.

Dissatisfied with that response the Union appealed the grievance to Step 3 at which time the Employer reiterated the same arguments that it made at Step 2, including that the same issues were appealed to Step 4 in accordance with the Collective Bargaining Agreement. The response did not satisfy the Union which appealed the matter to arbitration.

While those two cases were pending the Union submitted yet another request for information; this time seeking a copy of the notice to the National Union about subcontracting transportation work from Curseen-Morris to the Randolph Building as well as a copy of the initial Comparative Analysis Report. Seventeen days later the Union initiated a grievance, meeting with the Acting Manager of Transportation who denied the protest the same day. A short time later the Union appealed the matter to Step 2 at which time it complained, among other things, about the highway contractor who started transporting priority mail from the Curseen-Morris Mail Facility in Washington, DC to the Randolph Building in Northern Virginia sometime in 2004; a change about which the National Union was never notified. The Union also maintained that when the parties met at Step 1 the Acting Manager of Transportation informed the Union representative he could not resolve the grievance and that he was going to send it up to the District Level. He further advised the Union that he had turned over whatever documents he had in his possession, documents that the Union believed were not accurate because they spoke of a contract between the Service and Normbelle Transport even though Glen Burnie Hauling was the contractor performing the work. Finally, the Union asserted that members of the bargaining unit were continuing to haul overflow mail to the Randolph Building and that Curseen-Morris had tractor trailer trips that regularly went to that facility.

On November 12, 2004 Management denied the grievance, giving as its reason for doing so:

> ...1. After September 29, 2004, Glen Burnie Hauling an existing contract from the HASP operation was given extra service from JCTM to the Randolph Building at Dulles who is now working all priority mail for Capital Metro Operation between the P&DC.

> 2. JCTM not longer work (sic) first class or priority mail at the plant or Reagan AMC. 3. Before 9-29-04, the mail was transported from JCTM to Reagan AMC to be worked and dispatched accordingly be PVS/MVS. With the service change, PVS/MVS never had scheduled runs to the Randolph Building. The only scheduled rum was to Cargo Building #5 (around the corner from the Randolph Building). PVS/MVS never provided the service. On September 29, 2004, it was requested of the contractor Glen Burnie Hauling 207 NE to provide additional service under the existing contract.
>
> . . .
>
> ...Our position is that we made a determination that it would have Glen Burnie Hauling make additional (Extra Service) stops to service the Randolph Building because the contractor was already servicing buildings in the Capital Metro Area and it would be more cost effective. Motor Vehicle Service of JCTM never had the service scheduled to the Randolph Building, but is used for over-flow mail in which the contractor can not carry. (sic)

Shortly after receiving the Step 2 answer the Union filed additions and corrections in which it essentially argued that the motor vehicle craft had been making "several trips" to the Randolph Building prior to Management contracting out the work to Glen Burnie Hauling. The Union also alleged that:

> Management has created an adjusted route when the Service needed transportation to take mail to the Randolph Building in the past.

Finally, the additions and corrections repeated what had become a common thread in the Union's arguments which was that the National Union had never been notified of a subcontract being issued as required by Article 32.

The Union subsequently appealed the matter to Step 3. At the end of the meeting the Employer denied the grievance on the grounds that:

> ...the contractor in question was already under contract and transporting mail within the vicinity. The mail in question was given to the contractor as an additional run due to operational changes. The question posed here is whether the expansion of the contractor's work entailed a decision on "subcontracting which will have a significant impact on the bargaining unit

> work". I find that it did not. It is clear that the addition (sic) runs requested of the contractor, already under contract, had little or no impact on the existing bargaining unit and that no MVS driver lost any time, pay, or benefits as a result of the Postal Service's decision.
>
> Due to the union's lack of substantive evidence to support its claim of a contract violation, the grievance is denied.

No happier with that response than it had been with either of the two previous ones the Union pursued the grievance to arbitration.

As these cases were working their way through the system the Union filed yet a fourth request for information, this time seeking tractor logs for two employees for the period of February 1st through March 15, 2005 as well as a copy of the notice Management sent to the National Union of its intention to contract Cargo 5 work. It followed up that request with a second one a month later seeking copies of Form-5505 for contracting out Cargo 5 trips. What it appears to have received in response was a Contract Route Service Order, the beginning date of which was July 1, 2004. Actually, the service order, which was between the United States Postal Service & R&F Trucking Company, involved a series of amendments to the original contract. The changes, which were ordered on April 18, 2005, involved:

> Add service to official mails and Washington P & D C Curseen-Morris, DC to trip 9 and add service to Curseen-Morris to Trip 10.
>
> Change Trip 17 to serve Southern P & D C, MD and Randolph Processing Center, VA.
>
> Change Trips 19 and 20 to provide service between Capital Beltway Hasp, MD Official Mails, DC and change the frequency to be R17.
>
> Add a stop at Randolph Processing Center to Trip 21.
>
> Change the frequency and schedule of Trips 23 and 24.
>
> Delete Trips 25 and 26.
>
> Increase annual miles by 15,452.3 miles per annum.
>
> Increase annual hours by 521 hours per annum.

The Contract Route Service Order had actually been turned over to the Union at the Step 1 meeting which was held between the Chief Steward for the Motor Vehicle Craft on Tour 3 and the Manager of Transportation & Networks.

During the course of discussing the matter the Manager was surprised to learn from the steward that Union members were running two trips to Cargo 5 on a daily basis. After checking with the Superintendent of Transportation who confirmed the Union's information, the Manager advised the Chief Steward that bargaining unit personnel should not be hauling mail to Cargo 5. Of equal significance, she told the Chief Steward that she would have to deny the grievance because she could not settle what she did not initiate. What the Manager did not address was the Union's claim that the work in question had been performed by motor vehicle service personnel since the latter part of 2001 or that the Service had failed to notify the National Union that it had contracted out the work as required by Article 32.

With the grievance denied at Step 1 the Union appealed the matter to Step 2 only to have the Service again deny the protest, this time on the basis that:

...

> Second, JCTM Postal Vehicle Service is not the owner, or custodian of any Highway Contract Routes (HCR). The Contracts you refer to are owned by Northern Virginia via the Dulles & Merrifield, VA P & DC's, as well as the Suburban, P & DC. Therefore filing a grievance with this office in reference to the Contracts of other offices is not appropriate. Union Officials from the afore-mentioned offices have already filed grievances on the issues identified (per the official record).

...

> Transportation into and out of Worldwide/ Cargo# 5 is established under the jurisdiction of the Distribution & Networks domain, via the Metro Area Office...
>
> Upon entering the partnership between the US Postal Service and FedEx, it was never the intention of the Area Office to have PVS assigned these routes. PVS was only running these trips on a temporary basis in order to provide needed transportation data for solicitation of permanent HCR Routings. Because Cargo# 5 is

> located at the Dulles Airport Cargo area, this complex rightly falls under NOVA Transportation, and not JCTM...
>
> ...
>
> ...Because of the uncertainty of a permanent location, the Area Office withheld establishing a Contractor for not only Cargo# 5 but there were also temporary shifts to other trips. JCTM continued transporting mail to and from Cargo # 5 until we were firmly re-established back into the JCTM Plant.
>
> ...Cargo # 5 belongs to the NOVA corridor. PVS should only be used when the Contractor fails to show up or the volume exceeds payload capacity.
>
> ...
>
> In conclusion, Cargo# 5 was never intended, nor was it ever established as a PVS Route or Bid Assignment...

A month later the Employer again denied the grievance, relying on the same arguments that the Manager of Transportation & Networks had raised in her letter of denial, but adding that the grievance was untimely because it had not been filed within the fourteen day period required by Article 15. The Union took issue with that argument in the additions and corrections it filed on June 30, 2005; claiming that it filed the grievance within fourteen days of discovering that the trips to Cargo 5 had been taken away by Management. It also maintained that while the Employer claimed that MVS had only temporarily been running those routes Union personnel had actually been running them for approximately four years and had been back in the Curseen-Morris P&DC for nearly two years. Whatever the truth of those allegations, they fell on deaf ears as the Service refused to alter its position with the result the Union pursued the grievance to Step 3 where it was denied by Management, which argued that the only reason drivers had been transporting mail to and from Cargo 5 was because of the anthrax outbreak at the Brentwood facility.

It was, from the Employer's point of view, a temporary solution to an unexpected disaster. Once the emergency was over and motor vehicle operations were back at the Curseen-Morris facility, schedules were permanently assigned; schedules that did not include Cargo 5 which belongs to the Northern Virginia corridor. The Step 3 designee closed his response by

pointing out that postal vehicles should only be used when the contractor failed to show up or when the volume of mail exceeded the contractor's payload capacity.

When these cases came on for hearing the Union elicited testimony from the Motor Vehicle Supervisor at the Curseen-Morris P&DC who stated that members of the motor vehicle craft made scheduled runs from Curseen-Morris to the Randolph Building as well as the Dulles Cargo Building. He went on to testify that while craft employees go the Randolph Building every night the Service cut four trips on Tour 3 that went from Curseen-Morris to National and Dulles Airports. Finally, he stated that Curseen-Morris lost the Baltimore and the Northern Virginia runs as well.

His testimony was corroborated by the Craft Director who testified that in 1990 the Acting Assistant Postmaster General, writing on behalf of the Postal Service, reaffirmed the no "gutting" policy; a doctrine under which the Postal Service promised not to "gut" Postal Vehicle Service (PVS) in order to solicit bids from and give work to highway contracting routes (HCR) i.e. subcontractors. He also testified that in December 2002 the Service notified the Union that Nathanial Hubbard was the Step 1 designee for class action grievances for all Motor Vehicle Service cases on all tours.

On the critical question of whether the National Union was every notified of the Service's decision to contract out work that had been performed by the bargaining unit, the Craft Director pointed out that a January 15, 2004 letter to the Director of the Motor Vehicle Service's Division of the APWU from the Manager of Contract Administration dealt with Southern Maryland-Northern Virginia and not the Curseen-Morris P&DC. Finally, he stated that the contract which the Postal Service ultimately entered into with the HCR was an emergency contract, but there was no longer an emergency to justify subcontracting out the work to an outside trucking firm. To support that conclusion the Craft Director pointed to an E-mail message in which the Service's representative wrote: "We told the Union about the Emergency Contract in place at Southern Md to which the Union filed a grievance and I recently wrote a response to this grievance".

To counter those statements the Service, over the objections of the Union, elicited testimony from the Manager of Transportation & Networks who stated that from its inception the Randolph Building fell under the jurisdiction of Area Office Transportation and was

controlled by the Distribution Network Manager in the area. In simple terms, that meant that the Randolph Building was under the jurisdiction of the District and was never her responsibility. She went on to state that when the Randolph Building was opened it was a priority mail facility and although the Motor Vehicle Service took mail to the Randolph, it was never an official part of the Capitol Area. She also said that once the Distribution Network Manager contracted the work to the highway contractor the Randolph Building stopped being a regular run for the motor vehicle employees. She likewise testified that Cargo 5 was part of the Distribution Network Manager's responsibility, although she admitted that the Postal Service may put on a run when there is a problem with the schedule; for instance when the contractor leaves because a FedEx flight is late the Service will dispatch a driver to go out to the facility to pickup the mail. Finally, she stated that there are no bid positions concerning the runs at issue, a bid position being defined by her as one where the driver goes around and around all day.

As to the question of who is the class action designee with whom the Union was supposed to meet, the Manager of Transportation testified that he was the class action designee, not anyone else and that he wanted all class action grievances to come to him. Although he claimed that he had notified the Union as well as the supervisors who answered to him that he was the Step 1 class action designee, he acknowledged that the Acting Plant Manager's memorandum to the Union in December 2002 listed Nathaniel Hubbard as the Step 1 class action designee. At the same time the Union acknowledged that although members of the bargaining unit were going to and from Cargo 5 prior to the Manager of Transportation & Network coming to the Curseen-Morris Processing and Distribution Center in March 2001, the work that was taken away from the Union was not an eight hour back and forth run.

Finally, the Union introduced HRC schedule information for HRC:207EU, Southern Maryland P&DC, MD-Dulles P&DC, Virginia. The schedules indicate that the Service entered into contracts with Normbell Transport covering the period from April 19, 2003 to April 15, 2005. Although the Curseen-Morris Plant is one of the points served along with the Dulles P&DC, Northern Virginia P&DC, Southern Maryland P&DC and Washington-Dulles AFM, the form indicates that trips to the Curseen-Morris Washington, DC Plant are scheduled extra trips.

