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Appeal to Arbitration, National Dispute

May 4, 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, S.W.
Washington, D.C. 20260

Re: USPS Dispute No. Q11T4QC12029368,
APWU No. HQTT20110646,
Telecommunications Integrated Postal Network, (TIPN) Contract

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 #: Q11T4QC12029368
APWU #: HQTT20110646

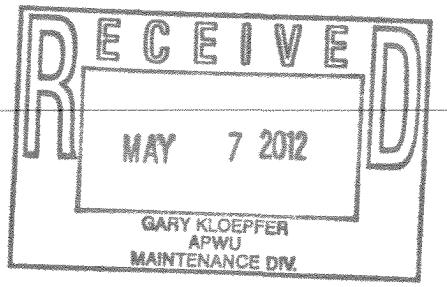
Case Officer: Gary Kloepfer
Step 4 Appeal Date: 11/18/2011
Contract Article(s): 32, Subcontracting Maintenance work; 19, Subcontracting;

cc: Resident Officers
Industrial Relations

File

LABOR RELATIONS

UNITED STATES POSTAL SERVICE



May 1, 2012

Mr. Gary Kloepfer
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Certified Mail Tracking Number:
7002 0860 0006 9347 4912

Fax: 202-289-3746

RE: Q11T-4Q-C 12029368
HQTT20110646 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 1, 2012.

Issue Presented

The issue involved as provided by the APWU in its dispute dated November 18, 2011, is "Whether the Postal Service violated Article 32 Section 1 of the National Agreement, the Contracting or Insourcing of Contracted Service MOU and Section 530 of the Administrative Support Manual when it made its decision to subcontract bargaining unit work to a third-party provider to install and maintain the Telecommunications Integrated Postal Network, (TIPN) contract, which is a replacement for the Management Network Service (MNS) contract."

Background

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 saying,

> 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.

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In the months after the Das award in the AOI decision, the Postal Service began the process to upgrade the WAN by way of the Telecommunication Integrated Postal Network (TIPN). Based on the findings by Arbitrator Das, the Postal Service understood work associated to the TIPN 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 June 13, 2011.

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 alleges that the Postal Service failed to meet prior to making its subcontracting decision. Additionally, the Union alleges that Section 530 of the Administrative Support Manual (ASM) restricts subcontracting any work on Postal Equipment unless there are no qualified maintenance employees, no employees which are capable of being trained available or if the equipment is a prototype.

Additionally, although Arbitrator Das already ruled on the WAN, the fact that the Postal Service gave notice to the APWU, in the APWU's opinion constituted acquiesce on behalf of the Postal Service that this work, contrary to the Arbitrator Das decision, was bargaining unit work.

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 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 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. For these reasons, the union's assertions regarding the MOU entitled "Re: Consideration of National Outsourcing Initiative" is inapplicable, as well.

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 installation and maintenance of TIPN 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 ensured contract compliance with the TIPN supplier and avoids 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.

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 TIPN does not fall into any of these categories therefore the APWU's reliance on this specific ASM regulation is misplaced.

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 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,

Neftali Pluguez
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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Mr. Neftali Pluguez
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Washington, D.C. 20260

Re: APWU No.HQTT20110646, USPS No. Q11T4QC12029368;
Telecommunications Integrated Postal Network, (TIPN) Contract

Dear Mr. Pluguez:

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 March 20, 2012. In addition the Postal Service did not raise any procedural or arbitrability issues during this meeting. In addition to the parties' agreement to extend all time limits, an agreement was reached whereby each party's 15 Day Statement had to be submitted no later than May 1, 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, the Contracting or Insourcing of Contracted Service MOU and Section 530 of the Administrative Support Manual when it made its decision to subcontract bargaining unit work to a third-party provider to install and maintain the Telecommunications Integrated Postal Network, (TIPN) contract, which is a replacement for the Management Network Service (MNS) contract. If yes, what shall the remedy be?

