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Appeal to Arbitration, National Dispute

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. Q06T4QC11102616, APWU No. HQTG20110058

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 #: Q06T4QC11102616
APWU #: HQTG20110058

Case Officer: Gary Kloepfer
Step 4 Appeal Date: 2/8/2011
Contract Article(s): ;

cc: Resident Officers
Industrial Relations

File

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

RECEIVED
MAY 17 2012
GARY KLOEPFER
APWU
MAINTENANCE DIV.

May 11, 2012

Mr. Gary Kloepfer
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Certified Mail Tracking Number:
7002 0860 0006 9347 3496

Fax: 202-289-3746

RE: Q06T-4Q-C 11102616
HQTG20110058 Class Action
Washington, DC 20260-4100

Dear Gary:

In accordance with Article 15.2 (Step 4) (a), the United States Postal Service (USPS) is providing you with its understanding of the issue involved in the above referenced dispute. Time-limits at this level were extended by mutual consent, as related to the exchange of position statements ("15-day letters"), with the understanding that the Postal Service's position statement would be mailed no later than May 11, 2012.

Issue Presented:

The issue involved as provided by the American Postal Workers Union (APWU) in its dispute dated February 8, 2011, is "Whether the Postal Service violated Article 19 and 32 Section 1 of the National Agreement and Section 535 of the Administrative Support Manual when it made its decision to contract with a third-party provider to install and maintain an Information Technology/Local Area Network (IT/LAN)?"

Background Information:

On December 3, 2010, the Postal Service gave notice to the APWU that after carefully considering the relevant factors under Article 32 of the National Agreement, the Postal Service has made the decision to contract with a third-party provider to install an Information Technology/Local Area Network (IT/LAN) wiring upgrade at the Postal VMFs. According to the notification issued by Postal Service, "The installation will prepare the VMF shop area for multiple computer connections. These computers will be used by VMF technicians to enter vehicle work order information, parts request, and labor operation transactions. The computers will also provide real-time information for vehicle maintenance cost reporting." The Postal Service also stated, "No significant impact to the bargaining unit is anticipated."

On February 11, 2010, in grievance Q94T-4Q-C 97031616 National Arbitrator Das awarded the APWU maintenance associated with the Associate Office Infrastructure (AOI) which "...is an information system to support retail, delivery, and Administrative operations in Associate Offices (post Offices, branches and stations)". In this award on page 23, Arbitrator Das also considered the designing and configuring the Wide Area Network (WAN) and the Local Area Network (LAN). Arbitrator Das found National Network Service Center (NNSC), not the maintenance craft, had the responsibility for installation and maintenance stating,

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> Designing and configuring the WAN and LAN networks using IP protocol is a critical component of Postal Service telecommunications and the postal intranet, and, as such, is within NNSC's responsibility. This, in my opinion, includes installation and maintenance of the LAN hub and the WAN router. The WAN router is provided and owned by the telecommunications carrier. To the extent the bargaining unit previously had installed and/or maintained modems, telephone lines, CSU-DSU equipment (similar to the DCE WAN device), and earlier LANs in certain postal facilities, this basically involved point-to-point communications on dedicated lines or relatively primitive networks, not involving use of IP protocol.

In the months after the Das award in the AOI decision, the Postal Service began the process to upgrade the IT/LAN wiring at the VMFs. Based on the findings by Arbitrator Das, the Postal Service understood work associated to the IT/LAN was not bargaining unit work and began the process of soliciting for contracts. Although Arbitrator Das already ruled this work did not belong to the bargaining unit, the Postal Service still complied with Article 32.1 of the National Agreement by giving due consideration to the public interest, cost, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract.

The work in question is not bargaining unit work and there is no significant impact on the bargaining unit, as per the notice sent to the APWU dated December 3, 2010.

APWU Position

It is the Union's position that the Postal Service violated Articles 19 and 32 Section 1 when it failed to give advance notification to the Union at the national level when subcontracting will have significant impact on bargaining unit work being considered and failed to meet with the Union prior to making its subcontracting decision. Additionally, the Union alleges that Section 530 of the Administrative Support Manual (ASM) restricts subcontracting any work unless there are no qualified maintenance employees or employees that are capable of being trained available; or if the equipment is a prototype. The Union also claims that the subcontracted work did not involve a prototype and qualified employees were available to perform the modification. This action violated ASM 535.111.