Along with those documents the Union also submitted a one-page notice sent to all managers in affected areas relative to new transportation service for area operations. Effective September 29, 2004, the document covers contracts with Glen Burnie Hauling, Inc., R&F Trucking, Inc., Wither Trucking, Inc. and Midwest Transport, Inc.; all of which involved transporting mail to the Randolph Road facility. It appears that the only one that involved the Brentwood facility is the contract between the Postal Service and Glen Burnie Hauling.

Finally, the Union submitted certain tractor logs that reveal that Motor Vehicle Service personnel regularly operated a run from Curseen-Morris to Cargo 5 and back, apparently picking up, but not dropping off any mail there. The Union also introduced similar logs for two other employees which demonstrate that from February 11, 2004 through March 19th and 21st respectively the two drivers would travel from the Curseen-Morris P&DC to BWI, Baltimore, Randolph, the AMF, and Suburban Maryland as well as Northern Virginia and back to Curseen-Morris on a regular basis.

II. POSITION OF THE UNION

The Employer acted in this case as if the Contract did not exist; taking work away from the Union that clearly falls within its jurisdiction. It is work that the Union has been performing for a number of years and continues to perform. While the Service would disagree with that characterization, there is no question about what it did or that in taking those steps it contemptuously brushed aside the terms of the National Agreement. The Contract, however, is clear, unequivocal and binding; giving the Union certain rights that are applicable to these grievances. The first is that if the Union believes that Management violated one of the terms of the National Agreement it has a right to conduct an investigation which means not just talking to people, but requesting and receiving documents that are under Management's control. The Contract also requires that the Service's Step 1 and Step 2 designees respond to the grievance, making every effort to settle the dispute at the earliest stage of the grievance procedure. For much the same reason Management has an obligation to fully disclose its position at Step 2 in order to insure that the parties are able to honestly bargain over the issue as well as to insure that each knows where the other stands in a particular case so that if the matter does reach arbitration there are no surprises. Finally, the Contract provides that with certain limited

exceptions Management cannot subcontract out work that belongs to the bargaining unit. The Employer violated every one of those principles in these cases.

That the work in question, hauling mail between stations in the Washington, DC area, has belonged to, continues to belong to and should continue to belong to the bargaining unit whose members have performed it and continue to perform it is beyond question. Even the Service's own witness admitted that members of the bargaining unit were still performing the work up to the time that this matter came to arbitration. In the face of that admission, Management cannot legitimately maintain that there is any justification for taking the work away from the bargaining unit and giving it to a highway contractor. It especially can't where it failed to follow the procedures outlined in Article 32.

To make matters worse, the Employer never turned over any of the documents the Union requested, documents that the Service was required by Article 32 to prepare in order to justify the decision to contract out the work at issue. Instead, Management behaved as if it is immune from the operation of that provision as well as the operation of Article 15 and the other terms of the National Agreement. It isn't. It should have followed the Contract, but it didn't. The result is that the Service gutted the runs at issue in violation of its promise not to take such action. Worse, from the Union's perspective, is that not only did it lose the work, but twenty-one positions have been lost as a direct result of Management's calculated decision to subcontract out work that belongs to the bargaining unit. For that reason the grievance should be sustained and the bargaining unit made whole.

III. POSITION OF THE EMPLOYER

It is a basic proposition of labor arbitration that in contract cases the Union has the burden of proving by at least a preponderance of the evidence that Management violated the terms of the National Agreement. It is a simple truth, one that the Union seems to have lost sight of in this case; substituting passion for evidence and emotion for reason. Those are not sufficient grounds to justify finding that the Employer violated the Contract. Instead, to prevail the Union must show that the work at issue belonged to the bargaining unit and that the Employer did something wrong when it hired a highway contractor to haul the mail in Northern Virginia. It is a burden the Union cannot possibly meet because the work actually never belonged to the bargaining unit and it was never performed by the bargaining unit.

What the Union has lost sight of in bringing these actions is that the work in question involved a new facility, not an existing one. Although the Union would downplay the difference, it is significant and cannot be overlooked by the Arbitrator. What it means is that the work did not belong to the bargaining unit and, in fact, was never performed by the motor vehicle craft. In addition, the decision to have a highway contractor perform the work was an operational change done at the area level, one over which local Management had no control. It was the area that decided to hire the highway contractor to haul mail, not local Management. Therefore, there is nothing that local Management could do about the situation. Even if it could, nothing would change because before the Employer decided to hire the highway contractor the Postal Service considered all of the factors outlined in Article 32 and concluded after making that assessment that it had the right under the terms of the National Agreement to contract out the work.

It is not a decision that can be overturned by the fact that there are less drivers now then there were before the contract was given out. That there are less drivers simply means that over time certain changes have taken place that have caused a reduction in force. Beyond pointing to the raw numbers the Union cannot establish any correlation between Management's decision to hire a highway contractor to carry mail to the new facility and the reduction in the number of the members of the bargaining unit. They are simply two events that have no connection. Unfortunately for the Union, that is the primary "evidence" that it put before the Arbitrator to prove that Management violated the Contract. Absent any real evidence, the grievances must be denied.

IV. DISCUSSION

At the core of every collective bargaining agreement is a conflict between management's desire to operate the business and direct the workforce with as free a hand as possible and the union's effort to protect and expand the rights and benefits of its members. The parties memorialized that clash in Article 3, the Management's Rights Clause, of the National Agreement, when they declared that subject to the provisions of the Contract the Employer has the exclusive right to direct employees, to hire, promote, transfer, assign and retain employees as well as to suspend, demote and discharge them. More importantly for the purposes of these grievances; it has the right to determine the methods, means and personnel by

which operations are to be conducted. Although Article 3 does not explicitly mention the Union's jurisdiction, there is, nonetheless, a palpable tension between the Employer's right to manage the workforce and to determine the methods, means and personnel by which operations are to be conducted and the bargaining unit's right to perform certain jobs. That conflict is more visible in other areas of the Contract.

Thus, in Article 1, Section 6 the parties agreed that except in certain limited circumstances supervisors are prohibited from performing bargaining unit work. Likewise, under the preceding section newly created positions are to be assigned by the Employer to the national craft union that is most appropriate for that position taking into account the factors listed in the Agreement. That same theme exists in Article 4 which speaks to the technological and mechanization changes that affect jobs in the area of wages, hours or working conditions. In spite of those provisions, the Union cannot claim that its members have an absolute right to perform all work involved in the handling and transportation of the mail. Management has the power to subcontract work that might otherwise be and has been performed by the bargaining unit, but only if it satisfies the preconditions outlined in Article 32 and the relevant Memorandum of Understanding.

The first paragraph of that Article requires that the Employer give due consideration to public interest, cost, efficiency, availability of equipment and qualifications of employees "when evaluating the need to subcontract" while the second demands that the Service give advance notice to the National Union when it is considering subcontracting that will have a significant impact on bargaining unit work. Those requirements apply any time Management intends to contract out work that would otherwise belong to the bargaining unit. Those same issues: public interest, cost, efficiency, availability of equipment and qualification of employees were significant enough that the parties decided to repeat them in Article 32, Section 2 which speaks to the factors the Service must consider when it is deciding whether to subcontract out transporting mail. In addition, they mandated that sixty days prior to the scheduled installation of a HRC Management will furnish the Union with certain specific information relative to the subcontract.

The parties became even more specific in Section E, enumerating the factors that must be used in any cost comparison between the amount the Service would have to pay if the work

was performed by the bargaining unit and the cost of hiring an outside contractor. Finally, the parties provided in Paragraph G that the language in the preceding section would be applicable when evaluating the type of service to be provided to certain categories of routes, one of which is any route then being operated by the bargaining unit regardless of annual cost, round trip length or operating time.

Throughout the grievance procedure and during the trial the Employer maintained that it fully met its responsibilities under Article 32, notifying the Union at the national level that it intended to subcontract out the work at issue; that it gave due consideration to public interest, cost, efficiency, availability of equipment, qualifications of employees and performed the detailed cost comparison outlined in Article 32, Section E. In addition, it argued that no member of the bargaining unit was hurt in any way by the decision to subcontract out the work at issue, work that in one case involved transporting priority mail from the Curseen-Morris facility to the Randolph Building in Northern Virginia. In regard to those runs Management defended the decision to give the work to the highway contractor on the grounds that the outside firm was already under contract and transporting mail within the vicinity and that the mail in question was only given to the contractor "as an additional run due to operational changes". The Union countered those claims as well as one made by Management in the other grievances that none of the decisions the Service made had an adverse impact on the bargaining unit by pointing out that although there were 94 to 96 drivers at the Curseen-Morris Facility in 2001 there were only 74 at the time this matter came to trial.

To the Union, the loss of 21 positions is unequivocal proof that Management's decision to contract out the work at issue had an adverse, disastrous impact on the bargaining unit. While admitting that there had been a reduction of approximately 20 to 22 drivers between 2001 and 2007; Management, nonetheless, argued that there is no correlation between the reduction in force and the subcontracts that the Union is challenging by way of these grievances.

In some other case a reduction in force, especially one as significant as the one that took place at the Curseen-Morris P&DC would, by itself, be proof that turning the work over to an outside contractor had a significant, adverse impact on the bargaining unit. That conclusion is not applicable here because in spite of the raw numbers the issue is not as clear cut as the

figures would indicate. The reason it isn't is that the Craft Director admitted that the work taken from the bargaining unit was not eight hour, back and forth runs. Instead, they appear to be runs that, at best, took place a few times a day. While that is certainly true of the trips to the Randolph Building and to Cargo 5 as well as the Baltimore run, those runs were, nonetheless, covered by Motor Vehicle Service employees and from the evidence in the record members of the bargaining unit continued to carry mail to Cargo 5, Dulles Airport, Washington Airport and the Randolph Building through 2004 on a regular basis. Those runs were too few in number, though, to establish a cause and effect relationship between the work being turned over to a private contractor and the loss of twenty or more positions.

From Management's perspective it didn't matter whether members of the bargaining unit at Curseen-Morris had been transporting mail to and from the Randolph Building, Cargo 5, Baltimore or any of the other places the Union claimed its members were servicing because those facilities did not fall within the jurisdiction of the Capitol Area. They were, instead, under the District's control. The Employer drew two conclusions from that premise. The first is that since local Management had nothing to do with turning the runs over to the highway contractor it can neither be held accountable for the decision nor could it alter it, and by extension, neither can the Arbitrator. The second is that because the runs at issue fall under the jurisdiction of other plants, any complaints about the work being turned over to private contractors should have been raised at those facilities. Neither is a convincing argument, especially the latter.

There is ample evidence in the record that, prior to the work being turned over to the highway contractor, members of the bargaining unit at Curseen-Morris regularly made runs between the Curseen-Morris facility and Baltimore, the Randolph Building, Cargo 5, Dulles Airport, and Reagan Airport. It was the decision to contract out that work that gave rise to these grievances. The fact that the Service may have reorganized its operations so that Northern Virginia and Southern Maryland P&DC's are responsible for handling mail in those other buildings does not mean that the Employer had an unfettered right to take the work away from the bargaining unit or that the motor vehicle craft at Curseen-Morris had no right to protest the decision to take away work that it had been performing and to some extent was still performing, at the time these grievances came to trial. To accept the Service's argument is to

accept that the Union could not challenge Management's decision to contract out the work because Curseen-Morris was no longer responsible for it and, therefore, the Union members at that facility could not grieve the decision to contract out the work and that craft employees at the plants that took over responsibility for the mail runs at issue could never have challenged it because there is nothing in the record to indicate that they ever knew that responsibility for the runs had been taken over by their individual plants.

Neither can the Employer defend these grievances on the grounds that it complied with Articles 17 and 31 of the National Agreement by turning over all of the documents the Union requested when it began investigating these grievances. At step 2 Management tacitly admitted that it failed to provide the documents the Union sought by arguing that the steward did file a grievance and was given time to prepare. The answer, however, misses the point which is that when the Union submitted the request for information Management had an obligation to respond. If it did not have the documents at the Curseen-Morris Plant then it had to do one of two things. It had to, at a minimum, inform the Union where the documents could be located and give the Union an opportunity to obtain those documents. The second, and the better approach, would have been to obtain the documents for the Union and turn them over as it was required to do by Articles 17 and 31.

The Service repeatedly maintained that it did turn over the materials the Union requested, but there is very little in the record to show that it actually complied with any of the requests the Union made. At best, there are two documents that management submitted that come anywhere close to complying with the Union's request. One is an HCR Schedule Information that apparently covers the period from April 19, 2003 to May 15, 2005 and affects the Southern Maryland P&DC and the Dulles P&DC. Attached to that form is a notice of changes effective September 29, 2004. Other than that, the only other piece of paper that the Employer seems to have turned over to the Union was a Contract Route Service Order dated April 15, 2005 covering a contract that began on July 1, 2004 and was to run through June 30, 2006. No where is there any indication that Management ever turned over, let alone prepared, a cost comparison or the initial Comparative Analysis Report and Decision Analysis Report or the notice or notices sent to the National Union informing the Union of the subcontracts. Instead, it appears that in the case of trips to the Randolph Building, Management simply

decided that because the contractor was going to a facility near the Randolph Building it would turn the run contractor as a matter of convenience. That is not how the parties envisioned the process operating.

