American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Appeal to Arbitration, National Dispute

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May 17, 2012

Sent Via Facsimile and First Class Mail

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

Re: USPS Dispute No. Q06T4QC10122810, APWU No. HQTT20100081

Dear Mr. Tulino:

Please be advised that pursuant to Article 15, Sections 2 and 4, of the Collective Bargaining Agreement, the APWU is appealing the above referenced dispute to arbitration.

Sincerely,

Mike Morris, Director
Industrial Relations

MM/GK/syi/opeiu#2/afl-cio

USPS #: Q06T4QC10122810
APWU #: HQTT20100081

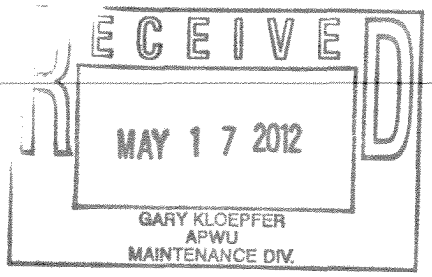
Case Officer: Gary Kloepfer
Step 4 Appeal Date: 3/2/2010
Contract Article(s): ;

cc: Resident Officers
Industrial Relations

File

LABOR RELATIONS

UNITED STATES POSTAL SERVICE



May 11, 2012

Mr. Gary Kloepfer
Assistant Director A
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Washington, DC 20005-4128

Certified Mail Tracking Number:
7002 0860 0006 9347 3472

Fax: 202-289-3746

RE: Q06T-4Q-C 10122810
HQTT20100081 Class Action
Washington, DC 20260-4100

Dear Gary:

In accordance with Article 15.2 (Step 4) (a), the Postal Service is providing you with its understanding of the issue involved. On numerous occasions we met to discuss the issue in dispute and were unable to reach an agreement.

Issue Presented

The issue involved as provided by the American Postal Workers Union (APWU) in its dispute dated March 2, 2010, is "Whether the Postal Service violated Article 19 and 32 Section 1 of the National Agreement, Section 535 of the Administrative Support Manual and the MS-22 Handbook when it made its decision to implement an initiative known as the Letter Box Refurbishment Program."

APWU Position

It is the Union's position that the Postal Service failed to give due faith consideration to any of the factors contained in Article 32 Section 1 and failed to meet prior to making its subcontracting decision. Additionally, the Union alleges that Section 535 of the Administrative Support Manual (ASM) restricts subcontracting any work unless there are no qualified maintenance employees, no employees that are capable of being trained available or if the equipment is a prototype.

USPS Position

It is the Postal Service's position that there was no violation of the terms and conditions of the collective bargaining agreement. Further, it is the Postal Service's position that while the Union has alleged violations of the National Agreement, the Union has failed to identify a specific national interpretive dispute as required by Article 15.2 (Step 4).

Article 32.1.B of the National Agreement requires the Postal Service to give advance notification to the Union about subcontracting only when there will be a significant impact on bargaining unit work. The Postal Service has determined that there is no significant impact on bargaining unit work. Additionally, even if the Union believes otherwise, it has not provided nor advanced any argument or documentation that would indicate a significant impact to bargaining unit work other

than its allegations. Accordingly, Article 32.1.B is inapplicable to the instant matter, as there is no significant impact on bargaining unit work. Further, while third-party contracting has taken place, and the factors under Article 32.1.A have been given due consideration, the Union has failed to identify what, if any, bargaining unit work has been replaced by the third-party contracting.

The Letter Box Refurbishment Program is work that has not been performed by Postal Service employees. Subcontracting this initiative allowed the work to be completed in a timely and cost-efficient manner. By engaging a sufficient number of contractors possessing the requisite skill sets, the Postal Service could ensure contract compliance with the Letter Box Refurbishment Program supplier and avoid unnecessary penalty costs.

Since equipment modification does not fall into the category of routine preventive, predictive, or corrective maintenance, it is not work that is typically considered when manpower requirements are determined. In order to accomplish this work using postal maintenance employees, it would have to be performed through costly overtime payments or by delaying existing scheduled maintenance work. Neither of these solutions provides an economically sound strategy; therefore, the alleged violation of Section 530 of the ASM is not supported. The Union claims that the subcontracted work has historically been performed by the bargaining unit, but the Union has failed to provide any evidence to support this claim. For these reasons above, the argument that the MS-22 was violated is also not supported.

