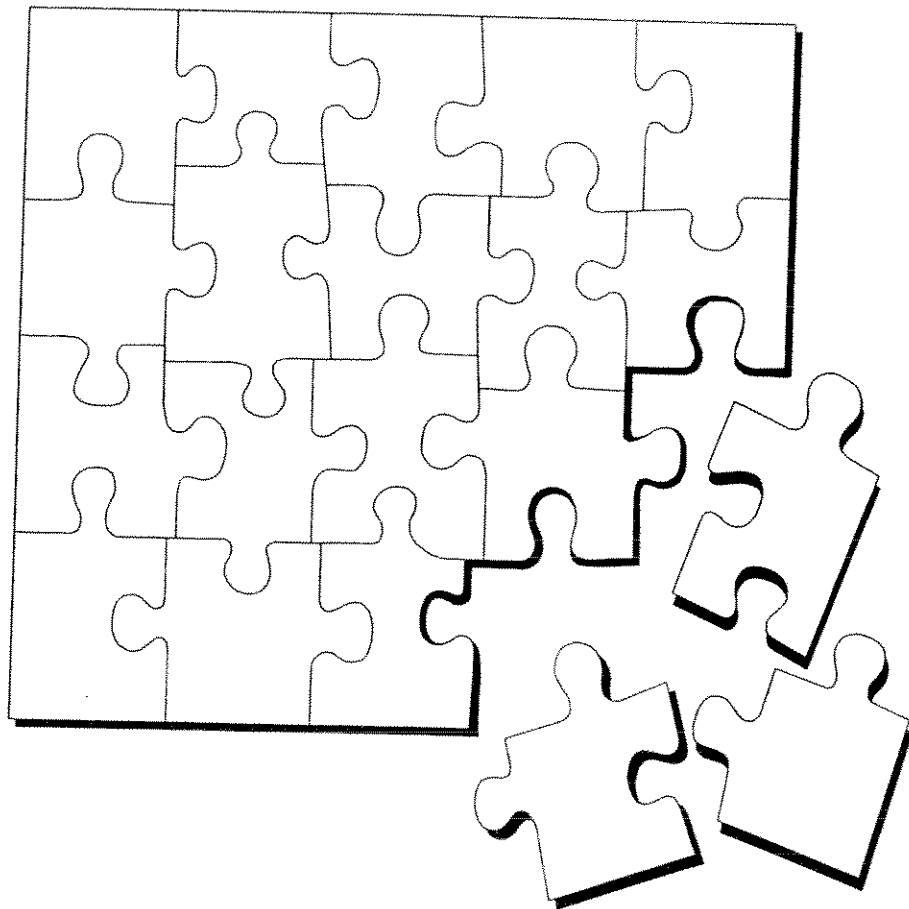


MAINTENANCE SUBCONTRACTING WORKBOOK



Newly revised and updated June 2002

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This workbook is the result of many years of experience, with contributions to its development over those years by numerous Maintenance Craft National Business Agents and Maintenance Craft resident officers. It was completely revised by Gary Kloefer with assistance from Donald L. Foley, Central Region National Business Agents in 1999 - 2000. Minor revisions occurred in January 2001. This edition represents a revised and updated version, with some editorial corrections, changes to content and updating of reference resources. It has been prepared for presentation during the pre-convention workshop on subcontracting at the Minneapolis 2002 APWU National Convention.

Chief among our purposes in developing this workbook is the hope that it contributes to an understanding of subcontracting issues. It is also hoped that stewards and officers will find this a useful guide to the development and processing of grievances on subcontracting. Where the Postal Service has violated the terms of the National Agreement, this workbook should assist in making that determination and in proving the case. It should also be noted that, Palm Beach Area Local Maintenance Craft Director, Gary Hamrick's fine work in compiling Subcontracting Grievance Guidelines, Maintenance Division, Southern Region also provided valuable material for this revision. Gary's book is another resource from which any steward may benefit. As with any such document, this workbook must be considered by those who use it as a starting point.

*Donald L. Foley
National Business Agent
Maintenance Craft
Central Region*

In general terms the right to subcontract is one that belongs to management, absent any specific contract restrictions. See, Elkouri and Elkouri, How Arbitration Works, (4th Edition, 1985) at pages 537-538. However, 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.” *Id.* at page 538.

* * *

In achieving a balance between competing interests on the part of the employer and the union when it comes to subcontracting, fundamental notions of good faith and fairness must be considered. Indeed, subcontracting out work that bargaining unit employees believe belongs to them goes to the very core of the employer-employee alliance and can often threaten that important relationship:

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. 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.

Elkouri and Elkouri, *supra*, at page 549, quoting New Britain Mach. Co., 8 LA 720, 727 (1947).

[I90T-11-C 94056229/94056230, L.E. Stallworth, pp 28-30]

SUBCONTRACTING OF MAINTENANCE WORK

VIOLATIONS OF ARTICLE 32 AND THE ADMINISTRATIVE SUPPORT MANUAL

The Decisional Process –

Disputes between the parties about the subcontracting of bargaining unit work hinge on the decisional process by which the Service reached the point of subcontracting for the performance of the work rather than assigning the work to bargaining unit employees. As clear as it may be that such a decision rests with the Service, it is equally clear that the parties have negotiated standards by which that decision is supposed to be governed and by which it may be judged. Additionally, the Service itself has established specific limitations on the exercise of this decisional process by its field managers. The parties have long recognized that not only does Article 32 provide the fundamental standards by which all subcontracting must be governed, but also that the terms of the Administrative Support Manual (ASM), subchapter 53, regulate these decisions as well.

For this reason the grievance on subcontracting should cite Article 32 of the National Agreement as well as ASM 535.111 or 535.112 as having been violated by subcontracting our work. Article 32 contains general language while the ASM provides specific language governing management's contractual requirements when it makes a subcontracting decision. Several arbitrators who have dealt with subcontracting disputes have noted that the language of the ASM is more specific than that of Article 32. Even where the Service may be able to show that it did give the requisite *due consideration*, it is also required to meet the standard set by the ASM language. This fact is well supported by Step 4 settlements between the parties.

And consider the logic of national level arbitrator Richard I. Bloch:

Analysis

The current labor agreement between the parties contains no prohibition, per se, on subcontracting of work. However, Article 32 sets forth certain procedural constraints concerning notification, meeting and discussion of the matter with the union as well as the employer's obligation to give "due consideration" to a variety of factors, including costs and efficiency, among other things. Assuming good faith compliance with the procedural requirements of Article 32, the Postal Service is otherwise unimpeded in the subcontracting process. Those requirements are not to be taken lightly. If they are not satisfied, "no final decision on whether or not such work will be contracted out" may be made.

[H4C-NA-C 39, October 20, 1987]

In case H8C-NA-C 25, November 9, 1981, Richard Mittenenthal defined one of the most critical terms of Article 32. The dispute arose over a decision by the Service to subcontract the highway movement of mail, rather than to have bargaining unit employees perform the work. While it arose under an earlier version of Article 32, its interpretation of the Service's obligation to **give due consideration** stands as definitive:

[Mittenenthal quoting Mittenenthal:] "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. 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. . .

[pp.5,6]



Beginning perspective - the starting point –

In exchange for the only material element workers bring to the bargain - **work** - an employer agrees to certain concessions.

- *The collective bargaining agreement **does not grant** any rights to the employer. It may memorialize a recognition by the parties that certain of the employer's inherent rights continue, in spite of the bargain and in spite of other specific concessions. But other than a minor statement to that effect, the agreement delineates, at virtually every point, rights ceded to the workers.*
- *Article 32 **does not grant a right to subcontract bargaining unit work.***
The Postal Service had this right - to determine what work would be allocated to the bargaining unit and what work would not - as an *inherent right*, not subject to being granted by the workers to the employer. When the Service negotiated with the Union the terms of Article 32, it ceded its inherent right. It negotiated, instead, specific limitations upon the circumstances under which subcontracting of bargaining unit work might be permissible.

Section 1. General Principles

- The Employer will give due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract.
[Article 32, Subcontracting]

This clause must be understood as a bar to subcontracting, a specific and serious restriction on the Postal Service's right. It is a concession by the Service that its exercise of subcontracting procedures will occur only within the parameters of a certain standard.

This represents a recognition by the parties of the workers' right to be secure in their jobs and to be protected against loss of employment by arbitrary decision or abuse of discretion in the removal of work from the bargaining unit.

Some Limitations –

An arbitrator from a Modified Panel states:

Article 32.1 has been defined by several national awards. A review of these awards serves to develop standards applicable to the case at bar. In case no. H8C-NA-25, Richard Mittenthal stated that the Postal Service must take into account all factors in Article 32.1.A in order to make a good faith attempt to evaluate the need to contract work. Such consideration relates to the decision-making process, not the decision itself, so that an incorrect decision does not per se mean a lack of "due consideration." In case nos. H4V-NA-84-87 and H7C-NA-C-1, 3, 5, Carlton J. Snow notes that the five criteria in Article 32.1.A are not weighted and that cost is not the predominant factor. Thus there may be times when

contracting work is contractually permissible even if cost is greater than if the work is done by the Postal Service.

And in case E7T-2N-C 21843, November 19, 1990, Arbitrator Wayne E. Howard addressed the significance of the specific language of the ASM and its relationship to Article 32:

It is a well-established rule of contract interpretation that specific provisions of a collective bargaining agreement take precedence over general provisions. Thus, Section 535.111 of the ASM which specifically governs the subcontracting of maintenance of postal equipment takes precedence over Article 32 of the Agreement which on its face is to be taken as a general principle. Therefore, the controlling principles found in Section 535.111 are that bargaining unit employees are to perform such repair work with two exceptions, if the Union view is accepted, namely, unavailability of capable employees and complex work, and three exceptions if the Service view is accepted, with the addition of "whenever possible" exception contained in the introductory language of Section 535.111.

A careful matching of these exceptions with the facts surrounding the subcontracting clearly evidences that none of the above exceptions was met by the Service. . . [pp.6,7]

As you can surmise from the above, Article 32 contains procedural restrictions on the Postal Service's right to subcontract our work while the language of the ASM provides the specific language governing each subcontracting issue.

Our burden is to demonstrate that the Postal Service failed to comply with its general contractual requirements (Article 32 violation) and that it failed to comply with its specific contractual requirements (ASM violation). Our burden can only be satisfied by conducting a thorough and complete investigation prior to filing a grievance, and by properly framing the dispute in the context of the grievance. The investigation should start, in accordance with Articles 17 and 31, with the request for all information used by the Postal Service in making its decision to subcontract bargaining unit work.

– ***Remember, it is the Service's decisional process that is crucial to the issue.*** –

Follow-up requests for information are usually necessary and must be pursued. And the grievance must address the Service's *failures to execute the process properly* as well as the validity (or lack thereof) of *alleged determinations made by the Service*.

Management's burden is to provide evidence of having given due consideration to the five Article 32 factors ***prior to*** reaching its decision to subcontract. Again, documentation of the Service's process is not automatically provided to the Union. ***THE UNION MUST MAKE WRITTEN REQUEST FOR THESE DOCUMENTS WITH THE UNION'S REQUEST FOR INFORMATION FORM.*** Article 32 notification requirements have been interpreted for many years to apply exclusively to discussions at the national level on nationally let subcontracts.

TIMELINESS –

It is important to know **when** management has made a decision to subcontract bargaining unit work. Normally the Union at the local level does not become aware that bargaining unit work has been subcontracted until after the subcontractor has begun the work. And although the Service is not normally obligated to notify the Union at the local level, sometimes the Service does provide advance notification that it has made the decision to subcontract bargaining unit work. This **may** be properly viewed as the triggering event for the purpose of filing a grievance.



- Some Locals have successfully achieved commitment from the Service to provide advance notice of projects being considered for subcontracting in the interest of reducing potential grievances and for the purpose of allowing the Union input to the decisional process. Properly constructed these commitments are citable and, in some cases, have formed part of the basis for an arbitrator's favorable award.

Please note: In the absence of a local, citable settlement or agreement requiring management to provide advance notification of its subcontracting decisions, there is no requirement for notification of management's subcontracting decisions at the local level. Article 32's notification requirement applies **only** to national level subcontracting.¹

It is important for the Union to make certain inquiries in situations where local management informs the Union of a future subcontracting situation. The Union must ascertain if the decision to subcontract has been finalized or is just under consideration.