At a minimum, Article 32.2.D demands that if there is a subsequent substantive modification in the information provided to the Union, it will be notified as soon as the decision is made. There is nothing in the record to suggest that was ever done or that the National Union was ever notified of Management's decision to contract out the runs at issue. The Union demanded that the Employer produce those notices, but it never did even though it had more than an ample opportunity to do so. Since the Contract places the onus on the Service to notify the Union before it contracts out work that could be performed by the bargaining unit, any claim that the Service satisfied those requirements is an affirmative defense that Management must prove by at least a preponderance of the evidence. It cannot meet that obligation by simply saying that it made the National Union aware that it intended to contract out the work. It especially can't where the Union asked for copies of the notice(s). Where the Union seeks the documents the Service has an obligation to produce them. What it turned over in this case as evidenced by the materials in the record is insufficient to satisfy that obligation.

The Employer could have claimed that because the Baltimore, Randolph Building and Northern Virginia runs were simply added to the existing subcontracts it had no obligation under Article 32.2.D to notify the Union that it was instituting those changes because the Union is only entitled to notice if Management is making "substantive modifications" in the information it already provided to the Union. Management, however, never asserted that the decision it made with regard to the runs covered by these grievances were not substantive modifications to the original Contracts and, therefore, it was permitted to initiate the changes without advising the National Union of what it was doing. Instead, in all four grievances the Service took the position that it notified the National Union of the decision to contract out the work at issue and that it turned over every document to the Union that the Union had requested including copies of the initial Comparative Analysis Reports and the notices that were sent to the National Union advising it that Management was considering contracting out the work in

question. As noted earlier in this discussion, there is absolutely nothing in the record to support those contentions.

That conclusion remains true even in the face of the July 15, 2004 email which speaks to Management notifying the National Union that it was contracting out motor vehicle service work. The message, however, only covers emergency contracts in place at the Southern Maryland Processing & Distribution Center. As the Employer was quick to point out throughout these grievances, the Southern Maryland Processing & Distribution Center lies outside the jurisdiction of the Capitol Metro Area. The Service cannot have it both ways. It cannot, on the one hand, argue that the Union had no right to pursue these grievances because the decision to contract out the work had been made at the District Level and also because the routes at issue lay under the authority of either the Northern Virginian or Southern Maryland plants and on the other assert that it fulfilled its obligation under Article 32.B to notify the National Union of its intent to contract out the work when it only advised the National Union of an emergency contract involving the Southern Maryland Processing & Distribution Center.

To be consistent Management would have had to notify the National Union that it was contracting out work that belonged to Northern Virginia, the Capitol Metro Area, as well as the Southern Maryland Processing & Distribution Center. Again, there is absolutely no evidence in the record that the Employer did that or if it did, that Management ever turned those documents over to the Union. At best, the Employer's Step 3 representatives played word games when confronted with the Union's claim that the Service had not turned over the papers the Union requested. Specifically, in the grievances involving the Union's claim that Management took work away from the bargaining unit by subcontracting out the Northern Virginia and Baltimore runs, Management's Step 3 representative wrote:

> Information was exchanged at the Step 2 meeting and request for information were given to the Union. At Step 2 the following issues were discussed: 1) letters from management at Headquarters giving notification to the Union about the change in service; 2). Copies of the Comparative Analysis and the Decision Analysis was provided by HQ LR the National Office of APWU; 3) This grievance on the same issues were appealed to Step 4 in accordance with the Collective Bargaining Agreement.

The issues may have been discussed, but the Step 3 representative stopped short of unequivocally declaring that Management had turned over the information the Union sought. The Service's failure to confront the issue head on leaves the undersigned with but two possible conclusions. The first is that in spite of its contractual obligation to supply the information, Management either deliberately refused or simply neglected to do so. The second is that the information, including the notification of the National Union, never existed. It is more likely the latter is the case in view of the Service's position that the work the Union claims was taken away from its members had never been formally assigned to the bargaining unit as in the case of the runs to Cargo 5 or was never posted for bid as in the case of the other runs. It would make little sense for the Employer to have notified the National Union that it intended to contract out routes that were never established or assigned for bid to the motor vehicle service at the Curseen-Morris P&DC.

According to the Employer, the only reason the work was initially assigned to the bargaining unit at Curseen-Morris in the first place was that:

> Transportation into and out of Worldwide/Cargo 5 is established under the jurisdiction of Distribution & Networks domain, via the Metro Area Office. This location for receipt of mail was established in 2001, with the deployment occurring just two (2) days prior to the September 11, 2001 attacks which took place at the Pentagon and the World Trade Center.
>
> Upon entering the partnership between the US Postal Service and FedEx, it was never the intention of the Area Office to have PVS assigned thee routes. PVS was only running these trips on a temporary basis in order to provide needed transportation data for solicitation of permanent HCR Routings. Because Cargo #5 is located at the Dulles Airport all HCR Contracts along the Dulles corridor belong to NOVA.
>
> Trips to Cargo #5 have never been established or assigned for Bid in PVS at JCTM. The reason our drivers continued in the position of transporting mail to and from this corridor is because of the disaster involving Anthrax, which resulted in the closing of the Brentwood Facility (JCTM) on approx October 21, 2001.
>
> When the Plant closed, we had no idea when we would return to the Facility. Adjustments had to be made with all of our trips and dispatched to correspond to our being placed at Southern, MD P

> &DC as well as the Calvert DDU. Because of the uncertainty of a permanent location, the Area Office withheld establishing a Contractor for not only Cargo #5 but there were also temporary shifts to other trips. JCTM continued transporting mail to and from Cargo #5 until we were firmly re-established back into the JCTM Plant.
>
> Now that we are back in the building, all Transportation Schedules are being "normalized" and given permanent assignments. Cargo #5 belongs to the NOVA corridor. PVS should only be used when the Contractor fails to show up or the volume exceeds payload capacity.

It is an interesting argument for a number of reasons, not the least of which is there is no indication in the portion of the Employer's Step 2 answer cited above that Management ever had any intention of assigning the work to the motor vehicle craft and, more importantly, that it never gave any notice whatsoever to the National Union that it intended to hire a contractor to haul the mail to and from Cargo 5.

It may very well be that Management ultimately intended to notify the National Union that it was going to give responsibility for hauling mail to and from Cargo 5 to an outside contractor once it established what the cost would be to use motor vehicle service personnel to perform the work. That is one way of reading the Step 2 designee's answer. The problem for the Service is that the argument starts with the conclusion that the public interest, cost, efficiency, availability of equipment and qualification of employees all would have fallen in favor of contracting out the route. The Service would have no way of knowing that, however, unless it performed the cost analysis mentioned in Article 32.2.B and it gave the National Union advance notice of its intent to subcontract the work so that the National Union could prepare an analysis that would have challenged that conclusion. (Both parties should have arrived at almost identical dollar figures for the cost of the bargaining unit performing the work since the parties had to apply the methodology outlined in Article 32.2.E.)

The Union repeatedly asked the Service to turn over copies of those cost comparisons. There is no indication in the record that the Employer ever complied with any of those requests, let alone all of them. If anything, some of the Service's Step 2 answers indicate that Management couldn't turn over copies of the cost analysis because it never prepared any such documents. Instead, it repeatedly declared that it gave due consideration to the five factors

outlined in Article 32.1.A. It is not enough to simply mouth the words, though. They are not some talismanic phrase that Management can mutter and then claim that it complied with the Contract. Instead, the Employer must be prepared to demonstrate that it did more than just pay lip service to the Contract. As Arbitrator Richard Mittenthal noted in Case Nos. H8C-NA-C25 and A8-NA-0481, due consideration means:

> ... that the Postal Service must take into account the five factors mentioned in paragraph A in determining whether or not to contract out. To ignore those factors or to examine them in a cursory fashion in making it's (sic) decision would be improper.

His view was echoed by Arbitrator Patrick Hardin who wrote:

> The duty is only to give due consideration to those factors, but is is not less than that. If Management makes a decision to subcontract before giving the five factors "due consideration", Management violates the national Agreement and the decision can be countermanded by the arbitrator, if necessary for a full remedy.
>
> Moreover, the duty to give due consideration means that Management must make reasonable decisions about subcontracting. It is not to be supposed that Article 32 allows the Postal Service to proceed with a subcontract after concluding that all five of the factors weigh strongly against that course of action. (Cited with approval by Arbitrator Christopher E. Mills in Case No. H94V-1H-C 98010993.)

The undersigned can find no reason not to follow the lead of those authorities. Neither can the undersigned find any basis to conclude that Management gave any consideration let alone due consideration to the five factors mentioned in Article 32.1.A.

There are times when, because of exceptional circumstances, it may not be feasible for the Employer to go through the process envisioned in Article 32. In such circumstances the Service is free to enter into an emergency contract for transporting mail. Management, however, cannot escape Article 32's reach simply by declaring that an emergency exists. Instead, the situation must fall within one of the five enumerated categories of events listed in Article 12.4.6.b.4 of the Procurement Manual. The first of those is a catastrophic event that

interrupts normal transportation operation. The anthrax outbreak that crippled the Curseen-Morris facility falls within that definition. According to Management, the Service had plans to contract out transporting mail to Cargo 5. They never came to fruition because of the crises. At that point it appears that the Employer turned some of the work at issue over to a highway contractor by way of an emergency contract. The decision did not violate the terms of the National Agreement because Publication 41 expressly allows the Service to enter into emergency contracts, but only for the duration of the emergency. Further, those agreements "must terminate when the emergency ceases and the Postal Service is able to obtain services otherwise pursuant to its contracting authority".

The Employer sought to justify the decision to employ a highway contractor at Step 2 on the basis of an emergency only to have the Union counter that members of the bargaining unit had been making the runs for four years as of June 30, 2005 and that Postal employees had been back in the Curseen-Morris P&DC for nearly two years at that time. The Service made no effort to challenge those claims.

The Manager of Transportation & Network also was not in a position to challenge the Union's claim that the bargaining unit has been running mail to Cargo 5 since 2001. The news, in fact, seemed to come as a surprise to her. Whether it did or not, there is no question but that motor vehicle personnel were regularly making runs to Cargo 5. They were also running mail to the Randolph Building in 2004 as well as to Baltimore and to Dulles. These may not have been eight hour back and forth runs, but the records and testimony leave no doubt that motor vehicle service employees regularly ran mail to Cargo 5, Baltimore, Northern Virginia and the Randolph Building. The Service cannot justify taking that work away from the Union on the basis of an emergency contract because there are only two emergency contracts, one out of Southern Maryland and the other Curseen-Morris, the extent of which is at issue. Moreover, Management did not contest the Union's claim that the Curseen-Morris P&DC had been open for at least a year and perhaps two by the time these grievances arose. If that is the case, and there is no reason to doubt that it is not, then the emergency no longer existed and the Service cannot justify taking work away from the bargaining unit on the basis of the emergency.

If it was going to do that it had to comply with the provisions of Article 32, Section 1.A which demand that Management give due consideration to public interest, cost, efficiency,

availability of equipment and qualifications of employees when evaluating the need to subcontract. In the four grievances under consideration the Employer claimed that it gave due consideration to those factors, but as noted earlier in this discussion offered no evidence to support that contention. It appears that the only factor the Employer considered with regard to giving a highway contractor the responsibility for the Randolph Building run was that the company was already picking up and delivering mail to a nearby facility. Under the circumstances, Management concluded that it would be more convenient for the contractor to go around the corner and service the Randolph Building as well. That may fall into the category of efficiency, but the Employer then undercut that argument by admitting that it dispatches motor vehicle service personnel to the Randolph Building when it was inconvenient for the highway contractor to fulfill its responsibilities. Further, the Employer may have a difficult time establishing that it gave due consideration to the issue of cost considering that the Contract Route Service Order involving R&F Trucking Company made a number of changes that increased the cost of the contract from $849,000.00 to $1,873,000.00 per year. It is not clear if all of those routes involved hauling mail to and from the Capitol Area, but the fault for that lies with the Postal Service not the Union because the Service failed to turn over any other documents except the HCR's Schedule Information between Southern Maryland P&DC and Dulles P&DC.