The requirement to meet and discuss potential subcontracting is only applicable when it has been determined that there will be a significant impact to bargaining unit work. The Postal Service determined there would be no significant impact; therefore, there is no requirement to meet with the APWU or to provide advance notification.

Nevertheless, after giving due consideration to the factors under Article 32.1.A, namely public interest, cost, efficiency, availability of equipment, qualification of employees (as evidenced by relevant information provided to the Union upon request); a third-party provider was selected to perform the modifications and site preparation. In addition, the APWU was notified of the Letter Box Refurbishment Program by letter dated November 5, 2009.

There is no provision in the National Agreement supporting the APWU's position in this dispute. As such, citing the contractual provisions and arguments above, the Union has not shown any violations of the Agreement.

Past practice, negotiations history, case law, handbooks and manuals, and reading of the National Agreement, and arbitral authority support management's interpretation.

Sincerely,

Matthew Berrang
Labor Relations Specialist
Contract Administration (APWU)

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

May 9, 2012

Gary Kloepfer
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Article 15 - 15 Day Statement of Issues and Facts

Sent Via Facsimile and First Class Mail

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

Re: APWU No.HQTT20100081,
USPS No. Q06T4QC10122810 Letter Box Refurbishment Program

Dear Mr. Tulino:

Article 15, Section 2 (Step 4) provides that if the parties have not reached agreement within fifteen days of their meeting that each party shall provide the other with a statement in writing of its understanding of the issues involved, and the facts giving rise to the dispute. The parties fully discussed the merits of this dispute on April 10, 2012. In addition the Postal Service did not raise any procedural or arbitrability issues during this meeting. Being unable to resolve the dispute during this discussion, the parties agreed to submit In addition to the parties' agreement to extend all time limits, an agreement was reached whereby each party's 15 Day Position Statement would be submitted no later than May 11, 2012.

The following is the APWU's statement of issues and facts concerning this dispute. Whether the Postal Service violated Articles 19 and 32 Section 1 of the National Agreement, Section 535 of the Administrative Support Manual and the MS-22 Handbook when it made its decision to implement an initiative known as the Letter Box Refurbishment Program?

By letter dated November 5, 2009 the Postal Service notified the Union of its subcontracting decision to implement a national Letter Box Refurbishment Program:

"As a matter of general information, Engineering in conjunction with Supply Management will implement a cost-saving initiative known as the Letter Box Refurbishment Program. As background, the Postal Service has and is experiencing a decline in collection mail. Based on collection box density surveys the Postal Service has removed several thousand letter boxes throughout the country. In an effort to reduce costs and rather than purchasing new boxes

these collection boxes will be refurbished by a vendor. By consolidating the refurbishment effort nationally, the Postal Service will receive the benefit of the economy of scale. No significant impact to the bargaining unit is anticipated."

Additionally the Union alleges the Postal Service made its national subcontracting decision without prior notice to the Union or receipt of input from the Union. It is the Union's position that the failure of the Postal Service to comply with the decisional subcontracting process violated the Collective Bargaining Agreement and Section 530 of the Administrative Support Manual. Article 32 requires the Postal Service provide documentation to the Union demonstrating it gave good faith consideration to all the factors listed in Article 32 **prior** to making its decision to subcontract as well as meeting with the Union when subcontracting is being considered. In addition, Section 530 of the Administrative Support Manual restricts subcontracting this type of work unless there are no qualified maintenance employees or if the equipment is a prototype.

In addition, based on the content of the Postal Service's letter, it identified only one reason for its subcontracting decision: "In an effort to reduce costs and rather than purchasing new boxes these collection boxes will be refurbished by a vendor. By consolidating the refurbishment effort nationally, the Postal Service will receive the benefit of the economy of scale. No significant impact to the bargaining unit is anticipated." It is the Union's position that letter boxes are Postal Equipment as defined in Section 5 of the Administrative Support Manual. In addition, Section 535.111 of the ASM permits subcontracting of Postal Equipment under limited circumstances. It is the Union's position that neither of these prohibitions existed at the time of the subcontracting decision. In this regard Section 535.111[1] of excludes costs/economical considerations as a factor in subcontracting decisions.