- If the Service informs the Union that the decision to subcontract *has not been made* but is still under consideration,

*the Local **must** send a written acknowledgment to management stating just that, and requesting confirmation that a final decision has not yet been made.*
- Management cannot violate the Agreement by merely *considering* its subcontracting option. It is the final **decision to subcontract** bargaining unit work that is subject to challenge through the grievance procedure.

¹ This is unchanged by the modification to Article 32 in the Goldberg award of the 2000-2003 National Agreement. The language added applies only to national level subcontracting and correspondence between the parties pertaining thereto.

Consider the language of Arbitrator Harvey Nathan in regional arbitration case C7T-4Q-C-32235 regarding the application of timeliness in a subcontracting situation.

I agree with the Service. On August 21, 1990, the Union knew that at least some of what it claimed to be bargaining unit work was being done. It inquired and was told that the sidewalks would be repaired (sealant applied) and that the sweeping, which the Union focused on, lasted for only ten minutes. The Union decided not to pursue the grievance regarding the sweeping, nor to grieve the application of the sealant. Thereafter the Union learned that in addition to the sidewalk, the outer brickwork on the building would be waterproofed. It then, on September 11, 1990, asked for a copy of the contract. It did not grieve the waterproofing at that time. Yet it had all of the information that it needed to file a grievance. . . . The Union knew exactly what was being done and had enough information with which to determine whether there had been violation of the National Agreement. . . .

A purpose of firm time limits in filing grievances is to insure that the problem can be addressed while the actions at issue are fresh or fluid. It is much harder to resolve problems after they have become fixed or have been completed. While it would be speculative to suggest that anything could have been done about this subcontract had the Union filed in a timely manner, it should be noted that the actual contract was not signed by the Postal Service until September 5th, two weeks after the first grievance was filed. Under the circumstances of this case, the conclusion that the grievance was not timely filed is unavoidable, and the grievance must be dismissed.

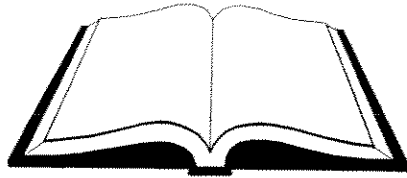
A similar result ensued when Arbitrator Robert B. Hoffman was asked to decide a subcontracting dispute in case H98T-1H-C 00056749, Manasota FL (involving building modification work). In this case the Service had let an indefinite quantity contract, also known as a blanket purchase agreement, covering a two year period of time. The Local had received documentation of this purchase agreement in connection with its investigation of another subcontracting issue, but did not initiate the grievance until nearly three weeks later.

The Union raises two defenses to the grievance being filed outside the 14-day time limit. It first argues that it did not have knowledge of the violation until 20 days after it received the contract. The Union's advocate stated that the local Union simply did not understand what it had received, although he was forthright in acknowledging that "we don't know why it took 20 days instead of 14 days."

It is noteworthy that what the Union received on November 30, 1999 was a document that responded to its request for two contracts. One was for the construction of a sidewalk and the other was a second request for the contract covering the workroom floor collapse. . . . Page six of this contract contains the pricing for concrete paving and page seven has prices for concrete walks, sidewalks and concrete demolition. . . . it should have been evident as early as November 30 that this was a document management relied on for subcontracting the two jobs.

Thus the Arbitrator found that the Union could and should be reasonably expected to have known, upon receipt of the information, of a contractual violation.

The above citations demonstrate how sitting on one's hands or failing to pursue on the merit may be viewed to be essentially the same as failing to process the grievance according to Article 15 time limits.



ARTICLE 17 REPRESENTATION

Section 3. Rights of Stewards

When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and such request shall not be unreasonably denied.

In the event the duties require the steward leave the work area and enter another area within the installation or post office, the steward must also receive permission from the supervisor from the other area he/she wishes to enter and such request shall not be unreasonably denied.

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

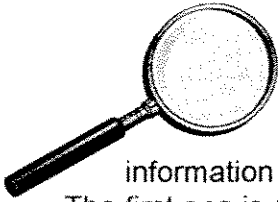
ARTICLE 31 UNION-MANAGEMENT COOPERATION

Section 3. Information

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or his designee. All other requests for information shall be directed by the National President of the Union to the Vice-President, Labor Relations.

Nothing herein shall waive any rights the Union may have to obtain information under the National Labor Relations Act, as amended.



APPROACHING THE REQUEST FOR INFORMATION

There are actually two separate and distinct lines of the information request process in subcontracting cases.

The first one is designed to seek the Service's disclosure of its **decisional process** and material evidence of the subcontract. The purpose of the Union here is to acquire all information the Service can provide, but is deliberately directed to box the Service in.

The second line of information request is for the purpose of compiling sufficient evidence in order to make the Union's case that our bargaining unit could and should have performed the work.

In order to position the Union to address the Service's **decisional process** employed in the determination to subcontract bargaining unit work, requests for information must be handled carefully.

1. Request –
that the Service provide the Union all information, documentation, records, data, correspondence, etc. that was considered in the process of making the decision to subcontract the work in dispute.

And request –
the name of the Postal Service official who made the decision.

Based on the response management provides to this initial request, it will be necessary to make certain decisions about how to further pursue this information.

2. Review the supplied documentation to see if it demonstrates the Service has met its Article 32 obligation - i.e., due consideration of the Article 32 factors.
3. Respond in writing to the employer identifying the documents you received. (See the example form below.)
4. If you believe information that **should exist** was not provided, then notify management in writing of the documentation that was not received.
For example –
 - if the information provided gives no evidence that a cost comparison was performed (i.e., the difference between in-house and subcontract), request specifically that the Service provide evidence of its cost comparison;
 - if the documentation does not include a full statement of the scope of the work, request that the Service provide it;
 - if there is no indication that the Service determined what tools and equipment would be needed to perform the job, ask for this information; etc.

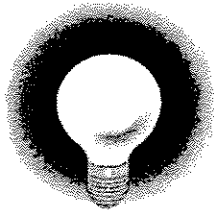
5. If the Service asserts it has provided everything in its possession or is unable to obtain further information, then notify management in writing of the inadequacy of the information. And **MAKE ANOTHER WRITTEN REQUEST FOR THE INFORMATION**, asserting the expectation that local management should attempt to obtain appropriate information from its source.

Remember – If the Service had met its contractual obligation to give due consideration to the Article 32 factors prior to making the decision to subcontract, then the information you are seeking would already exist and be readily available.



6. At this point, based on the information provided, if the grievance has not already been initiated, it should be filed, relying on the information provided – or the lack thereof.

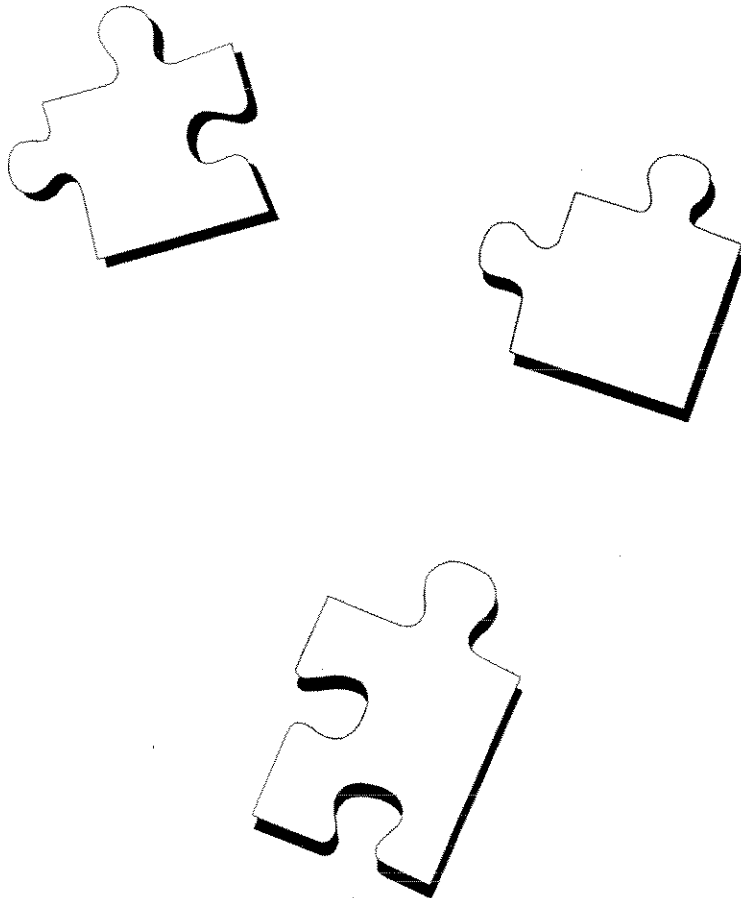
- ➔ If the Service has failed or refused to provide relevant information, this failure will become the keystone of the grievance.
- ➔ Always remember, one of our objectives is to shift the burden of proof to the Service. We are entitled to do this because the Service had the affirmative obligation to give **due consideration** to the Article 32 factors, and only the Service can give proof of having done so.



7. **There are basically two possible scenarios that develop by this point.**

- A. The Service credibly asserts it has provided all documentation that exists regarding the decisional process employed in reaching the determination to subcontract. More practically speaking, the Service will have acknowledged it has no documentation or other evidence relative to the Article 32 factors.
1. This enables the Union to focus largely on the Service's failure to meet its obligations under Article 32.
 2. In this circumstance, the Union **does not** pursue a grievance on the Service's failure to provide information about the subcontract decision.
- B. The Service demonstrates that it will not or cannot produce relevant and available information that would document the decisional process.
1. Here, the Union must grieve the Service's failure to provide information relevant and necessary to our ability to address the issue of the grievance.
 2. The Union must argue in the subcontracting grievance that the Service's failure to provide information must foreclose its right to defend its decision (ref. Article 15, Section 2).

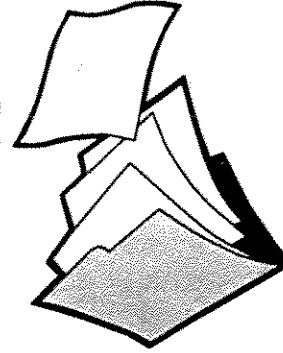
3. The Union must also argue in the primary grievance that the Service's ***failure to prove*** that it met its Article 32 obligation must be construed against the Service as evidence that, in fact, the Service failed the Article 32 requirements and - as a consequence - also failed to establish what is required by the applicable terms of the ASM.



Document Document Document

Make all your requests for information in writing to the installation head or designee as required in Articles 17 and 31 of the National Agreement and as established by local custom or practice.

You must file a denial of information grievance over any documentation that management will not provide. We cannot claim at a later date that the denied information was important to our subcontracting case if we have no record of a denial of information request on hand or a written claim in the grievance papers (Step 2 Appeal, Corrections and Additions, and/or Step 3 Appeal). Not only must the Union be able to document having made its requests for information, we must also document what we received and what efforts we made to further pursue information we sought. Failure to pursue a grievance on the Service's failure to provide information could cause a good grievance to be lost in arbitration.



Consider Arbitrator Miles's rationale in denying our grievance in case C94T-1C-C 98002582 because of his perception that the Union failed to pursue requested information relative to its subcontracting grievance:

Basically, with regard to the Union's request for information, it appears that Mr. Reed was willing to provide the information but did not have it. He requested the information from Ms. Lambert and Mr. Harry Smith of Administrative Services. According to the "cc mail" response from Mr. Smith, Mr. Reed was asked to "have the Union send their request to us, in writing, outlining specifically what information they want and reasons for the request." The record of evidence is devoid of any further attempt by the Union to obtain such information. Thus, it is my considered opinion that this was not a situation where the Postal Service refused the Union's request, rather it asked for a more specific request in writing to be submitted to Administrative Service. Apparently, such was not done.

Clearly we can lose a grievance on information that comes into a hearing where we are unable to prove that we had pursued that information in the earlier steps.

On the other hand, the Service's refusal or failure to provide information may be fatal to the Service's defense.



The Union Must Argue –

Management's failure to produce requested, relevant documents prohibits it from producing these documents and/or arguments at the arbitration table.

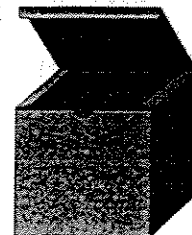
Management's decision not to provide requested, relevant information represents the forfeiture of its right to submit evidence and documents that support its subcontracting decision.

Additionally, this failure denies the Union its right to due process in the handling of this grievance dispute.