USPS Position

It is the Postal Service's position that there was no violation 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 determined there was no significant impact on the bargaining unit based on the previous Das decision on the AOI, which made it clear work associated with designing, configuring, installation and maintenance of the WAN and LAN networks did not belong to the bargaining unit. The Union has not provided any 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.

Modifications and hardware upgrades related to the IT/LAN is work that has not been performed by Postal Service employees. Subcontracting these modifications 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 IT/LAN 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 provide an economically sound strategy; therefore, the alleged violation of Section 530 of the ASM is not supported.

Moreover, the ASM citation the APWU is relying upon (535.111) pertains specifically to Postal Equipment. Types of Postal Equipment are defined in the ASM 534.1 as Mail Processing Equipment (i.e. mechanization and automation used for processing mail), Customer Service Equipment (i.e. stamp and commodity vending machines), Delivery Service Equipment (i.e. label imprinters) and Support Equipment (i.e. Postal Source Data System, electronic time clocks, etc.) The IT/LAN wiring upgrade does not fall into any these categories therefore the APWU's reliance on this specific ASM regulation is misplaced.

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 work in question.

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 violation 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 1, 2012

Article 15 - 15 Day Statement of Issues and Facts

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Sent Via Facsimile and First Class Mail

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

Re: APWU No. HQTG20110058,
USPS No. Q06T4QC11102616 ; Installation of IT/LAN in VMFs

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 several dates with the last being April 19, 2012.

In addition the Postal Service did not raise any procedural or arbitrability issues during these meetings. It was agreed each party's 15 Day Position Statement had to 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 and Section 535 of the Administrative Support Manual when it made its decision to contract with a third-party provider to install and maintain an Information Technology/Local Area Network (IT/LAN) wiring upgrade to Postal Equipment at Postal Vehicle Maintenance Facilities (VMFs)? If yes, what shall the remedy be?

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. In addition Article 32 Section 1 requires a statement of the Union's views and proposals must 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 the Union's position that the Postal Service must provide the Union all the documents, data, etc. it relied upon to make its subcontracting decision prior to finalizing its subcontracting decision. Failing to involve the Union in the pre-subcontracting decision making process deprived it of its contractual right to protect bargaining unit work. In addition, the specific language of Section 530 of the Administrative Support Manual restricts subcontracting of Postal Equipment unless there are no qualified maintenance employees or if the equipment is a prototype.

It is also the Union's position that the subcontracted work did not involve prototype equipment and qualified employees were available to perform the modification (535.111 of ASM). The Postal Service did not provide any documents and/or evidence establishing the contrary. In this regard it is the Union's position that the Postal Service violated Section 530 of the Administrative Support Manual. The failure of the Postal Service to comply with the specific language of the Administrative Support Manual is evidence of a violation of Article 32 Section 1.

In addition to the above, the Postal Service failed to notify the Union in accordance with Article 32 Section 1 that it also subcontracted the "maintenance servicing", e.g. Preventive and Corrective Maintenance, of Information Technology/Local Area Network (IT/LAN). It is the Union's position this additional subcontracting decision was not identified in the Postal Service's December 3, 2010 letter to President Guffey nor its Article 32 Consideration document. The Postal Service's June 13, 2011 notification stated:

> Please be advised that, after carefully considering the relevant factors under Article 32 of the National Agreement, the Postal Service has made the decision to contract with a third-party provider to install an Information Technology/Local Area Network (IT/LAN) wiring upgrade at Postal Vehicle Maintenance Facilities (VMFs).
>
> The installation will prepare the VMF shop area for multiple computer connections. These computers will be used by VMF technicians to enter vehicle work order information, parts requests, and labor operation transactions. The computers will also provide real-time information for vehicle maintenance cost reporting,
>
> No significant impact to the bargaining unit is anticipated.

