American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Appeal to Arbitration, National Dispute

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Mike Gallagher
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Princella Vogel
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Omar M. Gonzalez
Coordinator, Western Region

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. Q06T4QC11179651, APWU No. HQTT20110193,

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 #: Q06T4QC11179651
APWU #: HQTT20110193

Case Officer: Gary Kloepfer
Step 4 Appeal Date: 4/15/2011
Contract Article(s): 19, Subcontracting; 32, Subcontracting Maintenance work; ASM, Modifications of Existing Equipment;

cc: Resident Officers
Industrial Relations
File

LABOR RELATIONS

UNITED STATES POSTAL SERVICE

May 11, 2012

Mr. Gary Kloepfer
Assistant Director A
Maintenance Division
American Postal Workers Union,
AFL-CIO
1300 L Street, N.W.
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Certified Mail Tracking Number:
7002 0860 0006 9347 3502

Fax: 202-289-3746

RE: Q06T-4Q-C 11179651
HQTT20110193 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 as presented by the American Postal Workers Union (APWU) in their April 15, 2011, letter initiating this dispute is, "Whether the Postal Service violated Article 32 Section 1 of the National Agreement and Section 530 of the Administrative Support Manual when it made its decision to subcontract the installation of hardware upgrades to Enhanced Airline Assignment (EAA) equipment in all P&EC's (sic)[1] as described in Software Modification Order 19-10 and Maintenance Management Order 051-10."

APWU Position

It is the Union's position that the Postal Service violated Article 32, Section 1, of the National Agreement when it failed to provide documentation that it gave good faith consideration of the factors listed in Article 32 prior to making its decision to subcontract. The Union also alleges that the Postal Service failed to meet with them 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, no employees that are capable of being trained available or if the equipment is a prototype.

The Union also argues that the Postal Service failed to provide documentation related specifically to the subcontracting decision in dispute. The Union claims that the documents provided were generated seven (7) years prior to the upgrade of the Postal Equipment in question.

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

[1] Presumably the APWU meant Processing and Distribution Center (P&DC)

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).

It is the Postal Service's position that the Article 32 consideration in this matter was performed to cover the entire IDR program which included the Automatic Airline Assignment (AAA), the predecessor of the Enhanced Airline Assignment (EAA). This Article 32 consideration was provided in Information Request (IR) 10-36, which was provided to the APWU on March 21, 2011 and is further stated in #2 of the response in IR 10-36.

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 and no requirement to meet with the APWU or to provide advance notification.

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 Enhanced Airline Assignment (EAA) are 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 Enhanced Airline Assignment 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.

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.

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)

(CA2012-318)

American Postal Workers Union, AFL-CIO

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May 10, 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, S.W.
Washington, D.C. 20260

Re: APWU No. HQTT20110193, USPS No. Q06T4QC11179651;
Hardware Installation - EAA; SMO-19-10 and MMO-51-10

Dear Mr. Tulino:

The parties had numerous discussions regarding the issue in this grievance with the last one occurring April 17, 2012. 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. In addition it was agreed the respective party's 15 Day Position statements would be submitted May 11, 2012.

The following is the APWU's statement of issues and facts concerning this dispute:

Whether the Postal Service violated Article 32 Section 1 of the National Agreement and Section 530 of the Administrative Support Manual when it made its decision to subcontract the installation of hardware upgrades to the Enhanced Airline Assignment (EAA) equipment in all P&EC's as described in Software Modification Order 19-10 and Maintenance Management Order 051-10. If yes, what shall the remedy be?

Additionally the Union alleges that subcontracting the upgrade of Postal Equipment violates Article 32 Section 1 of 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 response to the Union's request for all documents related to the subcontracting decision, the Postal Service provided documents that were generated approximately seven (7) years prior to the upgrade of the Postal Equipment in question. It failed to provide documentation related specifically to the subcontracting decision in dispute. Therefore it failed to provide the underlying documentation which supported its subcontracting decision. The Postal Service presented no evidence demonstrating it gave good faith due consideration to the factors listed in Article 32 or that qualified employees were not available or that the upgrade was a prototype or that it was covered under the terms of another contract.. Based on the above it is the Union's position that Article 32 of the National Agreement and Section 530 of the Administration Support Manual were violated and the appropriate bargaining unit employees must be whole at the appropriate rate of pay.