- It is only the Service who possesses records that might give evidence to its decisional process.
- It is only the Service 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.

In large part, the Union's proof of violation of the agreement is the Service's failure to produce evidence of what it did to reach the decision to subcontract our work –
i.e., the Service's failure to give **due consideration** to the five factors of Article 32.

The purpose of actively pursuing information about the Service's decisional process is to put Postal Service management in a box. We want the Service to commit itself with respect to what constitutes the complete record of what it did. At each step of this information request process, we try to draw the parameters of the dispute closer and closer. We want to put the Service in a box it cannot climb out of at the arbitration hearing by production of material evidence to which we had an entitlement at the earliest steps.



Timeline –

When documenting the grievance, the steward should keep a timeline of events related to the subcontract and to the grievance procedure. Such a timeline might include the following:

- (1) Date of determination the work was needed.
- (2) Date of decision analysis report (DAR) or justification of expense (JOE).
- (3) Date of decision to subcontract the work.
- (4) Date of bid solicitation.
- (5) Date of bid award.
- (6) Date subcontract work begins.
- (7) Date(s) of submission of RFI(s).
- (8) Date(s) of receipt of response(s).
- (9) Dates of interviews with witnesses and Service officials.
- (10) Dates of Step 1 grievance process.
- (11) Dates of Step 2 grievance process.
- (12) Date of Step 3 grievance appeal.

Additionally, the steward should keep a running log of transactions that occur in the processing of the grievance, such as:

- (1) First request for information (RFI).
- (2) Record of response received.
- (3) Subsequent RFI's submitted and responses received.
- (4) List of documents received and documents developed through research.

- (5) Record of companion grievance on denied information, if applicable.
- (6) Identification of Service position on issues.
- (7) Record of any Service claim that documents are irrelevant to grievance.
- (8) List of documents requested which Service claims are unavailable or non-existent.
- (9) Record of each interview taken.
- (10) Complete record of correspondence between Union and Service.
- (11) List of documents provided to Service through grievance procedure.
- (12) Identification of individual who decided to subcontract work at issue.

Timelines and logs such as these should be used for reference when writing the Step 2 Appeal, the Additions & Corrections and Step 3 Appeal. Remember, *due consideration* can only occur prior to the deciding official reaching a determination that the work should be subcontracted. Your timeline can be used to substantiate the Union's assertion that no *due consideration* was given.

Inconsistencies in the Service's assertions and arguments can often be demonstrated through the Union's reliance on these elements of a well-constructed grievance.

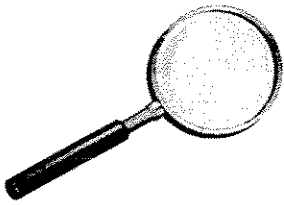
The following information was requested from _____, on _____,
for grievance number _____, which concerns _____

[illegible]

Steward's Signature

As presented in pre-convention workshop - APWU 2002 National Convention
Doug Mirowski Dona

Donald L. Foley



INFORMATION YOU MUST MAKE EVERY EFFORT TO OBTAIN PRIOR TO PROCESSING YOUR GRIEVANCE

TAKE CAREFUL NOTICE: *Never allow the grievance to become untimely because of delays in the effort to secure evidence.*

In addition to the information provided by the Service relative to your request(s) for information about the Service's decisional process, there is other evidence you must gather in order to properly address the issue. Remember, the decisional process is critical, but the Union must also be prepared to demonstrate that the work belongs to the bargaining unit and that we could have done it.

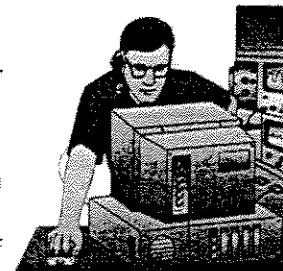
1. Copy of the **COMPLETE CONTRACT**, to include the cost for parts and labor. Sometimes parts and labor are figured separately. Unless your request is specific, you might not get all the information you need for your grievance. The complete contract should also include a full statement of the scope of the work.

Should management claim that they:

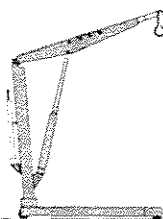
- 1) do not have the contract,
 - 2) cannot obtain a copy of the contract, or
 - 3) offer any other excuse for not providing a copy of the contract;
- then

YOU MUST FILE A GRIEVANCE PROTESTING THE DENIAL OF RELEVANT INFORMATION WHICH IS NECESSARY FOR THE PROCESSING OF THE SUBCONTRACTING GRIEVANCE.

2. Identify the type of equipment involved and the nature of work being subcontracted. Specifically what type of bargaining unit work was subcontracted? Was it postal equipment maintenance, plant equipment work, or custodial service?
3. Which Maintenance position(s) had the right to perform the work and had previously performed the same or similar work?
 - A. Identify the appropriate occupational groups and their incumbents.
 - B. Document the level and step of each employee.
 - C. Show the current base wage and overtime wage for each named employee.
 - D. Document employee training records and possession of licenses (if applicable) to show training and qualification to perform the work which was subcontracted.



- E. Develop work records (e.g., timekeeping reports, supervisors' tour reports, etc.) to prove our maintenance members were **available** to perform the work during the time frame of the subcontracting.
 - F. If the Service asserts there was an immediate need for the work, develop documentation to prove otherwise or to prove employees were engaged in low priority work during the time of the subcontract performance.
 - G. Document prior instances in which maintenance employees in the office had performed same or similar work.
 - 1. Copies of completed work orders.
 - 2. Copies of any preventive maintenance routes that include the same tasks involved in the subcontracted work.
 - 3. Parts inventory, if the stockroom has the parts or tools.
 - 4. Any paper work that shows bargaining unit employees have previously performed the work. This may include written statements by employees attesting to their own performance of the same work.
 - 5. Because some smaller offices do not maintain written records of work performed, a statement from the appropriate employee(s) as to the work performed may be the only records available.
4. Were any tools or equipment of unique or specialized nature, or which the Service did not have, needed to perform the task?
- A. If yes, identify the special tools or equipment.
 - B. Were these items readily available to the Service? If yes, then be prepared to prove not only that we could have rented the items, but we also must furnish the cost of the tool or equipment rental.
 - C. Are our members qualified to use the specialized tools or equipment? If yes, then furnish proof.
 - D. Did the contractor furnish their own tools and equipment or were items *furnished by the Postal Service*?



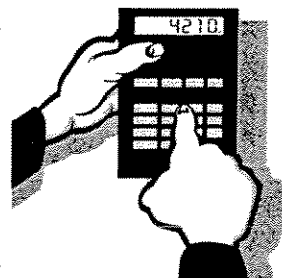
IF THE SERVICE SUPPLIED TOOLS, EQUIPMENT OR PARTS THEN THE COST OF THESE ITEMS **SHOULD HAVE BEEN** INCLUDED IN THE COST OF THE SUBCONTRACT.

5. Were any special qualifications needed that our people did **not** possess?
- A. If yes, identify them. A requirement for special qualifications, such as a clause that requires electrical work to be performed by a licensed electrician in a building not owned by the Postal Service, could be a valid reason for permitting the subcontracting.
 - B. Generally work performed by Postal Service employees on property owned by the Postal Service is not subject to local or state licensing requirements. We should be prepared to prove that our people have performed the same work (where this is an issue) without having licenses or certificates.

- C. If maintenance craft employees do possess applicable licenses or certificates, document these.
6. What were the Postal Service's specific reasons for subcontracting bargaining unit work?
- A. This should be determined by **interviewing** the person alleged by the Service to have been responsible for making the decision.
- B. Regardless where the statement of reason comes from, our effort must be to limit the Service to its own statements. This will help prevent the Service from developing its case at the time of the arbitration hearing.
7. Did the work have to be completed within a certain time frame?
- A. This claim requires the Local to analyze the facts and documents management provides to support the claim. We cannot simply dismiss this type of claim, as it goes directly to whether bargaining unit employees were available to perform the subcontracted work.
- B. When management makes this claim, the Union must make a written request for the documentation and/or evidence relied upon by the Service to support its position. For example, it is reasonable for the Union to request that management explain the reasons the bargaining unit employees could not perform the work in the same time frame. Provided the Union requests, management must also produce the documents it relied upon in making its decision.
8. Does a warranty exist for the equipment being subcontracted?
If yes, then GET A COPY. The importance of the warranty will have to be determined after receipt of the warranty.
- A. It is not uncommon for the Service to assert it had no choice but to have a vendor perform certain work in order to protect a warranty. This usually comes into play where the Service makes a purchase of equipment and installation is alleged to be included in the purchase.
- B. Do not simply take the Service's assertion as fact. **Demand proof.**
9. A copy of the complete **authorized** (signed) staffing package for the office, which should include MMO-028-97 (or its predecessor document) and all supporting documentation. These documents identify the equipment we maintain -- *Plant Equipment* and *Mail Processing Equipment* -- as well as the number of bargaining unit employees required in each area.
- NOTE:** Is the facility understaffed? Does the work that is being subcontracted appear in the staffing package? Has any grievance been filed protesting the staffing package? If yes, what is the status of the grievance?
10. Copy of the **current complement** (seniority lists) for all occupational groups having the skills to be assigned to the subcontracted work.



11. Only if the Postal Service claims that it considered cost prior to making its decision to subcontract should you make a request for a copy of the Postal Service's COST COMPARISON for the work that was subcontracted.
- A. The cost comparison should include all costs.
1. Subcontractor's wages, taxes, profit and other overhead.
 2. Cost of parts, tool rental, etc. This includes any tools or parts that the Service supplies the contractor.
- B. Also look for the Service's inclusion of administrative costs.
1. Frequently, the Service will claim administrative costs for in-house performance - such as, hours of Maintenance Support Clerks in ordering materials, tracking hours, etc. and hours of supervisors.
 2. However, the Service seldom shows the costs of administering the subcontract - which should include the cost of EAS employees who let the subcontracts and who monitor performance.
12. The Union should complete our own cost comparison.
- A. This should be constructed on more than one in-house hourly wage rate model.
1. Construct one showing straight time hourly wage rates.
 2. Construct one showing overtime hourly wage rates.
 3. And finally use the Service's published hourly wage comparison figures, which include wages and benefits. These are the figures the Service itself is supposed to use for cost comparisons.
- B. Utilize appropriate prevailing wage rates for the skilled trade and unskilled positions that the subcontractor uses to determine the labor costs for the subcontracting.
1. Attempt to verify through information requests that the subcontractor actually paid prevailing wage rates to its employees. If the subcontract falls under federal law, the subcontractor is obligated to keep track of its hours and wages paid and to make this information available to the Service upon request. [See Davis-Bacon Act.]
 2. The important factor here is that, if the subcontractor's bid represents a cost lower than federal wage requirements would have dictated, we need to present this element to show that the subcontract – if less expensive than in-house performance – was made so illegally.



13. Obtain copies of the subcontractor's weekly wage reports.
- A. The Davis-Bacon Act requires contractors to report weekly wages paid to employees to the agency responsible for the contract – the Postal Service. And it also requires contractors to maintain records of these reports for three years after completion of work.
 - B. The Service is obligated to provide this information to the Union upon its request.
 - C. The importance of this information is principally for purposes of achieving the **proper remedy** to the contractual violation – compensation for the hours spent by contract employees in the performance of our work.



It may be interesting here to note some of the instructions the Postal Service gives its Step 2 designees, addressing subcontracting issues²:

"We should be able to provide copies of the contract, Davis-Bacon compliance documents, evidence of Article 32 considerations, maintenance staffing, employee availability, etc.

"Clear differentiation between locally initiated contracts and headquarters/ECB initiated contracts must be made, along with direction for RFI submission. Where the decision to contract was made must be clearly stated and supported.

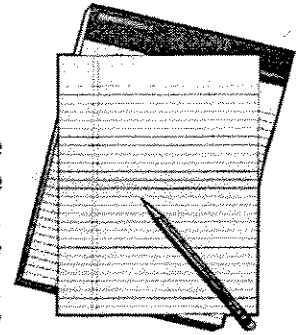
"Cost should include labor, purchasing, receiving, supervision, support, training, project design and development, the need for permits/licenses.

"Preliminary notice to the union is not required but is very helpful in supporting the due consideration arguments. The union cannot say they were unaware and it shows prior consideration of the craft."

² Maintenance Step 2 LR Training, Version 2.5a, distributed on compact disk from USPS Headquarters.

