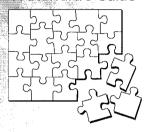
Maintenance Subcontracting

A Steward's Guide



1

Addressing Subcontracting Disputes

Introduction

Maintenance Subcontracting Workbook v.4

- Years of experience with subcontracting issues produces growth of ideas and changes
- Current theory of subcontracting issues maintains that we rely on BOTH Article 32 and the ASM
- Experience in arbitration proves that ASM provisions other than 535 lay the groundwork for our claim to the work so we refocus on the ASM
- More emphasis needs to be placed on the steward's responsibilities in the subcontracting grievance

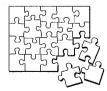
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Addressing Subcontracting Disputes

Introduction

Constructing a successful grievance is a process of fitting all the pieces of a puzzle into the correct places

- Disclosure
- Investigation
- Organization of evidence
- Argumentation
 - Claims and proofs



Addressing Subcontracting Disputes

Understanding the Issues

. . . subcontracting is frequently a subject of arbitration as it requires a delicate balance between

- the employer's legitimate interest in efficient operation and effectuating economies on the one hand and
- the Union's legitimate interest in protecting the job security of its members and the stability of the bargaining unit on the other.

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Addressing Subcontracting Disputes

Understanding the Issues

Job security is an inherent element of the labor contract, a part of its very being. If wages is the heart of the labor agreement, job security may be considered its soul.

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Addressing Subcontracting Disputes

Understanding the Issues

Those eligible to share in the degree of security the contract affords are those to whom the contract applies . . . The transfer of work customarily performed in the bargaining unit must therefore be regarded as an attack on the job security of the employees whom the agreement covers and therefore on one of the contract's basic purposes.

Addressing Subcontracting Disputes

Understanding the Issues

Any Employer has an inherent right to subcontract work

- Inherent management rights are eliminated or restricted by concessions to the bargaining unit
 - Article 3 of the National Agreement makes management's rights subordinate to the terms of the
- Article 32 does not grant management any rights Article 32 *limits* the Employer's right to subcontract bargaining unit work

The Critical Meaning of Article 32

Richard Mittenthal, Richard Bloch and Carlton Snow

National Interpretive Arbitration

- Sets precedent that must be followed by regional panel arbitrators
- Explains to the parties what our contract means and what it requires
- Richard Mittenthal, A8-NA-C 0481, April 2, 1981
 - Established that it is the decisional process that is critical for the Service to justify subcontracting
 - Defined for the parties what it takes for the Service to have actually given <u>due consideration</u> to the five factors of Article 32

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The Critical Meaning of Article 32

Richard Mittenthal, Richard Bloch and Carlton Snow

National In

- Sets prece regional p
- Explains to and what
- Richard Bl
 - Establishe Article 32 subcontra

nterpretive Arbitration	
edent that must be followed by anel arbitrators	
o the parties what our contract means it requires	-
och, H4C-NA-C 39, October 20, 1987	
d the principal that unless the terms of were satisfied, no final decision to	
ct could be made	
9	-
	-

The Critical Meaning of Article 32

Richard Mittenthal, Richard Bloch and Carlton Snow

National Interpretive Arbitration

- Sets precedent that must be followed by regional panel arbitrators
- Explains to the parties what our contract means and what it requires
- Carlton Snow, H4V-NA-C 84, July 24, 1992
 - Reaffirmed both Mittenthal and Bloch in requiring a good faith determination by the Service
 - Established Union's obligation to specifically address Service's <u>due consideration</u> of Article 32 factors

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The Critical Meaning of Article 32

Richard Mittenthal, Richard Bloch and Carlton Snow

Article 32 Requires the Service to

- Make a good faith determination by giving <u>due</u> <u>consideration</u> to each and all five factors
 - · Cannot ignore or gloss over any factor
- Cannot create additional factors
- Not reach final decision without satisfying procedural requirements
 - Note: New language of Article 32 requires local notice of subcontracting decisions

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The Critical Meaning of Article 32

Richard Mittenthal, Richard Bloch and Carlton Snow

Union challenges under Article 32

- Focus on the Service's decisional process
 - As in discipline grievances, the Union attempts to show what it was that the Service failed to do in reaching its decision
- Address each Article 32 factor and show that the Service failed to give due consideration
 - If the Service met procedural (notice) requirement, and if the Service produces evidence of having given due consideration, it may shift the burden of proof back on the Union

Understanding the ASM

Arbitrator Shyam Das

National Interpretive Arbitration

- Sets precedent that must be followed by regional panel arbitrators
- · Explains to the parties what our contract means and what it requires
- Shyam Das, HOC-NA-C 19007, June 21, 2002
 - Resolved 1992 challenge to ASM revisions
- Emphasized the importance of the ASM provisions limiting the Service's right to subcontract
- · Restored several separate subcontracting protections

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What Did Das Do?

The Details of These Changes

Changing Limits on Subcontracting

- 535,111 Postal Equipment
 - Gave clear preference for Maintenance Craft performance of maintenance work
 - · Provided only two possible exceptions
- 1992 change added third exception -when economically advantageous

 APWU objected this change made
- subcontrácting easier

Das sustained APWU challenge

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What Did Das Do?

The Details of These Changes

Changing Limits on Subcontracting

- 535.23 Window Cleaning and Snow and Ice Removal
 - Single exception to performance of this work by Maintenance Craft employees when it cannot be done expediently by existing workforce
 - Change eliminated this exception and substituted economically advantageous standard
- APWU objected this made subcontracting easier Das sustained APWU challenge

What Did Das Do?

