

## SUBCONTRACTING

There are two different types of subcontracting that will be covered by this document. One is the contracting out of maintenance functions. The second is the contracting out of Motor Vehicle activities. In order to understand the principle of subcontracting the reader must first understand that the National Agreement has bound the parties to the principle that craft workers employed by the Postal Service have an exclusive bargaining agent as specified in article one of that agreement.

The worker and not the work is covered by the agreement. Our major business is to transport and deliver the mail. In order to perform this function the company hires employees to manage the operation and people to perform the tasks. What work is to be performed by the hired workers or is purchased from someone else (contracted out) is a function of the managers the company hired. The workers on the other hand band together to protect their interests against unwanted or improper infringement on their collective rights. Those rights do not include a determination of what work they can or cannot perform. Thus the agreement they make with the company for mutual protection concerns only the worker vs. manager and company. It does not concern the specific work. Management can choose to pay for the service of other companies to provide their products. There are obvious limitations. Arbitrators have defined those limitations. Our handbooks and manuals cover job descriptions of the work to be performed by the craft employee. In so doing those same manuals determine the work the employees can perform.

When other companies perform work that previously was performed by Postal Employees and receive payment or a mailing discount for doing that work there is created no violation of our agreement with the union. Nor is it considered contracting out of work. We are not doing the work. We are not paying for the worker. Some examples are:

1. Presort mailings- discounts are given. Whole companies have been formed to handle this type of work.
2. Stamp sales in grocery and convenience stores. They handle what a window clerk would do.
3. Postal operation experiment at Sears Department Store. This was handling parcel post and other forms of mail. It was stopped only because of pressure from the unions, not because it violated any part of our contract with the unions.
4. Postal Contract Stations. These have been created all over the country without the Postal Unions having a major issue.

In fact while there have been unfair labor charges filed by the unions and some litigation begun from time to time there has never been anything which has come out which prevents the Postal Service from contracting or allowing others to do some of the work we could have done in house.

## Relevant Contract Language

### July 21, 1973 National Agreement Article XXXII SUBCONTRACTING

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

Section 2. The Employer will give advance notification to Unions 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 Unions' 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 Unions.

Section 3. A joint committee is established at the national level to study the problems in this area leading towards a meaningful evolutionary approach to the issue of subcontracting.

The 1975 National Agreement was unchanged.

The 1978 National Agreement had a cosmetic change for the existing language with a major addition. It is retyped with the new language in bold print.

### Article XXXII -- SUBCONTRACTING

#### 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.

B. The Employer will give advance notification to Unions 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 Unions' 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 Unions.

#### Section 2 Mail Handler Craft

A. The Employer and the Union agree that at sectional center post offices or mail processing center post offices where mail handler craft employees are assigned and on duty on the platform at the time a star route vehicle is being loaded or unloaded exclusively by a star route contract driver, a mail handler(s) will assist in loading and unloading the star route vehicle, unless such requirement delays the scheduled receipt and dispatch of mail or alters the routing or affects the safety requirements provided in the star route contract.

B. At offices where this Section is applicable, the schedules of mail handlers will not be changed nor will the number of mail handlers be augmented solely on the basis of this section.

#### Section 3. City Letter Carrier Craft

The Employer and the Union agree that upon the request of the NALC National President, the Employer will furnish relevant cost information prior to the commencement or renewal of any contract delivery route which performs service formerly performed in a particular installation by a city letter carrier. The Employer's decisions to whether to commence or renew the contract delivery route will be made on a cost effective basis.

#### Section 4. Motor Vehicle Craft--Highway Movement of Mail

A. The American Postal Workers Union, AFL-CIO, and the United States 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 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(s). Should the Postal Service fail to provide the Union with the information enumerated in Paragraph D below by February 15, the April 1 date shall be extended, when necessary, so as to allow the Union thirty (30) days to review the information. 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 in order to facilitate discussions.

C. For other contracts covered by this Section, the Unions will be furnished the information enumerated in Paragraph D below. If at all possible, this information will be furnished at least 60 days -prior to the scheduled installation of the service. Within 30 days of being furnished such information, the Union may request a meeting to

discuss a specific contract(s). The Union will submit its documented analysis in advance of the actual meeting to facilitate discussions.

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.

E. Should there subsequently be substantive modifications in the information provided the Union in D above, the Union will be notified as soon as such decision is made.

F. The parties agree that the following factors will be used in any cost comparisons for 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 8, 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. the parties will consider an adjustment for exceptional cost variances.
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.

G. 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.

H. These provisions shall be applicable when evaluating the type of service to be provided for routes that are:

1. Over \$45,000 per annum, but not more than 350 miles in round-trip length, and
2. Not more than 8 hours in operating time from terminus to terminus.
3. Being then operated by bargaining unit employee(s) of the Motor Vehicle Craft, regardless of annual cost, round-trip length or operating time.

I. The information will be furnished for all routes covered by this Section and subject to renewal, extension, conversion of existing postal vehicle service to highway contract service subject to the limitations stated herein. The following collection and box delivery; small contract operations in areas where no Postal Vehicle Service is currently operating and where Postal Vehicle Service operation is economically unfeasible; or any star route contracts let on a temporary or emergency basis.

J. The parties recognize that specific conditions may justify and require alteration of the time requirements specified herein.

Section 5. A joint committee is established at the national level to study the problems in the area leading towards a meaningful evolutionary approach to the issue of subcontracting.

The 1981 National Agreement made no changes to article 32 except to eliminate the Mail handlers from the JBC and to change some numbers around. The Mail Handlers agreement eliminated the reference to the other crafts and changed section 5 (under their new numbering system Section 32.3 Committee) to read:

Subcontracting is a proper subject for discussion at Labor-Management Committee meetings at the national level provided in Article 38.

The 1984 National Agreement contained several changes in the JBC contract. There was an addition of two memorandums added to the back of the Agreement. They read:

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
UNITED STATES POSTAL SERVICE  
AND  
AMERICAN POSTAL WORKERS UNION, AFL-CIO  
MAINTENANCE CRAFT

The parties agree that the following language will be incorporated into paragraph 535.261 of the Administrative Support Manual and that such language will not be changed during the life of the 1984 National Agreement. Subsequent changes may be made pursuant to the provisions of Article 19 of the USPS- APWU/NALC National Agreement.

.26 Cleaning Services

.261 Authorization

- a. Cleaning services contracts may be authorized for cleaning offices branches, or stations (1) if the average weekly workload does exceed 32 hours, and (2) provided the work is not presently being performed by field service maintenance employees.
- b. Cleaning service contracts are not authorized for (1) offices with less than 190 revenue units, or (2) building at which classified custodial maintenance employees are assigned.