As background, the Postal Service published Software Modification Order SMO-019-10, Enhanced Airline Assignment (EAA) Version 2.1.0 Software Release, on June 4, 2010. The SMO stated the hardware portion of this modification would be performed by a vendor and the software installation would be performed by bargaining unit employees. Specifically, the SMO stated, "The vendor will require access to the EAA machine for a minimum of one tour to perform the hardware upgrade and retrofit. A local ET will perform the Version 2.1.0 Software upgrade after the hardware upgrade is performed. Installation of this software will take approximately 1 hour to accomplish. . . "The Postal Service did not state in the SMO the work in dispute was part of another contract, it described the work as an upgrade.

POSTAL SERVICE POSITION

The Postal Service's position was the hardware upgrade was part of the Integrated Dispatch and Receipt Program (IDR), which is subject to a separate grievance, Q00T-4Q-C-05123891. It claimed that modification 19, dated March 29, 2006, of the IDR contract specifically covered the hardware upgrade identified in SMO-019-10.In this regard it claimed its 2004 Article 32 notice for the IDR demonstrated it gave good faith consideration to the five factors in Article 321. The Postal Service did not dispute that it had accepted the EAA and was responsible for the maintenance nor did it dispute that it provided notice to the Union that any part of the warranty for the EAA had been extended or work would be performed by contract workers beyond the work identified in the IDS contract notification. It also acknowledged the work was not beyond the scope of the bargaining unit and could have been performed by the bargaining unit. It claimed that since the original IDR contract was still "open" it could use the IDR contract as justification for subcontracting the hardware upgrade.

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[1] The Article 32 Memorandum of Consideration for IDR stated:

This memorandum presents the due consideration given to the five factors in Article 32 of the National Agreements with respect to considering the contracting for the engineering, fabrication, and installation of equipment to be deployed in the Integrated Dispatch and Receipt program. . . Ownership of each new Integrated Dispatch and Receipt system (and the activation of the associated warranties) will be transferred to the USPS only after installation and system acceptance testing has been satisfactorily performed at each site by the respective contractor.

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. 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. Providing an Article 32 Memorandum from 2004 for the installation of Postal Equipment, such as the EAA, to support this hardware upgrade in 2010 does not demonstrate compliance with Article 32. It is the Union's position the 2004 original IDR Article 32 Memorandum was limited to the installation of various pieces of automated mail processing equipment. In addition both the Article 32 memorandum and the Postal Service's IDR subcontracting notice regarding the IDR were silent regarding contract extensions. In this regard, it is the Union's position that each contract extension was a new contract which required a new Article 32 Memorandum and notice to the Union. These documents contained no language permitting upgrades and/or modifications of EAAs.

In this regard it is the Union's position that the Postal Service's undated and unsigned Article 32 Memorandum 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 the hardware upgrade to the EAA violated Article 32. In addition it is prohibited from making any argument or producing any evidence at arbitration regarding this issue. 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 stated above, the Article 32 Memorandum was created on an unknown date by an unidentified person in the year 2004. 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.

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. 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 Union's position 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[2]). 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 this regards the Postal Service advanced a reason for subcontracting – it had money left over from the IDS contract and used it for the hardware modification. It is the Union's position that "left over money" is not one of the five factors in Article 32 and reliance upon this position violates Article 32 and Section 535.111 of the Administrative Support Manual. Notwithstanding the above, Section 535.111 of the ASM excludes cost as a factor for subcontracting decisions involving Postal Equipment. Not only did the Postal Service specifically exclude language regarding upgrades/modifications from its original notice and discussions, it also redacted all cost data from the limited documents it did provide. Under these conditions the Postal Service's position regarding cost must be rejected. Sections 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.