The Details of These Changes

Changing Limits on Subcontracting

- 535.23 . Lawn and/or Grounds Maintenance . .
- Das declined to address change to language with respect to this work
- Das noted the parties had already resolved issues pertaining to lawn and/or grounds maintenance
- June 29, 1993 lawn maintenance settlement removed this area of dispute from the ASM challenge

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What Did Das Do?

The Details of These Changes

Changing Limits on Subcontracting

- * 535.262 Tenant Space
- Precluded subcontracting custodial maintenance of tenant space if Maintenance Craft employees were already performing the work
- Change completely eliminated this protection
- APWU objected this eroded job protection Das sustained APWU challenge

Changing Limits on Subcontracting

The Importance of Das' Findings

535,262 Tenant Space

- Least significant result of Das' award
- Few remaining grievances on subcontracting custodial maintenance of tenant space
- Multi-use buildings presently without Postal custodial maintenance will remain lost (unless grieved prior)
- Those multi-use buildings with Postal custodial maintenance presently performing this work *must be* protected by application of restored provisions

Changing Limits on Subcontracting

The Importance of Das' Findings

535.262 Tenant Space

Contracts may be authorized for cleaning buildings or portions of buildings occupied by nonpostal tenants and not used for proprietary postal functions, provided such space is not being cleaned by field service custodial maintenance employees. This includes . . .

Where we presently have this work, We keep this work

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Changing Limits on Subcontracting

The Importance of Das' Findings

535.23 Window Cleaning and Snow and Ice Removal

- APWU argued and Das found the pre-1992 language provided *significant protection* from subcontracting
- USPS explanation for change was that it "borrowed" the economically advantageous standard from
- The restored language per Das' interpretation provides greater protection than the economically advantageous standard
- It is not enough for USPS to claim cost cutting

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Changing Limits on Subcontracting

The Importance of Das' Findings

535.23 Window Cleaning and Snow and Ice Removal

- Contract service may be authorized <u>only</u> when the work cannot be done expediently by the existing maintenance workforce. .
- Consistent with Das' interpretation, this must be considered to be a more stringent limitation than mere cost sav
- USPS must be pres determines that thi expediently by cust employees

ings sed to demonstrate how it s work <i>cannot be done</i> odial maintenance	t
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Changing Limits on Subcontracting

The Importance of Das' Findings

535.23 . . Lawn and/or Grounds Maintenance . .

- Das' rejection of the change to the economically advantageous standard in this paragraph applies to lawn/grounds work
- Note the parties' expressed intention that this work be limited as prescribed by the ASM
- Settlement H7T-3D-C 22868 sets 300,000 square foot threshold
- ASM requires cannot be done expediently standard

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Changing Limits on Subcontracting

The Importance of Das' Findings

535.111 Postal Equipment

- Most significant result of Das' award
 - USPS borrowing of economically advantageous standard radically changed protection
 - Maintenance of postal equipment includes clear preference for postal maintenance employees
 - Standard for subcontracting *plant* equipment maintenance includes *encouragement* for subrontracting.
 - 1992 expansion of Postal Equipment definition adds to the importance of the award

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Changing Limits on Subcontracting

The Importance of Das' Findings

535.111 Postal Equipment

- Maintenance of postal equipment should be performed by Postal Service personnel whenever possible. Exceptions:
 - a. Where *capable* personnel are *not available*, or
- b. When a piece of equipment is a prototype or experimental model or unusually complex, so that a commercial firm is the *only practical source* of required maintenance expertise.

USPS must be pressured to show how one of these exceptions *precludes* Maintenance Craft performance of the work

Changing Limits on Subcontracting

The Importance of Das' Findings

Das' Award Reinforces APWU Argument

- Article 32. Section 1.A. establishes the general limitation on all subcontracting decisions
- ASM 535 establishes the specific limitations on decisions to subcontract maintenance work
- ASM 535 provisions "reflect the Postal Service's application of [the Article 32] general principle in various maintenance contexts."

Every Maintenance Craft subcontracting grievance must use both Article 32 and the ĀSM.

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The Subcontracting Grievance

Recapping the Fundamentals

Subcontracting is a transfer of work

- Bargaining unit work is given over to "strangers to the collective bargaining agreement"
- Erosion of work from the bargaining unit threatens the job security of workers

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The Subcontracting Grievance

Recapping the Fundamentals

The Employer has an inherent right to subcontract work

- The APWU collective bargaining agreement with the Postal Service places limitations on that inherent right to subcontract
 - Article 32 establishes the general limitations for all types of subcontracting
 - ASM provisions establish specific, additional limitations for subcontracting Maintenance work

The Subcontracting Grievance

Recapping the Fundamentals

The limiting effect of Article 32 is on the Postal Service's *decisional process*

- Reaching a determination to subcontract requires a good faith evaluation of need, giving due consideration to
- Public Interest
- Cost
- Efficiency
- · Availability of equipment
- · Qualification of employees

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The Subcontracting Grievance

Recapping the Fundamentals

Due consideration of the Article 32 factors

- Does not require correctness
- Cannot be perfunctory is more than mere consideration
- Cannot Ignore any of the factors
- Is prerequisite to a final determination

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The Subcontracting Grievance

Recapping the Fundamentals

Article 32 includes notification provisions

- Prior to 2006-2010 National Agreement the only notification requirements of Article 32 pertained to <u>national level</u> subcontracting
- 2006-2010 National Agreement now requires notification to the Local Union of any field level subcontracting decision

The Subcontracting Grievance

Recapping the Fundamentals

Limitations imposed by ASM provisions

- Are additional to, and implement Article 32
- Apply specifically to subcontracting decisions involving Maintenance Craft work
- Provide substantial protection for bargaining unit performance of Maintenance Craft work

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The Subcontracting Grievance

Recapping the Fundamentals

Limitations imposed by ASM provisions

- Are different for different types of work
- Custodial work of snow removal and lawn maintenance each has its own requirements
 - Custodial maintenance in tenant space has unique limitations on subcontracting
 - Maintenance of *postal* equipment has more protection against subcontracting than maintenance of *plant* equipment

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The Subcontracting Grievance

Investigating and Processing a Successful Grievance



Timeliness

What is the grievable event?