Get it in Writing . . . Get it in Writing . . . Get it in Writing

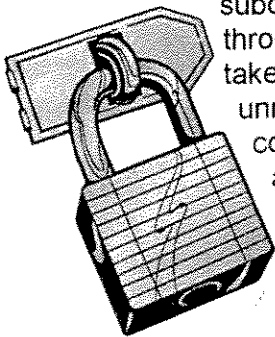
This is an extremely important part of your investigation. Please note that in many cases the decision to subcontract was made by someone outside the facility many months prior to a subcontractor beginning the work. In these situations it is important to recognize that local management may not be able to respond to the Union's requests for information. However, local management's inability to respond does not in any way adversely impact our grievance **unless you permit it.**



Local management is required by the National Agreement to either provide the information we seek or forward the request to the person who can provide the information – such as, the person who made the decision to subcontract. Only that person can tell us the factors he or she considered prior to making the decision to subcontract. Any documents or arguments created after the decision to subcontract was made must be viewed as flawed due to the fact that the content of this material could not have been considered prior to the decision to subcontract.

It is not unusual for the Postal Service to assert certain reasons for subcontracting in its Step 2 grievance denial. Such an assertion may present some problems if not addressed properly. As stated above, regardless when local management informs us of the reasons for subcontracting bargaining unit work, it is the Union's burden to challenge those reasons. In the case where the decision to subcontract is made by someone outside the facility, we must not accept at face value local management's reasoning. We must determine whether local management is providing information based on actual knowledge of the subcontracting decision or if it is creating its own version of the subcontracting decision. This can only be determined by conducting a thorough investigation which includes requesting the specific information identified above and also discussing the relevance of the information that has been provided. This discussion must address when and by whom consideration was given to relevant factors and the stated position used to support the subcontracting decision.

When the Service produces its only explanation of the decisional process in its Step 2 response to the grievance, the Union must challenge this explanation through a properly constructed *corrections and additions* document. We cannot allow the Service to enter such information into the record of the grievance unchallenged. Remember, any information relevant to the decisional process should have existed long before the subcontract was let, well before the subcontract was performed. We were entitled to have received this information through information requests much earlier than a Step 2 decision. Generally, we take the position that such an explanation must be viewed as self-serving and unreliable. We must demand that the Service produce evidence contemporaneous to the time when the decision was actually made. Mere assertions made in defense of the subcontract well after its execution prove nothing.



CONTRACT PROVISIONS and GOVERNING REGULATIONS

ARTICLE 32 SUBCONTRACTING [2000-2003]

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.

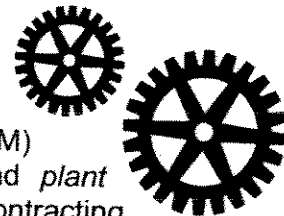
[see Memos, as attached to National Agreement]

- B. The Employer will give advance notification to the Union at the national level when subcontracting which will have a significant impact on bargaining unit work is being considered and will meet **with the Union while developing the initial Comparative Analysis report. The Employer will consider the Union's views on costs and other factors, together with proposals to avoid subcontracting and proposals to minimize the impact of any subcontracting. A statement of the Union's views and proposals will be included in the initial Comparative Analysis and in any Decision Analysis Report relating to the subcontracting under consideration.** No final decision on whether or not such work will be contracted out will be made until the matter is discussed with the Union.

ADMINISTRATIVE SUPPORT MANUAL (ASM) [Issue 13, March 7, 2002]



EQUIPMENT TYPES



The Administrative Support Manual³ (ASM) establishes definitions of *postal equipment* and *plant equipment*. Subsequent provisions (535.111 and 535.112) regulate subcontracting of work differently for each of these two types of equipment.

531.21 Definitions

The following definitions apply:

- A. *Building and building equipment* — the building's physical structure, utilities, and environmental systems.

³ For purposes of this workbook, the provisions come from Issue 13 of the ASM dated March 7, 2002. The use of these provisions may be effected by the outcome of case H0C-NA-C-19007, which is the Union's challenge to the changes made to Chapter 530 of the ASM as identified in the Postal Service's letter of November 29, 1991. As of this revision to the workbook, the arbitrator's decision is still pending.

- 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).

Within the meaning of *Postal Equipment* the Service further specifies what constitutes each of several subcategories of equipment type.

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.

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.

534.13 Delivery Service Equipment

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

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.



These definitions are important. Properly identify the equipment for which a subcontract has been let as either *postal* or *plant* equipment and utilize the appropriate ASM provisions that govern – either **535.111 Postal Equipment** or **535.112 Facility and Plant Equipment**

535 Maintenance Service Contracts

535.111 Postal Equipment

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

- a. Where capable personnel are not available.
- b. When maintenance can be performed by contract and it is economically advantageous.
- c. When a piece of equipment is a prototype or experimental model or unusually complex, so that a commercial firm is the only practical source of required maintenance expertise.

535.112 Facility and Plant Equipment

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

535.12 Procurement of Contracts

535.121 General

See 72 for guidance and restrictions concerning the purchase of required services.

535.122 Existing Contracts

When proposing a major revision to provisions of an existing contract, consider submitting the proposal to the purchasing and materials service center (PMSC).

535.13 National Agreement Considerations

Installation heads must be knowledgeable about Article 32, Subcontracting, of the National Agreement with the postal unions, before considering contract maintenance service.

535.2 Contract Criteria**535.21 Removal of Ashes and Rubbish**

Contract service may be authorized when the municipality or lessor is not obligated to provide removal services. When contractors are required to use Postal Service-owned equipment, such as crane hoists or elevators to remove ashes and rubbish from the premises, they must use the equipment according to safety rules established by the postmaster. The postmaster must have this equipment inspected periodically to ensure its safe operating condition.

535.22 Cloth and Laundry Service

Contract service may be authorized when necessary.

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

Contract service may be authorized when it is economically advantageous.

535.24 Air Conditioning Service

Contract service may be authorized for facilities in which the Postal Service is responsible for operating and maintaining certain types of air conditioning equipment. Handbook MS-24, *Heating, Cooling, and Ventilating*, specifies instructions for use of air conditioning contract maintenance service. This handbook:

- a. Must be followed by post offices with central air conditioning systems using chillers, water cooling towers, and air handlers.
- b. Is available to offices with self-contained units with compressors rated at 5 tons or above, if the Postal Service is responsible for maintenance of the air conditioning equipment.

535.25 Elevator, Escalator, and Dumbwaiter Service**535.251 Operation**

Contract service may be authorized for facilities in which the Postal Service is responsible for operating and maintaining elevators, escalators, or dumbwaiters. The Postal Service has this responsibility in all Postal Service-owned facilities. In leased facilities, the Postal Service generally has routine maintenance responsibility and sometimes has repair and replacement responsibility. In questionable cases, review the lease (see 535.111). Use Handbook AS-707-G, *Contracting for Elevator Repair and Maintenance*, as a reference when developing a contract.

535.252 Maintenance

Routine maintenance of this equipment (inspection, adjusting, cleaning, oiling, and greasing) requires highly technical skills. Post offices that do not have employees with these skills should request authority to procure the necessary maintenance service under contract with a qualified elevator maintenance company.

* * * *

535.262 Tenant Space

Contracts may be authorized for cleaning buildings or portions of buildings occupied by nonpostal tenants. This includes office space adjacent to or above or below postal operating space; identifiable sections of buildings that are separated from postal space and outleased to nonpostal functions; and buildings that have been vacated by the Postal Service and area awaiting final disposition.

* * * *

535.27 Other Contract Service

If another type of contract service is needed, forward a complete description of the service desired, the need for it, and the estimated cost and duration of the contract to the purchasing and materials service center (PMSC).

CLEANING SERVICES

Cleaning Services are defined in Section 112 of the MS-47 Handbook, entitled "Housekeeping Postal Facilities".

112 This handbook provides procedures for determining staffing and scheduling for the building services maintenance work force. The task of this group includes cleaning and preventive maintenance of the building and grounds that make up the physical plant.

The contractual language governing the subcontracting of cleaning services is found in Section 535.26 of the Administrative Support Manual. These provisions have been altered by several successive National Agreements. The currently applicable terms appear in the ASM and as attached to the 2000-2003 National Agreement.

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

Re: Subcontracting Cleaning Services

The parties agree that the following language will be incorporated into paragraph 535.261 of the Administrative Support Manual.

.26 Cleaning Services

.261 Authorization

- a. In a new facility or when a vacancy as a result of an employee's voluntary attrition is identified in an independent installation or in a station and/or branch of an independent installation, the following sequential steps will be taken to determine whether or not a contract cleaning service may be utilized:
 - (1) Measure the square footage of the interior area, using procedures identified in Handbook MS-47, *Housekeeping-Postal Facilities*. Then divide that measurement by 18,000 and round off the resulting number to four decimal places.

- (2) Measure the square footage of the exterior paved and unpaved area to be serviced, using the procedures identified in Handbook MS-47. Then divide that measurement by 500,000 and round off the resulting number to four decimal places.
 - (3) Add the numbers obtained in steps 1 and 2 together. If the resulting number is less than one, a contract cleaning service may be used to perform the required work.
- b. If the determination is made to utilize a contract cleaning service, the local APWU president will be provided a copy of the above computations.
 - c. The formula applies to replacement facilities or existing facilities with extensions or modifications.
 - d. Post offices, stations, and/or branches that contract cleaning services under previous criteria may continue to do so.

During negotiation of the 1998-2000 National Agreement, the parties agreed to the definition of "voluntary attrition":

What is the definition of "voluntary attrition"?

Answer: If the employee bids out, is promoted, quits, retires, or dies.

This may be found in the Article 38 Questions and Answers document separately distributed after publication of the National Agreement.

While the Cleaning Services Memorandum of Understanding provisions govern the subcontracting of the full scope of custodial services in a small office, other types of subcontracting of custodial work also may occur – such as, rubbish removal, window cleaning, lawn care, snow removal, etc. These are generally governed by the other terms of the ASM – 535.21, 535.22 and 535.23 (see above).

It should also be noted that the parties reached settlement on June 28, 1993, of a national dispute in case **H7T-3D-C 22868** concerning the **subcontracting of lawn maintenance**, which is still controlling on this type of work.

SPECIAL CONSIDERATIONS –

The subcontracting of cleaning services generally involves some factors uniquely different from those involved in other subcontracting of maintenance work. For one thing, some arbitrators have found that the specific regulations found at ASM 535.26 (the Subcontracting Cleaning Services MOU) take precedence over the general terms of Article 32. This, in one sense, is consistent with arbitral thought we support that gives ASM 535 significant weight in both *plant* and *postal* equipment subcontracting; but it should not be taken to an extreme – where Article 32 may be viewed as irrelevant.

Our position generally is that the ASM must be seen as **supplementing** with its specific terms the broad requirements of Article 32.

Also of note is the fact that many arbitration cases on cleaning services subcontracting are founded on a posting and bidding argument.

- Frequently the Service fails to meet its Article 38 obligations to post, withhold or revert a vacancy in a small office.
- It then proceeds to subcontract the work formerly performed by the custodial employee.

While many such small offices may qualify for subcontracting of cleaning services under the terms of the MOU, the ***Service's failure to properly revert a custodial vacancy serves as the grounds upon which to overturn*** the subcontracting. In such a case, we seek return of the work to the bargaining unit and the re-establishment of the vacant duty assignment.

Remember, there are two precedent requirements that must occur for the Service to subcontract under the MOU.

- *First*, there must be a vacancy as a result of voluntary attrition.
- *Secondly*, the Service's square foot computations must result in a factor less than '1'.

The MOU contains no reference to reversion of the vacant position. Article 38, Section 4.A.2 and 4.A.3, provisions are controlling and must be satisfied, regardless whether the Service intended to subcontract the cleaning services in the office upon occurrence of the vacancy.

One of the earliest cases upon which we place reliance for the position that a vacancy not properly reverted ***must*** be posted and filled is the decision by Robert W. McAllister in case number C4T-4D-C 31776. This is a staffing grievance (and there are several others that do not involve subsequent subcontracting) but it is valuable to establish our record on the issue.

We also have seen some success in arbitration of grievances where there was no actual vacancy by voluntary attrition. Unfortunately, the cases noted to date in which arbitrators attempted to *define* voluntary attrition predate the 1998 National Agreement question-and-answer by which the parties agreed to a definition of the term.