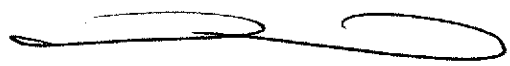
There is nothing in the Contract that gives the Union an exclusive claim to all motor vehicle work. Article 32, however, puts certain restrictions on Management; prohibiting it from contracting out work that the bargaining unit could perform unless and until it satisfies the requirements mandated by the Contract. In addition, the Service is prohibited from gutting Postal Service vehicle runs in order to solicit highway route contractor to perform the work. It appears from the record in this case that Management did not meet those requirements. There is nothing to suggest that it considered any of the factors outlined in Article 32, Section 1.A or that it ever notified the National Union that it was contracting out the work at issue. If anything, it appears that the Service has been assigning members of the motor vehicle craft at the Curseen-Morris Facility to clean up after the subcontractor, sending motor vehicle drivers to the Randolph Building to pick up mail when the contractor leaves because it does not want to wait or cannot wait around for FedEx planes to land. Regardless of how the Employer

characterizes the work, the evidence reveals that it was regularly performed by members of the bargaining unit and would have been performed by the bargaining unit but for the Service's decision to turn it over to a highway contractor. Since there was no emergency or the emergency ceased the Service had to meet the requirements of Article 32 before it contracted out the work. It didn't. As a result it violated the Contract.

V. DECISION

For the foregoing reasons the grievances are sustained. The Postal Service is to cease and desist contracting out the runs at issue to highway route contractors. The parties are to determine the number of times MVS drivers were denied the work in question and the duration of those runs. The appropriate drivers are to be compensated at straight time rates for each occurrence. The Arbitrator shall retain jurisdiction for 120 days to resolve any disputes regarding the implementation of this award.

Date: 6/12/07



LAWRENCE R. LOEB, Arbitrator

Regional Level Award B00V-1B-C06232841

by Arbitrator Thomas J. Fritsch

This Utica case involved the transport of mail by other than the designated MVS Craft. We prevailed despite the fact that the position had duel duties.

REGULAR ARBITRATION PANEL

in the Matter of the Arbitration	( )	Grievant: Class Action
between	( )	Post Office: Utica
UNITED STATES POSTAL SERVICE	( )	USPS Case No: B00V1BC06232841
and	( )	APWU Case No:
AMERICAN POSTAL WORKERS UNION, AFL-CIO	( )	0630

BEFORE: Thomas J. Fritsch, Arbitrator

APPEARANCES:

For the U.S. Postal Service:	J. Panek
For the Union:	R. Knepp
Place of Hearing:	Utica, NY
Date of Hearing:	June 13, 2007
Date of Award:	July 11, 2007
Relevant Contract Provision:	Article 7
Contract Year:	2000 - 2005
Type of Grievance:	Contract

Award Summary

The instant grievance is sustained for the reasons set forth in the attached award.

Thomas J. Fritsch
Arbitrator

OPINION

Background:

The facts in this matter are not in dispute. On August 1, 2006 at approximately 10 PM, a Clerk Craft, Flat Sorter Machine Operator was dispatched from the Utica facility to transport approximately 8 trays of mail to the plant in Syracuse, NY. According to TACS reports that were contained in the moving papers, the Clerk Craft employee in question has a bid assignment beginning 2:30 PM with an end tour of 11 PM. On the tour beginning on August 1, the Clerk ended his tour at 1 AM for which he was compensated 8 hours at straight-time and 2 hours of overtime. The round trip from Utica to Syracuse is approximately 120 miles.

According to the testimony of the now local Union President in Utica, as a result of a settlement agreement reached at the Regional level, there is one individual in Utica who acts as a Clerk/Motor Vehicle Service Driver. On August 1, 2006, that individual ended his tour at 9 PM. The local President also testified that local management in Utica knew that the mail in question needed to be transported to Syracuse before the Clerk/Motor Vehicle Service Driver left for the day. On cross examination, the local President testified that he was not present at the facility at 9 PM on August 1, 2006 because he reports for duty at 10 PM. On redirect examination, he further testified that he had investigated this grievance before testifying and had found that the practice in Utica was to transport mail by truck and car simultaneously each evening.

It was undisputed at the hearing that there was no Step 1, 2 or 3 meeting or decision rendered in regard to this grievance. This put the Service representative in the position that he could not establish any affirmative defense in this matter because of the failure of management to articulate its position or refute the Union's version of the facts during the processing of this grievance. Therefore, anything the Service representative could have

presented at arbitration would constitute new argument in view of the full disclosure requirements of Article 15 of the National Agreement.

The parties were unable to resolve this dispute through the steps of the grievance procedure and the matter was eventually appealed to arbitration. A hearing was held in Utica, NY on June 13, 2007.

Issue:

The issue in this matter is as follows:

Did the Service violate the National Agreement when it used a Clerk Craft employee to transport a bulk quantity of mail from Utica to Syracuse, NY on the evening of August 1, 2006?

Position of the Parties:

The position of the Union was outlined in both its opening statement and closing argument. The Union began by pointing out that the transportation of bulk mail is the exclusive work of the Motor Vehicle Craft. The Union states that there was no dispute that on the evening in question that the Service sent the Clerk/Motor Vehicle Service Driver home at 9 PM. The Union maintains that the Service knew when it sent the Clerk/MVS Driver home at the end of his tour that the approximately 8 trays of mail needed to be transported to Syracuse. The Union contends that it was a well known practice at Utica that mail would be simultaneously transported by truck and car every evening. The Union noted that the testimony of the local President in regard to the aforementioned assertions was unrebutted by the Service.

On a procedural note the Union asserts that there was no Step 1, Step 2 or Step 3 meetings or decisions rendered in regard to this grievance. The Union argues that as a

result of the Service not taking any position in this case, anything that the Service presents for the first time in arbitration must be considered new evidence and argument and should, therefore, be excluded from consideration. As a remedy, the Union requests that the senior Vehicle Maintenance Facility employee on the Overtime Desired List at the time of the incident be compensated at the overtime rate for all time spent by the Clerk transporting bulk quantities of mail on the evening of August 1, 2006.

In view of the foregoing, the Union requests that the instant grievance be sustained.

The position of the Service was also outlined in its opening statement and closing argument. The Service began by pointing out that the burden of proof in this matter rests squarely on the shoulders of the Union. The Service contends that the Union did not meet that burden. As a result, the burden never shifted to the Service and it was not required to establish any affirmative defense, according to the Service. The Service contends that the record is clear that no one from the Vehicle Maintenance Facility was on duty at 10 PM on the evening in question. The Service asserts that the Union has not identified any employee who was available to perform the work involved in this dispute.

Concerning the Clerk/Motor Vehicle Service Driver, the Service states that he clocked out at 9 PM on the August 1, 2006. The Service notes that the local President who testified that the Service allegedly knew it would be necessary to transport the 8 trays of mail at 9 PM was not physically present at that time since he does not report until 10 PM. In addition, the witness's claim that he investigated the grievance cannot be determined since his name does not appear on any of the documents contained in the moving papers.

In view of the foregoing, the Service requests that the instant grievance be denied.

Discussion and Analysis:

Beginning with the procedural question raised by the Union, it is undisputed in this

matter that the Service did not meet or render a decision at any step of the grievance procedure. Breeches such as this place a Service advocate at a distinct disadvantage in arbitration since any defense raised at hearing is considered to be new argument because of national arbitration precedent upholding the full disclosure requirements of Article 15 of the National Agreement. Such is the case in this matter. Because the Service took no position during the processing of this grievance, the undersigned did not consider the Service's arguments and assertions in this decision because everything it presented in arbitration was presented for the first time at that stage.

However, it should be noted that in spite of that fact, the Union must still be able to carry its burden of proof in a contract case such as this in order to win the day. The Union did so in this matter. The Union presented unrebutted testimony that the Clerk/Motor Vehicle Service Driver was present until his end tour at 9 PM on August 1, 2006. The Union established that the existing practice at the time of this incident was to utilize simultaneous truck and car transportation of bulk quantities of mail on a daily basis. The Union demonstrated that the Service knew it would have to dispatch a trip to Syracuse on the evening in question before the Clerk/MVS employee finished his tour at 9 PM. The Union proved that a Clerk Craft employee was sent to Syracuse at 10 PM on August 1, 2006 and on that tour worked a total of 10 hours. All this results in the conclusion that the Clerk/MVS Driver should have been remained on duty to perform the work in question. The use of the Clerk Craft employee, who received overtime on that evening, was improper and a violation of the National Agreement.

The instant grievance is, therefore, sustained. The remedy requested by the Union that the senior VMF employee on the Overtime Desired List be compensated at the overtime rate for "all time incurred by the clerk in transporting the mail to Syracuse" is granted. The request that the Service cease and desist is too broad in scope to be granted and is prospective. This is beyond the authority of the undersigned to grant.

The arbitrator will retain jurisdiction for the sole purpose of resolving any disputes

concerning the aforementioned remedy.

Thomas J. Fritsch

Arbitrator

Regional Level Award C00V-1C-C056712

By Arbitrator Lawrence R. Loeb

Philadelphia Management decided that this driver was not going to drive. They relied on a horrible investigation to sustain their position.

Article 29 was violated as well as others.

MVS Craft Director gave excellent testimony.

234

REGULAR ARBITRATION PANEL

In the Matter of Arbitration	)	CASE NO. C00V-1C-C 05067125
	)	C00V-1C-C 05056946
between	)	C00V-1C-C 06164964
	)	
THE UNITED STATES POSTAL SERVICE	)	LOCAL UNION NO. 05801
	)	05617
and	)	062035
THE AMERICAN POSTAL WORKERS UNION, AFL-CIO	)	
	)	GRIEVANT: Sarah Davis-White
	)	
	)	POST OFFICE: Philadelphia, PA

BEFORE: Lawrence R. Loeb, Arbitrator

ON BEHALF OF THE POSTAL SERVICE	Ken Giles Labor Relations Specialist
ON BEHALF OF THE UNION	Russ Knepp National Business Agent
PLACE OF HEARING:	Philadelphia, PA
DATES OF HEARING:	November 22, 2006 & March 28, 2007
DATE OF DECISION:	May 17, 2007
CONTRACT PROVISION:	Articles 15, 16 & 29
DECISION:	The grievances protesting the indefinite suspension and permanent revocation of the Grievant's license are sustained. The Grievance protesting the revocation of the Grievant's driving privileges on the grounds of the July 2004 accident is denied.

SYNOPSIS

The Employer violated the Contract when it first indefinitely suspended the Grievant's license and then permanently revoked it. The Service's actions were triggered by an accident that it did not investigate, but nevertheless assumed was the Grievant's fault. Management had a duty to thoroughly investigate the incident before it acted, but failed to do so; refusing to contact an eye witness or even consider his statement which exonerated the Grievant for the collision.

I. STATEMENT OF FACTS

The Grievant was hired as a motor vehicle operator by the Postal Service on February 2, 1999. Her training record reveals that she began her training on February 18th and completed it four days later. It appears from that same document that she was trained to operate a tractor trailer on June 20, 2001, but ultimately was not certified to do so. Of greater significance for the purposes of these grievances, her training record indicates that on April 22, 2000, June 17, 2003, April 27, 2004, October 4 and 14, 2004 and then again on February 10, 2005 she received remedial training which Management's witnesses testified is automatically given to any motor vehicle operator who, like the Grievant, is involved in an accident. The worst one the Grievant was involved in occurred on July 5, 2004 when she attempted to make a left turn from Market onto 30th Street in Philadelphia. According to the Grievant, when the light turned yellow she started her turn at which time a passenger car approximately half a block down the road sped up in order to make the light. The result was a collision in which not only were the passengers and the driver of the oncoming car injured, but so too was the Grievant. Her injuries were serious enough that she was off work for approximately three months.

While she was recovering the Safe Driving Award Committee reviewed the incident to determine if it was preventable. Two of the Committee's members, the Supervisor of Transportation operations and the Safety Specialist, concluded that the accident was preventable because the Grievant had turned left in front of the other vehicle assuming that it would yield the right of way. The third committee member, a qualified installation driver, reached the opposite conclusion; deciding that the accident was non-preventable because the other driver was traveling too fast and had driven into the intersection even though the Grievant was half way through her turn. It was a conclusion that ultimately found support in the report of an accident reconstruction expert from Consulting Engineers & Scientists, Inc., a private firm that had been hired by the Postal Service to review the accident in preparation for the suit Management knew would be forthcoming. After examining photographs of the two vehicles involved in the accident, the police report and the report prepared by the Employer the expert concluded that the accident was caused by the driver of the privately owned vehicle who was traveling on wet pavement in excess of the posted speed limit.