- It is the Postal Service decision to sul or do Agre
- It is work that

bcontract that either does bes not violate the ement not the performance of the by contractor employees is a violation	
33	

The Subcontracting Grievance

Investigating and Processing a Successful Grievance



Timeliness

- It does not violate the Agreement for the Service to *consider* or *study* the possibility of subcontracting
- The Service must give notice of its decision to subcontract
- At this point, the Union has "learned of the cause" (Article 15) of a grievance

<u>Do Not Wait</u> for Work to Begin

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The Subcontracting Grievance

Investigating and Processing a Successful Grievance

Disclosure and Information Gathering

- Know your rights
- Articles 15, 17 and 31
- The parties must cooperate



- The Service must provide
- · Initial notification is disclosure
- Service must respond to requests for information • This is also disclosure
- Local management's lack of custody of information does not relieve it of obligation to obtain and provide

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The Subcontracting Grievance

Investigating and Processing a Successful Grievance

The Investigation

Three lines of inquiry



- Acquiring evidence of the Decisional Process
- Obtaining evidence of the contract, the work and its performance
- Gathering material evidence to support or to rebut arguments made in the grievance

First Line of Inquiry - the Service's Decisional Process



Boxing in the Service's Case First Request for Information

- Al/information, documentation, records, data, correspondence, etc. that was considered in the process of *making the decision* to subcontract the work in dispute.
- The name of the deciding official
- . So that you may set up an interview

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The Grievance Investigation

First Line of Inquiry - the Service's Decisional Process



What's in the Box This information is the Postal Service's case

- · Or it should be . . .
- Because it is the decisional process that either does or does not justify the Service's decision, this evidence should limit the Service's attempt to defend the decision

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The Grievance Investigation

First Line of Inquiry – the Service's Decisional Process

Responding to the information provided

- Review the information in light of Article 32 and the ASM limitations
- Document the documents
- Identify potential missing evidence
 - Cost comparison if the Service claims cost was
 - Identification of occupational group(s) considered
 - . Contract "Statement of Work" or "Scope of Work"
- Confirm totality of evidence
 - If the Service asserts "this is all there is"

First Line of Inquiry — the Service's Decisional Process

Responding to the Information Provided

- Make follow-up RFI
- Only for information that certainly must have existed as decision was being made
- · Decide whether to protest failure to provide
- * A separate grievance may be desirable
- Tactically, it may be counterproductive to give the Service additional opportunities to make its case

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The Grievance Investigation

First Line of Inquiry - the Service's Decisional Process

Interviewing the Decision Maker
Once the Service identifies the deciding
official

- Set up an interview
- · Verify and clarify evidence
- Seek back-up evidence
 - Dollar and hour figures
 - Projected contractor cost
- Do not open the door for after-the-fact rationalizations

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The Grievance Investigation

First Line of Inquiry - the Service's Decisional Process



Always remember

- All of the Service's material evidence must predate the decision to subcontract
- If the Service actually did what it was supposed to do, it would be in possession of all the evidence you seek to acquire

Second Line of Inquiry - Evidence of the Contract, the Work

INFORMATION NECESSARY TO

- UNDERSTANDING WHAT IS AT ISSUE AND
- ESTABLISHING REMEDY
- The contract the whole contract
- This cannot have been part of the decisional process
 Specific information about availability of equipment and qualification of employees
- If the Service relied negatively upon these factors
- Contractor's weekly wage and hour reports
- Per Davis-Bacon Act or Service Contract Act

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The Grievance Investigation

Second Line of Inquiry - Evidence of the Contract, the Work

The Service claims "this is a national level subcontract"

- Demand proof of national subcontract
- · Service may invoke "local matters" limitation of Article 31
- Local Union is entitled to enough evidence to prove Service claim
- Seek advice of your National Business Agent Assert Your Rights, Enforce Your Rights

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The Grievance Investigation

Second Line of Inquiry - Evidence of the Contract, the Work



Obtaining the contractor's weekly wage and hour reports

- This is NOT to check compliance with prevailing wage regulations
- This evidence goes to remedy; it shows the hours of work used and the categories of employees who did the work

Second Line of Inquiry - Evidence of the Contract, the Work

Service fails or refuses to provide requested information

- This information is necessary to the Union's job of processing the grievance and
- The Union's right to not be prejudiced by Service non-cooperation
- You must file a separate grievance under Articles 17 and 31
- Cite the Service's failure in the primary grievance as a denial of due process

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The Grievance Investigation

Third Line of Inquiry - Claims and Evidence

Argumentation and the Grievance Procedure

- Argumentation demands that every claim be supported by evidence
- The Article 15 grievance procedure is an example of argumentation to resolve contractual disputes
- Service claims about its decisional process
 Must be supported by evidence
- Union claims in rebuttal to the Service's case
- Must be supported by evidence

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The Grievance Investigation

Third Line of Inquiry - Claims and Evidence





Categories of workers and nature of work

- Hourly wage rate for maintenance labor
- Standard Position Descriptions
- · Work order and PM backlog reports
- Employee training and certification records
- Evidence of Maintenance employees' prior performance of work similar to contracted work