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE  
UNITED STATES POSTAL SERVICE  
AND THE  
AMERICAN POSTAL WORKERS UNION, AFL-CIO  
MOTOR VEHICLE CRAFT

In furtherance of ongoing application of Article 32 , Section 3 of the National Agreement the parties agree to the following principles:

1. The U.S. Postal Service reaffirms its commitment to require compliance with the highway contract specifications including the Service Contract Act. Contraction officers and administrative officials at the local level, when advised by American Postal Workers Union officials of complaints and/or provided information concerning alleged violations of a specific contract(s), especially those that relate to vehicle schedules, wage rates, and safety violations will, in a business-like manner, acknowledge to the interested American Postal Workers Union official, receipt of said information and the action taken in response to the situation identified. Background information concerning scheduled routes will not be unreasonably denied.
2. the Headquarters Office of Transportation and International Services, within 30 days of ratification of the National Agreement, will advise all TMOs of the requirement to accurately reflect vehicle equipment needs when developing transportation service requirements. Specifically, reasonable efforts will be made at the TMO level to reconcile vehicle requirements to existing postal vehicle sizes. In those situations where it is determined that the vehicle needed substantially differs from that which is available in the U.S. Postal Service Fleet, justification will be provided the Office of transportation and International Services for those routes that otherwise meet the criteria of Article 32.
3. The Office of Transportation and International Services will encourage all contractors to display clearly and conspicuously on all vehicles, while engaged in the transport of mail, their company name, address and the fact that they are contract vehicles.
4. When the Union is advised of the decision to award and /or renew a highway contract(s), the U.S. Postal service will provide a reasonable explanation of its decision.

The 1987 contract and with minor changes the 1990 contract showed a completely different paragraph 535.261. of the Administrative Support Manual. The new language read:

.261 Authorization

- a. When a vacancy as a result of an employee's voluntary attrition is identified in an independent installation with 39 hours or less of custodial cleaning, the following sequential actions will be taken:

A cost ascertainment study will be undertaken to determine if it is more economical to utilize a contract cleaning service or a career maintenance employee to perform the required work.

For purposes of the comparison, the salary of \$19,960 and the benefits appropriate to that salary will be utilized.

If the determination is made to utilize a contract cleaning service., the local APWU President will be provided a copy of the cost comparison and management's determination.

- b. When a vacancy as a result of an employee's voluntary attrition is identified in a station and/or branch of an independent installation with 39 hours or less of custodial cleaning, the following sequential actions will be taken:

Before proceeding to ascertain whether custodial cleaning services can be subcontracted, local management shall ascertain whether, consistent with the needs of the Service, the work hours of the vacated position can be combined with that of another career service maintenance employee's position to constitute either a full-time regular or expanded part-time regular maintenance position.

If the vacated work hours cannot be combined as discussed above, then management may proceed to develop a cost ascertainment study to determine if it is more economical to utilize a contract cleaning service or a career maintenance employee to perform the required work.

For purposes of the comparison, the salary of \$19,960 and the benefits appropriate to that salary will be utilized.

If the determination is made to utilize a contract cleaning service, the local APWU President will be provided a copy of the cost comparison and management's determination.

c. The foregoing is not intended to modify existing cleaning services contracts.

**Section 3, Motor Vehicle Craft- Highway Movement of Mail, part B, C and G were totally changed. The old part D was eliminated with the remaining letters moving up one. Part E2 was changed from the last 2 quarters to the last 4 quarters. No changes were made in the Mail Handler agreement. The new language of B, C and G read:**

B. For highway contracts covered by Article 3, Section 3, the Union will be furnished the information enumerated in Paragraph C below. This information will be furnished at least sixty (60) days prior to the scheduled installation of the service. Within forty (40) days of being furnished such information, the Union may request a meeting to discuss a specific contract(s). Within forty-five days of being furnished such information, the parties will exchange the basic cost analyses on order to facilitate discussions. The parties will meet on or before the sixtieth (60th) day. At no time will the subject highway contract(s) for which a meeting has been requested be awarded prior to the actual meeting.

C. The information will include the following in a concise summary form:

1. A statement of service including frequency, time of departure and arrival, annual mileage, and proposed effective date of contract.
2. Equipment requirements. If not comparable to standard USPS equipment available at that facility, the reasons therefor along with the cubic foot justification are to be provided.
3. A statement as to whether the proposed contract is a renewal of then existing contract and/or a partial or completely new contract solicitation.
4. For contract renewals, the current contractual cost is to be provided along with any specifics, if the terms of the renewal are modified to whatever degree.
5. If the new contract solicitation replaces in part or in whole existing Postal Vehicle Service (PVS) service, specifics as to the existing PVS service are to be provided as to the span of operation time, equipment utilized, annual cost, how the PVS employees impacted will otherwise be utilized and the projected Transportation management Office (TMO) cost for subcontracting the work in question.

G. These provisions shall be applicable when evaluating the type of service to be provided for routes that are:

1. A fixed annual rate contract over \$75,000 per annum, but not more than 350 miles in round-trip length, and
2. an annual rate or non-annual rate contract such as local drayage, spotting or shuttle service where the estimated annual compensation will exceed \$45,000, and
3. Not more than 8 hours in operation time from terminus to terminus.
4. Being then operated by bargaining unit employee(s) of the Motor Vehicle Craft, regardless of annual cost, round-trip length or operating time.

The 1987 National Agreement with the JBC had one change, other than cosmetic. It was in Section 32.3E1 which then read.

E. 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 the average cost of Level 5 Motor Vehicle Operators and the Motor Vehicle employee costs for Tractor-Trailer Operators will be the average cost

of Level 6 Tractor-Trailer Operators, as per these employees' straight time wages inclusive of fringe benefits. The average of each level will be a weighted average based on the number of employees in each step of the respective levels and their respective wages. The Motor Vehicle employee costs will be updated within 30 days following each salary adjustment for the Motor Vehicle Craft.

The 1990 National Agreement contains no changes to the language. It does incorporate Transitional Employees in the Agreement.

All of the language of the original National Agreement and the various changes made though the years have never restricted management's right to subcontract. They have required the contact, discussion and justification. Therefore the union argument that any of the work is craft work and cannot be contracted out would be 100% incorrect.

On June 30, 1989 in a memorandum for the Senior management committee, David Charters, Senior Assistant Postmaster General wrote:

Subject: Subcontracting

The following is provided as follow-up to the Policy and Strategy items developed during the March 27 meeting of the Senior Management Committee.

As we explore future opportunities in subcontracting, consideration must be given to effective management of the labor relations aspects of our decision process.

As you know, Article 32 Section 1 of our national labor agreements with the major unions requires that we "give due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract."

There is little question as to the procedural requirements of Article 32; they are essentially threefold. At the national level management must:

1. Give "advance notification" when the U.S. Postal Service is considering subcontracting that will have a "significant impact" on bargaining unit work. Any doubt as to whether a decision has a significant impact on bargaining unit work should be decided in favor of meeting with the appropriate union pursuant to Article 32
2. Meet with the union(s) to consider its views on minimizing such impact and provide information necessary to the union(s) understanding of the situation and, in good faith consider any proposals the union(s) advances.
3. Discuss the matter with the union(s) prior to a final decision on the subcontracting programs.

Once the contractual requirements have been met, and all issues considered the U.S. Postal Service may proceed to implement.

As an organization, we need to ensure that we have addressed our labor contract obligations. In the arbitration/litigation of issues, the U.S. Postal Service's liability could be substantial in the event any subcontracting decision is reversed.