Although the report was completed and sent to the Manager of Transportation Networks on September 9, 2004, the Union would not learn of its existence until sometime in mid 2006 even though it submitted a request for information about the 2004 accident sometime before August 10, 2004. The Union never stated why it took that step, but the most reasonable explanation is that it sought the information in anticipation of Management taking some action against the Grievant. Whatever the Union's motives, the Employer responded to the request by turning over all of the documents that it had in its possession up to that time. Two notations on the cover sheet that accompanied the documents indicate that the Employer intended to supplement its response if and when the other materials the Union asked for became available. The Employer, however, did not advise the Union that it had retained the services of an accident reconstruction specialist, turn over his report or the other key pieces of information the Union had sought

The Union's concerns about the Grievant's situation proved to be justified when, after she returned to work in the fall, she received a memo informing her that her driving privileges would be suspended for thirty days effective October 27th of that year. The notice went on to advise the Grievant that:

> Your accident history reflects that from April 2003 until the present you have bee involved in three (3) motor vehicle accidents. You will return to Transportation's Operations on Monday, November 29, 2004.

The incidents included an accident on November 1, 2003, one on April 26, 2004, the July 5, 2004 accident, which was by far and away the worst one, and another accident on October 12, 2004. Although the Grievant's driving privileges were supposed to have been suspended from October 27 through November 29, 2004, another document in the file indicates that on November 4, 2004 the Grievant received a fourteen day suspension for unsafe driving/failure to follow standard operating procedures when backing. It is unclear from the document when that incident occurred and no one offered any testimony to fill that void. Whatever the case, the Grievant did not protest that suspension.

She returned to driving a truck at the end of November and drove without incident until February 9, 2005 when she was involved in yet another accident. This one occurred on the grounds of the University of Philadelphia whose police investigated the incident after which an officer filed a report that failed to list the name of any witnesses to the incident. The same day Service personnel completed an Accident Profile, which is a three page document, the third page

of which requires the individual who completes the form to provide a narrative/complete description of the accident. According to the narrative the Grievant was stopped at a traffic light in the left-hand lane on a street running through the University of Pennsylvania. When the light changed she started across the intersection only to hear a noise a short time later. She stopped her vehicle at which time she discovered that a privately owned vehicle was at the right rear wheel of the passenger side of her truck. The report concluded with the statement:

> Witness Bernard Williams...stated it looked like the POV (privately owned vehicle) attempted to change into the left-hand lane.

That was the lane in which the Grievant was traveling at the time of the incident. On March 8, 2005 the Grievant obtained a sworn statement from the witness which put the blame for the accident on the driver of the privately owned vehicle who, according to the witness, attempted to move from the right to the left lane in which the Grievant's vehicle was traveling without using his turn signal or having a clear lane to switch into.

By then it was too late for the Grievant who, on the day of the accident, received a memorandum notifying her that effective Friday, February 11, 2005 her driving privileges would be indefinitely suspended because of her "unsafe driving practices". The notice went on to declare that her record revealed that she had been involved in a total of four motor vehicle accidents in less than a year. That memorandum was followed by one dated March 4, 2005 advising the Grievant that effective that day her driving privileges were being permanently revoked. Following that declaration the document went on to declare:

> Our decision to take this action is based on your unsafe driving practices. Your accident history reflects that with in less than a year you have been involved in a total of four (4) motor accidents.
>
> The record also notes that you have been a Motor Vehicle Operator for six (6) years, during that time frame you have had a total of six (6) motor vehicle accidents.
>
> This action is in accordance with Article 29, of the National Agreement, which Notes "An employee's driving privileges, may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver". It further states that every effort will be made to reassign such employee to non-driving duties in the employee's craft or in other crafts.

The Grievant was not reassigned to another craft, though. Instead, she remained in the motor vehicle craft assigned to work the gate at the Lindberg Processing & Distribution Center.

The Union nevertheless quickly initiated two grievances on her behalf. The first, presented on March 8, 2005, protested the notice of revocation of driving privileges on the grounds that the action was not for just cause, was punitive rather than corrective in nature as required by Article 16 and was capricious. The second, which most probably was filed sometime in late March or early April 2005, challenged the Grievant's indefinite suspension on the grounds that the action was premature because Management failed to conduct a full investigation before it issued the suspension. The Employer denied the grievance protesting the permanent revocation of the Grievant's driving privileges in a three page letter dated April 22, 2005 in which the Service's Step 2 representative pointed out that the Grievant had had six motor vehicle accidents in six years, four of those coming within the ten months preceding the revocation of the Grievant's license. The Step 2 decision reiterated that point by listing the Grievant's entire driving record while at the same time pointing out that the Service has the right under Article 29 to revoke an employee's driving privileges when his or her on-duty record demonstrates that the employee is an unsafe driver.

In the additions and corrections that it filed almost immediately after receiving the Step 2 answer the Union did not contest the fact that the Grievant had been involved in four motor vehicle accidents. Instead, it took the position that her record did not give Management the right to ignore the Contract which required that the Employer demonstrate that all of the accidents were preventable and that a full review of the accident must be make as soon as possible, but not later than fourteen days after the incident. The Employer brushed those claims aside on June 6, 2005 when it filed its Step 3 answer which returned to the argument that the Service had both the right and as well as the obligation under Article 29 to revoke an employee's driving privileges where the evidence reveals that the individual is an unsafe driver.

The Union faired no better on its challenge to the suspension that had been handed down immediately after the February 9, 2005 accident. In fact, the parties repeated almost word for word the arguments they put forward at Step 3 of the first grievance with the result that the grievance protesting the indefinite suspension was also appealed to arbitration.

On July 6, 2006, while the other two grievances were awaiting trial, the Union initiated a third grievance in which it protested the Employer's alleged violation of the National Agreement and the Local Memorandum of Understanding because Management had failed to give careful consideration to "the nature, severity and recency (sic)" to the July 5, 2004 accident. What the Union was really protesting was the Service's failure to take into consideration the findings of

the accident reconstruction specialist who, according to the Union, concluded the Grievant was not responsible for the July 5, 2004 accident. In part, that conclusion was based on the photographs attached to the report that indicate that the Grievant's truck suffered significant damage to the right front bumper while the car's front, top and back were destroyed. Based on the pattern of damage the accident reconstruction expert concluded that even though the Grievant had been making a left turn the operator of the privately owned motor vehicle was at fault because he was traveling in excess of the 30 mile per hour posted speed limit on wet pavement..

When the matter came to trial the Employer tendered an E-mail message dated November 13, 2006 which stated that the Service had settled the claims of two of the passengers who had been in the car that struck the Grievant's truck in 2004 for a total of $460,000.00. The Union countered that point by eliciting testimony from the Grievant who declared that the driver had taken the case to court and that she, the Grievant, had "won her case" meaning that the driver had been paid nothing, intimating that the decision had come down in her favor because she was not at fault for the accident.

The Union also challenged the Employer's decision to cite the February 9, 2005 accident as the basis for first indefinitely suspending the Grievant's license and then revoking it through cross-examination of the Supervisor of the Transportation Department who issued the two actions. Asked specifically about the witness to the February 2005 accident and especially about his statement that the owner of the private vehicle, not the Grievant, was at fault, the Supervisor responded "That was his opinion". She also stated that even though the witnesses' name was on the Accident Report she had not contacted the witness because she usually doesn't.

II. POSITION OF THE UNION

Although the phrase may be trite, there is no better way to describe the Service's decision to first suspend the Grievant's license and then to permanently revoke her driving privileges than as a rush to judgment. It could not be otherwise considering that Management utterly failed to investigate February 2005 accident, in the process ignoring the witness who unequivocally put the responsibility for the collision on the operator of the other vehicle. That was bad enough. Management then compounded the problem by disregarding the findings of its own expert that the Grievant was not at fault for an earlier accident. The Service obviously did not care about such inconvenient things like facts or let them get in the way of the decision to take away the Grievant's driving privileges. The proof that it didn't lies in the fact that at the time these grievances were being discussed the Employer never explained why it ignored such crucial

evidence. It was only years later, at arbitration, that it was finally able to articulate what can best be described as an after the fact justification for poor decisions.

The Employer has the right to suspend an employee's license where there is just cause to take that step. It also has the right in an appropriate case to revoke an employee's driver's license. Neither principle is under assault in this case. What Management cannot do, but what it did in this case is create its own reality; deciding in advance that an employee is guilty and then scrambling to find some justification for that decision. Faced with exactly that problem, Management's answer was to ignore anything and everything that was contrary to the idea that the Grievant's license should have first been suspended and then revoked. That may have worked up until arbitration, but at trial the Service had to produce credible evidence to support those decisions. It utterly failed to come anywhere close to meeting that burden in any of these cases. The result is that the Employer was forced to fall back on a number of after the fact arguments in order to justify a decision that was made the moment it learned that the Grievant was involved in the February 2005 accident. When it became clear that those claims would not adequately explain its actions Management offered up a series of bizarre explanations for failing to adequately investigate the two accidents that are the crux of this matter and for disregarding the eyewitness account that exonerated the Grievant of any liability for one of those accidents and its own expert's opinion regarding the other.

Whatever power the Employer has to manage the workforce and direct its employees as well as discipline and discharge them is tempered not just by the language in the National Agreement and the Local Memorandum of Understanding, but also by basic principles of decency, fairness and due process. Together, those guarantee that not only the Grievant, but every employee a right to a fair, impartial and thorough investigation before Management decides to discipline that individual or to radically alter her status in the Post Office. For reasons that the Service has never made clear and which it probably cannot articulate, Management failed to live up to those obligations in these cases. The result is that the Grievant's license was suspended in October 2004 and again in February 2005 and then revoked even though there was absolutely no justification for any of those decisions. As a result, all three actions violated the Contract and because they did the Grievant is entitled to be made whole with all that implies.

III. POSITION OF THE EMPLOYER

Underlying every decision that Management made in this case is the principle that the Employer owes an obligation to its employees and to the public to insure that those individuals to

whom it has entrusts motor vehicles operate them in the safest manner possible. It was those principles that reluctantly led the Service to first suspend the Grievant's license after she was involved in a major motor vehicle accident in 2004 and then revoke her license the following February because of yet another accident. While the 2004 collision was horrendous in terms of the damage inflicted on the passengers and driver of the privately owned vehicle as well as the sums the Service was forced to pay out to satisfy their claims; that incident, by itself, did not lead Management to revoke the Grievant's license. The Union would have the Arbitrator believe otherwise. It would also have the Arbitrator believe that the collision was not the Grievant's fault. It is a claim based on nothing more than a misguided attempt to turn the decision of the Safe Driver Award Committee into something that it is not. The Union would equate the Committee's decision with a final and binding determination as of whether an accident was preventable. It knows full well, however, that such is not the case.

Instead, the Committee's conclusions are only relevant to the question of whether an employee is eligible for a Safe Driving Award. That is not the issue in this case. Even if it were, even if there were some contractual basis to support the Union's argument it would still fail because two out of three members of the Committee determined that the 2004 accident in which the Grievant turned left in front of an oncoming vehicle was preventable. In simple terms, she was at fault for the accident. Because she was, the Service had to pay out more than $400,000.00 to the passengers in the motor vehicle that the Grievant ran into.

Even that, however, did not lead to the revocation of her license although it did result in the decision to suspend it for a significant period of time. Management took that step not just because of a single incident, but because the Grievant had such a poor driving record up to that point. That was not Management's fault. Further, in an effort to help the Grievant she was given remedial training after each accident, but obviously to no avail. The end result was that her record did not improve. It was so bad that by February 10, 2005 she had been involved in six accidents within ten months which was more than ample reason to revoke her license. It was not an easy decision to make, but it was one which had to be made in order to safeguard her and the public.

In spite of the Grievant's record and in spite of the fact that she was taken off the truck she lost no pay and her seniority was not affected. The Union has fought to put her back into a motor vehicle. There is no reason to do so. Certainly the Union's claim that the Grievant was somehow not at fault for the 2004 accident where she turned left in front of an oncoming vehicle

is unsupported by anything other than her claim that she "won her case". It is an odd statement to make considering that at the point the Grievant claims she won the Service had already paid out over $400,000.00 to the passengers in the other car and their experts had determined that the Grievant was at fault. There is, likewise, more than ample reason to believe that the Grievant was at fault for the February 2005 accident. In conjunction with the others that had preceded it the incident led Management to decide to revoke the Grievant's driving privileges.

While she may have liked driving a motor vehicle or may not like working the gate, what she likes or doesn't like is of no consequence to the outcome of this matter. The only question before the Arbitrator is whether Management had just cause to first suspend the Grievant's license and then, less than four months later, to revoke her driving privileges. Given the number of accidents she was involved in and the severity of one of them, the totality of her record justified those decisions. There is no reason to override either determination.