Additionally, there have been some cases in which the Service used improper methods to compute the interior square footage of an office, then applied the Subcontracting Cleaning Service MOU. One such case involved an attempt to redefine interior parking/maneuvering space as exterior paved area (see Linda Klein, I94T-1I-C 97040151).

MAKING THE ARGUMENT

(The following is excerpted from one of Gary Kloepper's opening statements in the arbitration of a subcontracting grievance. While some portions are particular to the instant grievance it represented, the arguments presented here should be noted for their applicability to other subcontracting grievances.)

The specific contract language of Section 535.111 and/or 535.112 of the ASM along with the general language of Article 32 Section 1.A of the National Agreement are the relevant Contractual provisions governing the subcontracting of bargaining unit work as it relates to the facts of this grievance. The language contained within these two Sections and Article 32 must be used together when determining whether the Postal Service violated the National Agreement at the time it made the decision to subcontract the bargaining unit work in dispute.

As such, any right the Postal Service may have to subcontract bargaining unit work for Postal Equipment and/or Plant Equipment has been substantially restricted through negotiation at the Headquarters level.

The Postal Service may argue that Article 32 of the Agreement, by itself, allows for this type of subcontracting; however, as stated above, the specific language of Section 535.111 and/or 535.112 of the ASM, which permits subcontracting of this type of work only under certain conditions, contains the more restrictive and controlling language in this situation. It is also well established through arbitrable precedent that the Postal Service must give and provide more than simple lip service to the due consideration factors identified in Article 32 prior to making the decision to subcontract bargaining unit work. Thus the Postal Service must demonstrate with evidence that exceeds the clear and convincing standard that it gave good faith consideration to the factors contained in Article 32 with the production of evidence and documents that predated and support the decision to subcontract. In this case, the Postal Service failed to provide requested relevant information so that the Union could determine if the Postal Service had indeed given good faith consideration to the subcontracting factors. As such, any testimony and/or documents, etc. not previously supplied by the Postal Service must be rejected.

The Union will show that management's reason for subcontracting the work in dispute has not been supported by evidence of the application of the good faith consideration principles such as economical factors as required by Section 535.112 of the Administrative Support Manual.

The Postal Service did not supply the Union was a cost comparison, a copy of the contract and other requested information. The Postal Service, by its failure to provide requested relevant information for this grievant, has forfeited its contractual right to submit any such documents today. To permit the Postal Service to submit evidence, documents etc. at this late date would be a violation of the National Agreement. The Service simply can not withhold relevant information that was within its possession at the lower steps of the grievance procedure.

The Union will show maintenance employees were qualified and available to perform this work. The Union will show that the Postal Service failed to provide any evidence that it gave due consideration to any of the factors identified in Article 32 or Section 535.111 and/or 535.112 of the ASM were considered prior to making the decision to subcontract. In light of local management's decision not to provide all documentation, such as but not limited to evidence that cost was considered prior to making the decision to subcontract the work in dispute, as required by Section 535.111 and/or 535.112 of the ASM, the arbitrator must draw a negative inference from the Postal Service's refusal to provide this relative information. The Union maintains that the Postal Service violated the Agreement by subcontracting the bargaining unit work in dispute.

SUMMARY OF A FEW SUBCONTRACTING ARBITRATION AWARDS

Arbitrator Thomas J. Germano in case **E1T-2W-C-18967** addresses management's Article 3 argument and addresses the idea that the specific language of the ASM on subcontracting takes precedence over the general language of Article 32.

On page 13 he states,

First, its reliance on Article 3 of the National Agreement is misplaced since the rights granted to management in that article are "subject to the provisions of this Agreement and consistent with applicable laws and regulations". The contract Article which incorporates the provisions of all handbooks, manuals and published regulations to the Agreement, providing of course that they contain no language that conflicts with the National Agreement.

* * *

Since it is a well-established rule of contract interpretation that specific provisions of a collective bargaining agreement take precedence over general provisions, Section 535.111 of the ASM which specifically governs the subcontracting of maintenance of postal equipment takes precedence of Article 32 of the Agreement which provides only general principles in this regard.

As to the appropriate remedy, Arbitrator Germano awarded that the employees who would have normally performed the work would be compensated at the overtime rate for the amount of hours worked by the contractor.

Arbitrator Wayne E. Howard in case **E7T-2N-C 21843** also addresses the issue of the specific language of ASM 535 overriding the general provisions of Article 32 with the following language (page 6):

It is clear that under Article 19 of the Agreement, the provisions of Section 535.111 of the ASM are entitled to Agreement status so long as they are not in conflict with the Agreement. Section 535.111 does not necessarily conflict with the provisions of Article 32 of the Agreement, but it does set up additional standards for subcontracting of the maintenance of postal equipment.

It is a well-established rule of contract interpretation that specific provisions of a collective bargaining agreement take precedence over general provisions. Thus, Section 535.111 of the ASM which specifically governs the subcontracting of maintenance of postal equipment takes precedence of Article 32 of the Agreement which on its face is to be taken as a general principle.

Arbitrator Arnold Ordman in case **C4T-4F-C 8761** provides language ASM 535 in relation to subcontracting on pages 10 and 11 as follows:

Certainly, argument would be superfluous here to demonstrate that management should have utilized its own personnel to do the subject work under Section 535.111. Neither of the exceptions applies. Capable personnel were available and no special equipment, not readily available, was needed. Similarly, it is demonstrably clear that outside contract service would not be economically advantageous as Section 535.112 provides.

As to the appropriate remedy Arbitrator Ordman awarded compensation at the overtime rate for the hours each of the grievants would have worked had the work been assigned to them.

Arbitrator James E. Rimmel in case **E4T-2J-C 34489** agreed that maintenance to mail and relay boxes fell under the provisions of Section 535 of the Administrative Support Manual with the following language on page 7 and 8:

I believe collection and relay boxes more appropriately fall in the category of postal equipment as opposed to facility and plant equipment. It seems reasonable to conclude that mail and relay boxes, which are used in the normal day-to-day work of the Postal Service, would fit the definition of postal equipment. This being the case Paragraph 535.111 of the Manual as quoted above becomes controlling. When such provisions are reviewed, it becomes apparent that the maintenance of such equipment should be performed by Postal Service personnel whenever possible. There are two exceptions provided, (1) when capable personnel are not available and (2) when a piece of equipment is so complex that a commercial firm would be the only practical source of required maintenance expertise. Obviously mail boxes and the type of work performed on such do not fall within the second category. Therefore, the question becomes whether or not capable personnel were available to perform the work in question.

On page 9 he addressed the issue of the condition of the mail boxes with the following language:

The Service must take responsibility for the fact that the mail boxes were all in need of being painted at the same time. Simply stated, I believe that since the Service chose such an arguably short-sighted course of action, grievant should not be deprived of work which rightfully belongs to him provided for in his job description.

For the appropriate remedy, Arbitrator Rimmel awarded a make whole pay remedy.

Arbitrator Thomas J. Erbs in case **C7T-4C-C 6509** addressed the due consideration requirements of the USPS as follows:

Under the provisions of Article 32 the Postal Service agrees to give due consideration to the "public interest, cost, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract.

Arbitrator Erbs found the appropriate remedy to be compensation to the grievants at the straight time rate in an amount equal to the number of hours worked by the subcontractor.

Arbitrator John C. Fletcher in cases **C7T-4D-C 21543, C7T-4D-C 21544 and C7T-4D-C 21545** addresses the due consideration requirements in Article 32 on page 9 as follows:

Article 32 requires that due consideration be given to a number of factors when the need to subcontract is being evaluated.In total this generalization does not demonstrate that:

1. the painting was done at a lower cost through the use of a subcontractor.
2. the efficiency of postal operations would have been impeded if the painting were done by Maintenance Craft employees and not the subcontractor,
3. the unavailability or cost of securing equipment dictated that a subcontractor be used, and

4. Maintenance craft employees were unqualified to do any of the work items required of the subcontractor.
Also there is no evidence on "public interest" one way or the other.

Article 32 obligates management to give due consideration to these factors when evaluating the need to subcontract. More than a self serving statement that due consideration was given is needed in instances, such as those under review here, where the decision to subcontract is challenged.
[underlining added]

As to an appropriate remedy Arbitrator Fletcher awarded that the involved employees were to be paid at the overtime rate as if they had performed the work.

Arbitrator Harvey A. Nathan in case **J87T-1J-C 90022669** addresses a Postal Service argument concerning application of the law as a reason to subcontract on pages 9 and 10 with the following language:

...Management claims that for the painting to be done on the premises it would have to bring the facility formerly used for painting up to federal safety and health regulations. However, this is standard operating procedure. Of course, federal safety and health standards have to be followed with painting the same as they have to be followed in all other postal operations involving equipment. Where there are vehicle emissions standards, postal vehicles must meet them. Where there are exposed machinery parts the regulations protecting employees must also be in place. And where subcontractors perform work on facility of plant equipment, such as HVAC work, they must also be in compliance with the appropriate safety and health standards. There is simply no explanation in this case as to why federal standards for painting are such that management can avoid the requirements of Section 535.111 merely because costs associated with this work would be incurred.

Arbitrator Elliott H. Goldstein in case **C7T-4M-C 34067** addresses the issue of the contractor's profits on page 18.

Profits must be considered as a cost to the purchaser, too.

In this context, I find that the profit margin charged to this Employer for the contracted work is indeed extremely relevant in any real cost comparison. Said another way, even if the labor cost factor was \$20.00 per hour for 10 hours work, and the materials were charged at \$836.00, the total cost of "going outside" the facility maintenance crew was still in excess of \$1,500.00. If labor charges were held to \$20.00 per hour, profit had to be approximately \$500.00, for the ten hours' work at issue, as I read the record. That "total cost" including profit to Dover should have been a basis of comparison with the cost of doing the work in-house at the \$30.00 plus per hour rate Mosciski calculated, if a fair and accurate result was desired. Costs here then do not favor contracting out, even if the contract was "one-time," because \$70.00 per hour for labor and profit is more than \$30.00 or so per hour for in-house personnel. I so rule.

Arbitrator Harvey A. Nathan in case **C0T-4J-C 2471** provides the following language concerning 1) Under staffing in relation to subcontracting, 2) No cost comparison, and 3) the lack of Article 32 considerations:

The Service contends that it considered efficiency, because the subcontracting was necessary to eliminate a backlog that its workforce could not handle. But to the extent that the backlog was the result of unjustified understaffing, the Service cannot use this manufactured "efficiency" to justify the contracting out. (Footnote 10 - In addition, the Service apparently disregarded the inefficiencies that would result when the Service ran short of parts for in-house repairs because it had sent its stock of parts to the outside contractors for their use. However, the Union has failed to establish that the frequency, extent or severity of these parts shortages, so it is impossible to determine whether they would have weighted significantly against contracting out, even had they been duly considered.) (Footnote 11 - It should also be noted that the subcontracting contravened Maintenance Bulletin MMO-43-82....) Thus the Service violated Article 32 by failing to give due consideration to cost and the availability of its own qualified employees in contracting out the repair work in issue.
[page 14]

Moreover, the Service failed to give "due consideration" to the factors listed in Article 32. In particular, the Service offered a cost comparison that was prepared by former Superintendent Milewski after the grievance was filed. There is no evidence that any cost comparison or other consideration of cost was made prior to the subcontracting in issue here.
[page 12]

Arbitrator James P. Martin in case **C7T-4P-C 9080**, addresses the adverse impact imposed upon the Craft by subcontracting when under staffed on page 9 of his decision with the following rationale:

The failure to fill the position has several adverse effects, one individual and one general. Whenever that position is filled, that employee has one year less seniority with the Postal Service than if he had been hired when the vacancy first occurred. That is the personal adverse effect upon a Custodian, when Arbitrator Witney had been assured that no adverse effect had nor would occur. Further, the entire Maintenance Craft suffers when its unit decreases in size, and the Union has a right not only to defend against individual adverse effects, but upon the effect of the entire bargaining unit being reduced in size.

Arbitrator James P. Martin also addresses the issue of "an emergency condition" to justify a subcontract in case **C1V-4A-C 36906** on page 9:

The claim of an emergency based upon efficiency is farcical: obviously, it would be the opinion of management that it could much more efficiently run the Post Office if the Union would take its Contract and go fishing. The Postal Service has been told numberless time that it may be efficient only within the limits of the contracts agreed to between it and the Union; this case illustrates an extreme example of management ignoring that message.