Accordingly, I am asking that you review the attached decision tree for the subcontracting process and ensure, through ongoing interaction with our Labor Relations Department and the Office of Labor Law, that we can support "yes" interim decisions in the arbitration/litigation forums in each step leading to a final decision in favor of contracting out.

To assist each department in this process, Anthony J. Vegliante of the Labor Relations Department has been designated as the primary contact person, and Edward F. Ward, Jr. of the Office of Labor Law has been designated as the secondary contact person.

A memorandum which supports each of the "yes" determinations at each step identified in the decision tree should be developed by the department initiating exploration of any subcontracting initiative and should be sent to Mr. Vegliante for review and necessary guidance. Because of our contractual requirements, this memorandum must also support the fact that management has given "due consideration" to the following five items when evaluating the need to subcontract and must be provided to the Labor Relations Department for evaluation before any effort is commenced:

1. Public Interest
2. Cost
3. Efficiency
4. Availability of Equipment
5. Qualification of Employees

I am sure you share with me a desire that any subcontracting efforts we might undertake meet our contractual obligations and not fail on account of procedural irregularities.

David H. Charters

There are five (5) National Awards on the issue of subcontracting which deal with the Postal Service's right to contract work.

**A8-NA- 0481 Arbitrator Mittenthal, April 2, 1981**

The union argued that management should not be allowed to contract the movement of mail in Spokane, WA. It contended that Management had inflated the figures.

The arbitrator stated " 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'."

**H8C-NA-C 25 Arbitrator Mittenthal, November 9, 1981**

The union argued that management should not be allowed to contract the movement of mail in Baton Rouge, Louisiana. It contended that Management had inflated the figures.

The arbitrator reaffirmed the decision in A8-NA-0481. There are basically five factors that must be considered in determining which of the two possible modes of highway transportation to use, i.e. postal service or contractors. They are; due consideration to public interest, cost efficiency, availability of equipment and qualification of employees. He emphasized that "due consideration" is not defined and the five factors are not weighted. He concluded that "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'."

**AB-NAT 6291 Arbitrator Gamser, November 24, 1977**

The union argued that the Postal Service had given work to Banks to perform which had previously been done by Postal workers, including the selling of stamps. It contended that in one case the Service had opened a Contract Station in a bank after a nearby Post Office had closed down. The unions' argument was based on the allegation that Management had not complied with the proper procedure of Article XXXII.

The arbitrator stated "The union also argued that the use of banks as contract stations is also quite obviously a form of subcontracting. The lease signed by the USPS with a bank, wherein a self service unit or units is installed, calls for the bank to receive a fixed credit and to account for it. This is 'window clerk' work for which Postal employees also vie because it provides work on the more desirable day shift." and goes on to say "The APWU did not claim that the provisions of Article XXXXII prohibit subcontracting. It only pointed out that this Article requires that the USPS take a series of steps before embarking on this form of subcontracting."

Arbitrator Gamser points out two additional aspects of the National Agreement that differ from other contracts on the subject. The National Agreement does not provide that the Service is prohibited from subcontracting where it can be shown that the Service can do the job as efficiently and cheaply as the subcontractor. Secondly, the Service must consider public interest which is not a normal criteria in the private sector.

#### **H4C-NA-C 39 ARBITRATOR BLOCH, OCTOBER 20, 1987**

The arbitrator stated " There is little question as to the procedural requirements of Article 32; they are essentially three-fold. Management must:

1. Give 'advance notification' when it is considering subcontracting that will have a 'significant impact' on bargaining unit work.
2. Meet with the Union to consider its views on minimizing such impact.
3. Discuss the matter with the Unions prior to a final decision on the subcontracting program.

Reasonably speaking, this means that, in the overall, the Union is to be consulted and the matter is to be discussed between the Company and the Union. This is not a new conclusion; Arbitrator Mittenthal has made the same observation."

#### **H4V-NA-C 84,85,86,87/H7C-NA-C 1,3,5 ARBITRATOR SNOW, JULY 24, 1992**

In his analysis the arbitrator states "Resolving this consolidated grievance flows directly from long-established arbitral precedent interpreting Article 32 of the parties' collective bargaining agreement. As will be explained in detail, Article 32 has been a part of the parties' collective bargaining agreement since 1973. Although provisions of Article 32 have evolved since that time, the substantive purpose of the article has not. It is the purpose which long has been recognized by arbitrators interpreting the agreement between these parties and largely dictates the resolution of this dispute."

His analysis goes on to support the finding and conclusions of arbitrators Gamser and Mittenthal. In fact the award reiterates their guidelines.

His specific conclusions for each of the questions asked were:

1. Article 32.3 does not preclude the Employer from considering taxes foregone;

2. Article 32.3 does not preclude the Employer from updating information until the time of the decision to subcontract;
3. Article 32.3 does not preclude the Employer from renewing with a highway contractor for good faith reasons even when the estimated in-house cost is shown to be slightly lower.
4. Article 32.3 does not preclude the Employer from returning to the incumbent contractor and seeking a best and final offer; and
5. Article 32.5 does not preclude the Employer, when it decides not to renew a contract, from solicitation bids for the contract and its routes.

There are other National Arbitration decisions on subcontracting. They basically go to whether the enunciated criterion for subcontracting have been met. They are:

H4T-3W-C 9682 ARBITRATOR COLLINS, SEPTEMBER 3, 1986 contracting out custodial work when the position became vacant.

There are several Regional Awards on the subject of subcontracting which deserve consideration. They are:

N1T-1J-C 7757 ARBITRATOR MARX, SEPTEMBER 11, 1984  
S1T-3T-C 20710 ARBITRATOR FOSTER, JUNE 15, 1989

Both maintained the Service's right to use subcontract personnel in constructing new facilities as this could not be considered maintenance of facilities by creating something new.

C8T-4E-C 34116 ARBITRATOR SEIDMAN, DECEMBER 29, 1982  
E1T-2B-C 11911 ARBITRATOR POWELL, NOVEMBER 1, 1984

Both maintain the postal service has a right to subcontract work which does not have any effect on the craft.

RC-C 0393 ARBITRATOR FELDMAN, JUNE 6, 1980

In a case later overturned in federal court, the arbitrator ruled that the Postal Service failed to consider public interest when deciding to contract out work.

C1V-4A-C 36906 ARBITRATOR MARTIN, MAY 27, 1986

The arbitrator maintained that Management blatantly violated the steps of the contract concerning Article 32 and 12. He said Management abolished motor vehicle positions without allowing drivers to exercise excessing procedures and subcontracted their positions. There is more involved in this case other than the subcontracting issue.