Third Line of Inquiry - Claims and Evidence

Tools and Equipment

- · Special tools or equipment
 - Availability through normal Service means
- · Availability through rental
- Evidence contractor subcontracted for special services like a crane and its operator
- Evidence Maintenance employees have experience with cited tools and equipment
- Evidence contractor used Postal Service tools or equipment

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The Grievance Investigation

Third Line of Inquiry - Claims and Evidence

Time Critical Work

- Demand evidence relied upon by the Service during decisional process, not records contemporaneous to the performance of work
- If timing of job depended upon mail processing activities, obtain records of processing operations – such as, volume reports

Remember

 Only information that could have been known when decision was made is relevant

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The Grievance Investigation

Third Line of Inquiry - Claims and Evidence

Claims of need for warranty

- Some equipment warranties apply regardless who installs the product
- Obtain manufacturer information on warranty

Third Line of Inquiry - Claims and Evidence

Availability of employees

- This is specifically NOT an Article 32 factor; however, it may come into consideration
- Be prepared to document availability of employees by
 - Staffing package
 - Seniority lists
 - · Work schedules

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The Grievance Investigation

Third Line of Inquiry - Claims and Evidence

Cost Comparison

- If the Service presents a cost comparison
- Obtain back-up evidence to show source data
- Union may need to perform cost comparison to rebut Service contentions about cost
 - Separately document labor costs from material costs
 - Rely upon appropriate hourly wage rates
 - Straight time wages
 - Overtime wages
 - Fully loaded wages
 - Prevailing wage rates



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The Grievance Investigation

Gathering Evidence and Disclosure

The Union Must

- Request information from the Service
- Demand and enforce disclosure
- Develop its own information and make disclosure in support of claims

Gathering Evidence and Disclosure

A perfectly good grievance can be lost on lack of evidence,

The Service's refusal or failure to provide information may be fatal to the Service's defense.

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The Grievance Investigation

Gathering Evidence and Disclosure

Problems with disclosure will lead to certain necessary grievance arguments

- Failure to produce evidence should preclude new evidence from coming to arbitration
- Failure to produce evidence proves lack of support for the decision to subcontract
- The Union is denied due process by the Service's failure to disclose

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The Grievance Investigation

Gathering Evidence and Disclosure

All primary evidence relating to the subcontracting decision is in the possession and control of the Postal Service

- It is only the Service who possesses records that might give evidence to its decisional process.
- It is <u>only the Service</u> who is in position to articulate to the union, when the union challenges its action, what went into that decisional process.
- It is only the Service who can prove that it did or did not exercise the decision to subcontract within the parameters by which that decision is limited.

Preparing the Grievance Document the Documents Create a Timeline This will document events leading to the decision to subcontract; events preceding the actual contracting and the performance of work It will also serve to document the progression of requests for information and the grievance

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Preparing the Grievance

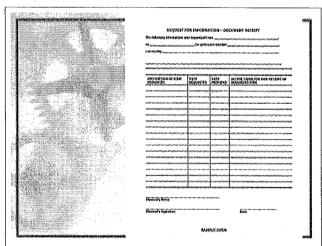
Document the Documents

Create and maintain logs

- Keeps record of
- RFI's
- Responses to RFI'sEvidence obtained
- Evidence provided
 Correspondence

Maintain records of interviews and statements taken

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Arguing the Subcontracting Grievance

Claims and Proofs

Know what is in dispute when you challenge subcontracting

- There must have been a decision made to subcontract work
- It does **not** violate the Agreement for the Postal Service to *consider* subcontracting
- It is the decision, itself, that is grievable
- The work at issue must be bargaining unit work
- Do not assume everyone knows this is our work
- Prepare to prove it is bargaining unit work that belongs to the Maintenance Craft

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Arguing the Subcontracting Grievance

Claims and Proofs

Know what are the limitations on a Postal Service decision to subcontract

- Article 32 establishes the general limitations for all subcontracting of bargaining unit work
- Administrative Support Manual (ASM) subchapter 530 provides specific limitations on decisions to subcontract Maintenance Craft work

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Arguing the Subcontracting Grievance

Claims and Proofs

The Burden of Proof and the **Burden of Going Forward**

- The grievance procedure demands the Union bear the ultimate burden of proof
- The grievance procedure also demands that each side bear the burden of making legitimate claims and giving evidence to support them
 - · This is the burden of going forward

Arguing the Subcontracting Grievance

Claims and Proofs

The Union's initial burden of proof Or, making the *prima facie* case

- The Union must prove there is a subcontract, and
- The Union must prove the work at issue is bargaining unit work
 - That is, work that can be identified as belonging to the Maintenance Craft

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Arguing the Subcontracting Grievance

Claims and Proofs

The Service's burden of going forward
Or, the Service's grounds for defense
against the grievance

- Satisfying the limiting requirements of Article 32 allows the Service to subcontract, provided
- The Service also shows it satisfied the limiting requirements of the ASM

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Arguing the Subcontracting Grievance

Claims and Proofs

The Union's ultimate burden of proof
Or, proving the Service failed to satisfy its
obligations under the National Agreement

- Prove the Service failed to give <u>due</u> <u>consideration</u> as required by Article 32
- Prove the Service failed to show its decision was proper within the limitations of the ASM

Arguing the Subcontracting Grievance

Claims and Proofs

The Snow decision - H4V-NA-C 84 The Service claims this award means the Union must always prove which, if any, factor of Article 32 lacked *due consideration*

- Not really Snow's decision relied on the Service meeting notification and disclosure requirements
- However, if the Service does give notice and disclosure -
- The Union MUST prove failure of due consideration

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Arguing the Subcontracting Grievance

Claims and Proofs

The Snow decision - H4V-NA-C 84 Because of this award, be careful

- Read the Service's claims
- Understand what it argues
- Refute, point for point, whenever possible

As in any grievance, the Union's constant response should be

Oh yeah? Prove it!