Arbitrator Edwin H. Benn in case **I90T-11-C 93036556** (in a maintenance staffing dispute) addresses the question of what constitutes an appropriate *remedy* for a subcontracting violation on pages 7 and 8:

The type of relief sought by the Union is more typical of a remedy in a subcontracting case. In those situations where an employer improperly subcontracts bargaining unit work, the employees have suffered a loss of work opportunities because strangers to the contract have performed work that otherwise would have been performed by the bargaining unit.

I94T-11-C 97075046 - MSP BMC - Subcontracting

Arbitrator Lamont E. Stallworth - This grievance involved the subcontracting of plant equipment (actually grounds) maintenance in that the Service subcontracted for the restriping of the truck parking lot. The grievance asserted and proved that Maintenance Craft employees had previously performed the same sort of work inside the building and on outside pavements. Our argument was significantly based on the position that the Service's right to subcontract our work is restricted by the terms of Article 32 and the ASM and that these provisions must be read in conjunction as governing subcontracting issues. The Service protested that the Union had not cited Article 32 on the Step 2 Appeal document as part of its claim. However, the Arbitrator found in that regard, . . . the record evidence reveals that Article 32 was at least discussed between the parties during Step 2 of the grievance procedure, if not formally written down on the grievance charge. Based upon the foregoing, the Undersigned Arbitrator will not hold the Union to any technical violation regarding the Union's apparently inadvertent oversight in not including Article 32 as a contract section at issue in the instant grievance.

The Service also asserted that its position was supported by Article 3 of the National Agreement. The Arbitrator noted,

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. Those eligible to share in the degree of job 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 principles.

[Elkouri and Elkouri, *How Arbitration Works*, 4th Edition, p.549]

Ruling for the Union on the basis of the Service's violation of the terms of Article 32, the Arbitrator further stated,

. . . if the Service needed to subcontract out such work, which could clearly be performed by Service employees, it was imperative that the Service properly inform the Union in accordance with the National Agreement and the ASM. To do so, the Service was contractually required to abide by the requirements of Article 32. It is clear from the record evidence that the Service failed to do so prior to making the subcontracting decision.

I94T-11-C 97094734 - MSP BMC - Request for Information

Arbitrator Frederick P. Kessler - In this case, the Union had made request to the Service for information about the subcontracting of the installation of the *Postal Vision* system hardware - e.g., cabling, television mounts, etc. This system was put together under a national level contract with Target Vision for development of the software and programs and for coordination of the implementation. Locally, when the Union challenged the installation of the system, the Service

refused to provide information on the assertion that the work was covered under a national subcontract. Actually, the hardware installation never was part of the national subcontract.

[Local Service officials] honestly believed that the installation in question was covered by a "national" contract. Schaub testified it was out of his normal range of responsibility. He did not remember who told him it was national. He made no effort to verify the accuracy of the representation. Hoglin also believed that this was a "national" matter. He did not think that he had any alternative to use Target Vision. Likewise, he made no effort to verify his belief.

Both management officials were in error. . . . Once the question was raised, it is hard to understand why neither official checked on its status. The lack of verification is particularly puzzling because neither official can explain how he learned the erroneous fact or even who he learned it from.

Ignorance is not and cannot be a defense in this type of case. The correct information was in the files of the Postal Service. Schaub and Hoglin failed to review the file carefully. They could have easily called Washington themselves to correctly determine Target Vision's role in the installation. ***The burden is not on the Union to determine whether the contract is local or national. All pertinent information was in the possession of management. Management has an enforceable obligation to provide the requested information to the Union.*** [emphasis added]

In addition to documentation produced subsequent to the processing of this grievance, the Union was also able to produce the testimony of Assistant Maintenance Craft Director Edgar Williams to the effect that the work in question had never been part of the nationally let subcontract with Target Vision. What is important about this award is the Arbitrator's reaffirmation of the Service's responsibility for information when the Union seeks to pursue a contract dispute.

J90T-1J-C 94064526 - Flint, MI - Snow removal subcontracting

Arbitrator Alan Walt – While there had been some subcontracting of snow removal in years prior, this subcontracting in October 1993 generated this grievance, which was filed in January 1994 when the first snow saw subcontract performance of the work. The Service attempted to bar consideration of the merits of the grievance on a claim the Union was precluded from grieving now when it had not grieved prior subcontracts. The arbitrator rejected this defense, ruling that each new subcontract or renewal of a subcontract would be grievable as a possible contractual violation. He also found that each such subcontract would have to be weighed to determine whether it met the applicable standards.

The arbitrator applied both the general criteria of Article 32 and the specific standards of ASM 535.23 after drawing from the Custodial Laborer standard position description and the MS-47 to set the basic premise that the work involved was bargaining unit work, stating,

Clearly the function of removing snow from sidewalks, driveways and parking areas using snowplows is bargaining unit work and may be outsourced only when all contractually established criteria have been met. [p.12]

This case gives a good discussion of what is required of the Service in order to meet those criteria as well as an interesting insight into the Union's right and obligation to grieve each subcontract of our work. Having rejected the Service's procedural challenge of *estoppel*, the arbitrator (logically consistent) also found that this grievance could not achieve remedy for any subcontracts beyond the ones entered into in October 1993. Even though the Union had sought, through this grievance, to prospectively remedy the then present and all future subcontracting of snow removal, the arbitrator would not allow prospective remedy. Again, although not all arbitrators would make this distinction, this reinforces the importance of grieving each subcontract and exercising great care with prospective grievances.

194T-11-C 97013888 - St. Louis, MO - Air conditioner PM subcontracting

Arbitrator Linda DiLeone Klein – In 1996, after opening a “temporary” P&DC Annex, the Service decided to subcontract for the performance of routine preventive maintenance on 29 rooftop air conditioning units at this facility, where no building equipment maintenance positions had yet been established. It did so in spite of the fact that BEM’s were dispatched on perhaps a daily basis to perform other building equipment maintenance; and it continued to subcontract this work even after being directed by Arb. Gerald Cohen in 1997 to establish two BEM positions to support the Annex.

Significantly here, the arbitrator stated,

Conspicuously absent from these proceedings is any documentation to show that a cost analysis was performed prior to April 1996 when Management notified the Union that they had ‘elected to contract out the preventive maintenance on the roof top units at the Priority Annex. The main factors considered were cost and efficiency’.

The Arbitrator is of the opinion that the provisions of Article 32 and Section 535 of the ASM create an affirmative obligation on the part of Management to demonstrate how this cost consideration was analyzed. . . Although the Union did not specifically complain about the absence of this information from the responses of Management during the cited steps of the grievance procedure, it is extremely significant to the Arbitrator that this supporting documentation was not provided at the hearing.

[pp.17,18]

The arbitrator also faulted most of what the Service attempted to present in its defense, ultimately awarding overtime compensation for all hours performed by subcontract employees from beginning of the subcontracting until its final termination four years later. (In this case, the arbitrator did not find it necessary to limit the remedy to a period covered only by the 1996 subcontract.)

D94T-1D-C 96080772 - Louisville, KY - Electrical modification/installation subcontracting

Arbitrator Irwin J. Dean, Jr. – Two separate projects were subcontracted to a single electrical contractor in early 1996 and the Union filed one grievance addressing both. In one instance the Service subcontracted for the installation of new light fixtures in the CFS work room. In the other the work was the installation of electrical equipment necessary to support an uninterruptable power supply (UPS) for deployment of the remote encoding system. The award is interesting for a number of reasons. For one, the grievance was filed without reference to Article 32 but only the terms of the Administrative Support Manual (ASM). The Service objected as we proceeded to attempt to bring the Article 32 considerations into the hearing. Ruling with the Service on the issue of “new argument” the arbitrator, nonetheless, addressed the dispute thus:

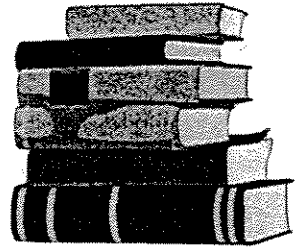
The Administrative Support Manual sets forth a general proposition that maintenance work is to be performed by members of the maintenance craft. . . . Article 32, likewise, contemplates that bargaining unit work will be performed by bargaining unit members. Although it provides additional bases beyond economic advantage and the unavailability of qualified personnel, the Union did not rely upon the additional bases set forth in Article 32 to support its claims in these proceedings. As a practical matter, therefore, there is no substantive distinction whether the Union’s claims are deemed to arise under Article 32 or under the provisions of the Administrative Support Manual.

[pp. 10,11]

The Service too was found guilty of attempting new arguments raised for the first time at the hearing. And the arbitrator rejected these, forcing upon the Service its originally stated defense. And finding that the Service’s burden of proof was not met, he also rejected the broad contentions

that maintenance employees could not have performed the work at issue in the same time frames in which contractors performed it. He additionally found that the Service's reliance on a claim of "capital improvement" was irrelevant to its contractual obligations and, for that matter, did not support the Service's claim that such work was never assigned to the bargaining unit.

This award also reflects the dilemma in which the Union must argue that we could and should have been given the work at issue within the normal framework of our work assignments – i.e., that it would *not* have required overtime – while, on the other hand, we must argue that the remedy should be overtime compensation. This remedy theory is based on the premise that, because the work was not assigned and we were gainfully employed full-time, the only appropriate remedy is overtime. Which theory is further supported by the notion that anytime someone other than those to whom the work belongs performs our work, overtime is the appropriate remedy. Here, though, the arbitrator ordered straight time compensation because of the fact that there was no evidence the work would have to have been performed as overtime work. Favorable awards are mixed on the remedy of overtime versus straight time.



SOME REFERENCE MATERIAL DIRECTIVES - HANDBOOKS - MANUALS

MMO-064-94 - Hourly Rates for Computing Labor Costs
MMO-016-96 - Hourly Rates for Computing Maintenance Labor Costs
MMO-148-98 - Hourly Rates for Computing Maintenance Labor Costs
MMO-022-00 - VMARS Hourly Rates for Computing Maintenance Labor Costs

MMO-028-97 - Maintenance Workhour Estimating Guide for All Mechanized Offices
MMO-074-00 - Work Hour Estimator Program (WHEP)
MMO-041-01 - Work Hour Estimator Program (WHEP) Version 2.1

ADMINISTRATIVE SUPPORT MANUAL - CHAPTER 530 PURCHASING MANUAL

- A. Hndbk P-1
- B. Hndbk P-2
- AS-504 - Space Requirements
- AS-701 - Material Management
- AS-707-G - Contracting for Elevator Repair and Maintenance
- EL-201 - Bargaining Unit Position Descriptions
- MS-1 - Operation and Maintenance of Real Property
- MS-10 - Floors, Care and Maintenance
- MS-21 - Elevator Maintenance
- MS-22 - Street Letter Box Maintenance
- MS-24 - Heating, Venting and Cooling
- MS-39 - Fluorescent and Mercury Vapor Lighting
- MS-43 - General Maintenance for Mail Handling Equipment
- MS-45 - Area Maintenance Office
- MS-47 - Housekeeping - Postal Facilities
- MS-55 - Neighborhood Delivery and Collection Boxes
- MS-58 - Maintenance Performance Criteria
- MS-63 - Maintenance Management Class A Offices
- MS-70 - Intra-BMC Container-lightweight
- MS-110 - Associate Office Postmaster's Facilities Maintenance Guidelines
- RE-12 - Repair and Alteration Surveys
- RE-13 - Repair and Alteration Program

Handbooks Related Specifically to Bulk Mail Centers

Maintenance Systems and Procedures (Interim Handbook), January 1975.
Interim Bulk Mail Center Maintenance Staffing Guidelines and Criteria, August 1979

Federal Law – Service Contract Act Davis-Bacon Act

SUBCONTRACTING ARBITRATIONS

NATIONAL INTERPRETIVE AWARDS

A8-NA-0375	Gamser Washington DC	Custodial Duties - MS47	Sustained
AB-NAT-6291	Gamser Washington DC	Postal unit operation, sale of stamps, repair of SSPU	Denied/ Sustained
H4T-3W-C-9682	Collins St. Cloud FL	Custodial Duties	Sustained
H8C-NA-C-25	Mittenthal Washington DC	Subcontracting - Highway Movement of Mail	Denied
H4C-NA-C-39	Bloch Washington DC	Stamp Sales by Consignment	Denied
H4V-NA-C-84 - 87 H7C-NA-C-1/3/5	Snow Washington DC	Highway Contracts	Denied
H7C-NA-C-96 H0C-NA-C-6	Snow Washington DC	Remote Video	Sustained