C4V-4J-C 4790 ARBITRATOR ERBS, AUGUST 13, 1986

In a case involving Express Mail and subcontracting the arbitrator stated " At the outset the Arbitrator is convinced that the USP Service was faced with a serious problem involving Express Mail in June of 1984.... The Arbitrator believes USPS has consistently attempted to meet performance obligation of service to the public at a reasonable cost. Article 32.3.A requires consideration to be given to cost, efficiency, public interest and availability of equipment and qualified employees. Secondly while the Union might disagree, it is the Arbitrator's opinion that USPS has attempted to work within the confines of the National Agreement. On this point the Arbitrator must recall that Article 32 discussions and Step 4 compliance did take place for solicitation of the permanent contracts. This fact alone causes the Arbitrator to doubt any willful violation of the contract as charged in Union's grievance... " "The Arbitrator is simply unwilling to say that the use of these subcontractors was outside the conditions and/or unusual need's constituting an emergency under both the Highway Contract Route Administration Manual and the Postal Operations Manual."

N1V-1J-C 16080 ARBITRATOR ROBINS, FEBRUARY 12, 1986

She said "Nothing in the agreement has been shown which would require this result. Article 32 of the National Agreement, and Section 324 of the M-52 Manual, both referred to by the Union, do not appear to support the Union claim that the VMF personnel had to be fully utilized (going into overtime, if necessary) before the work could be contracted out. There is nothing in the Union presentation to show that the use of the contractors was not a financially acceptable choice."

H1R-4H-C 26640 ARBITRATOR ZUMAS, OCTOBER 31, 1985

In a case dealing with emergency service contracts for H.C.R's the arbitrator stated "No provision of the Agreement between the parties has been cited that would prohibit the selection of the date of December 15, 1983 as the date of such conversion (to a Highway Contract Route). From that date, the nature and manner of Postal Service on the route in question ceased to be of legitimate concern to the Union. The fact that the service utilized an Emergency Service Contractor for 4 months in this case does not mean that it is obligated to prove the then existence of emergency conditions. The restrictions on the use of emergency service contractors do not pertain to routes that have already been converted to highway contract delivery. The distinction in this case between an Emergency contractor and a permanent contractor is nominal only, there being no such thing as a delivery contract permanent in nature."

WOT-5R-C 1675 ARBITRATOR ABERNATHY, DECEMBER 23, 1993

"The Union did not establish, however, that the job could have been done in an equally professional manner in the same amount of time and at less cost with bargaining unit employees, as compared to the contractor. Thus, the Union certainly did not establish that bargaining unit employees could do the job more professionally or in less time than the contractor. Since the Postal Service showed that it would be "economically advantageous" to contract the work, the Postal Service decision to do so was consistent with Seciton 535.. and met the requirements of Article 32, Section 1.A, of the National Agreement...." "The decision has no long-term impact on bargaining unit employees. Moreover, as discussed earlier, the decision also had no significant short-

term impact on the bargaining unit...." "The subcontracting in this case is not the type of subcontracting decision that falls within the purview of Section 1.B...." "The decision to subcontract is to be based on all of the listed factors that apply to the particular case, not just the single factor of workload."

W7T-5F-C 32108 ARBITRATOR ABERNATHY, NOVEMBER 20 1992

"Did the Postal Service Window Cleaning Contract violate: The National Agreement including the Subcontracting Cleaning Service Memorandum of Understanding; and or ASM 535.23; and or MS-47 Housekeeping Manual; and/or the National Arbitration of Arbitrator Gamser (AB-NA-0375). I will use this issue, the National Agreement, then in turn, ASM 535.23, the MS-47 manual and the arbitration awards. National Agreement - First, it requires the Employer to give "due consideration to public interest, cost, efficiency, availability of equipment and qualification of employees when evaluating the need to subcontract..." "A second limitation is triggered when subcontracting will have a significant impact on bargaining unit work. None of the evidence before me convinces me that was the case here. So I conclude the triggering event never occurred and that this limitation does not apply. I conclude that Article 32 was not violated." "This MOU is triggered by a vacancy arising "as a result of an employee's voluntary attrition." The evidence in this case clearly establishes that the window washing subcontract did not occur as a result of such vacancy. Therefore, the triggering event did not occur and this MOU does not apply to the fact situation of this case. Administrative Support Manual 535.23: The evidence is clear and undisputed that the original window washing subcontract was let in January 1989 and that it was more cost effective to subcontract window washing. The Union grieved that subcontracting action but later dropped that grievance. When the subcontract was reissued in 1991 the Union grieved again. " "That section provides that window washing can be subcontracted only when the work cannot be done expediently by the existing maintenance work force... "I find the evidence simply does not support the Union's position that Section 535.23 was violated. MS-47 Housekeeping Manual:... I find that the Union failed to show how this handbook is applicable to this grievance or to show that it had been violated. In summary, I have carefully read and summarized these decisions by other arbitrators and have found that the fact patterns in those cases are clearly distinguishable from the facts in the case before me. In none of those cases did the Postal Service issue a subcontract, causing the Union to grieve, and then have the Union drop the grievance. In none of those cases was the subcontract re-let a year later. In none of those cases did the Union agree to a staffing plan with zero minutes for the subcontracting activity. In none of those cases did the Union sign an LMOU that agreed to a staffing level and to zero minutes for the subcontracted activity at that staffing level. In none of those cases did the Union sign an LMOU agreeing not to grieve the staffing level. In short, the cases submitted were distinguishable. For all the reasons set forth above, I will enter an award denying the grievance.

C7T-4G-C 33339 ARBITRATOR BENN, JUNE 24, 1993

"Did the Service violate the Agreement by subcontracting certain maintenance work on neighborhood delivery cluster box units and parcel post lockers?... This dispute concerns the subcontracting of certain painting and repair work on neighborhood delivery cluster box units (NDCBU) and parcel post lockers (PPL) in the Indianapolis area.... The Service's action will be analyzed under Article 32 of the Agreement and

Section 535.111 of the Administrative Support Manual... Article 32.1.A of the Agreement requires the Service to give "due consideration.".... to specified factors:.... The evidence satisfactorily shows that the factors set forth in Article 32.1.A. were given "due consideration...." The letter box mechanics did not have the time to perform the work, could not get it done and the work was backing up.... I am satisfied that "due consideration" was sufficiently given to factors listed under Article 32.1.A.--particularly the public interest and efficiency. With respect to Article 32.1.B. again, I find no violation. There was no 'significant impact on bargaining unit work on the local level, much less the national level.... Therefore, no violation of Article 32 can be found. Section 535.111 of the Administrative Support Manual states, in relevant part: Maintenance of postal equipment should be performed by USPS personnel, whenever possible. Exceptions: Where capable personnel are not available. Under Section 535.111(a), capable personnel (were) not available thereby bringing this case within the exception to postal equipment should be performed by Service personnel "whenever possible..." The grievance is denied. Under the particular circumstances of this case, the evidence fails to support a finding that the Service improperly subcontracted the disputed work."