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Arguing the Subcontracting Grievance

Claims and Proofs

The Union's Burden of Proof

- That there was a subcontract should be easy
- . If there weren't, we wouldn't be here
- That the work is bargaining unit work
- More specifically, the work is *Maintenance* work
- Do not assume anything; prepare to prove everything
- The Service likes to narrowly define "maintenance"
- Establish a broad definition of maintenance
- Establish the scope of maintenance jobs

Subcontracting by Equipment Type

Postal Equipment vs. Plant Equipment

535 Maintenance Service Contracts 535.111 *Postal Equipment*

- Maintenance of postal equipment should be performed by Postal Service personnel whenever possible. Exceptions:
 - a. Where capable personnel are not available, or b. When a piece of equipment is a prototype or experimental model or unusually complex, so that a commercial firm is the only practical source of required maintenance expertise.

As restored by Das' award

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Subcontracting by Equipment Type

Postal Equipment vs. Plant Equipment

535 Maintenance Service Contracts 535.112 Facility and Plant Equipment

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

Unchanged, pre-1992 to present



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Subcontracting by Equipment Type

Postal Equipment vs. Plant Equipment

531.21 Definitions

- The following definitions apply:
- a. Building and building equipment the building's physical structure, utilities, and environmental systems.

Subcontracting by Equipment Type

Postal Equipment vs. Plant Equipment

531,21 Definitions

- b. Postal equipment a broad range of equipment used either directly or indirectly in moving the mail and for providing customer services
- (includes scales, stamp vending machines, collection boxes, letter and flat sorting and canceling machines, containers;
- and fixed mechanization, such as, but not limited to, conveyors, parcel sorters, and sack sorters).

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Subcontracting by Equipment Type

Postal Equipment vs. Plant Equipment

534 Postal Equipment Maintenance

534.1 Types of Equipment

534.11 Mail Processing Equipment

 This consists of all mechanization and automation used to convey, face, cancel, sort, or otherwise process for delivery all classes of letter and bulk mail. Examples: optical character readers, facer-cancelers, parcel and sack-sorting machines, bulk belt and portable powered conveyors, canceling machines, and flat-sorting machines.

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Subcontracting by Equipment Type

Postal Equipment vs. Plant Equipment

534 Postal Equipment Maintenance

534.1 Types of Equipment

534.12 Customer Service Equipment

 This consists of equipment such as stamp and commodity vending machines, scales, bill changers, self-service postal center equipment, and money order machines.

Subcontracting by Equipment Type

Postal Equipment vs. Plant Equipment

534 Postal Equipment Maintenance 534.1 Types of Equipment

534.13 Delivery Service Equipment

 This consists of equipment such as label imprinters for central markup, label makers, letter boxes, and centralized forwarding systems.

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Subcontracting by Equipment Type

Postal Equipment vs. Plant Equipment

534 Postal Equipment Maintenance 534.1 Types of Equipment

534.14 Support Equipment

 This consists of equipment such as Postal Source Data System (PSDS) equipment, electronic time clocks, and maintenance working equipment such as fork-lift trucks, vertical-lift equipment, powered shop equipment, and containers.

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Subcontracting by Equipment Type

Is It Our Work?

Remember the two things the Union must prove first

- There is a subcontract
- The work at issue belongs to the bargaining unit – specifically to the Maintenance Craft

The provisions of the ASM point toward a very broad meaning of "maintenance" and, thereby, of Maintenance Craft work

What Work is Included in Postal Equipment Maintenance

531 General

- 531.1 Scope
- This subchapter covers *policies and requirements* for maintenance of facilities, plant equipment, and postal equipment.

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Postal Equipment Subcontracting

What <u>Work</u> is Included in Postal Equipment Maintenance

531.3 Maintenance Categories

- 531.31 Preventive and Predictive Maintenance
- 531.32 Corrective Maintenance
- 531.33 Operational Maintenance

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Postal Equipment Subcontracting

What <u>Work</u> is Included in Postal Equipment Maintenance

532.2 Equipment Modifications

- 532.21 Conditions
- 532.211 Plant Equipment
- 532,212 Fixed Mechanization
- * See 531.21 definition of Postal Equipment
- 532,213 Nonfixed Mechanization
- See 534.11, 534.12, 534.13 and 534.14
- 532,214 Headquarters Developed Modifications

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What <u>Work</u> is Included in Postal/Equipment Maintenance

532.2 Equipment Modifications

- 532.22 Installation
- Approved modifications are installed on field equipment by Postal Service personnel when feasible. When personnel, time, special equipment, or cost limitations preclude using Postal Service personnel, contract services may be used . . .

Note the parallel between the language of this provision and 535.111

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Postal Equipment Subcontracting

The Sum of the Parts

Postal maintenance employees have broad responsibilities

Types of equipment are extensive and varied

USPS has established a specific preference for performance of this work by its own employees

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Postal Equipment Subcontracting

The Sum of the Parts

Broad responsibilities include

- Routine preventive, predictive and corrective maintenance
- Equipment repair and overhaul, including replacement of parts and full assemblies
- Installation of modifications to fixed and nonfixed mechanization

Responsibilities are further articulated by USPS Standard Position Descriptions for each occupational group

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The Sum of the Parts

Types of Equipment are Extensive

- · Mail processing equipment
- Machinery used <u>directly or indirectly</u> in processing or movement of mail
- . This includes fixed mechanization
- Customer Service equipment
- Delivery Service equipment
- Including letter boxes, markup and forwarding systems
- Support equipment
- Timekeeping equipment, containers and maintenance equipment