IV. DISCUSSION

Even though these grievances grow out of a particular set of facts which may have never arisen before and may never be duplicated again, they have one thing in common with every other grievance that has preceded them and every one that will follow them. The common link between these cases and every other grievance past, present and future is that the starting point for their resolution lies in the terms of the National Agreement. In this case, the controlling provision is Article 29, **Limitation on Revocation of Driving Privileges**, which provides in pertinent part:

> An employee's driving privileges, may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver.
>
> Elements of an employee's on-duty record which may be used to determine whether the employee is an unsafe driver include but are not limited to, traffic law violations, accidents or failure to meet required physical or operation standards.
>
> The report of the Safe Drive Award Committee cannot be used as a basis for revoking or suspending an employee's driving privileges. When a revocation, suspension, or reissuance of an employee's driving privileges is under consideration, only the on-duty record will be considered in making a final determination.

Neither party has trouble understanding the words which, on their face, are simple and straightforward. Because they are the Union made no effort to challenge the Employer's right to

invoke its authority under Article 29 to suspend or revoke an employee's driving privileges in an appropriate situation. Rather, it contends that in these cases Management had no right to take that step. Restated in contractual terms, the Union's position comes down to the proposition that Management can only revoke or suspend an employee's driving privileges if it has just cause to act which means that it must have a legitimate reason that it can support by clear and convincing evidence that the employee is an unsafe driver.

In arriving at that decision the Employer has the right under the Contract to consider not only on duty accidents in which the employee may have been involved, but traffic violations as well as the individual's failure to meet the physical and operations standards of his or her position. Although the operable language of Article 29 hints that the Employer may consider other factors in determining if an employee is an unsafe driver, Management made no such effort in this case; choosing instead to rely strictly on the Grievant's driving record which included a total of seven accidents, six within the period from June 17, 2003 through February 9, 2005. To make matters worse from the Employer's perspective, four of those accidents occurred within a ten month period. The Union did not complain about the inclusion of the earlier incidents in the Grievant's record, but it took exception to Management's decision to include the July 5, 2004 accident and the February 9, 2005 incident, arguing that neither was the Grievant's fault. Since it was the latter that initially led to Management's decision to indefinitely suspend the Grievant's license and then ultimately to permanently revoke her driving privileges, it is that accident which deserves the greatest scrutiny.

There is no question that the accident took place on a street that runs though the University of Pennsylvania or when it occurred or that the incident resulted in only minor damage to both the Grievant's truck and the privately owned motor vehicle. What is at issue is whether the accident was caused by the Grievant. The question of who was responsible for the accident, the Grievant or the other driver, has real consequences for both the union and Management because the Contract presumes that an employee is entitled to maintain his or her driving privileges unless the Service can establish that he or she is an unsafe driver. It is, therefore, not the number of accidents that an employee may be involved in that makes him or her an unsafe driver, but who is responsible for those collisions. To put the matter in more practical terms, the Employer can not suspend or revoke an employee's driving privileges if that individual was involved in five, ten, fifteen or even twenty accidents if every one of them was caused by someone else and the employee just happened to be in the wrong place at the wrong

time. Thus, an employee who is repeatedly struck from behind at different times by different drivers while waiting for a light to change or one whose vehicle is struck by an individual running a red light is not responsible for any of those accidents and cannot be punished by having his license suspended or revoked simply because he happened to be the target of someone else's poor driving.

In the matter under consideration Management contends that it was the Grievant who was the in the wrong because she caused the February 2005 accident. It is an allegation to which the Union and the Grievant took strong exception, arguing that the exact opposite is true and that it was the other driver who was at fault.

There were effectively three people who were involved in the incident: the Grievant, the driver of the other vehicle and a witness. The witness's name does not appear on the University of Pennsylvania Police Report that was completed after the incident, but the Service nonetheless knew of the individual's identity and how to contact him by the close of business on February 9, 2005 because that information appears on the third page of the Accident Profile that the Grievant's supervisor signed off on the next day. That there was a witness does not in and of itself exonerate or condemn the Grievant. Rather, the issue is what the witness had to say about the incident. The Employer had a good idea what the witness would say because the Accident Profile indicated that the witness believed that it was the privately owned motor vehicle, not the Grievant, who caused the accident.

On March 8th the Grievant hammered that point home when she presented a notarized statement from the witness in which he unequivocally stated that the privately owned vehicle, which was initially traveling in the right or inner lane, attempted to move into the left lane without using his turn signal and without insuring that he had adequate room to change lanes. He didn't because the Grievant was traveling in the left lane at the time. Not only was she in the left lane, but she was ahead of the other driver. That the two vehicles were so positioned means that the only way that the Grievant could have caused the accident is if she was moving to her right into the inside lane, a contention that the witness not only did not support, but reported that he saw the exact opposite occur. Management made absolutely no effort to contact the witness or, of equal significance, to even consider his statement much less give it any credence. Instead, the Grievant's supervisor testified that she usually does not contact witnesses. Worse, while she admitted that she read the witness's statement in which he put the onus for the collision on the driver of the other vehicle, not the Grievant, the supervisor nonetheless dismissed the statement

out of hand, testifying: "That was his (the witness') opinion". The supervisor was correct that what the witness swore to was opinion, but he was the only neutral observer to the incident. In the absence of any reason to doubt his veracity, though, his statement was and is is entitled to great weight.

Neither the Employer nor anyone else has to accept a witness' statements at face value. By the same token, it cannot summarily dismiss the witness's report without having some legitimate reason to do so. It may be that the witness did not have an opportunity to observe the collision because of where he was located in relation to where the accident occurred or his attention may have been directed elsewhere until he heard the noise of the collision and then concluded, based on the position of the vehicles, that the Grievant was not at fault and that the other driver was. Or it may be that the witness was somehow related to the Grievant or it is possible that there was a bumper sticker on the back of the privately owned vehicle that somehow prejudiced the witness against the driver. Those are just four reasons why the witness may have stated that the Grievant was not at fault and that the accident was caused by the other driver. There are, no doubt, more. The point is not the number of possible explanations for the witness' statement, but what effort Management made to ascertain its validity. It could only ignore the witness's statement if it conducted an investigation which, in turn, would have required interviewing the witness and perhaps examining the area where the accident occurred to determine whether he actually could have seen what took place and accurately reported what he saw.

Management did not take that step. Instead, apparently based on nothing more than the Grievant's prior driving history, the Service concluded that the Grievant had to be at fault and first indefinitely suspended her license and then permanently revoked it. It was one thing to indefinitely suspend the Grievant's license pending an investigation, but quite another to permanently revoke it without an investigation, especially when Management knew of the existence of a witness who stated that the Grievant was not the cause of the accident. Whatever power Article 29 gives the Employer in terms of suspending or revoking an employee's driving privileges, it does not confer upon the Service the right to act in an arbitrary or capricious manner. It must have a legitimate reason that it can establish by some objective standard that the employee is an unsafe driver. It cannot simply assume that the employee is nor can it assume that the employee caused an accident just because there was one. It must still conduct an investigation and only after reviewing the results of that investigation can it conclude that the

accident was the employee's fault and that because it was the employee's fault he or she is an unsafe driver.

The Employer skipped those intervening steps. Based on the sequence of events in this case and the testimony of the Grievant's supervisor there is little reason to believe that the Service did anything more than decided that because of the Grievant's past record she had to have caused the February 2005 collision. It is, of course, equally possible that Management did not care who was responsible for the February accident. Instead, the Employer may have simply concluded that enough was enough; that the Grievant had been involved in one too many accidents. Therefore, regardless of who caused the February 2005 accident the Service concluded that it could no longer tolerate the Grievant operating a motor vehicle. Whatever the case, Management acted improperly. It had neither the right to assume that the Grievant was responsible for the incident nor could it simply suspend her license and revoke her driving privileges because it concluded without evidence she had too many accidents.

The Service would have been justified in indefinitely suspending the Grievant's license if it took that step as a prelude to an investigation. It has both the power and the responsibility under Article 29 to insure that the people it puts behind the wheel of its vehicles are safe drivers. To that end it is contractually empowered to act if the employee's record or other circumstances give it just cause to believe that he or she is an unsafe driver. Although Article 29 does not speak of indefinite suspensions, Management nonetheless has the inherent power to place a motor vehicle operator who is involved in an accident in that status while it determines whether the employee is responsible for the collision and what action to take if he or she is. Indefinitely suspending an employee's license is a legitimate way of maintaining the status quo in order to give Management time to conduct a thorough review while at the same time insuring the safety of the driver and the public. What Management cannot do, but what it did in this case is place an employee on indefinite suspension following a collision and then do nothing more that conclude, based on that individual's record up to that point, that he or she must have been responsible for the accident. Assumptions cannot be used as nor are they a substitute for a thorough investigation, especially not where Management knows of the identity of a witness and has every reason to believe that that individual will exonerate the employee. Where that happens, the Employer has no contractual right to indefinitely suspend the employee's license without making any effort to conduct a timely investigation of the incident. It especially can't where it knows the identity of one or more witnesses to the accident, but refuses to contact them.

More than a year after it appealed the grievances challenging the indefinite suspension and revocation of the Grievant's driving privileges to arbitration, the Union launched yet another assault on Management's decision to take away the Grievant's license. The attack came by way of a grievance initiated on July 6, 2006 in which the Union complained that:

> Management violated the national and local agreements when they failed to give careful consideration to the nature severity, and recency (sic) (July 5, 2004) of the incident which let to the revocation of the Grievant's driving privileges and the conclusion of the re-constructionist that fund the Grievant not responsible for the accident.

Considering the nature of the grievance it was almost certainly filed after the accident reconstruction expert's report was turned over to the Union. Rather than deny the grievance on the basis of timeliness, it appears from the Step 2 Grievance Appeal Form that the supervisor with whom the Union lodged the protest did absolutely nothing which resulted in the Union appealing the matter to Step 2 where it raised the exact same points that it brought up when it initially filed the grievance on July 6, 2006. Like the Step 1 supervisor, the Step 2 designee ignored the fact that the grievance was really protesting a decision that had been made more than a year earlier and instead focused on the Grievant's driving record and Article 29 which together, in the Step 2 designee's opinion, justified the decision to revoke the Grievant's license.

Sometime after receiving the Step 2 decision the Union filed additions and corrections in which it reiterated its belief that the July 5, 2004 accident was the cause of Management's decision to revoke the Grievant's driving privileges. It is of interest that along with citing the report issued by the accident reconstruction specialist who had been hired by the Postal Service as proof that the Grievant bore no responsibility for the July 2004 accident, the Union pointed out that the Service had still not provided copies of the two witness statements that it had obtained from the individuals identified in the police report. The Union made no mention of that or the Employer's non-compliance with its 2004 request for information when it appealed the matter to Step 3. Instead, it merely repeated the same arguments that it had raised at Steps 1 and 2 which were that the July 5, 2004 accident directly led to the revocation of the Grievant's driving license and that she was not at fault for the accident. Since the accident reconstruction expert placed the blame for the collision on the owner of the passenger car the Union concluded that Management had no right to take away the Grievant's driving privileges.

On October 3, 2006, shortly before this matter was initially set to be heard, the Employer issued its Step 3 denial in which, for the first time, it argued that the grievance was untimely.

The Step 3 designee expended little effort pursuing that avenue, though. Instead, he denied the grievance on the same basis that the Employer had denied the two previous grievances which was that Management has the authority under Article 29 to revoke an employee's driving privileges when that employee, like the Grievant, proves to be an unsafe driver. Since that grievance was consolidated with the other two set for hearing the issues raised by that protest cannot be ignored. The fact that they must be faced, however, doesn't change the outcome of this matter.

That conclusion is true not because of Management's claim that the grievance is stale since it was filed more than two years after the 2004 accident upon which it is predicated, but rather in spite of it. The reason the argument carries no weight is that the Service never raised the point until Step 3. Since the Employer didn't bring the matter up before then the Union was never forced to confront the issue of timeliness. If it had it almost certainly would have claimed that the grievance was timely because it was filed within the fourteen days of the date the Grievant learned or may reasonably have been expected to learn of the contract violation. The words are from Article 15, Section 2, Step 1 of the National Agreement which has probably been part of the Contract from the time the parties entered into their first collective bargaining agreement more than thirty years ago. Since the Employer did not hand over the accident reconstruction expert's report until some time in 2006, the Union would reason that was the first time the Grievant could reasonably have been expected to learn Management violated the Contract by holding her at fault for the July 5, 2004 accident when there was no basis to do so.