The Postal Service's November 13, 2010 Article 32 Memorandum identified the scope of the subcontracted as:

> This document details the Postal Service's due considerations of the elements identified in Article 32.1A as required by the National Agreement *"when evaluating the need to subcontract:'* These considerations are in relationship to work necessary to the installation of Local Area Network (LAN) wiring at a minimum of 262 USPS facilities nationwide. . . After evaluating all five (5) of Article 32 "due consideration" factors, it is our belief that contracting out the installation, testing, and validation of this effort is in the best interest of the Postal Service. It is our position that the contracting out of the SEAM wiring project will have no significant impact on bargaining unit work.

> Contracting out the work does not eliminate' work hours from the existing employees, and it is less costly when considering the fees for training maintenance craft employees to perform portions of the work.

In this regard it is the Union's position that the Postal Service's November 13, 2010 Article 32 Memorandum and its June 13, 2011 letter limited the scope of the its contracting decision and alleged due consideration. As such it is the Union's position that the Postal Service's subcontracting decision regarding maintenance of the network violated Article 32.

In addition, it is prohibited from making any argument or produce any evidence at arbitration regarding this issue. Furthermore, it is the Union's position maintenance of this network was awarded to the bargaining unit due to the Postal Service's failure to provide a subcontracting notice as required by Article 32. As such the bargaining unit must be made whole for any work performed on this network by non-bargaining and/or NonPostal workers.

It is also the position of the Union that the Article 32 consideration document created by the Postal Service contained incorrect and contained erroneous data. The cost data relied upon by the Postal Service was for Building Maintenance Mechanics (BEM) and only considered the cost of installing cables. VMFs are located at facilities that are staffed with Electronic Technicians (ET) as such qualified employees were available to perform this work. In addition, contracting bargaining unit work in 269 sites represented a significant impact to the bargaining unit. Since these are large sites, the staffing included sufficient occupational groups with qualified workers to perform the work in dispute. It is reasonable to infer the Postal Service's singular reliance on BEMs in its Article 32 consideration that it made additional errors and/or inaccuracies.

Furthermore, it is the Union's position that cost is not a factor for postal equipment subcontracting decisions; economics is not a factor contained in Section 535.111 of Issue 8 of ASM. The Article 32 document is not accurate and does not represent evidence of good faith consideration of all five Article 32 factors.

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 Electronics Technician, Electronic Technician, MPE Mechanic, Maintenance Mechanic, etc.

Further evidence of this position is the Postal Service's June 13, 2011 notice to President Guffey in which it identified Article 32.1.A of the Collective Bargaining Agreement as the controlling regulatory language governing its subcontracting decision. In this regard, the Postal Service's position that National Arbitrator Das' award in case Q94T-4Q-C-97031616 supports its position is erroneous.

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.

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.

The following is submitted as background information for this dispute; "An IT LAN wiring installation/upgrade is required at USPS Vehicle Maintenance Facilities (VMFs) in order to:

- Prepare the VMF shop area for multiple computer connections at technician work bays. These computers will be utilized by the VMF technicians to enter vehicle work order information, parts requests, and labor operation transactions.
- Provide real time information for vehicle maintenance cost reporting.

Based on the above scope of work it is the Union's position the subcontracted work falls within the definition of Postal Equipment as described in 531.212 of the Administrative Support Manual. Given this fact it is also the position of the Union that subcontracting decisions regarding Postal Equipment must be made in accordance with the general language of Article 32 Section 1 and more importantly the specific language of Section 535.111 of the Administrative Support Manual which further limits any right the Postal Service may have to subcontract. As such the Postal Service's claim regarding cost as a considered factor has no merit and must be rejected. Notwithstanding the above, the inclusion of training costs as a justification skewers the cost analysis as it excludes the training cost incurred by the contractor. Sections 531.212 and 535.111 of the ASM specifically state:

> *531.212 Postal Equipment.* Includes 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 cancelling machines, containers).
> *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 also the Union's position that the information supplied by the Postal Service as evidence that it gave due consideration to the five factors in Article 32 Section 1 are not evidence of consideration.. As such, the Union was prevented from investigating and determining whether the Postal Service made a good faith

effort to consider all the factors listed in Article 32 Section 1 prior to making its subcontracting decision. It is the Union's position that the Memorandum is a self-serving subjective document, not evidence of consideration.