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Postal Equipment Subcontracting

The Sum of the Parts

USPS Stated Preference is to have Postal Maintenance Craft employees perform maintenance activities on *postal* equipment

- · Refer to the provisions at ASM
 - 531.3 Maintenance Categories
 - 532.2 Equipment Modifications
 - 534.2 Repair Parts Overhaul and Rebuild

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Postal Equipment Subcontracting

The Sum of the Parts

USPS Stated Preference is to have Postal Maintenance Craft employees perform maintenance activities on *postal* equipment

 535.111 requires performance of postal equipment maintenance by USPS employees with only two specific exceptions

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The Sum of the Parts

The Effect of the Das Award

- Reemphasis on the significant protection afforded Maintenance Craft employees against subcontracting postal equipment maintenance
- Reinforcement of the difference between the lesser standard of economically advantageous and the more stringent, now restored standards of pre-1992 ASM
- Reemphasis on the relationship between Article 32 and the ASM

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Plant Equipment Subcontracting

What Das Did Not Do

ASM provisions for subcontracting *plant equipment* maintenance were not changed or challenged in 1992

Das' award has no effect on these provisions

• It is neither harder nor easier now for USPS to subcontract this work

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Plant Equipment Subcontracting

What You Must Know About the ASM And Plant Equipment Subcontracting

531.3 Maintenance Categories

- 531.31 Preventive and Predictive Maintenance
- 531.32 Corrective Maintenance

These apply to *plant* equipment maintenance as well as to *postal* equipment maintenance

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Plant Equipment Subcontracting

What You Must Know About the ASM And Plant Equipment Subcontracting

532.2 Equipment Modifications

- 532.21 Conditions
- 532.211 Plant Equipment
- 532.214 Headquarters Developed Modifications

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Plant Equipment Subcontracting What You Must Know About the ASM

And Plant Equipment Subcontracting

532,2 Equipment Modifications

- 532,22 Installation
 - Approved modifications are installed on field equipment by Postal Service personnel when feasible. When personnel, time, special equipment, or cost limitations preclude using Postal Service personnel, contract services may be used . . .

As with postal equipment modifications, again, the clear preference is for performance by Maintenance Craft employees

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Plant Equipment Subcontracting

What You Must Know About the ASM And Plant Equipme

533.4 Building Mainte

- 533.41 Postal Service-
- 533.411 Scope
 - The Postal Service is res cleaning and maintenand facilities, including maint The postmaster or other jurisdiction over the faci appurtenances, and is re and maintenance.

ent Subcontracting			 	 -
enance				
Owned Buildings				
sponsible for ensuring the ce of all postal-owned		 	 	
tenance of plant equipment.				
r installation head has lity, grounds, and			 	
esponsible for their operation		 		
	J			
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Plant Equipment Subcontracting

What You Must Know About the ASM And Plant Equipment Subcontracting

533.4 Building Maintenance

- 533.412 Maintenance Responsibilities
- The Postal Service is responsible for:
- a. Accomplishing preventive maintenance, that is, keeping facility, grounds, and plant equipment in operational condition through scheduled inspections, adjustments, lubrication, and repairs.

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Plant Equipment Subcontracting

What You Must Know About the ASM And Plant Equipment Subcontracting

533.412 Maintenance Responsibilities

- . The Postal Service is responsible for:
- b. Replacing expendable component parts of building and equipment units (such as switches, starters, flush valves) that can reasonably be expected to wear out repeatedly.

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Plant Equipment Subcontracting

What You Must Know About the ASM And Plant Equipment Subcontracting

533.412 Maintenance Responsibilities

- The Postal Service is responsible for:
- c. Replacing complete plant equipment units when necessary or economically desirable.

Plant Equipment Subcontracting What You Must Know About the ASM And Plant Equipment Subcontracting

533.412 Maintenance Responsibilities

- The Postal Service is responsible for:
- d. Providing expendable supplies and materials such as gaskets, seals, filters, electronic components, and supplemental refrigerants.

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Plant Equipment Subcontracting What You Must Know About the ASM And Plant Equipment Subcontracting

533.412 Maintenance Responsibilities

- · The Postal Service is responsible for:
- e. Making necessary changes, modifications, repairs, and improvements to facilities (see Handbook F-66 series on investment policies and procedures).

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Plant Equipment Subcontracting

What You Must Know About the ASM And Plant Equipment Subcontracting

533.412 Maintenance Responsibilities

- The Postal Service is responsible for:
- f. Maintaining suitable working conditions for all interior and exterior areas for the type of work being performed.

Plant Equipment Subcontracting

What You Must Know About the ASM And Plant Equipment Subcontracting

533.412 Maintenance Responsibilities

 Each of these areas of responsibility is reinforced by the provisions of Handbook MS-1 and USPS Standard Position Descriptions for each occupational group

The Union contends, except as otherwise provided, all this work belongs to Maintenance Craft employees

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Plant Equipment Subcontracting

What You Must Know About the ASM And Plant Equipment Subcontracting

535.112 Facility and Plant Equipment

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

While not the preclusive language of 535.111, it requires the Postal Service to establish that subcontracting *plant equipment* maintenance is *economically advantageous* in order to justify the decision

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Plant Equipment Subcontracting

The Sum of the Parts

USPS maintenance employees have broad responsibilities on *plant equipment*USPS has established a specific preference for performance of this work by its own employees