The Union did not have to make that argument, though. The reason it didn't is that the Employer waived the right to claim that the grievance was untimely because it failed to raise the issue at Step 2 as required by Article 15.4 of the Contract. Having failed to argue the point at the appropriate time, the Service lost the opportunity to raise the argument at a later date even though it did raise the issue when it denied the grievance at Step 3. By then it was too late. The Employer's silence at Step 2 was conclusive. Having missed the opportunity to claim that the grievance was untimely at Step 1 or 2 the Service could not resurrect the defense by bringing the matter up at Step 3. As a result, even if the Service had tried to bring up the issue at arbitration the undersigned would have had no power to consider the argument regardless of its merits.

The Service should have turned a copy of the report over to the Union as soon as the document came into its hands in September 2004. There is nothing in the record that hints at let alone explains why the Employer did not take that step or why it waited almost nineteen months

before it finally turned a copy of the report over to the Union. Considering the Union's reaction to the indefinite suspension and revocation of the Grievant's license, it is reasonable to assume that if Management had forwarded a copy of the expert's report to the Union as soon as it became available then the Union would have protested the thirty day suspension of the Grievant's license that was handed out in October 2004 and on the basis of that report may have been able to convince an arbitrator that the accident was not her fault and, therefore, the Employer had no right to suspend her license. That did not happen because Management held on to the report for whatever reason. It is possible that if the issue had come up the Service would have claimed that it had no obligation to turn the report over to the Union because the Union never asked for a copy of the document when it filed a request for information regarding the 2004 accident. It is not an argument the undersigned can countenance.

The purpose behind Articles 17 and 31 is to afford the Union an opportunity to thoroughly investigate a potential contract violation in order to determine whether it should initiate a grievance or how best to defend an employee who believes that Management violated the Contract by disciplining or discharging him. The Union, therefore, has the right to seek whatever documents or information it believes are necessary in order to police the Contact. Faced with a request for information the Employer has a duty to respond in a timely manner, providing the Union with the information that it seeks. The Service has no right to refuse to comply with the request or to withhold specific information on the grounds that Management believes that it will be of no use to the Union. It is not for the Service to determine whether the information is relevant or not or what use the Union will make of it.

If the Employer cannot initially refuse to turn over information the Union seeks then, by the same token, it cannot refuse to supplement whatever materials it initially sends to the Union on the grounds that the Union did not submit a second request for information. There is nothing in the Contract that requires it to do so. Instead, the thrust of Articles 17 and 31 along with the full disclosure provisions of Article 15 require that the Employer provide the Union not with just the materials it has in its possession at the time the request for information is submitted, but that it turn over as soon as practical whatever other documents or materials may come into its possession that reasonably could be subsumed within the class of documents and materials the Union first requested.

The practical impact of those principles is that Management cannot hide behind the fact that the Union never asked for a copy of the accident reconstruction expert's report in its 2004

request for information. Since the report did not come into existence until September the Union had no way of knowing, unless the Service volunteered that it hired the expert, to ask for a copy of his report. For that reason alone the Employer cannot be permitted to argue that the Union was not entitled to a copy of the report because it did not ask for it.

The cover letter that Management submitted along with its response to the Union's request for information indicates that the Union was asking for every document the Service had in its possession as of the date the request for information was submitted that in any way pertained to the July 5, 2004 accident. It fully expected that the Grievant would be punished as a result of that incident and so it was invoked its right under Articles 17 and 31 to seek information to determine whether it should file a grievance or how it should represent the Grievant. The Service, therefore, can not claim that the report was not relevant to the 2004 accident, especially considering that the Grievant's license was suspended for thirty days as a result of the incident. Management should have turned a copy of the report over to the Union as soon as it came into possession of the document. It didn't. In other circumstances that might prove fatal to the Employer's case, but not here.

The reason it doesn't is that the Union alleged in the grievance it initiated in July 2006 that the 2004 accident was the trigger for the revocation of the Grievant's license. It is not a persuasive argument in view of the sequence of events that unfolded after the July collision. Specifically, while it is true that the Grievant's license was suspended for thirty days beginning on October 29, 2004;it is equally true that the 2004 accident was only one factor that the Employer considered when it decided to indefinitely suspend the Grievant's license and then permanently revoke her driving privileges in 2005. And while the 2004 accident may have been the worst one the Grievant was involved in, there is no question but that she had a series of accidents beginning in 2003 that culminated in the February 2005 incident. It was the succession of accidents in such a relatively short period of time that led to the revocation of her license, not the July 5, 2004 accident alone.

Had that been the case then Management would have revoked the Grievant's license immediately following her return to work or even before she came back from medical leave in October 2004. That was not what happened. Instead, upon her return to duty she went back to work driving a truck and would have continued to operate a motor vehicle had the Employer not overreacted when she was involved in the February 2005 accident. It was that incident; coming on top of all of the other accidents the Grievant had been involved in that together led

Management to conclude that she Grievant was not a safe vehicle operator which in turn led to the decision to revoke her driving privileges.

If the Union had sought by way of the 2006 grievance to challenge Management's decision to suspend the Grievant's license for thirty days in 2004, the outcome of that protest might have been different. That, however, was not the issue the Union raised when it initiated the grievance. Instead, it left no doubt that what it was protesting was the revocation of the Grievant's license which it believed was tied to a single event; the July 2004 accident. Since the record does not support that conclusion it follows that there is no basis to sustain that grievance.

V. DECISION

For the foregoing reasons, the Grievant's 2006 grievance claiming that the Service violated the Contract because Management suspended the Grievant's license as a result of the July 5, 2004 accident is denied. The grievances protesting the indefinite suspension of the Grievant's license and the permanent revocation of her driving privileges are sustained. The Postal Service is directed to reinstate the Grievant's license and driving privileges.

Date: 8/17/07

LAWRENCE R. LOEB, Arbitrator

Regional Level Award K00V-1K-C06051709

By Arbitrator Lawrence R. Loeb

This is a schedule examiner case that involved Postal Management just taking the work of the schedule examiner and refusing him even access to a computer.

Again, Arbitrator Loeb ruled for the Union to include compensation.

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	CASE NO: K00V-1K-C 06051709
	)	
between	)	LOCAL UNION NO: KB706
	)	
THE UNITED STATES POSTAL SERVICE	)	CLASS ACTION GRIEVANCE
	)	
and	)	POST OFFICE: Washington, DC
	)	
THE AMERICAN POSTAL WORKERS UNION AFL-CIO	)	

BEFORE: Lawrence R. Loeb, Arbitrator

APPEARANCES:

On Behalf of the Postal Service:	Brian Fletcher Labor Relations Specialist
On Behalf of the Union:	Russ Knepp National Business Agent
Place of Hearing:	Washington, DC
Date of Hearing:	July 13, 2007
Record Closed:	July 22, 2007
Contract Provision:	Articles 1, 7, 8, 15, 19 & 37
Date of Decision:	January 8, 2008
Decision:	The grievance is sustained.

SYNOPSIS

The Employer violated the Contract when, instead of abolishing the Grievant's position as a schedules examiner, it reassigned him to a different tour; cobbling together work for him and turning part of his job over to a supervisor.

I. STATEMENT OF FACTS

On January 23, 2006 the Motor Vehicle Craft Director sent a request for information to the Acting Manager of Transportation at the Brentwood Station in which he asked Management to supply eight different categories of records. A week later the Craft Director sent a handwritten note to the Acting Manager asking to meet with him on February 2, 2006 to discuss several class action grievances. That same day he sent a more formal letter to the Acting Manager complaining about the Employer's failure to provide the information the Union had requested seven days earlier. At issue was the Union's belief that Management violated the Contract when it involuntarily placed the entire motor vehicle craft into different job assignments on January 21, 2006. At the time those events were taking place the Grievant held the position of Schedules Examiner Vehicle Runs; a best qualified Level 7 job that he bid into in 2004. According to the standard position description the functional purpose of the Schedules Examiner is:

> At a large office, carries through to completion all steps in the process of developing schedules providing vehicle transportation of transit and local mails throughout the entire area. Provides vehicle trips properly coordinated with transportation contractors, special delivery and carrier delivery schedules.

and the primary duty and responsibility of the position is:

> 1. From written or oral instructions regarding necessary changes or additional vehicle service requirements from various sources at post office and regional levels, develops necessary vehicle service schedules to accommodate changes or additional requirements, in the most economical manner possible. Prepares operator schedules and master schedules and notifies all concerned of new service and effective date.

On February 2, 2006 the Craft Director tried to interview the Acting Supervisor of Transportation. The interview consisted of four questions the first of which was: "How long he had been Acting Supervisor in Transportation?" In response the Acting Supervisor, according to the Union's notes, stated that he follows the instructions of his Transportation Manager. The Craft Director's notes go on to indicate that the Acting Supervisor gave the same answer to the

other three questions he was asked including whether he had been doing bargaining unit work and whether he had been assigned the task of inputting the new 4533's into the system and putting scheduled together. Both men understood that the system they were talking about was a computer program called "VITALS" that is designed to make and change vehicle runs. The same or the next day the Grievant sent a memo to the Craft Director in which he complained:

> During the recent job assignments in the Curseen-Morris PVS, the Schedules Examiner was not involved in the process. I would like to express my concerns regarding this.
>
> The duties and responsibilities of the Schedules Examiner, Vehicle Runs for Transportation, Washington, DC, include input and participation in any development or change to MVS schedules. Any new schedule should be test run before it is made effective. Therefore the Schedules Examiner should have flexibility of schedule and daily access to an administrative vehicle in order to make necessary run observations on any tour. I should also have access to all transportation websites in order to make necessary changes and adjustments to schedules when instructed to do so. The Postal Service Transportation section will benefit by cooperating in these requests and it will also enable the drivers to better perform their duties.

Of equal significance, the same day the Union appealed the present grievance to Step 2 complaining that Management had refused to meet at Step 1 to discuss the matter. Specifically, the Union wrote on the Step 2 Grievance Appeal Form that:

> This grievance is being appealed to the next level of the grievance without the benefit of a Step one meeting and decision. Management has refused to honor the request for information that the union had presented to them. The above plight has been forwarded to the District manager's office (Tim Haney). Management has been performing bargaining unit work that is designated to the Schedule Examiner in the Motor Vehicle Craft. Anthony Sheard (A/Supervisor) has been assigned the task of creating new 4533's (schedules) and inputting them into VITALS. The union interviewed Mr. Sheard and he stated that he follows the instructions of his transportation manager. Please see Grievance KB-06-06

The parties met to discuss the matter on February 13, 2006, but Management never issued an answer following the meeting. Not surprisingly the Union appealed the grievance to Step 3 at

which time it again complained that the Acting Supervisor was putting together the 4533's and did not let the Grievant perform any of his duties in violation of both the Contract and the the EL-201.

The parties met to discuss the matter in early March 2006 following which on the 27th of the month Management denied the grievance on the basis that:

> The grievance alleges a violation of Article 1.6.B of the National Agreement when a supervisor created 4533's and input them into VITALS.
>
> In the Transportation Network, the creation of 4533's and inputs in VITALS is not limit to the bargaining unit. The Transportation network is staffed with non-bargaining employees that perform various administrative functions that deal with schedules and VITALS inputs. In addition, I find no violation based on the union's limited argument and lack of evidence in support of the alleged 1.6.B.
>
> Due to the union's lack of substantive evidence to support its claim of a contract violation, the grievance is denied.

The Employer repeated those arguments when this matter came to arbitration, explaining that VITALS is a computerized system designed to make and change motor vehicle schedules. Management did admit that the Grievant had bid into the Schedules Examiner position which is a bargaining unit position. Further, the Employer's witness, the Manager of Transportation at Brentwood, testified that when the job was first developed the Schedules Examiner was supposed to go on runs to determine the quickest, most efficient way to complete those runs and provide that information to the supervisors. The Transportation Manager further stated that Management does not need anyone to go out on the road because they have been doing the runs for so long in the city provides them with all the information they need to design the schedules as effectively as possible. Finally, the witness stated that although VITALS is a Management program there is nothing in the Schedules Examiner's position or job description that mentions the program or that bargaining unit employees cannot access it. In fact, she admitted that bargaining unit employees can get access the VITALS program, but she does not allow them to. Finally, she testified that the Employer does allow the Grievant to perform the functions of his job on an as need basis.

The Grievant took issue with that statement, testifying that although he was awarded the Schedules Examiner's job in June of 2004 he now works as a Dispatch Clerk and picks up express mail. He went on to state that even though he was supposed to be assigned to Tour 2, he is now working Tour 3. Of greater he also stated that he has not been allowed to do significance for the purpose of this grievance, any scheduling changes. He was not, in fact, allowed to make any scheduling changes from the minute he got the job. In spite of that he did admit that when he first was awarded the bid he was sent out to make run observations, but has not done any for a significant period of time. On the critical question of who is has been and is now performing the work on this bid job, the Grievant maintained that the functions are being performed by Management and that he was told that his duties fall within domain of the Network Specialist, a Level 16 Management position. Finally, he testified that that there is no one in the Network Administrator's slot at the present time. The Employer did not contradict any of the Grievant's testimony.