In addition the subcontracted work was within the scope of duties performed by APWU bargaining unit employees. The subcontracted work is bargaining unit work and has historically been performed by the various members of the APWU bargaining unit Letter Boxes, etc. are mail processing equipment as defined by the Administrative Support Manual, Chapter 535 and Handbook MS-22, Street Letter Box, Maintenance. Section 535.111 requires that maintenance of postal equipment be performed by USPS employees except where capable personnel are not available or where the equipment is experimental or unusually complex, neither of which conditions exists in the case of letter boxes, the grievance should be sustained.

POSTAL SERVICE POSITION

The Postal Service stated its position as: As a matter of general information, Engineering in conjunction with Supply Management will implement a cost-saving initiative known as the Letter Box Refurbishment Program. As background, the Postal Service has and is experiencing a decline in collection mail. Based on collection box density surveys the

[1] Issue 8 of the ASM

Postal Service has removed several thousand letter boxes throughout the country. In an effort to reduce costs and rather than purchasing new boxes these collection boxes will be refurbished by a vendor. By consolidating the refurbishment effort nationally, the Postal Service will receive the benefit of the economy of scale. No significant impact to the bargaining unit is anticipated. At the conclusion of the parties discussions the Postal Service added an addition reason for its subcontracting decision: Due to stringent requirements for painting Letter Boxes it was a better business decision to paint than to purchase new letter boxes and a consolidated site would be good and allow the Postal Service to comply with EPA standards.

UNION POSITION

It is the Union's position that contracting out of this work violated the Collective Bargaining Agreement and Section 530 of the Administrative Support Manual (ASM). Article 32 requires the Postal Service to 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 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.

It is the Union's position the work performed by the contractor removes work from the bargaining unit. In addition, the change of work process from purchasing letter boxes to painting letter boxes is the equivalent of a technological change as defined in Article 4 of the Collection Bargaining Agreement. In this regard the Postal Service was required to offer this new work, painting, to present employees capable of being trained to perform the new or changed job and it was required to provide the training. All other bargaining unit work associated with refurbishing a letter box can and has been performed by the bargaining unit in all major postal facilities.

It is the Union position that subcontracting decisions regarding painting of letter boxes must be based on Section 535.111. The parties at the Headquarters level do not dispute this position.[2] These Step 4 settlements are controlling and have not been waived by either party. These headquarters settlements also reflect the parties' agreement the bargaining unit is capable of doing the work and the work of refurbishing and painting letter boxes is neither experimental nor unusually complex. In addition, it is the Union's position that compliance with a federal safety and health regulation is not a reason to remove work from the bargaining unit. In this regard, Arbitrator Nathan in case J87T-1J-C-90022669 properly ruled:

> 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 emission 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

[2] See H7T-4M-C-27666,H4T-4G-C-21613,H4T-4P-C-20952

management can avoid the requirements of Section 535.111 merely because costs associated with this work would be incurred.

It is the Union's position that moving the bargaining unit task of painting letter boxes to a central location does not relieve it of the its contractual requirements provided in Section 535.111 of the ASM as well as Article 38 regarding the issuance of tools and job training. Supplying Personal Protection Equipment (PPE) to perform refurbishment and/or painting tasks is a safety and health requirement imposed by Article 14 of the Collective Bargaining Agreement, not a reason to subcontract bargaining unit work. Section 531.111 of the ASM defines the conditions under which the Postal Service may subcontract Postal Equipment:

535.111 Postal Equipment. Maintenance of postal equipment should be performed by USPS personnel, whenever possible. Exceptions:

a. Where capable personnel are not available, or

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

It is the Union's position that Article 38 Section 6.A requires the employer to provide Maintenance Craft job training and Section 7 requires the employer to provide adequate tools, tool kits, and equipment in order for bargaining unit employees to perform their assigned tasks. The Postal Service's unilateral decision to not provide job training and tools to its employees does not justify subcontracting the work in question. Such action is disingenuous and self-serving, as it controls the issuance of tools and scheduling of training that is provided to the bargaining unit.

It is the Union's position the Postal Service's claim that it lacked tools and its failure to provide training is not justification(s) to subcontract bargaining unit work. To hold otherwise would permit grant the Postal Service a right it does not currently possess. The conclusion to be drawn from the above is that management improperly made its subcontracting decision when it concluded that its own workforce was incapable of doing the work which was contracted out, because it failed to train and provide the necessary tools to its own workforce. It is without dispute that the Postal Service controls the assignment of training and the issuance of tools; as such arguments based on the lack of training and/or tools are self-serving as they result in a predetermined result.