Plant Equipment Subcontracting

The Sum of the Parts

Broad responsibilities include

- The full scope of "Building Maintenance" • 533,411 Scope
- 533,412 Maintenance Responsibilities
- Preventive and predictive maintenance
- Corrective maintenance
- Replace complete plant equipment units
- Make modifications, repairs and improvements
 Maintain suitable working conditions inside and out
- Responsibilities are further articulated by USPS Standard Position Descriptions for each occupational group, as well as specific Handbooks (e.g., MS-1)

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Plant Equipment Subcontracting

The Sum of the Parts

USPS Stated Preference is to have Postal Maintenance Craft employees perform maintenance activities on plant equipment

- Refer to the provisions at ASM
 - 531,3 Maintenance Categories
 - 532.2 Equipment Modifications
- 533.4 Building Maintenance

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It Is Our Work

Maintenance of Postal and Plant Equipment

Make it part of the grievance presentation

- EL-201 Standard Position Descriptions Include the work in the occupational groups

Refute any claims the Service attempts to make that the work is "not maintenance"

It is Our Work

What's Next

Laying the foundation for grievance arguments

- · Specify the type of work at issue
- Did the Service give proper notification
- Was there full disclosure
- Did the Service give *due consideration* to all Article 32 factors
- · Were the terms of the ASM satisfied

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Type of Work Being Subcontracted

Specific Work May Have Specific Requirements

Custodial Maintenance - ASM 535.2

- Removal of Ashes and Rubbish
- Cloth and Laundry Service
- Window Cleaning, Lawn and/or Grounds
 Maintenance, and Snow and Ice Removal
- Cleaning Services
- Tenant Space



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Type of Work Being Subcontracted

Specific Work May Have Specific Requirements

Window Cleaning, Lawn and/or Grounds Maintenance, and Snow and Ice Removal

- Remember, Das restored stronger criterion
- Not the economically advantageous standard
- Rather the cannot be done expediently standard
- This even applies to subcontracting lawn maintenance in excess of 300,000 square feet

Type of Work Being Subcontracted

Specific Work May Have Specific Requirements

Cleaning Services

- MOU Subcontracting Cleaning Services is sole controlling document
- Prerequisite
- · Voluntary attrition of only maintenance position in the
- Proper notification to Local President
- Proper execution of reversion (Article 38,4.A.3.)
 40-day window of opportunity

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Type of Work Being Subcontracted

Specific Work May Have Specific Requirements

Tenant Space

- Again, remember that Das restored greater limitations on Service's opportunity
- "... provided such space is not being cleaned by field service custodial maintenance employees."

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Type of Work Being Subcontracted

Specific Work May Have Specific Requirements

Plant Maintenance

- Installation [of modifications]
- Air Conditioning Service
- Elevator, Escalator, and Dumbwaiter Service



Type of Work Being Subcontracted

Specific Work May Have Specific Requirements

Installation of modifications to plant equipment

 Although the economically advantageous standard generally applies, the specific terms of ASM 532.22 give clear preference to USPS employees for performance of this work

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Type of Work Being Subcontracted

Specific Work May Have Specific Requirements

Air Conditioning Service

- Subcontracting of this work is addressed in Handbook MS-24
- . Limited to offices without qualified personnel
- 60-ton or greater refrigeration requirement usually means an office has qualified personnel
- Acquisition of Postal Service basic air-conditioning training should suffice in smaller offices

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Type of Work Being Subcontracted

Specific Work May Have Specific Requirements

Elevator, Escalator, and Dumbwaiter Service

- The *economically advantageous* standard is augmented by ASM 535.25
- This work depends on the office having personnel in possession of "highly technical skills"—a matter of qualification, not training
- The Elevator Mechanic' duties and responsibilities were given over to the BEM occupational group – one of the highest skilled positions in Maintenance

Type of Work Being Subcontracted

Specific Work May Have Specific Requirements

Postal Equipment

- In addition to the very limiting provisions of ASM 535.111, there are other limitations
- Installation of modifications 532.22
- Only when USPS maintenance employees' performance of the work is <u>precluded</u>

 By bersonnel, time, special equipment or cost
 Preclude means "to make impossible by necessary consequence; rule out in advance"

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Type of Work Being Subcontracted

Specific Work May Have Specific Requirements

Field Maintenance

- ASM contemplates subcontracting
- Scope of work is very broad
- · Relates primarily to building maintenance
- · Including security systems, vaults and safes
- Includes some postal equipment
- Handbook MS-45 also controls



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Type of Work Being Subcontracted

Specific Work May Have Specific Requirements

Field Maintenance - MS-45

- · References limitations of ASM
- · Brings ASM 535,111 and 535,112 into consideration
- Defines the scope of bargaining unit work
 - 321.1 Plant Equipment
 - 321.2 Operating Equipment

Again, we rely on the EL-201 Standard Position Descriptions - AMS and AMT - to further establish the scope of work

Facilities Single Source Provider

A Process, Not a Circumvention

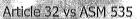
The FSSP Program

- Established no later than 2003 to lend uniformity to the maintenance process of subcontracting
- Does not change any Article 32 or ASM obligations
- May provide the Union with better documentation of parts of the subcontracting process
- Generally reflects little of the decisional process

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Arguments and Counter-Arguments

The Successful Grievance



". . . Article 32.1 of the National Agreement sets forth the following general principle:

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

The provisions of ASM 535 reflect the Postal Service's application of this general principle in various maintenance contexts."