II. POSITION OF THE UNION

This is a very simple case. In 2004 the Grievant bid into the vacant Schedules Examiner's job, a "best qualified" position. The Grievant met the qualifications, which is why he was awarded the job in the first place. The Service obviously needed to have the work done at that time because it filled the position. Since he was awarded the job, Management has decided that a supervisor should do the work. The result is that the Grievant has not been allowed to perform the duties of the position he bid into. To make matters worse, he was taken off his tour. There was no reason for the Employer to engage in that course of conduct except for a deliberate decision to take the work away from the bargaining unit and have it performed by managers in express violation of the Contract.

On that point the Contract is very clear as is the EL-201. They both unequivocally declare that Management is not to perform bargaining unit work except in certain specific limited circumstances, none of which were applicable to this case. There was no emergency; Management was not performing the work to train the Grievant because he had already been trained; the supervisor was not doing the Grievant's job to ensure the proper operation of equipment or to protect the safety of employees or to protect the property of the United States Postal Service; the only contractually circumstances under which a supervisor is permitted to

perform bargaining unit work. This is simply a case of an Employer deciding to have a supervisor do what the Grievant should have been allowed to do because he was awarded the bid as being the best qualified candidate for the job. Since the Service flagrantly violated the Contract the Grievant is entitled to be made whole, which means to be paid for all the work the supervisor performed as well as to be paid out of schedule premium for being moved from his Tour 2 to Tour 3.

III. POSITION OF THE EMPLOYER

Whatever the situation was in 2004 when the job of Schedules Examiner was put up for bid, there is no question that the situation had radically changed by 2006. By then the VITALS program had come online along with 4533's which, in concert, radically altered the way vehicle schedules were put together. More importantly, whatever the Schedules Examiner may have done in 2004, there is absolutely nothing in the Contract that says that he had to continue to perform those duties in 2006 when this grievance arose or into the future if the work was no longer needed. Nor is there anything in the Contract that said that he or any other member of the bargaining unit had to enter the information into the VITALS system. Of equal importance, there is nothing in the Contract or in any handbook or manual that prohibits the supervisors or managers from entering that data when it is necessary to do so. Since that is all that happened in this case, the grievance should be denied.

If there is no substance to the grievance in general there is absolutely no merit to the Union's claim that the Grievant is entitled to out of schedule premium pay because he was supposed to be assigned to Tour 3 in the first place. He was subsequently assigned to Tour 2, but that was the result of a simple mistake. That was what the Manager of Transportation Services testified to, testimony to which the Union never contested. Since it was a simple error, which was quickly rectified, the Grievant cannot be allowed to profit by it especially; when there is no basis for this grievance in the first place.

IV. DISCUSSION

During the hearing both sides presented their respective cases in a straight-forward manner, concentrating their arguments and the witnesses' testimony around the issue of whether the Service violated the terms of the National Agreement by assigning the acting supervisor to perform work belonging to the craft. In following that path Union did not argue,

as it well could have, that the manner in which Management processed this grievance should result in the Arbitrator to ruling in the Union's favor solely on the basis of the procedural mistakes it made. The first occurred on February 2, 2006 when the acting supervisor of Transportation was interviewed by the Clerk Craft Director as part of his investigation into this matter. The Union has the right under Articles 17 and 31 to conduct an investigation to determine whether to file a grievance because it believes that Management violated the Contract or to determine whether and how to defend an individual who has been disciplined or discharged. One of the tools available to the Union is the right to interview potential witnesses. While the Contract does not explicitly state that a witness should fully and truthfully answer the questions put to him, that concept is inherent in Article 17 as well as in Article 15's declaration that grievances are to be settled at the lowest possible step of the grievance procedure. The grievance might even need not be filed, though, if Management is forthcoming during the investigatory process; providing the Union with sufficient information to enable it to make a reasoned determination that no contract violation took place.

The Union attempted to do that in this case when it interviewed the Acting Supervisor. Unfortunately, he was less than forthcoming. Specifically, when asked how long he had been the Acting Supervisor the Craft Director, who took down the Supervisor's answers, wrote that the Supervisor responded that he follows the instructions of the Transportation Manager. It was a childish response. The individual either was the Acting Supervisor or he was not. Telling the Craft Director that he was following the instructions of the Manager of Transportation was, in effect, saying nothing. By the same token, repeating the answer over and over again to specific questions about his roll in regard to inputting 4533's into the system and putting together schedules and whether the Grievant had any hand in performing that work did absolutely nothing but raise the Craft Director's suspicion that the Supervisor was hiding something Management did not want the Union to know. It is understandable for an individual in the Supervisor's position not to want to be seen as disloyal or as helping the Union by supplying answers that the Acting Supervisor had to suspect would strengthen the Union's claim that Management violated the terms of the National Agreement by the way it was conducting operations at the Brentwood facility. While the Arbitrator can understand the

predicament the Acting Supervisor found himself in, the conflict does not justify his evasive answers or his disregard for the spirit of the Contract.

The Union did not press the point, though, believing the testimony of the Grievant would be sufficient to carry the day. It almost did not have to present much in the way of evidence or testimony because the Service failed to provide a written answer after the Step 2 meeting. It is difficult for the undersigned to understand how, so many years after Arbitrator Aaron declared that the Postal Service and the Union are barred by the operation of the full disclosure provisions of Article 15 from introducing evidence or arguments not presented at the preceding steps of the grievance procedure, that the Employer could fail to issue a written answer after the Step 2 meeting. The response is the best proof of the arguments and evidence that the Service put forward at Step 2. If Management had continued to ignore its responsibilities under Article 15 and had either not met with the Union at Step 3 or had not issued as detailed a Step 3 response as it did, it might very well have found itself in the position of not being able to offer any evidence or arguments when this matter came to arbitration. It was a dangerous game to play, waiting until the last minute to divulge its position in the hope that the Union would not protest and an arbitrator would not decide that because of Management's tardiness the Union was effectively ambushed by the Service's failure to adhere to the terms of Article 15. It was lucky in this case. It might not be so fortunate in the future.

That the Service was able to overcome those procedural hurdles does not mean that the Union cannot or should not prevail in this matter. The Employer does not deny that the Grievant was awarded the job of Schedules Examiner in 2004 or that the standard position description of the job requires that he perform certain duties, the goal of which is to develop "...necessary vehicle service schedules to accommodate changes and additional requirements, in the most economical manner possible". Although the record is sparse, it appears that the Grievant performed those duties through 2005 and into early 2006. It was around that time, according to the grievance, that Management took the work away from the Grievant and reassigned him to other duties on another tour, directing the Acting Supervisor of Transportation to perform the Grievant's job by entering 4533's into the VITALS system. Although the parties did not indicate when this system went online, there seems to be a number of points that are not in dispute. The first is that VITALS is a computerized system that did not

exist or at least was not in use at the Brentwood facility when the Grievant was awarded the job of Schedules Examiner in 2004. The second is that the system operates by the input of something called 4533's. The third is that the Grievant could have inputted the 4533's into the VITALS system, but was not permitted to do so by the Manager of Transportation.

In the face of those facts the Employer essentially argued that there is no longer a need for a Schedules Examiner since the routes in the Washington, DC area had been set for a considerable time. If that was the case, the job really no longer existed and the Service should have abolished the position and followed the procedures outlined in the Contract with regard to reassigning the Grievant. The record reflects that the Service took one of those steps, reassigning the Grievant to a different tour and a different job, but did not take the primary one, which was to abolish his position. Instead, the Manager of Transportation intimated that the position remained open and that the Grievant performed the job on an as-needed basis. That is not what should have happened, though.

Management is not bound to keep doings things the way they were always done in the past. Were that the case then the Employer would still be sorting and moving mail by hand. To remain competitive, which it must, the Service has to have the ability to adopt new technology and equipment. Any such changes will inevitably cause dislocations in the workplace, dislocations that the parties planned for by writing provisions into the Contract for the reassignment of displaced workers.

Of greater significance for the purposes of this grievance, they also declared that work that belonged to the bargaining unit would not be performed by Management unless one of four specific circumstances outlined in Article 1, Section 6 of the Contract exists. The Service never claimed that they did in this matter. Instead, as discussed earlier in this opinion, the Employer took the position that VITALS is a Management program and that there is nothing in the job description of the Schedules Examiner which mentions the VITALS program or assigns the operation of the program or the job of inputting information into the program to the bargaining unit. That, however, is not the issue in this case.

The question is whether the Service violated the Contract by assigning work that should have been performed by the Grievant in his capacity as a Schedules Examiner to a supervisor. Had the Employer abolished the Grievant's position when the new system became operational,

the undersigned most probably would have sided with Management, but as noted above the Service did not take that step. Instead, it moved the Grievant off his tour and out of his bid job. That left the responsibility for doing what he should have been doing to the Acting Supervisor. There is no indication that this was particularly complicated work or work that the Grievant could not have performed it had he been allowed to. The record is clear, though, that he was never given the opportunity to. The reason he wasn't is that the Manager of Transportation had no intention of letting the Grievant anywhere near the VITALS system or of allowing him to input the 4533's that are the key to the system's operation. Instead, she assigned those duties to the acting Supervisor of Transportation. When she did she violated the Contract.

At some point during the course of her testimony the Manager of Transportation hinted due to some clerical error the Grievant had been put on to the wrong tour when he bid into the Schedulers Examiner job. Her testimony was not convincing in the face of the Grievant's statements that he had been on Tour 2 for some time and was only later moved to Tour 3 when the Employer cobbled together a job for him. If the Employer made a mistake when it posted the Schedules Examiner position for bid in 2004 Management it had a way of rectifying the error. Once he was awarded the bid the Employer simply could not take the Grievant off of his tour, especially when it appears from the rest of the evidence in the record that the reason the Grievant was moved was that there was no longer any work for him to perform as a Schedules Examiner and that whatever duties he could have performed once the VITALS system became operational were turned over to the Acting Supervisor of Transportation. That decision violated the terms of the Contract entitling the Grievant to be made whole which includes, under the terms of the EL-201, to be paid for the work that the supervisor performed at the applicable rate. Further, because he was moved from Tour 2 to Tour 3 the Grievant is entitled to out of schedule premium pay.

V. DECISION

For the foregoing reasons, the grievance is sustained. The Postal Service is directed to cease assigning the acting supervisor or any Supervisor of Transportation or the Manager of Transportation from performing work of the bargaining unit including, but not limited to the work of the Schedules Examiner. The Grievant is entitled to be paid for work performed by the

the undersigned most probably would have sided with Management, but as noted above the Service did not take that step. Instead, it moved the Grievant off his tour and out of his bid job. That left the responsibility for doing what he should have been doing to the Acting Supervisor. There is no indication that this was particularly complicated work or work that the Grievant could not have performed it had he been allowed to. The record is clear, though, that he was never given the opportunity to. The reason he wasn't is that the Manager of Transportation had no intention of letting the Grievant anywhere near the VITALS system or of allowing him to input the 4533's that are the key to the system's operation. Instead, she assigned those duties to the acting Supervisor of Transportation. When she did she violated the Contract.

At some point during the course of her testimony the Manager of Transportation hinted due to some clerical error the Grievant had been put on to the wrong tour when he bid into the Schedulers Examiner job. Her testimony was not convincing in the face of the Grievant's statements that he had been on Tour 2 for some time and was only later moved to Tour 3 when the Employer cobbled together a job for him. If the Employer made a mistake when it posted the Schedules Examiner position for bid in 2004 Management it had a way of rectifying the error. Once he was awarded the bid the Employer simply could not take the Grievant off of his tour, especially when it appears from the rest of the evidence in the record that the reason the Grievant was moved was that there was no longer any work for him to perform as a Schedules Examiner and that whatever duties he could have performed once the VITALS system became operational were turned over to the Acting Supervisor of Transportation. That decision violated the terms of the Contract entitling the Grievant to be made whole which includes, under the terms of the EL-201, to be paid for the work that the supervisor performed at the applicable rate. Further, because he was moved from Tour 2 to Tour 3 the Grievant is entitled to out of schedule premium pay.

V. DECISION

For the foregoing reasons, the grievance is sustained. The Postal Service is directed to cease assigning the acting supervisor or any Supervisor of Transportation or the Manager of Transportation from performing work of the bargaining unit including, but not limited to the work of the Schedules Examiner. The Grievant is entitled to be paid for work performed by the