It is the Union's position that the work performed by contract employees to Postal Equipment is bargaining unit work as contained in, but not limited to, the Standard Position Descriptions of the Letter Box Mechanics, Maintenance Mechanics, Area Maintenance Technicians, etc. In addition, bargaining unit employees have performed the same and/or similar work. As a result of the Postal Service's impermissible contracting decisions the Maintenance bargaining unit suffered a loss of work opportunities due to strangers to the contract performing work they otherwise would have been performed. The harm to the Union and its members due to the abridgement of these rights cannot be remedied with a simple cease and desist instruction as the bargaining unit has been deprived of work and work opportunities and compensation due to the errors committed by the Postal Service. Rather, the remedy for this contract violation must be the return of work and any required adjustments to the staffing levels and compensation to the bargaining unit for all

hours worked by the contractor at the appropriate rate of pay, e.g. straight time and/or overtime rate.

It is the position of the Union that the documentation provided by the Postal Service as justification of its subcontracting decision can not be treated as evidence of good faith consideration to any subcontracting factors. No part of the decisional process that formed the basis of the conclusions reflected in the Article 32 Review documents were supported by any fact based documentation. Conclusions, such as those contained in the documents provided by the Postal Service are not probative evidence of a good faith deliberative process. It is the position of the Union that "all" information regarding its subcontracting decision existed prior to the filing of this dispute, as such the Postal Service is prohibited from introducing testimony, documents, etc. into the record to refute the Union's position in this case.

An examination of a national level arbitration case by Arbitrator Gamser in Case No. AB-NAT-6291, in which he sustained the APWU's grievance regarding the Postal Service's obligation to provide advance notification to the Union before contracting out bargaining unit work, reveals that no decision to subcontract could be made unless, and until, such notification was given. Arbitrator Gamser stated, in relevant part, that:

> 3. ... Further, the employer is also obligated under Section 2 of Article XXXII not to make a final decision on this type of subcontracting of bargaining unit work until after engaging in a meaningful discussion with the union on this subject.

Additionally Arbitrator James S. Odom, Jr., in Case No. H94T-1H-C 97121813, decided, consistent with the aforementioned Gamser Award, that the procedural requirement of Article 32 must be given "genuine respect" and not be "taken lightly." Indeed, according to Arbitrator Odom, "If they (the procedural requirements of Article 32) are not satisfied, 'no final decision on whether or not such work maybe contracted out may be made. " Article 32, in both Sections 1.A and 1.B clearly states that the Postal Service may not enter into contracts for bargaining unit work unless the pre-condition of prior notice to the Union is met.

It is without doubt that the Parties agreed, in Article 32, Section 1.B to a strict process of prior notification to the Union before any contract with significant impact could be let. Specifically, Article 32 provides, in no uncertain terms, that the Union must receive prior notification, together with certain information and an opportunity for discussion prior to any subcontracting decision. In order for the notification and other procedural requirements of Article 32 to be effective, those provisions must be strictly adhered to, with no excuses.

The Postal Service's failure to observe the strict letter of the National Agreement and give the APWU prior notification of this contract deprived the Union of opportunities it would otherwise have had to protect the job security of the bargaining unit. When the Postal Service failed to give the APWU the notification and information required by Article 32, Section 1 .B prior to making its subcontracting decision, it denied the APWU the opportunity to attempt to convince the Postal Service to assign the work to Maintenance bargaining unit employees and to suggest alternatives to subcontracting which would permit the work to be performed in-house by its career maintenance craft employees.

The Postal Service may claim that the scope of the contract did not have significant impact upon bargaining unit work and it is not required to give advance notification to the Union or to justify its subcontracting decision. Should it make this allegation then its position is a self-serving position and equates to an affirmative defense. In raising this affirmative defense for a subcontracting decision that has nationwide impact it assumes the burden of providing the documents and evidence that it relied upon in making its decision. The necessity of providing this data is a requirement as the decision making process of Article 32, regardless of whether the decision making process results in a finding of significant impact or not, clearly requires good faith application on the part of the Postal Service. Not only did the Postal Service not provide evidence that it considered any of the factors listed in Article 32 prior to making its subcontracting decision it also failed to supply any evidence to support its claim of no significant impact. As such, the Postal Service is prohibited from submitting any evidence and/or testimony beyond its limited input during our discussions.