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.

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[2] Issue 8 of the ASM, Section 535.111 subcontracting of this nature was prohibited due to the fact that qualified employees were employed in every EAA site.

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

APWU #: HQTT20110193
USPS #: Q06T4QC11179651

Dispute Date: 4/15/2011
Contract Articles: 19, Subcontracting; 32, Subcontracting Maintenance work; ASM, Modifications of Existing Equipment;

cc: Industrial Relations

Transmission Report

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American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

May 10, 2012

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The following is the APWU's statement of issues and facts concerning this dispute:

Whether the Postal Service violated Article 32 Section 1 of the National Agreement and Section 530 of the Administrative Support Manual when it made its decision to subcontract the installation of hardware upgrades to the Enhanced Airline Assignment (EAA) equipment in all P&BC's as described in Software Modification Order 19-10 and Maintenance Management Order 051-10. If yes, what shall the remedy be?

Additionally the Union alleges that subcontracting the upgrade of Postal Equipment violates Article 32 Section 1 of 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

Total Pages Scanned : 9 Total Pages Confirmed : 9

No.	Job	Remote Station	Start Time	Duration	Pages	Line	Mode	Job Type	Results
001	996	202-268-3074	11:00:16 a.m. 05-11-2012	00:02:15	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

Mike Morris, Director
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Sharyn M. Stone
Coordinator, Central Region

Mike Gallagher
Coordinator, Eastern Region

John H. Dirzius
Coordinator, Northeast Region

Princella Vogel
Coordinator, Southern Region

Omar M. Gonzalez
Coordinator, Western Region

Initiate National Dispute

April 15, 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. HQTT20110193;
Installation of Hardware Upgrades to the Enhanced
Airline Assignment (EAA) – SMO 19-10 and MMO-51-10

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 Article 32 Section 1 of the National Agreement and Section 530 of the Administrative Support Manual when it made its decision to subcontract the installation of hardware upgrades to the Enhanced Airline Assignment (EAA) equipment in all P&EC's as described in Software Modification Order 19-10 and Maintenance Management Order 051-10. If yes, what shall the remedy be?

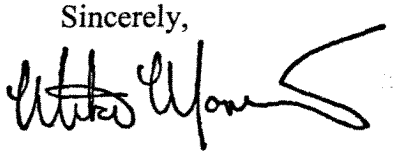
The Union alleges that subcontracting the upgrade of Postal Equipment violates Article 32 Section 1 of the Collective Bargaining Agreement and Section 530 of the Administrative Support Manual. Article 32 requires the Postal Service provide documentation to the Union demonstrating it gave good faith consideration 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 response to the Union's request for all documents related to the subcontracting decision, the Postal Service provided documents that were generated approximately seven (7) years prior to the upgrade of the Postal Equipment in question. It failed to provide documentation related specifically to the subcontracting decision in dispute. Therefore it failed to provide the underlying documentation which supported its subcontracting decision. No evidence was submitted to demonstrate that the Postal Service gave good faith due consideration to the factors listed in Article 32 or that qualified employees were not available or that the site preparation was a prototype.

Based on the above the Union is initiating a dispute under Article 32 of the National Agreement and Section 530 of the Administration Support Manual.

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 #: HQTT20110193
Dispute Date: 4/15/2011

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

cc: Resident Officers

File

Transmission Report

Date/Time	04-15-2011	04:02:00 p.m.	Transmit Header Text	
Local ID 1	2022893746		Local Name 1	Maintenance
Local ID 2			Local Name 2	

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Initiate National Dispute

April 15, 2011

Sent Via Facsimile First Class Mail

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No.	Job	Remote Station	Start Time	Duration	Pages	Line	Mode	Job Type	Results
001	419	202-268-3074	04:01:02 p.m. 04-15-2011	00:00:22	2/2	1	EC	HS	CP28800

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