POSTAL SERVICE POSITION

The Postal Service's position during the Step 4 meeting was the subcontracted work was Plant and Facility Equipment as defined in the Administrative Support Manual Section 531 rather than Postal Equipment which is also defined in Section 531. In stating this

position the Postal Service took the position the work fell within the definition of ASM 535.112 rather than ASM 535.111 (Issue 8)[1]. It was the Postal Service's position the Union was required to demonstrate it was more economical for bargaining unit workers to perform the disputed work. In support of its economic position the Postal Service referenced the Memorandum of Understanding titled, "Contracting or Insourcing of Contracted Services". In addition it referenced Question 1[2] of the Article 32 JCIM Q&A's in support its economic position. The Postal Service also claimed the TIPN contract was part of the Wireless Area Network (WAN) and outside the scope of Arbitrator Das' decision.[3]

AMERICAN POSTAL WORKER'S POSITION

It is the Union's position that contracting out of this work violated the Collective Bargaining Agreement, Section 530 of the Administrative Support Manual (ASM) and the above referenced MOU. 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 must 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. Finally 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 installation and maintenance of the Telecommunications Integrated Postal Network (TIPN) has a significant impact on the bargaining unit and is bargaining unit work. In this regard the Postal Service failed to provide the advance notice required Article 32 Section 1.A of the Collective Bargaining Agreement. In so doing it denied the Union of its contractual rights as described therein.

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[1] National Arbitrator Das, in case H0C-NA-C-19007 ruled the Postal Service's insertion of a new part "b" which stated, "When maintenance can be performed by contract and it is economically advantageous" was not fair, reasonable or equitable in accordance with Article 19 and restored the original language. As such the proper ASM reference in regards to Section 535.111 is found Issue 8.

[2] Question and Answer 1 reads as follows:

Q. Does the language in the Article 32 MOU (Re: Contracting and Insourcing of Contracted Services) mean that if work can be contracted for less that it must be contracted?

A. Answer: No. Where based on a **fair comparison** a proposed contracted operation costs less than an in-house operation, **the considerations in Article 32.1 and other contractual provisions, manuals and handbooks still apply and may require and certainly allow a decision not to contract.** [Emphasis Added]

[3] The Postal Service waived this position in its June 13, 2011 letter to President Guffey. According to the Postal Service the decision to subcontract the work in dispute was made pursuant to Article 32.1.A of the Collective Bargaining Agreement. The fact the Postal Service relied upon Article 32 of the CBA and notified the Union of its decision as well as claiming there would be no significant impact to the bargaining unit is evidence the Postal Service this was bargaining unit work. The Postal Service's Article 32 Consideration document is further evidence the Postal Service believes maintenance and installation of the TIPN is bargaining unit work. . Notwithstanding the above, should the Postal Service advance this position then it would be forced to do so under the terms of Article 4 of the CBA as this would be new work which must first be offered to present employees capable of being trained to perform the work.

It is also 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.

The Postal Service's notification dated June 13, 2011 stated:

> Please be advised that, pursuant to Article 32.1.A, Raleigh Information Technology Service Center (RITSC) Telecommunication Services (Telecom Services/TS) has decided to contract with a third-party provider to install the Telecommunications Integrated Postal Network (TIPN) contract, which is a competitive replacement for the Managed Network Service (MNS) contract.
>
> TIPN is a wide area network providing connectivity for more than 34,000 Postal Service locations. Work associated with this contract will require the supplier to monitor, maintain, support, upgrade, install, and configure equipment, including wiring. Deployment is not yet scheduled; however, information will be provided as it becomes available.
>
> No significant impact to the bargaining unit is anticipated.

It is the Union's position the Postal Service finalized its subcontracting decision involving bargaining unit work in 34,000 Postal Service locations for six (6) years prior to its notification to the Union in violation of Article 32 Section 1.A. In addition, as stated in the Postal Service's notification, the subcontracting of this work in 34,000 Postal Service locations for a six (6) year time period is evidence of a significant impact to the bargaining unit which contractually requires advance notification.

