American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Appeal to Arbitration, National Dispute

Mike Morris, Director
Industrial Relations
1300 L Street, NW
Washington, DC 20005
202-842-4273 (Office)
202-331-0992 (Fax)

National Executive Board

Cliff Guffey
President

Greg Bell
Executive Vice President

Elizabeth "Liz" Powell
Secretary-Treasurer

Mike Morris
Director, Industrial Relations

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Director, Support Services Division

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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

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. Q11T4QC12105213, APWU No. HQTT20120059

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 #: Q11T4QC12105213
APWU #: HQTT20120059

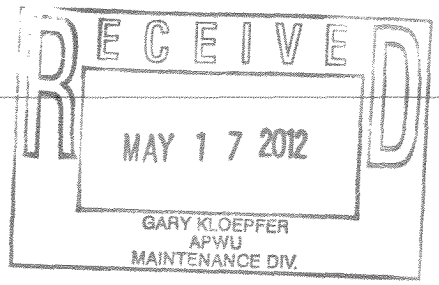
Case Officer: Gary Kloepfer
Step 4 Appeal Date: 2/16/2012
Contract Article(s): 19, Subcontracting; 32, Subcontracting Maintenance work;

cc: Resident Officers
Industrial Relations

File

LABOR RELATIONS

UNITED STATES POSTAL SERVICE



May 11, 2012

Mr. Gary Kloepfer
Assistant Director
Maintenance Division
American Postal Workers
Union (APWU), AFL-CIO
1300 L Street, NW
Washington, DC 20005-4128

Certified Mail Tracking Number:
7002 0860 0006 9347 3526

Fax: 202-289-3746

RE: Q11T-4Q-C 12105213
HQTT20120059 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 16, 2012, is "Whether the Postal Service violated Article 32 Section 1 of the National Agreement and Section 530 of the Administrative Support Manual and prior National Level Arbitration decisions when it made its decision to subcontract this work as well as failing to provide the Union with requested relevant information?" The referenced work is Surface Visibility Phase One, Refresh III (SPORE III).

Background:

Surface Visibility is a program designed to collect data from mail handling units (trays, tubs, sacks, etc.) mail transport equipment, and yard trailers that move within USPS surface transportation network, and transmit data through the USPS switched network to designated endpoint servers. The initial deployment of Surface Visibility occurred in 2004 which involved contracting wireless network installation work to a third party. The installation required additional wiring of junction boxes and access points through a national contract. Subsequently, efficient mail operations have increased throughout Postal facilities including enhanced scanning capabilities, the creation of wireless self-healing capabilities with full floor coverage, and improved wireless roaming of Intelligent Mail Devices (IMDs)/SV Handhelds.

As a result of increasing needs for wireless technology, the Postal Service initiated SPORE III in 2011. By letter dated June 14, 2011 the APWU was notified that a third-party provider was being considered to support the deployment of Local Area Network (LAN) and wireless LAN equipment upgrades along with wiring, equipment installation and configuration in sixty-three (63) sites nationwide. The upgrades, installation and configuration were necessary to support the Surface Visibility Phase One, Refresh III (SPORE III) project. On July 6, 2011, the Union submitted a request for information regarding SPORE III to which the Postal Service responded by letter dated August 16, 2011 (Information Request IR11-39).

APWU Position:

It is the Union's position that the same positions and arguments from SPORE II are carried forward to this grievance on SPORE III. It is the Union's position that the Postal Service violated Articles 15, 19, and 32 Section 1 of the National Agreement, as well as Section 530 of the Administrative Support Manual (ASM), when it made its decision to subcontract this work as well as failing to provide the Union with requested relevant information. The Union alleges that Section 530 of the ASM restricts subcontracting and requires the Postal Service to use bargaining unit employees to perform work unless there are no qualified maintenance employees or employees capable of being trained; or if the equipment is a prototype. The APWU also claims in response to their request for all documents related to the subcontracting decision the Postal Service provided documents that were generated after the decision to subcontract was made. The APWU claims no documentation and/or evidence was submitted by the Postal Service demonstrating it gave good faith due consideration to the factors listed in Article 32 or that qualified employees were not available or this network was a prototype.

USPS Position:

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

Postal WAN/LAN installations, and configurations have typically been performed by Information Technology (IT) employees or vendors. The APWU argues a violation of the ASM Section 530; however, they have failed to identify which specific sub-sections were violated. Furthermore, this project does not fall into the category of routine preventive, predictive, or corrective maintenance that is typically considered when manpower requirements are determined. Accomplishing this work by postal maintenance employees may have resulted in overtime payments or delays to scheduled maintenance work. In addition, by subcontracting this work, the Postal Service received the benefits of warranty coverage. None of the solutions offered by the APWU provide an economically sound strategy; therefore, the alleged violation of Section 530 or any other section of the ASM is not supported.

Furthermore, the plain reading of the language in Article 32 does not support the Union's position. There is a distinct difference between 32.1.A and 32.1.B; and the Postal Service is not required to provide documentation to the Union unless 32.1.B is triggered. The APWU does not dispute that the Postal Service applied Article 32.1.A; however, they claim the Postal Service failed to provide a good faith due consideration.

In addition, the Union contends maintenance craft employees have historically performed this work; however, they have failed to provide any documentation to support their claim.