REGULAR REGIONAL AWARDS

E1T-2B-C-11911	Powell Philadelphia BMC	Alterations & Repair work done at the BMC by carpenters from another installation	Denied
I94T-1I-C 97024296	Fletcher Milwaukee WI	Asbestos - drilling holes in floor	Denied
C7V-4L-C-34655	Nathan Champaign IL	Auto Body and Fender Repair Work	Denied
H90T-1H-C 95007687	Reed Orlando FL	Building Equipment, Sprinkler system repair	Sustained
H94T-1H-C 97080162	Plant Ft. Lauderdale FL	Building equipment - installation of bollards (posts to guard equipment)	Sustained
E4T-2J-C 41542	Rimmel Evansville IN	Building modification - installation of sawtooth platform	Denied
C7T-4Q-34110	Nathan St. Louis BMC	Building Modification, Wall Panels	Sustained
W7T-5S-C-32984	Render Tucson AZ	Building Modification, Walls - Installation	Sustained (NO remedy)
I90T-1I-C-94054291*	Fletcher Omaha NE	Building Modification, Space adjustment	Sustained

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C90T-1C-C 94009173 (not in 'Search')	Shea South Jersey NJ	Building Modification, Carpentry and Electrical	Sustained
H90T-1H-C-94018829	Hardin St. Petersburg FL	Building Modification, Walls	Denied
I94T-1I-C 96045530	Fletcher Minneapolis MN	Building Modification, Space adjustment	Denied
I94T-1I-C 97117569	Fletcher Madison WI	Building Modification, Battery Rm	Sustained
D94T-1D-C 97091152	Miles Roanoke VA	Building Modification, Space adjustment	Denied
C94T-1C-C 97082376	Zobrak Akron OH	Building Modification, Space adjustment	Sustained
H94T-1H-C 98068944	Lurie Pembroke Pines FL	Building Modification, Space adjustment	Sustained
E94T-1E-C 98066207	Winston Salt Lake City UT	Building Modification, Construction of compressor room	Sustained
D94T-4D-C 99076412	Roberts Charleston WV	Building Modification, Concrete dock replacement	Sustained
A98T-1A-C 00123011	Fritsch Westchester NY	Building Modification, Roof replacement	Denied
H98T-1H-C 00052751	Hoffman Manasota FL	Building Modification, Concrete repair	Denied
H98T-1H-C 00056749	Hoffman Manasota FL	Building Modification	Denied (Timeliness)
E1T-2B-C-12979	Rimmel Philadelphia BMC	Carpentry, Painting, and Electrical Remodeling Cafeteria	Denied
N1T-1J-C-7757	Marx Springfield BMC	Carpentry, Modification of Interior Offices	Denied
H90T-1H-C-94018829	Hardin St. Petersburg FL	Carpentry, Erect and Finish Interior Walls	Denied
H94T-1H-C-97050930	Byars St. Petersburg FL	Carrier Case Relocation	Denied
C90T-4C-C-95070081	Klein Mansfield OH	Computers, Office. Preventive Maint. etc.	Sustained
C94T-1C-C 96031228	Drucker Philadelphia BMC	Construction - bulk belt conveyor	Denied
H90T-1H-C 95042994 H90T-1H-C 95050278 H90T-1H-C 95051123	Odom Ft. Lauderdale FL	Construction	Denied

E7T-2N-C 21843	Howard Cincinnati OH	Containers, (APC), Repair	Sustained
C0T-4J-C-2471	Nathan Milwaukee WI	Containers, (All types), Repair	Sustained
E4T-2M-C 5030/5031 and 37204	Kasher Charleston WV	Custodial Services	Sustained
E4T-2D-C 9609 E4T-2D-C 9610	Zumas Baltimore MD	Custodial Services	Sustained
N4T-1G-C-33419	Liebowitz White River Jct VT	Custodial Services	Sustained
W7T-5R-C-7693	Levak Tacoma WA	Custodial Services	Sustained
C7T-4M-C 32277	Dolson Allegan MI	Custodial Services - Failure to revert vacant position	Sustained
C7T-4S-C 32864	Klein Rice Lake WI	Custodial Services - Failure to revert vacant position	Sustained
E7T-2B-C 11571	Powell South Jersey NJ	Custodial Services - Cafeteria Cleaning	Sustained
S7T-3A-C 27743 S7T-3A-C 27744 S7T-3A-C 27745	Schedler Fort Worth TX	Custodial Services	Denied Denied Sustained
N7T-1W-C 30365	Germano Syracuse NY	Custodial Services	Sustained
S7T-3Q-C 31275	Johnston Monroe LA	Custodial Services	Sustained
N7T-1R-C-34813 N7T-1R-C-34815	Shea Buffalo NY	Custodial Services (Including Snow Removal)	Sustained
S0T-3D-C-4577	Bentz Columbus GA	Custodial Services	Sustained
W0T-5K-C-7071	Axon Billings MT	Custodial Services (Cleaning Inside Walls)	Denied
G90T-1G-C-92041754	Hardin Austin TX	Custodial Services	Denied (Untimely)
I90T-1I-C-93030141	Fletcher Kansas City MO	Custodial Services	Denied
C90T-4C-C-93036118 C90T-4C-C-93036137	Berk Crooksville OH New Lexington OH	Custodial Services	Denied

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I90T-1I-C-93020272 I90T-1I-C-93020273	Stallworth Kansas City KS	Custodial Services	Denied
C90T-4C-C-93016219	Zobrak Lima OH	Custodial Services	Sustained
C0T-4P-C-19373 C0T-4P-C-19373 (remedy)	Stallworth Kansas City MO	Custodial Services	Sustained
E90T-1E-C 94008030	Render Phoenix AZ	Custodial Services (Exterior sweeping)	Sustained
B90T-4B-C 94043996 *	Gudenberg Richfield NJ	Custodial Services - Failure to inform Local President	Sustained
I90T-1I-C 94059146	Stallworth St. Paul MN	Custodial Services	Sustained
I90T-1I-C-95013040	Fletcher Milwaukee WI	Custodial Services	Sustained
C90T-4C-C 95040359	Zobrak Huron OH	Custodial Services - Failure to revert vacant position	Sustained
A90T-4A-C 95051752	Drucker Forked River NJ	Custodial Services - Failure to revert vacant position	Sustained
J90T-1J-C 96008981	Benn Chicago IL	Custodial Services	Sustained
I94T-1I-C 97040151	Klein Milwaukee WI	Custodial Services - Improper computation of interior square footage	Sustained
I94T-1I-C 97066332	Klein Milwaukee WI	Custodial Services - Lack of vacancy by attrition / Improper reversion	Sustained
D94T-4D-C 97060917	Klein Fredericksburg VA	Custodial Services - Failure to revert vacant position	Sustained
H94T-1H-C 98017217	Bennett West Palm Beach FL	Custodial Services - Exterior wall cleaning	Sustained
C94T-4C-C 98064429	Miles Grove City OH	Custodial Services - Lack of vacancy by attrition; failure to inform Local President	Sustained
C4T-4D-C 31776	McAllister Chicago IL	Custodial Staffing - Failure to revert vacant position	Sustained
B90T-1B-C-93046547	Sulzner Syracuse NY	Delivery Bar Code Sorter	Denied
E7T-2N-C 21984	Zobrak Cincinnati BMC	Dock Door Repair	Denied
C7T-4M-C 34067	Goldstein Flint MI	Dock Door Repair	Sustained

C0T-4S-C-20278*	Fletcher Minneapolis BMC	Dock Door Springs	Sustained
S0T-3S-C-2340	Dennis Ft. Lauderdale FL	Dock Door Installation/Painting	Denied
C98T-1C-C 00065173	Dissen Pittsburgh BMC	Dock Door - Installation of opener	Sustained
I90T-1I-C-94052280*	Fletcher Green Bay WI	Dock leveler - modification	Sustained
I90T-1I-C 95025581*	Fletcher Minneapolis BMC	Dock leveler installation	Sustained
I90T-1I-C-95003723* I90T-1I-C-95003726*	Fletcher St. Louis BMC	Dock Levelers and door seals	Sustained
G90T-1G-C 93013317* G90T-1G-C 93013317 (remedy)	Yancy Houston TX	Dock lift repair - postal equipment	Sustained
C1T-4C-C-23371	Nathan Minneapolis BMC	Electrical Service Installation	Sustained
D90T-1D-C-93034280 thru 93034283	Klein Roanoke VA	Electrical and Power Supply Installation for DBCS	Denied
C4T-4F-C-8761	Ordman Cincinnati OH	Electrical Work	Sustained
C7T-4C-C-6509	Erbs Minneapolis BMC	Electrical Work	Sustained
S7T-3U-C-39310	Bennett Corpus Christi TX	Electrical Work	Sustained
G90T-4G-C-92042885 G90T-4G-C-92042703	Bennett Ft. Worth TX	Electrical Installation, Flat Sorter, Facer Canceler	Sustained
I90T-1I-C 93034497	Stallworth Minneapolis BMC	Electrical installation - fire alarm	Sustained
D94T-1D-C 96080772	Dean Louisville KY	Electrical installation - lights and power supply	Sustained
I94T-1I-C 97024124	Martin Omaha NE	Electrical work - rewiring, relamping	Denied
I94T-4I-C 98093746	Fletcher Milwaukee WI	Electrical work - alteration	Sustained
E94T-1E-C 98113935	Halter Albuquerque NM	Electrical installation - power drops	Sustained
G98T-4G-C 99239951	King Fort Smith AR	Electrical work, repair parking lot lights	Denied

C7T-4G-C-31903	Krider Terre Haute IN	Elevator, Maintenance and Repair	Denied
I94T-1I-C 96063835	Fletcher Milwaukee WI	Elevator maintenance	Denied (laches)
E7T-2N-C-37843	Berk Cincinnati OH	Fabricating & Installing Safety Screens	Denied
G90T-4G-C-92042702*	Bennett Ft. Worth TX	Furniture, Installation of Modular Furniture	Sustained
C0T-4R-C-18474	Stallworth Sioux Falls SD	Furniture, etc., Moving Between Installations	Denied
I90T-1I-C-94052689	Stallworth Omaha NE	Furniture, etc., Moving Between Installations	Denied
H90T-1H-C 94043513*	Plant Orlando FL	Furniture and equipment, move	Sustained
E98T-1E-C 99226013	Hayduke Boise ID	Furniture moving	Denied
E98T-1E-C 00245408	Hayduke Boise ID	Furniture moving	Denied
C1T-4K-C 35749	Martin St. Louis BMC	HVAC, Air Conditioning	Sustained
S7T-3W-C-34282	Marlatt Ft. Meyers FL	HVAC, Preventive Maintenance	Denied
W0T-5R-C-3230	McCaffree Spokane WA	HVAC - Install heater/furnace at station	Denied
D90T-1D-C 94052396	Wolf Charleston WV	HVAC - Install heater at station	Sustained
I90T-1I-C 94056229*	Stallworth Minneapolis MN	HVAC - Installation of A/C unit	Sustained
I94T-1I-C 97013888	Klein St. Louis MO	HVAC - Preventive Maintenance	Sustained
A94T-1A-C 97032182	Thomas Trenton NJ	HVAC - Install air system	Sustained
N0T-1N-C-9014	Kelly Kilmer GMF NJ	In-Plant Powered Vehicle, Maintenance to tenant yard sweepers	Sustained
C94T-1C-C 97047826*	Wolf Philadelphia BMC	Information - only issue decided was failure of Service to provide info.	Sustained
MN95332	McAllister Eagan MN	Information - Service reliance on "national level subcontract"	Sustained