It is also the Union's position that the Postal Service violated the Memorandum of Understanding and its clarifying Questions and answers by failing to provide any cost data in support of its subcontracting decision. Although the Postal Service claimed cost was a factor considered in its Article 32 considerations, it failed to provide any documentation, cost or otherwise, to support its opinions as contained in its Article 32 Due Consideration document nor the document it purported to be the final contract. This is further evidence the Union was denied its rights under Article 32 Section 1.A, ASM Section 535.111 as well as the Contracting and Insourcing of Contracted Services MOU (". . . based on a fair comparison. . .")

It is also the Union's position that due to its failure to make full disclosure during grievance discussion as well as its failure to provide all requested information it is prohibited from making any argument or produce any evidence at arbitration regarding this dispute that were not presented during the dispute investigation and discussion process.

It is the Union's position that the work performed by contract employees 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 is bargaining unit work as defined by

the Collective Bargaining Agreement. 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's award in case Q94T-4Q-C-97031616 supports its position is erroneous. In addition, bargaining unit employees perform same and/or similar work. The Maintenance bargaining unit suffered a loss of work opportunities due to strangers to the contract performing work they otherwise would have been performed as a result of the Postal Service's impermissible contracting decisions. 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 not to provide job training and tools to its employees cannot justify subcontracting of bargaining unit duties and responsibilities. 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 that a lack of tools and/or training is not justification 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.

Based on this data, it is the Union's position that the work associated with to install and maintain the Telecommunications Integrated Postal Network, (TIPN) 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. Also, the Postal Service provided no documentation to support its allegations regarding cost as a considered factor. Again, based on its failure to provide supporting documentation, the Postal Service is prohibited from making any additional argument and/or documentation regarding cost during any future discussion and/or dispute resolution procedure, e.g. arbitration, etc. 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 stated above, the Article 32 Memorandum was created on an unknown date by an unidentified person. 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 the Postal Service's Article 32 Consideration document is flawed and inaccurate due to its failure to provide the underlying documents used to create the document.

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. The Postal Service may claim no bargaining unit hours were reduced however the record clearly reveals a six (6) year contract was entered into by the Postal Service for the performance of bargaining unit work in 34,000 Postal Service locations. 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 limited to performing routine preventive, predictive, or corrective maintenance on the existing installed equipment and systems is faulty. 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 based on this new work then 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. 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
Case ~~Officer~~

GK/syi/opeiu#2/afl-cio

APWU #: HQTT20110646
USPS #: Q11T4QC12029368

Dispute Date: 11/18/2011
Contract Articles: 32, Subcontracting Maintenance work; 19, Subcontracting;

cc: Industrial Relations

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Mike Morris, Director
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Coordinator, Eastern Region

John H. Dirzius
Coordinator, Northeast Region

Princella Vogel
Coordinator, Southern Region

Omar M. Gonzalez
Coordinator, Western Region

Initiate National Dispute

November 18, 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. HQTT20110646;
Telecommunications Integrated Postal Network, (TIPN) Contract

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, the Contracting or Insourcing of Contracted Service MOU and Section 530 of the Administrative Support Manual when it made its decision to subcontract bargaining unit work to a third-party provider to install and maintain the Telecommunications Integrated Postal Network, (TIPN) contract, which is a replacement for the Management Network Service (MNS) contract. 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, the Contracting or Insourcing of Contracted Service MOU and Section 530 of the Administrative Support Manual.

Article 32 requires the Postal Service to 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.

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 (at 202-842-4213), to discuss this dispute at a mutually scheduled time.

Sincerely,

Mike Morris, Director
Industrial Relations

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

APWU #: HQTT20110646
Dispute Date: 11/18/2011

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

cc: Resident Officers
File