S7V-3W-C 30484 ARBITRATOR CARAWAY, DECEMBER 17, 1992

"At first blush, it would appear that the Postal Service's plea of untimeliness has merit and must be granted. This would be true except for the application of the principle of a continuing violation... "The evidence in this case, as is shown by the testimony of Mr. Pawson, Union Craft Director, is that the vehicle maintenance work with the outside contractor ended two months after the grievance was filed. This testimony was not refuted by the Postal Service. Therefore, this grievance is deemed as timely filed...." "The evidence shows that the cost of using Post Office mechanics to perform the preventive maintenance would have been equal to or probably more than the labor cost paid to the subcontractor. There is the further factor that scheduling the work with in-house mechanics would have created problems in that the work would have to be done on an overtime basis. This was not a problem with the subcontractor. The work could be handled promptly and expeditiously. Thus, the two weeks average could be overcome and the preventive Maintenance Program brought up to date. The conclusion must be that the cost and efficiency favored the subcontracting out of the work...." "The Union grievance is denied."

B90V-1B-C 93052142 ARBITRATOR DENNIS, JULY 22, 1994

The Union.... "is required to demonstrate that Management had no right to subcontract work that normally would be performed by bargaining unit members. In the instant case, it has failed to do so. The route between Albany and Saratoga, and Albany and Gloversville was already in the hands of a Highway Route Contractor. No work that was formerly performed by Postal employees was taken away. The Postal Service argued that it had authority from Washington to use Emergency Contracts and extend them when required for movement of mail. The Union presented no arguments to persuade me the Postal Service violated the Agreement in this instance."

ND4-IN-C-C003544

N7C -1N-C 35344 ARBITRATOR DENNIS, JULY 22, 1994

The Union in this instance failed to file grievances on each of the three contracts in question in a timely manner. It did so at its own peril. There is no rational reason for the Union not to have been aware of the contracts in question immediately after contractors began moving mail in and out of the Albany GMF. Local Union personnel in Albany are experienced Union leaders...." "The Union reasonably should have become aware of the contracts in question soon after they were issued and the work begun."

N7V-1W-C 37970 ARBITRATOR DENNIS, JUNE 15, 1992

"The work subcontracted in this instance clearly fall under the exclusions listed in Section H. It is a small contract operation in an area where no PVS operation is currently operating and where a PVS operation is economically unfeasible and the work could legitimately be let on a temporary contract. What is wrong in this instance, and what gives the Union a legitimate claim is that the Postal Service used an emergency contract rather than a temporary contract or a regular contract at the outset to purchase the Express Mail Transportation Service between Albany and Glens Falls...." "In the instant case, it is my opinion that local MV people should have been used to transport the Express Mail from Albany to Glens Falls until a proper contract could have been advertised and awarded...." "I do conclude that the employee or employees who were denied the work between February 9, 1991, and May 9, 1991, should receive compensation for the lost work opportunity."

CON-4Q--C 66097 ARBITRATOR ERBS, MARCH 20 1992

"The parties, in negotiating Article 32 of the National Agreement, did not establish a prohibition against subcontracting as is often contained in collective bargaining agreements. Instead the parties have, in Article 32.1.A., established certain guidelines that the Postal Service must follow when it is to evaluate the need to subcontract. It is noted that there is no blanket prohibition against subcontracting but instead due consideration must be given to certain factors before it may subcontract. Those factors include the public interest, cost, efficiency, availability of equipment, and qualifications of employees...." "In the instant case, the un rebutted evidence is that the Postal Service did give consideration to public interest, costs, efficiency, availability of equipment and qualification of employees prior to evaluating the need to subcontract. The only issue that is to be decided is whether, under Article 32.2 the Postal Service was required to notify the National President, the Local Branch Office, and/or the National Bargaining Agent of the intent to contract prior to the time that it could commence the contracting...." "What is significant to the arbitrator in this case is that there was a notice to the local union of the possibility of the subcontracting of this work. The union has argued that the carriers were notified as carriers, and not as a union, and since they are 50 miles from the local branch that notice has no significance. The arbitrator does not agree. The persons that were notified were the local stewards who are the agents of the union."

N7V-1T-C 25727 ARBITRATOR GERMANO, AUGUST 21, 1990

During the period March 6-11 and June 6-12, 1989, Management at the Hicksville Postal Facility utilized contract drivers to transport empty trailer boxes between the Long Island Facility and two New Jersey Mail Facilities for a total of 22 trips...." "The

union claimed that bargaining unit employees were available to perform these duties and that their utilization would have been cost effective and more expeditious than hiring a private contractor to do the work...." "The Postal Service's position was that it properly contracted the work in question in accordance with the provisions of Article 32 of the collective bargaining agreement. It claimed that due consideration was given to public interest, cost, efficiency, availability of equipment, and qualifications of employees...." Documentary evidence as well as testimony showed that if bargaining unit employees were paid overtime it would have cost the Postal Service more to utilize them only if the private contractor was hired for only one way transportation. In fact, however, contrary to the Postal Service's claim, evidence was submitted which showed that the contractor in some instances was utilized for round-trip transportation...." "Had the Postal Service given advance notice to the union and conducted a legitimate cost analysis as the contract requires, a truly efficient and cost-effective method for transporting the empty trailers may have been realized. The Postal Service's claim that the situation was of an "emergency nature" is not supported because it took the contractor six and seven days to accomplish the task, which bargaining unit employees could have completed in a shorter period of time...." "The Postal Service shall pay the appropriate bargaining unit employees a total of 148 hours of overtime pay."

E7T-2H-C 43203 ARBITRATOR FOSTER, JULY 20, 1992

"The Union's objection to subcontracting the cleaning of lobby windows is unpersuasive in view of the expressed recognition by part 535.23 of the Administrative Support Manual that contract service may be appropriate when the work cannot be done expeditiously by the existing maintenance work force. Mr. Wangness testified convincingly that there was a legitimate business reason for the subcontracting because the custodial work force needed the services of a maintenance mechanic to remove the sunscreens covering the windows prior to cleaning. While custodians could undoubtedly perform some of this work, Arbitrator Searce had it right when he stated in the case cited by the Employer, it does not appear to be economical or practical to segregate such incidental work particularly where as is indicated here the contractor charged a single-service fee to accomplish all of the tasks."

S7T-3W-C 36631 ARBITRATOR GOLD, JANUARY 29, 1992

"Article 32 of the National Agreement (subcontracting) dictates that the employer must give due consideration to several factors in evaluating the need to subcontract. These include the public interest, cost, efficiency, availability of equipment, and qualification of employees. The evidence in this case supports the service's contention that it did properly weigh these factors...." "Section 535 of the Administrative Support Manual states that, with two exceptions, maintenance of postal equipment should be performed by USPS personnel...." "Because of his special skills, the grievant has proven to be a great benefit to the Postal Service. He has been, and apparently will continue to be used to work on repairs, installations, and additions, as the operational needs of the service dictate. I find nothing in the record, however, to support the contention that the work here has been subcontracted out in violation of the National Agreement."

C7T-4M-C 34067 ARBITRATOR GOLDSTEIN, AUGUST 17, 1992

"In sum, the evidence proffered by Management in this case does not prove that the available Maintenance Mechanics could not have done the work at issue without the necessity for a subcontract, I believe...." "I thus find a violation of Article 32.1A, since the subcontracting decision was not made in accordance with the requirements of that contractual provision, as I read the record evidence...." "Based on my assessment of the skills required for the tension spring, especially in light of the testimony of Employer witness Brown, I find that Jacobs, Odykirk, and Corcoran were "qualified and available" on the Overtime Desired List and should receive a monetary remedy for the lost work opportunity and in order to maintain the integrity of the National Agreement. I so hold."