In addition, it is the position of the Union that this national in scope subcontracting decision had significant impact upon the bargaining unit and the Postal Service failed to provide the Union with the requisite advance notice as required by Article 32 Section 1. A plain reading of the National Agreement establishes that prior notice to the Union is a condition precedent to any decision by the Postal Service to contract out bargaining unit work. By not doing so, the Postal Service compounded its violation of the National Agreement. Although the Postal Service claimed that no bargaining unit hours were reduced the evidence of record proves otherwise. The bargaining unit was significantly harmed not only by the lost work associated with the installation; it was also significantly harmed due to length of the maintenance servicing agreement.

It is also the Union's position that the Postal Service's position that Postal maintenance craft employees are hired to and assigned to Postal facilities to conduct routine preventive, predictive, or corrective maintenance on the existing installed equipment and systems is faulty as a justification to subcontract bargaining unit work. Its position ignores the qualification standards and/or Maintenance Standard Position Descriptions.

It is the Union's position that had the Postal Service properly staffed its facilities that the bargaining unit would have performed this work. It must also be noted that the Postal Service limited the application of its "efficiency" position to "installed equipment and systems". The obvious inference is maintenance of the network must be awarded to the bargaining unit after installation.

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. l94T-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
Case Officer

GK/syi/opeiu#2/afl-cio

Transmission Report

Date/Time	05-02-2012	11:32:33 a.m.	Transmit Header Text	
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Local ID 2			Local Name 2	

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American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

May 1, 2012

Article 15 - 15 Day Statement of Issues and Facts

Gary Kloepfer
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Maintenance Division
1300 L Street, NW
Washington, DC 20005

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202-289-3746 (Fax)

gkloepfer@apwu.org

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Omer M. Gonzalez
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Sent Via Facsimile and First Class Mail

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

Re: APWU No. HQTG20110058,
USPS No. Q06T4QC11102616 ; Installation of IT/LAN in VMFs

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 several dates with the last being April 19, 2012.

In addition the Postal Service did not raise any procedural or arbitrability issues during these meetings. It was agreed each party's 15 Day Position Statement had to 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 and Section 535 of the Administrative Support Manual when it made its decision to contract with a third-party provider to install and maintain an Information Technology/Local Area Network (IT/LAN) wiring upgrade to Postal Equipment at Postal Vehicle Maintenance Facilities (VMFs)? If yes, what shall the remedy be?

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. In addition Article 32 Section 1 requires a statement of the Union's views and proposals must be included in the initial Comparative Analysis

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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

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Princella Vogel
Coordinator, Southern Region

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Initiate National Dispute

February 8, 2011

Sent Via Facsimile 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. HQTG20110058
Third Party Provider -- IT/LAN Wiring Upgrade at Postal VMFs

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 and Section 535 of the Administrative Support Manual when it made its decision to contract with a third-party provider to install and maintain an Information Technology/Local Area Network (IT/LAN) wiring upgrade to Postal Equipment at Postal Vehicle Maintenance Facilities (VMFs)? If yes, what shall the remedy be?

According to the Postal Service, "The installation will prepare the VMF shop area for multiple computer connections. These computers will be used by VMF technicians to enter vehicle work order information, parts requests, and labor operation transactions. The computers will also provide real-time information for vehicle maintenance cost reporting. It also claimed "No significant impact to the bargaining unit is anticipated."

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 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.

Please contact Gary Kloepfer, case officer, to discuss this dispute at a mutually scheduled time.

Sincerely,

Mike Morris, Director
Industrial Relations

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

APWU #: HQTG20110058
Dispute Date: 2/8/2011

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

cc: Resident Officers
File

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Local ID 2			Local Name 2	

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Initiate National Dispute

February 8, 2011

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Vice President, Labor Relations
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475 L'Enfant Plaza
Washington, D.C. 20260

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Total Pages Scanned : 2 Total Pages Confirmed : 2

No.	Job	Remote Station	Start Time	Duration	Pages	Line	Mode	Job Type	Results
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Abbreviations:
HS: Host send
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PR: Polled remote
MS: Mailbox save
MP: Mailbox print
CP: Completed
FA: Fail
TU: Terminated by user
TS: Terminated by system
RP: Report
G3: Group 3
EC: Error Correct