It is also the position of the Union that when subcontracting decisions are made at the national level the first issue to be determined is whether the contract had significant impact on bargaining unit work. In case AB-NAT-6291, national arbitrator Howard Gamser refuted the Postal Service's argument that the Union was required to demonstrate an adverse impact upon the bargaining unit in order to prove the contacting action had a significant impact upon the bargaining unit. He reasoned that if there was a reasonable expectation that the subcontracted work could be expanded nation-wide then the subcontract could have significant impact upon bargaining unit work. In support of this reasoning he embraced a part of the Postal Service's position that the installation of more machines would result in more work for the bargaining unit employee that normally repairs the machine. He then conclude that an expanded contract would have a significant impact upon bargaining unit work available to be performed and that the Postal Service was required to give the Union advance notice of the contract, consider the Union's views on minimizing such impact upon bargaining unit work availability, and not make a final decision that such a program would be implemented until a good faith discussion of any issues raised by the Union had been concluded with due consideration of the Union's proposals.

Article 32 gives the Union the absolute right to advance notice and the opportunity to engage in discussions before the subcontracting commitment has been made. In case H4C-NA-C-39, national arbitrator Richard Bloch found that 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 likely. If they are not satisfied, "no final decision on whether or not such work will be contracted out" may be made. ***The obligation to notify and to discuss with the union the aspects of the plan are not to be reduced to mere formalities or cursory briefings.***

He then defined the procedural requirements of Article 32 as:

Management must:

1. Give advance notification, when it is considering subcontracting that will have a "significant impact" on bargaining unit work.
2. Meet with the Union to consider its views on minimizing such impact.

3. Discuss the matter with the Unions prior to a final decision on the subcontracting program.

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

> The purpose of the meeting is apparently is to give the union an opportunity to attempt to persuade the Postal Service to change its course... (Case A8-NA-0481, at page 8)

The 2000 Collective Bargaining Agreement expanded the criteria established by Arbitrator Bloch. The specific language is as follows:

> 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.

It is also the position of the Union, assuming the Postal Service has met its contractual obligations under Article 32 Section 1.B, or in the case where management successfully demonstrates that there was no significant impact upon the bargaining unit, its subcontracting decision must then stand the scrutiny of Article 32 Section 1.A and Section 535.111 of the Administrative Support Manual. In case, H8C-NA-C-25, Arbitrator Richard Mittenthal ruled that management's obligations when making its subcontracting decision related more to the process by which it arrived at its decision than to the decision itself. He then defined the term "due consideration" as:

> "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. An incorrect decision does not necessarily mean a violation of Paragraph A. Incorrectness does suggest, to some extent at least, a lack of 'due consideration.' But this implication may be overcome by a Management showing that it did in fact give 'due consideration' to the several factors in reaching its decision. The greater the incorrectness, however, the

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

Based on Arbitrator Mittenthal's interpretation, the Postal Service carries the burden of proof whenever it claims a subcontracting decision was made in accordance with Article 32. This burden can only be achieved through the production of the documents, data, etc. that pre-date the decision to subcontract.

It is also well established through arbitral 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 that predated the decision to subcontract. Therefore, an unsupported "Article 32 Review" document is insufficient to demonstrate good faith consideration to any of the listed factors in Article 32 of the National Agreement. In this case, the information supplied by the Postal Service failed to demonstrate that good faith consideration was achieved.

Although the Postal Service did not provide the Union with the required advance notification that it was considering a subcontracting decision, the Union initiated discussions upon learning of the final subcontracting decision. Thus the record reveals that the Union took advantage of this opportunity to meet and discuss the Postal Service's subcontracting decision. The Union sought a detailed explanation of the Postal Service's assumptions, insisted upon the identification and resolution of fact disagreements, suggested means to resolve the dispute, etc. It is the Union's position that all though meetings and discussions occurred, they were held after the decision to subcontract had been made. Therefore no negative inference can be applied to the Union for its participation in these meetings and discussions as they occurred outside the scope of Article 32.