E7V-2B-C 38714 ARBITRATOR HOWARD, OCTOBER 24, 1991

"It should be noted that the subcontracting of painting work was unavoidable at the outset because the existing spray paint facility was found to be a safety hazard for the employees...." "It should be noted that neither the union nor the company presented what the arbitrator considered accurate cost figures or the replacement of the spray paint booth. Manager Bruno's figure of \$75,000-\$125,000 is too broad a range to be considered an accurate estimate, and it was not accurately arrived at.... The body shop operator is obviously interested in gaining business, not in encouraging an in-house facility...." "Moreover, the installation of a new spray paint facility would mean the loss of considerable work space for other maintenance work which the present structure affords. Thus, there would be a significant loss of space for maintenance work or the need to construct a new maintenance facility, a significant capital investment.

C7T-4L-C 26029 ARBITRATOR KLEIN, APRIL 12, 1993

"The subcontracting complained of herein is violative of the ASM and the Step 4 Settlement. The work at issue in Champaign belongs to the bargaining unit. Although Management would have been required to purchase new equipment to perform the lawn care/snow removal work, the specific provisions of the ASM and the step 4 settlement cannot be ignored...." "Bargaining unit employees had performed grounds work at the Neil Street Station for years, and even though the work at the GMF was on a much larger scale, they nevertheless had the skills and experience to perform the outside duties in question...." "The considerations outlined in Article 32 do not appear to be valid here; nor do they override the provisions of the ASM or the Step 4 Settlement. The grievance is granted. Management shall comply with the December 19, 1989, Step 4 Settlement in Case No. H7C-NA-C 27. The appropriate custodial personnel shall be compensated at the straight time rate for the hours worked by the subcontractors."

A90V-1A-C 92004456 ET AL ARBITRATOR LIEBOWITZ, OCTOBER 18, 1994

"When evaluated on this global basis, the Union's "emergency" contention falls short of being established; the argument also encounters the obstacle presented by the facts that the emergency contracts at issue have long since expired and that they have been superseded by regular highway service contracts as to which the evidence shows that the Postal Service did follow the provisions of Article 32, and particularly of 32.3.G, of the National Agreement, a point amplified below." "Thus, while the Union states that it has not invoked the provisions of Article 32 in these grievances, on the evidence and authorities presented, it is apparent that those provisions are operative...." "The

difficulty for the Union here arises from the fact that the evidence shows that the Service did follow the provisions of Article 32.3.G. as to the regular highway contracts.... " "The difficulty for the Union is that it has not proved the contractual violation which would substantiate its concern and call for the remedy it seeks. The evidence shows that no bargaining unit work was lost, no positions were abolished or curtailed, and there was no adverse effect upon employment within the bargaining unit arising from the changes that took place."

W1T-5C-C 19965 ARBITRATOR LEVAK, JULY 31, 1987

"Article 32.1.A. merely provides that the USPS must give due consideration to certain factors when evaluating any decision to subcontract. That provision requires only that the service act in good faith and that it give thoughtful managerial consideration to the factors therein set forth. Article 32.1.B further limits the union's ability to question or attack a subcontracting decision. That provision is the type of subcontractor clause that is aimed at preventing a reduction in the number of bargaining unit employees. It does not appear to be aimed at preventing or limiting subcontracting that would not have a direct effect on the number of bargaining unit personnel...." "The Arbitrator can find no violation of the National Agreement, the ASM, or the Step 4 Grievance Decision. It should be emphasized that under the circumstances of this case, Management had the absolute right under Article 3 to establish the reasonable time constraints involved and also to establish the scope of work set forth on the Form 7381."

W0T-5S-C 9035 ARBITRATOR MARLATT, OCTOBER 12, 1992

The grievance alleges that the Postal Service violated the National Agreement by contracting out certain bargaining unit work; specifically, the painting of some 44 letter boxes over a period of six months in 1991. The grievance was not filed until the work had been completed, but no objection to timeliness was raised even though the painting was done at the Post Office and maintenance craft employees must have been aware of it...." "It is clear from the position descriptions quoted above that painting letter boxes is bargaining unit work of the Maintenance Craft. Furthermore, Part 535.111 of the ASM specifically provides: 535.111 Postal Equipment. Maintenance of postal equipment should be performed by USPS personnel, whenever possible...." "The applicability of this ASM provision to the painting of letter boxes was expressly recognized in two Step 4 settlements...." "While the Union has the burden of proof in a contract dispute, it is not required to prove that the above criteria would favor the performance of the work within the bargaining unit. Rather, it is up to the Postal Service to prove that there is a 'need' to subcontract. In this case, management offered almost no evidence at all to show that it gave "due consideration" to the listed factors...." "I conclude, therefore, that the subcontracting out of bargaining unit work in this case violated the National Agreement."

S7T-3W-C 34282 ARBITRATOR MARLATT, JANUARY 29, 1992

"In the present case, however, the evidence establishes that subcontracting of HVAC preventive maintenance results in a net savings to the Postal Service. Even though postal maintenance craft employees work at a lower hourly rate of pay than contractor employees, it is necessary to add in the numerous employee benefits which the Postal

Service must provide, the cost of transporting the employees to and from the stations and branches, and the cost of filters, lubricants, and refrigerants. When all these factors are taken into account, the cost of performing these services with postal employees would exceed the approximately \$4,000 a year being paid to the contractor. Furthermore, contracting out this kind of work frees up maintenance employees to devote their time more productively to working on postal equipment of a specialized nature...." "Accordingly, I conclude that the Postal Service did not violate the National Agreement by entering into preventive maintenance contracts for the HVAC systems at the Fort Myers stations and branches.

C1T-4K-C 35749 ARBITRATOR MARTIN, FEBRUARY 14, 1991

Violations of clear language of the Agreement, which are continuing in nature, also are not time limited. If Management is not allowed to subcontract each day it operates under a subcontract is a continuing violation, and a Grievance may be filed on that matter at any time. The failure to file for a long period of time will certainly affect the remedy, but not the inherent right to grieve the violation of the Agreement. To find otherwise would be to allow the Contract to be interpreted, waived, and/or distorted by the inattention or incompetence of the parties at a local level. If employees are entitled to certain work, and it is done under subcontract, each day that they are deprived of their work is another violation of the employee's rights under the Contract, and he does not lose those rights due to temporary inaction...." "Since the violation is continuing, the 14-day time limit also continues, and the matter does not become non-arbitrable because of the passage of a long period of time...." "Arbitrator Gamser found that the MS-47 Handbook contains standards binding upon Management; Arbitrator Collins found that ASM, Part 535.261 is binding upon the parties, and Arbitrator Zumas found that lawn care is included in the cleaning service referred to in the ASM Section 535.261, and the limitations there are as binding on the subcontracting of lawn care as on any other form of cleaning service. Article 32 had no relevance to this Grievance, because there were more specific limitations on subcontracting of the work here involved...." "The only consideration left is the remedy. There are two facets of that: the time when a remedy commences, and the nature of the remedy. As to the first, the Grievance was filed after Management had been subcontracting lawn care for some five years, and shortly after a new Contract was signed. The remedy cannot be effective more than 14 days prior to the filing of the Grievance, and that time is inappropriate based upon other facts. Management had developed a right to rely upon its authorization to subcontract, and signed a new subcontract shortly prior to the filing of the Grievance, the specifics of which were not put in the record. Therefore, the remedy will commence upon the conclusion of the Contract which was signed just prior to the filing of the Grievance. When the facts are applied to Article 32, the generic subcontracting authority, there does not appear to be clear justification for the subcontracting. No showing of any public interest in the subcontract was made, the cost appears to be more likely greater under the subcontract than under in-house maintenance, efficiency was not supported by any evidence, availability of equipment was also not supported by evidence and the qualification of the employees was found to be adequate, or if not adequate to be the fault of Management. The specific authorizations for the subcontract would have come from the ASM, which while encouraging contract service when economically advantageous, does not encourage subcontracting when not economically advantageous. Further, it directs Management to MS (47) for the specifics of its subcontracting, and that document, part of the