Arbitrator Shyam Das, H0C-NA-C 19007

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Arguments and Counter-Arguments

The Successful Grievance

The ASM reflects the application of Article 32, as it pertains to Maintenance Craft work

This has been, and remains, one of our fundamental arguments

It is critically important for the steward to note this connection and Arbitrator Das' ruling to reinforce our argument

- It means the Service MUST satisfy both
 - The general requirements of Article 32, and
 - The specific requirements of the ASM

Arguments and Counter-Arguments

The Successful Grievance

The *decision* to subcontract is the cause of action – the triggering event of the grievance

 Arbitrator Mittenthal defined due consideration and established the primary importance of the decisional process

The steward must recognize the significance of <u>Mittenthal</u> and hold the Service to its standards for *due consideration*

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Arguments and Counter-Arguments

The Successful Grievance

Interpretive Precedents vs. Regional Arbitration Awards

- Regional panel arbitrators may be found to rule every imaginable way on almost any issue
- The steward should rely on precedents
- · National interpretive arbitration awards
- Step 4 settlements



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Arguments and Counter-Arguments

The Successful Grievance



National Interpretive Awards

- Rely on these
- Mittenthal, A8-NA-C 0481
- Bloch, H4C-NA-C 39
- Das, HOC-NA-C 19007
- Know the implications of
- Snow, H4V-NA-C 84

Arguments and Counter-Arguments

The Successful Grievance

Step 4 Settlements &

National Pre-Arbitration Settlements

- Lawn Maintenance H7T-3D-C 22868
- ASM applicability e.g., B94T-1B-C 97042106
 - "This issue is suitable for local determination by application of the Administrative Support Manual, Section 53, entitled "Maintenance"."
- Nat'l vs. Local e.g., Q00T-4Q-C 05060577
 - "Local Mangement is responsible for giving due consideration.
 It is local management's responsibility to demonstrate to the local union that it gave due consideration to the factors in
 Article 32.1 . . .

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Arguments and Counter-Arguments

Service Claim

Union Response

Public Interest

1. The project directly or Indirectly impacts mail processing, customer service or delivery operations.

Subcontracting is in the public interest for identifiable reasons.

Public Interest

- The Service must be able to specify just what Impact may be at issue.
- Determine whether the Service has considered impact of the project itself or impact of subcontracting versus in-house performance of the

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Arguments and Counter-Arguments

Service Claim

Union Response

The National Agreement does not require that a cost comparison be done.

White not required by the National Agraement. Isck of a cost comparison may stow lack of due consideration of cost. (ASM requirement to show "economically adventageous" cannot be met without cost comparison.)

- Cost comparison was unnecessary.
- Onlesion of any factor may demonstrate lack of due consideration.
- In-house cost would include overtime pay.
- Maintennance hourly rate coal is dictated by Sorvice published to the sorting of the sorting of
- Administrative costs (supervision, maintenance support, etc.) are included in the in-house squres.
- If administrative costs are included in the In-house figures, such costs must also appear in figures for subconfract performance i.e., If \$0, A\$0, contracting officer, maintenance support hours, atc.

Arguments and Counter-Arguments Service Claim Union Response Efficiency 1. Subcontracting provides highly experienced, skilled labor. 2. Other necessary maintenance work would suffer by in-house dedication of hours to project. 2. The Service routinely makes decisions what work to bypase. It sots priorities for the maintenance workforce. Whether or not other work may be secificed is subject to proof. The primary function of maintenance support units is to plan and prepare for work of all types.

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Arguments and Counter-Arguments Service Claim A Subconfecting provides waitenty. Subconfecting provides w

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Arguments and Counter-Arguments Service Claim Availability of Equipment 1. Performence of the project regulates opnicatived engipment not in possessium of the Patel Service Availability of Equipment 1. The Service must be able to specify what such equipment is. It may all the possessium of the Patel Service in the includition. Dut I evaluate the post in may carb be in passessium of the size of the passes of the pass

Arguments and Counter-Arguments

Service Claim

Union Response

Qualifications of Employees

1. Insufficient personnel to perform the project and other maintenance duties.

Union Response

Qualifications of Employees

1. Sufficiency of personnel is a question of availability. Availability applies to equipment not to amployees. Interference with other work may go to Efficiency or to Cost, but not to Qualifications, in either of the former two factors, this would require that the Service quantity its claim—i.e., produce the numbers.

2. A Service claim that its employees lack qualifications for the job must be fully refuted. Prior performance of similar work is good ovidence. The Standard Position Descriptions and Qualification Standards for the involved occupational groups are essential.

Bargaining unit employees lack the qualifications.

essential.

The Service must be challenged to specify just what qualifications are at lesue and necessary to the job.

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Arguments and Counter-Arguments

The Successful Grievance

The decisional process as Step 2 Decision

- If the Step 2 Decision is the first explanation of the Service's decisional process
 - The Union must attack in the Additions & Corrections
 - · After-the-fact rationalizations are no subsitute for the process required by Mittenthal and Das
 - Such explanations are self-serving and unreliable
 - Especially if the Step 2 Designee was not the decision-maker on the subcontracting determination

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Arguments and Counter-Arguments

The Successful Grievance

Remember

- . The Union's prima facie case
 - Evidence of subcontract
 - Proof the work belongs to us
- The Service must prove its decisional process
- Satisfied Article 32
- Met the ASM limitations
- The Union's ultimate burden of proof
- The Service violated Article 32 and the ASM

Every Claim demands Evidence

Reference Material

Directives - Handbooks - Manuals

Know where to find necessary material

- USPS sources
- 'Blue Pages'
- Maintenance Support Office
- Your Supervisor
 WWW.USPS.COM • ELM • Postal Bulletin • Publication 223



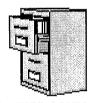
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Reference Material

Directives - Handbooks - Manuals

Know where to find necessary material

- APWU sources
 - Maintenance Subcontracting Workbook
 - Local Union Office
 - WWW.APWU.ORG
 - Your NBA



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As Always

Win By Persuasion When Possible Beat Them at the Table When Necessary Give 'em Hell Generally