Arbitrator Stallworth considered the issue of whether the Postal Service violated the National Agreement when it subcontracted work removing old paint and repainting the second floor vehicle maintenance facility without first giving the APWU notice under Article 32. Arbitrator Stallworth first concluded that the Postal Service violated the National Agreement when it failed to notify the APWU regarding its intent to subcontract the work in question. With regard to the remedy, Arbitrator Stallworth decided that:

> As a remedy, the Undersigned Arbitrator orders that the Service cease and desist subcontracting work as qualified journeymen in various occupational groups within the Minneapolis facility may be capable of doing such work, and that the Service provide the Union hereafter with cost information and advance notice as required-by the Collective Bargaining Agreement. The Undersigned Arbitrator further orders that the Service pay overtime to those employees qualified to do the disputed work at their respective overtime rates for the hours denied and all other benefits to which they would have been entitled to and to be made whole.

In a similar case, Case No. I94T-1I-C-97075046 (January 7, 2000), Arbitrator Stallworth again found that the Postal Service violated Article 32 of the National Agreement when it failed to give prior notice of its intent to subcontract disputed work. With regard to the Postal Service's failure to give the requisite prior notice, Arbitrator stated that:

> It is well-settled that to flatly ignore the subcontracting notice requirements of Article 32 is a clear violation of the National Agreement See, e.g., *United States Postal Service and American Postal Workers Union,* (Baton, Rouge, LA (Arb. Richard Mittenthal, November 9, 1981) Case No. H8C-NA-C-25 and *United States Postal Service and American Postal Workers Union,* (Minneapolis/St. Paul, MN BMC) (Arb. Lamont E. Stallworth, December 30, 1997) Case No. I90T- 1G-C 94041650. Accordingly, the instant grievance must be sustained.

Arbitrator Stallworth went on to order, as a remedy in this case, that the Postal Service cease and desist from contracting out disputed work and that the Postal Service provide "monetary relief' to affected bargaining unit members in the amount "relative to the cost of the subcontracting, or a percentage thereof, in payment for the work that would have been performed by bargaining unit members." (In addition, see Arbitrator S. Earl Williams in Case No. S1V-3U-42697 (July 20, 1989), in which, after having found that the Postal Service committed a procedural violation of Article 32 by failing to give the APWU prior notice of its intent to subcontract, ordered, as a remedy, that the subcontract be cancelled, and the disputed work be reassigned to the bargaining unit.

Please contact me if you wish to discuss this matter.

Sincerely,

Gary Kloepfer

Gary Kloepfer
Case Officer

GK/syi/opeiu#2/afl-cio

APWU #: HQTT20100081
USPS #: Q06T4QC10122810

Dispute Date: 3/2/2010
Contract Articles: ;

cc: Industrial Relations

Transmission Report

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American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

May 9, 2012

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USPS No. O06T4OC10122810 Letter Box Refurbishment Program

Dear Mr. Tulino:

Article 15, Section 2 (Step 4) provides that if the parties have not reached agreement within fifteen days of their meeting that each party shall provide the other with a statement in writing of its understanding of the issues involved, and the facts giving rise to the dispute. The parties fully discussed the merits of this dispute on April 10, 2012. In addition the Postal Service did not raise any procedural or arbitrability issues during this meeting. Being unable to resolve the dispute during this discussion, the parties agreed to submit In addition to the parties' agreement to extend all time limits, an agreement was reached whereby each party's 15 Day Position Statement would be submitted no later than May 11, 2012.

The following is the APWU's statement of issues and facts concerning this dispute. Whether the Postal Service violated Articles 19 and 32 Section 1 of the National Agreement, Section 535 of the Administrative Support Manual and the MS-22 Handbook when it made its decision to implement an initiative known as the Letter Box Refurbishment Program?

By letter dated November 5, 2009 the Postal Service notified the Union of its subcontracting decision to implement a national Letter Box Refurbishment Program:

"As a matter of general information, Engineering in conjunction with Supply Management will implement a cost-saving initiative known as the Letter Box Refurbishment Program. As background, the Postal Service has and is experiencing a decline in collection mail. Based on collection box density surveys the Postal Service has removed several thousand letter boxes throughout the country. In an effort to reduce costs and rather than purchasing new boxes

Total Pages Scanned : 9 Total Pages Confirmed : 9

No.	Job	Remote Station	Start Time	Duration	Pages	Line	Mode	Job Type	Results
001	992	202-268-3074	11:52:28 a.m. 05-10-2012	00:02:14	9/9	1	EC	HS	CP28800

Abbreviations:

HS: Host send	PL: Polled local	MP: Mailbox print	TU: Terminated by user	
HR: Host receive	PR: Polled remote	CP: Completed	TS: Terminated by system	G3: Group 3
WS: Waiting send	MS: Mailbox save	FA: Fail	RP: Report	EC: Error Correct

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Greg Bell, Director
Industrial Relations
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Washington, DC 20005
202-842-4273 (Office)
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Elizabeth "Liz" Powell
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Greg Bell
Director, Industrial Relations

James "Jim" McCarthy
Director, Clerk Division

Steven G. Raymer
Director, Maintenance Division

Robert C. "Bob" Pritchard
Director, MVS Division

Bill Manley
Director, Support Services Division

Sharyn M. Stone
Coordinator, Central Region

Mike Gallagher
Coordinator, Eastern Region

John H. Dirzius
Coordinator, Northeast Region

William E. "Bill" Sullivan
Coordinator, Southern Region

Omar M. Gonzalez
Coordinator, Western Region

Initiate National Dispute

March 2, 2010

Sent Via Facsimile and First Class Mail
Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

Re: APWU No. HQTT20100081

Dear Mr. Tulino:

In accordance with the provisions of Article 15, Sections 2 and 4, of the Collective Bargaining Agreement, the American Postal Workers Union is initiating a Step 4 dispute.

The issues and facts involved in this dispute are as follows.

ISSUE: Whether the Postal Service violated Articles 19 and 32 Section 1 of the National Agreement, Section 535 of the Administrative Support Manual and the MS-22 Handbook when it made its decision to implement an initiative known as the Letter Box Refurbishment Program?

The Postal Service provided a singular reason for its subcontracting decision "In an effort to reduce costs and rather than purchasing new boxes these collection boxes will be refurbished by a vendor. By consolidating the refurbishment effort nationally, the Postal Service will receive the benefit of the economy of scale. No significant impact to the bargaining unit is anticipated." Cost is not a consideration per Section 535.111 of the Administrative Support Manual; as such the singular reliance on cost is evidence that the Postal Service failed to give due faith consideration to any of the factors contained in Article 32 Section 1.

In addition the subcontracted work was within the scope of duties performed by APWU bargaining unit employees. Under these circumstances the Postal Service was obliged to meet and discuss the matter with the Union consistent with Article 32.1.B. It did not do that.

The subcontracted work is bargaining unit work and has historically been performed by the various members of the APWU bargaining unit Letter Boxes, etc. are mail processing equipment as defined by the Administrative Support Manual, Chapter 535 and Handbook MS-22, Street Letter Box, Maintenance. Section 535.111 requires that maintenance of postal equipment be performed by USPS employees except where capable personnel are not available or where the equipment is experimental or unusually complex, neither of which conditions exists in the case of letter boxes, the grievance should be sustained.

The Union alleges that contracting out this work violated Article 32 Section 1 which required the Postal Service to provide documentation to the Union that it gave good faith consideration to the factors listed in Article 32 prior to making its decision to subcontract. In addition Section 535 of the Administrative Support Manual states that this type of work may only be subcontracted when it is economically advantageous. It is the Union's position that the information supplied by the Postal Service failed to demonstrate compliance with Article 32 or that an economical advantage existed.

Article 32 Section 1 of the Collective Bargaining Agreement requires the Postal Service to give due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract. In addition, the Postal Service is required to 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 no such work will be contracted out will be made until the matter is discussed with the Union. As of this date, the Postal Service has not complied with these contractual requirements.

Sincerely,

Greg Bell

Greg Bell, Director
Industrial Relations

GB/GK/syi/opeiu#2/afl-cio

APWU #: HQTT20100081
Dispute Date: 3/2/2010

Case Officer: Gary Kloepfer
Contract Article(s): ;

cc Resident Officers
:
File

American Postal Workers Union, AFL-CIO

Memorandum

Telephone
(202) 842-4246

1300 L Street, NW
Washington, DC 20005

From the Office of WILLIAM BURRUS
President

March 5, 2010

TO: Gary Kloepfer

SUBJECT: Re: Notification No. GCCT20096, Letter Box Refurbishment Program – Collection Boxes Will Be Refurbished by a Vendor

In regards to the above referenced matter, are you collaborating with Greg Bell on this? Please contact me with your answer.

WB:RB:sbd