Contract under Article 19, appears to make subcontracts permissible only for those installations where maintenance personnel are not qualified to perform the routine preventative maintenance...." "Based on all of the above, the conclusion must be drawn that the subcontracting of refrigeration service was in violation of the Agreement, principally Article 19.

SOV-3U-C 3651 ARBITRATOR MOBERLY, MARCH 9, 1994

The arbitrator in the instant case accepts the rationale of Arbitrator Caraway as to the continuing nature of the alleged subcontracting violation, and finds the grievance herein to be timely filed...." "Nothing in the contract requires that management employ PTF's for forty hours per week before subcontracting work. Moreover, the Union did not show that the factors set forth in Article 32.1 favored its position. In fact, the testimony taken as a whole showed that the opposite was true. This subcontracting has existed since the early 1980's. Management's testimony was persuasive in showing that its subcontracting was cost effective, safe, and required less inventory and equipment to be on hand. For example, painting has always been contracted out for safety reasons. Accordingly, the grievance must be denied.

C7V-4L-C 34655 ARBITRATOR NATHAN, MARCH 26, 1993

The issues in this case are as follows: Did the Postal Service violate the National Agreement when it contracted out auto body and fender repair work after moving into a new VMF? If so, what is the appropriate remedy? While the Union faults the VMF for not inquiring whether any employees had experience, there would be no reason to do so if the positions were not authorized. And, the VMF had initially sought such authorization and it was denied. The Union also criticizes the failure to conduct a formal cost analysis before contracting out the work. For the purposes of this case, however, even if management should have conducted such an analysis, that by itself is not a basis to sustain the Grievance. The Union still has to prove that contracting out is not cost effective. Assuming for the sake of discussion that there was a procedural error in the subcontracting process, it is still for the Union to prove that the subcontracting did not meet the criteria set out in Article 32.1. The Union has not done this. It attacks the Service's computations, but it does not supply one of its own to show that keeping the work in-house would be more cost effective. The problems with much of the Union's case is that it is based upon speculation and not evidence.

C1T-4C-C 23371 ARBITRATOR NATHAN , OCTOBER 1, 1992

In the present case, it is apparent that the Service failed to give due consideration to the relevant factors. The parties have stipulated that the necessary equipment was available and that the bargaining unit employees were qualified to perform the subcontracted work. Although Manager Drier testified that he also gave due consideration to cost and efficiency factors in making the subcontracting decision, his testimony has been amply rebutted by the Union. Finally, the Service contends that the Union cannot question whether due consideration was given to issues of public interest because public interest was not among the factors cited in the grievance documents. This grievance cannot be overruled because the Union omitted a reference to one factor from its description of the alleged violation when it was otherwise implied in the description.

E7T-2E-C 13473 ARBITRATOR POWELL, FEBRUARY 28, 1990

"It is the position of the Union that the contracting out of lawn care is a continuous violation, and that the omission to file at an earlier date, only limits their request for damages and does not preclude their right to grieve contracting out of a function and the included jobs...." "The failure to file has not prejudiced the Employer....", "if any, to the Union. Thus, the Union's demand for damages would be limited to the fourteen-days prior to the filing and the subsequent period if they prevail...." "Based on the testimony presented by management, there has been no adverse impact on the number of custodial employees employed. No employees were laid off as a result of subcontracting the lawn work. The property is receiving expert care, and no employees had been previously trained in the care and feeding of lawns, trees, shrubs, and the plantings of same. There have been definite savings over and above the use of new hires and the cost of equipment and supplies which would be necessary. The Union has failed to show any adverse impact on any of the employees presently employed. To the contrary, management has shown that there has been no diminution in numbers of employees. That the work involved has never been performed by the current employees either in the volume required or the know-how expected. In the present case, management did follow the dictates of the MS-47 and the ASM in arriving at a decision to subcontract lawn care at the Reading facility. Based on the evidence presented, I find that the Employer has complied with the subcontracting requirements of the Collective Bargaining Agreement and has met the requirements of efficiency and effectiveness set forth in Article 3. Permitting this case to be decided on its merits and not dismissing the matter on the basis of untimeliness was done for two purposes. The Union on their part failed to explain the inexcusable delay in filing for relief, and management was not able to demonstrate resulting prejudice or injury because of the delay."

E7T-2N-C 19045 ARBITRATOR POWELL, DECEMBER 18, 1990

"Management has demonstrated both a good faith business justification for its subcontracting decision and the absence of any anti-Union or anti-bargaining unit motivation. It has relied upon the existence of a relatively broad management rights clause acknowledging its rights and obligations to work efficiently and effectively plus specific criteria which is demanded by Article 32. Employee job security has not been diluted nor have any general contractual obligations been undermined."

N7T-1R-C 34813 ARBITRATOR SHEA, APRIL 10, 1992

"The arbitrator must concur with the union's contentions that when considering the contractual appropriateness of the subcontracting of maintenance work, the general provisions of Article 32 must be read in conjunction with the more specific provisions of the ASM. Specifically, the arbitrator determines that ASM Section 535.23 is controlling on the issue of whether or not the service was contractually authorized to subcontract snow removal and ASM Section 535.26 is controlling concerning the same issue relative to the internal cleaning work at the CFS Annex. In the opinion of the arbitrator, ASM Section 353.23 limits the subcontracting of snow removal work to circumstances where the work cannot be performed expediently by bargaining unit employees within

the criteria of Article 32. The arbitrator determines that the union, as the moving party, must produce sufficient evidence to establish a prima facie case that career employees could perform the work in question. The arbitrator finds that the union met that burden."