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I94T-1I-C 97094734*	Kessler	Information - Service denied request,	Sustained
I94T-1I-C 97094752	Minneapolis BMC	claimed subcontract was national level	
C8T-4E-C-34116	Seidman Akron OH	Lawn Care	Denied
C4T-4Q-C 21051 (in Search under C1T-4K-C 35749)	Martin St. Louis BMC	Lawn Care	Sustained
C4T-4P-C 32582	Witney Springfield MO	Lawn Care	Denied
E4T-2F-C 33099	Zumas Lancaster PA	Lawn Care	Sustained
E4T-2E-C 48914	Sickles Lehigh Valley PA	Lawn Care	Sustained
C7T-4P-C-9080	Martin Springfield MO	Lawn Care	Sustained
E7T-2E-C-13473	Powell Reading PA	Lawn Care	Denied
E7T-2G-C 23332 (not in 'Search')	Sanford NC	Lawn Care	Denied
N7T-1W-C 26079	Zack Syracuse NY	Lawn Care	Sustained (NO remedy!)
C7T-4L-C-26029	Klein Champaign IL	Lawn Care & Snow Removal	Sustained
C7T-4U-C- 26532	McAllister Grand Junction CO	Lawn Care	Denied
C7T-4L-C-27956	Fletcher Decatur IL	Lawn Care	Sustained
S7T-3Q-C 31264	Larson Jackson MS	Lawn Care, Landscaping	Denied
N7T-1N-C 36124	Mitrani Trenton NJ	Lawn Care	Sustained
S0T-3S-C-1977	Dennis Ft. Lauderdale FL	Lawn Care, Tree Trimming	Denied
C90T-1C-C 94001447	Tanner Philadelphia PA	Lawn Care, Pesticide treatment	Denied
H94T-4H-C 96047285	Hoffman Naples FL	Lawn Care	Sustained
I94T-1I-C 97113962	Fletcher Green Bay WI	Lawn Care, Tree removal	Denied

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I94T-1I-C 97116405	Fletcher Green Bay WI	Lawn Care, Fertilizer application	Sustained
I94T-1I-C 98017257	Kessler Minneapolis BMC	Lawn Care, Pesticide treatment	Sustained
H94T-1H-C 97078148	Hardin Ft. Lauderdale FL	Lawn mower repair	Denied
E1T-2W-C-18967	Germano Syracuse NY	Letter Box Painting	Sustained
E1T-2W-C-18967 (remedy)	Wittenberg Syracuse NY	Letter Box Painting	Sustained
W1T-5C-C-19965	Levak Alameda CA	Letter Box Painting	Denied
C4T-4F-C 17766	Klein Sidney OH	Letter Box Slab Installation	Denied
E4T-2J-C-34489	Rimmel Evansville IN	Letter Box Painting	Sustained
E7T-2N-C 21844	Rimmel Cincinnati OH	Letter Box Painting, Strip/Primer	Denied
S7T-3W-C 27286	Bennett St. Petersburg FL	Letter Box Painting	Sustained
C90T-4C-C-95065735	Klein Mansfield OH	Letter Box Painting	Denied
S0T-3Q-C-2316	Hardin Monroe LA	Letter Box, Installing Curbside Mail Boxes	Denied
W0T-5S-C-9035	Marlatt El Paso TX	Letter Box Painting	Sustained
G90C-4G-C-91024577	Bennett Ft. Worth TX	Letter Box Painting and Stripping	Sustained
J87T-1J-C-90022669 (in Search under C7T-4M-C 27666)	Nathan Flint MI	Letter Box Painting and Sandblasting	Sustained
A90T-4A-C-93014566	Cannavo Brooklyn GMF	Letter box painting	Sustained
I90T-1I-C 94023483	Fletcher Kansas City MO	Letter box painting and sandblasting	Sustained
K90T-1K-C 95044200	Kohler Washington DC	Letter box painting and sandblasting	Sustained

I90T-1I-C 96023145 I90T-1I-C 96063841 I90T-1I-C 96063847	Fletcher Milwaukee WI	Letter box painting	Sustained
S7T-3U-C 39310	Bennett Corpus Christi TX	Letter case modification	Sustained
E7T-2N-C-19045	Powell Cincinnati BMC	Lighting, Installation of High Bay	Denied
C7T-4U-C 30294	Goldstein Denver BMC	Lighting, Relocation & Relamping	Denied
I94T-1I-C 97027266	Fletcher Madison WI	Lighting, Relamping	Denied
D98T-1D-C 99256929	Evans Clarksburg WV	Lighting, Replacement	Sustained
S1T-3T-C-20710 (not in 'Seach')	Oklahoma City OK	Locker Installation	Denied
E7T-2A-C 10908	Zumas Philadelphia BMC	Mail Processing Equipment, Modification	Denied
J90T-4F-C-93020926*	McAllister Rockford IL	Mail Processing Equipment, LSM, Dismantle (not an overhaul)	Sustained
D90T-1D-C-95015901	Drucker Charleston SC	Mail Processing Equipment, Fabrication	Sustained
D94T-1D-C 96065320*	Dean Louisville KY	Mail Processing Equipment, Removal	Sustained
A94T-1A-C 97001610	Thomas Trenton NJ	Mail Processing Equipment, Installation of conveyors	Sustained
K94T-1K-C 97011531	Rimmel Baltimore MD	Mail Processing Equipment, Modification	Sustained
A94T-1A-C 97014806	Pecklers Monmouth NJ	Mail Processing Equipment, Removal of LSM	Sustained
A94T-4A-C 97050773	Kelly Elizabeth NJ	Mail Processing Equipment, Removal of LSM	Denied
G94T-1G-C 97060278	King Little Rock AR	Mail Processing Equipment, Relocate MPFSM	Sustained
G94T-1G-C 98036625	August Little Rock AR	Mail Processing Equipment, Removal	Denied
I90T-1I-C-93036556	Benn Columbia MO	Maintenance Staffing	Sustained
C1V-4A-C-36906	Martin South Suburban IL	Motor Vehicle Runs for Highway Mail Movement	Sustained

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S7V-3W-C 32838*	Hardin Tampa FL	Motor Vehicle - transporting vehicles	Sustained
H90T-4H-C-94043576	Vause Naples FL	NDCBU Installation	Denied
H90T-1H-C 95050276*	Odom Hollywood FL	NDCBU Installation	Sustained
E4T-2L-C-50677 (no .pdf in Search)	Klein Columbus OH	NDCBU Lock Installation	Denied
W7T-5S-C-14281	Williams El Paso TX	NDCBU Lock Installation	Denied
S7T-3W-C-27286	Bennett St. Petersburg FL	NDCBU Painting	Sustained
C7T-4P-C-28185	Nathan Kansas City MO	NDCBU Lock Installation	Denied
C7T-4G-C-33339	Benn Indianapolis IN	NDCBU Painting & Maintenance	Denied
W0T-5G-C-2798	Patterson Corvallis OR	NDCBU Lock Installation	Denied
W0T-5S-C-3233	Williams El Paso TX	NDCBU Lock Installation	Denied
W0T-5R-C-4573	Abernathy Tacoma WA	NDCBU Painting	Denied
W0T-5S-C-9035	Marlatt El Paso TX	NDCBU Painting	Sustained
G98T-4G-C 00205816*	Sherman Spring TX	NDCBU Installation	Sustained
C7T-4N-C-11586	Stallworth Chicago IL Overhaul Facility	Painting display frames and cases.	Denied
C7T-4D-C-21543	Fletcher Chicago BMC	Painting	Sustained
G90T-4G-C 92042701	Bennett Ft. Worth TX	Painting floors in VMF	Sustained
I90T-1I-C 94056230*	Stallworth Minneapolis MN	Painting - renovation of VMF interior	Sustained
I94T-1I-C 97075046	Stallworth Minneapolis BMC	Painting parking lot stripes	Sustained
C7T-4D-C-32561	Stallworth Chicago BMC	Painting	Denied

W0T-5R-C-1675	Abernathy Spokane WA	Painting stripes on parking lot	Denied
W0T-5K-C 7071 W0T-5K-C 7072	Axon Billings MT	Painting of Offices and Lobby of Station	Denied
J90T-4J-C-94005366	Klein Carpentersville IL	Painting, Interior Walls	Sustained
D90T-4D-C-94004922*	Loeb Louisville KY	Painting, Interior Walls	Sustained
G94T-1G-C 99197001	King Ft. Worth TX	Painting, Interior Walls	Sustained
H94T-1H-C 98020543	Hoffman West Palm Beach FL	Plumbing repair	Sustained
C94T-1C-C 98089514	Fullmer Pittsburgh BMC	Plumbing repair	Sustained
E1T-2B-C-11909	Rimmel Philadelphia BMC	Pull Cords, Towveyor Installation	Denied
H94T-1H-C 97080161	Plant Ft. Lauderdale FL	Safe - lock repair	Sustained
I94T-1I-C 98009558	Stallworth Minneapolis BMC	Security system - hardware installation	Sustained
C7T-4Q-C-32235	Nathan Carbondale IL	Sidewalk Repairs	Denied As Untimely
E4T-2F-C 9589	Powell Pittsburgh PA	Snow Removal	Denied
C7T-4B-C 22381	Erbs Dearborn MI	Snow Removal	Denied
E7T-2M-C 40968	Sickles Charleston WV	Snow Removal	Sustained
C7T-4L-C 26029	Klein Champaign IL	Snow Removal and Lawn Care	Sustained
C90T-4C-C 94026955	Loeb Scranton PA	Snow Removal - ASM 535.23 controlling	Denied
J90T-1J-C 94064526	Walt Flint MI	Snow Removal	Sustained
S7T-3W-C 36631	Gold St. Petersburg FL	Telephone System, Internal, Installation	Denied
C90T-1C-C 93044058	Graham Philadelphia BMC	Towveyor Repairs	Sustained

S4T-3T-C-15225	Sherman Oklahoma City OK	Welding	Denied
W7T-5F-C-32108	Abernathy Phoenix AZ	Window washing - multi-story bldg.	Denied
N0T-1N-C-2291	Tener New Brunswick NJ	Window washing - skylight windows	Sustained
I94T-1I-C 96075846	Larney Des Moines IA	Window washing - specialized lift	Sustained

*In these cases a major contributing factor considered by the Arbitrator when awarding in the Union's favor was the Service's failure to provide information or to raise their subcontracting rights argument at Steps 1, 2, & 3.

STEP 4's RELATING TO SUBCONTRACTING ISSUES

H7C-NA-C 27	Washington DC	ASM Cleaning Services (24-Hr. Rule) Pre-arbitration settlement. This decision affected twenty-three (23) facilities in three (3) regions.
A-S-1575/A-367	Ft. Lauderdale FL	Installation of new locks on apartment-type receptacles
H1T-4F-C 620 (not in 'Search')	Cincinnati OH	ASM 535 applies to forklift and vert-a-lift repair
H7T-3C-C 21569	Memphis TN	ASM 535 vs. Article 32 replacing reflectors
H7T-3C-C 14397	Memphis TN	ASM 535 vs. Article 32 building equipment
H7T-4K-C 22603	Des Moines IA	ASM 535 vs. Article 32 contracting
H4T-3Q-C 19626	Kenner LA	ASM 535 applies to lawn care
H4T-4F-C 17766	Sidney OH	ASM 531 and 535 applies
H4T-4G-C 21613	Washington IN	ASM 535 applies to collection box painting
H4T-4F-C 5725	Cincinnati BMC	Art. 31 & 32 and ASM 535 applies to painting
H4T-4F-C 5726		
H4T-4C-C 7755	Minneapolis MN	Article 32 applies to painting
H4T-4P-C 20952	Springfield MO	ASM 535 applies to painting
H4T-4H-C 21048	Wichita KS	Article 32 applies to stripping parking lot
B94T-4B-C 96060363	Branford CT	Custodial attrition / ASM 535.261 where office is covered by more than one custodial position
H4T-4A-C 16767	Kewanee IL	Custodial Duties-apply H4T-3W-C-9682
H4T-2B-C 9553	Philadelphia PA	ASM 530 applies to sprinkler repair
H7T-3D-C 22868	Montgomery AL	Lawn care
H4C-NA-C 5	Washington DC	NDCBU Customer Locks

H1T-3A-C 30709	Ft. Worth TX	NDCBU Installation
H1T-3A-C 29261	Temple TX	NDCBU Installation
H1T-3A-C 26547	Waco TX	NDCBU slab installation belongs to maintenance where sufficient manpower is available
H1T-4C-C 14756	MSP BMC MN	Reversion process - 40-day window
H7T-4G-C 34553	Indianapolis IN	Reversion process - 40-day window
H4T-3W-C-11259	Bradenton FL	Supervisors installing apartment type mail box locks

ADDRESS ANY QUESTIONS YOU MAY HAVE CONCERNING THE ABOVE ITEMS
OR ANY OTHER CONTRACTUAL MATTERS TO
YOUR NATIONAL BUSINESS AGENT, OR
THE MAINTENANCE CRAFT OFFICE IN APWU HEADQUARTERS