E7T-2N-C 21984 ARBITRATOR ZOBRAK, JULY 31, 1992

"The record fails to reveal any evidence of adverse impact on the bargaining unit or individual employees caused by the contracting out of the dock door repairs. The record, instead, leads to the conclusion that the repair and maintenance of the mail processing equipment would have been jeopardized and the efficient handling and processing of the mail would have been negatively affected. It must be remembered that when the Postal Service considers subcontracting, the public interest and efficiency must be considered. The primary function of the MPEs is to assure that the mail processing equipment is functioning properly. The MPEs were working a full work week and some overtime to assure the efficient processing of the mail. It is further concluded that there is no contractual obligation for the Postal Service to use the MPEs on overtime to avoid the contracting out of the disputed work. For all these reasons, the remedy requested will not be granted."

N7M-1T-C 38718 ARBITRATOR ZUMAS, JULY 7, 1992

On February 19, 25, 16, and March 4 and 8, 1991, private mailer trailer drivers for Mailing Services, Inc., unloaded mail at the Hicksville postal facility. The Union alleged that this was impermissible in that it was subcontracting out work depriving Mail Handlers of the right to perform the work...." "Management took the position that the unloading of mail by private mailers is consistent with the guidelines of the Bulk Mail Acceptance Handbook, DM-102; and also that mailings prepared by the mailer are not considered to be U. S. Mail until accepted and verified at the accepting Postal facility...." "The above-quoted regulations make it clear that: 1) Private Mailers have an obligation to off load this mail without assistance on the dock of the accepting facility; 2) It is not considered to be U. S. Mail unless and until it is accepted, by various procedures, at the accepting facility; and 3) There is no obligation on the part of Management to assist in the off loading of this mail."

S7T-3Q-C 31264 ARBITRATOR LARSON, APRIL 20, 1994

"It is clear that the 1984 and 1987 Memoranda and the quoted provisions of the ASM and the MS-47 Manual are contractual and expand on the meaning and application of Article 32. The usual tasks performed in maintaining lawns, shrubbery and trees, including planting of flowers, are custodian's work...." "But in the present case the work subcontracted went considerably beyond usual maintenance or cleaning service. Accordingly, my conclusion is that management did not commit a contract violation in subcontracting the redesign and reconstruction of the flower bed outside the GMF building. This conclusion is consistent with the distinction which is made out in the cases cited by the PS and the union."

C4T-4F-C 8761 ARBITRATOR ORDMAN, DECEMBER 29, 1988

"Management should have utilized its own personnel to do the subject work under Section 535.111 (of the ASM). Neither of the exceptions applies. Capable personnel were available and no special equipment, not readily available, was needed...." "The estimate of its own electricians as to the labor cost if they did the job was \$2,062.80. A representative of management indicated that the projected labor cost for the outside labor contractor was in the neighborhood of \$20,000...." "There was undisputed evidence that more complex and extensive electrical projects had been assigned and performed by the staff electricians in the past...." "I conclude and find that all elements enumerated in Articles 17 and 32 of the National Agreement and in section 535 of the Administrative Support Manual having been considered and applied, the work here in dispute should have been assigned to the three maintenance electricians herein identified."

S7T-3W-C 28476 ARBITRATOR SCHEDLER, JANUARY 18, 1990

"The situation in a contracting out award is not a bright line that tells management, or an arbitrator, when work should be contracted out and when it should not be contracted out. This grievance involved 8 hours of work for 4 employees. I am satisfied that there are many occasions when management could save money contracting out custodial work, however, for the small amount of hours involved and, if there are employees and equipment available to do the work, management has a greater obligation to honor the recognition clause and work in harmony with the employees than to save a few dollars by contracting out."

E7T-2M-C 40906 ARBITRATOR SICKLES, APRIL 1, 1992

"The union clearly established that the service's staffing determination contemplated that snow removal would be performed by custodians, a function clearly within their job description. The general right of the service to subcontract under Article 32 must give way to the specific protections to continued work accorded by the MS-47 Handbook as incorporated by reference in Article 19. (See specifically, N7T-1W-C 26079). In any case the service did not make a case that the arrangement with the subcontractor was any more efficient or beneficial to the public than using USPS workers...." "Although there are at least two decisions which find otherwise, my decision is to follow the precedent set in N4T-1G-C 33419 where Arbitrator Liebowitz ordered compensation at the applicable hourly rate...." "The grievance is sustained as noted above."

N0T-1N-C 2291 ARBITRATOR TENER, FEBRUARY 20, 1993

"The Service has not shown that it was not expedient or unsafe to have custodial employees handle the window cleaning in question. It is a fact that nobody lost a work opportunity. The work in question is a small part of the over-all window cleaning at the facility. Nevertheless, there is an important issue of principle here. The Manual is clear in setting limits on the subcontracting of this specific task...." The Union has shown that the window cleaning work in question is work within the maintenance craft. It was contracted out because of an alleged safety hazard. The record does not support the Service's position on that score."

B90M-1B-C 92936319 ARBITRATOR:TALMADGE MAY 2, 1995

"The Pre-Arbitration Agreement of February 13, 1992, case #47A -MA-C 191027 between the parties concerning the revision to the Domestic Mail Manual (DMM) 722.421 led to an understanding that the revisions were not designed to eliminate Mail Handlers work. More over that the service's policy with respect to unloading and bedloaded shipments is as was provided in Section 5.2 of the "Drop Ship Program Operation Guidelines" dated September 27, 1991...." The service demonstrated that it gave "due consideration" to factors specified in Section 32.1 and Section 32.2. Accordingly, the Arbitrator finds that the Postal Service did not violate the provisions of the National Agreement by having drivers and other non-postal personnel unload drop-shipment trailers.

UNITED STATES POSTAL SERVICE

A8 NA-0481

Mittenthal 4/2/81  
Washington, DC 20260  
National Award  
WON

DATE: April 8, 1981  
UR REF: LR320:SSBarber:ltd  
SUBJECT: National Arbitrator Mittenthal's  
Award A8-NA-0481

TO:

Distribution List

The attached national award involves the contractual obligations of the Postal Service under Article XXXII, Section 4, Highway Movement of Mail. The Union alleged that the USPS did not give due consideration to the five factors listed in Section 4A, particularly cost, when they awarded a surface transportation contract. In noting that the five factors listed in 4A are unweighted, the arbitrator found that the Postal Service must make a good-faith attempt to evaluate all five before making its decision and that relative cost is an important, but not controlling, factor.

The arbitrator reviewed the Headquarters' cost study performed to resolve discrepancies between regional and union cost estimates. Union figures reflected actual driver hours while the USPS figures included non-driving hours of the additional employees who would be needed. Arbitrator Mittenthal found that Section 4F did not preclude the addition of non-driving time, where appropriate, and that the USPS had properly determined an in-house estimate which included all of the proposed new employees' hours.

He found that the Postal Service had given due consideration to all five factors and had, in fact, gone beyond the procedural requirements in Section 4B-G by agreeing to delay the contracting-out decision. The delay allowed the Union to personally investigate the situation and prepare a further proposal which was locally reviewed and evaluated before the final decision.



Sherry S. Barber  
General Manager  
Arbitration Division  
Office of Grievance and Arbitration  
Labor Relations Department

Attachment

ARBITRATION AWARD

April 2, 1981<sup>1</sup>

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, Arbitrator

RECEIVED  
APR 6 1981  
Arbitration Division  
Labor Relations Department