The Postal Service has given due consideration, pursuant to Article 32.1.A, to the relevant factors under Article 32.1.A – public interest, cost, efficiency, availability of equipment, and qualifications of employees in evaluating the need to subcontract the installation and all other work associated with the Installation of SPORE III (Surface Visibility Phase One Refresh III). As indicated above, the Union was provided all relevant information requested, which included:

1. The identification of the sites in which this replacement mail processing equipment will be installed and the deployment schedule.
2. A copy of the contract for the above-referenced work.
3. A copy of the letter in which the Union was advised that the Postal Service was considering subcontracting the bargaining unit work in dispute.
4. The name of the person, by title, that approved this contract and the date the contract was approved.

5. The total number of hours worked by contract employees performing this work to include the amount of time charged to the maintenance service for hardware support, etc.
6. The Statement of Work.
7. A copy of all documents and information relied upon by the Postal Service prior to making its subcontracting determination, to include cost analyses.
8. A copy of the warranty for this piece of mail processing equipment. [1]

As noted in the information request response letter dated August 16, 2011, the Postal Service provided the APWU the opportunity to specifically identify additional information deemed necessary and the relevance.

Specifically, the memorandum of due consideration, as discussed by the parties during the Step 4 meeting, demonstrated the due consideration given to the relevant Article 32 requirements. The factors listed in Article 32.1.A, namely public interest, cost, efficiency, availability of equipment, and qualification of employees were given due consideration.

Significant among those considerations was the need for efficiency gained by outsourcing; particularly the ability to hire a company possessing the necessary engineering level skills needed for wireless LAN systems installation, testing, and validation of those systems to ensure compliance. Additionally, the network installation as performed by Sub-Contractor Experts provided a service warranty that would not have been available to the Postal Service had Maintenance Craft employees performed the work.

Furthermore, the memorandum of due consideration addressed availability of equipment as an additional factor in making the decision to SPORE III Upgrades. The equipment needed to perform site preparation work such as forklifts, vertilifts, and the associated safety equipment, are readily available in most Postal facilities or from local rental companies. However, specialized installation tools and test equipment provided by Sub-Contractor Experts and used by their installation experts are not readily available at each site.[2]

Another factor evaluated was the qualification of employees. This too was taken into consideration and presented as one of the five (5) factors addressed in the memorandum of due consideration. The SPORE III configuration activities require a proficiency level not commonly possessed by USPS maintenance employees.

Listed above are factors that the Postal Service took into consideration when determining if the SPORE III Project should be contracted to a third party, however, this list is not all inclusive. Clearly, the memorandum of due consideration applied the relevant factors under Article 32.1.A and thereby meets the contractual requirements negotiated by the parties, as confirmed in national arbitration decisions.

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 was no significant impact to the bargaining unit. Subcontracting the work does not affect the current work functions, hours, or operations performed by the Maintenance Craft employees.

The Union also claimed that the Postal Service's subcontracting decision is in conflict with Arbitrator Das' awards in cases Q94T-4Q-C 97031616 and Q94V-4Q-C 96044758 and is an attempt to overturn these precedent setting national level interpretive arbitration decisions. Section IV of the memorandum of due consideration, provided to the Union within their information request, details the subject of Arbitrator Das' decision in Q94T-4Q-C 97031616.

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[1] IR11-39, Decision to Contract with Third-Party Provider for SPORE III Installation dated August 16, 2011
[2] Memorandum of due consideration – Section III, 4- Availability of Equipment

> "Lastly, Arbitrator Das opined '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 includes... installation and management of the LAN hub and the DCE WAN device which is situated between the LAN hub and the WAN router.' Das, Q94T-4Q-C 97031616, p. 23."

As such, the Postal Service believes that Arbitrator Das' findings support the decision to perform the work necessary for the conversion because the nature of the work is equivalent to that which Das cited. Not withstanding Das' decision, the Postal Service evaluated the work with due consideration and determined that it was in the best interest of the Postal Service to contract the work to a third-party vendor.

Furthermore, the Union cited Arbitrator Das' award in case Q94V-4Q-C 96044758. This award involved the Postal Service's decision to subcontract a Highway Contract Route (HCR) without first notifying the Union of its intent to do so. The Postal Service contends that the Das decision is distinguishable from our instant case due to the vast differences in the fact circumstances presented. The Postal Service believes that Arbitrator Das' findings are not affected by the Postal Service's decision to contract out this work.

The APWU also claimed violations to Articles 15 and 19. Article 15, Grievance-Arbitration Procedure, sets forth the guidelines for the parties to address disputes. The Postal Service contends that no violation has occurred in this instant case. The Union failed to point to any provision within this article that substantiated an interpretative issue or violation. Furthermore, the Union has failed to provide any arguments to prove otherwise. Within the Collective Bargaining Agreement, the Union has the right to appeal Article 19 disputes directly to arbitration. The Union has failed to do so in this case and the Postal Service contends Article 19, Handbooks and Manuals, has no impact on this instant case.

Conclusion

After giving due consideration to the factors under Article 32.1.A, namely public interest, cost, efficiency, availability of equipment and qualification of employees (as evidenced by relevant information provided to the Union upon request), a third-party provider was selected to perform SPORE III Project. The Postal Service contends that no contractual violation has occurred.

The Postal Service also submits that no violation to Article 32.1.B has occurred since there was no affect to the work functions, hours, or operations. Thus, there was not a significant impact on bargaining unit work.

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

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

Sincerely,

Matthew Berrang
Labor Relations Specialist
Contract Administration (APWU)

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

May 10, 2012

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

202-842-4213 (Office)
202-289-3746 (Fax)

gkloepfer@apwu.org

National Executive Board

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Princella Vogel
Coordinator, Southern Region

Omar M. Gonzalez
Coordinator, Western Region

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. HQTT20120059,
USPS No. Q11T4QC12105213; Surface Visibility Phase One Refresh III

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 530 of the Administrative Support Manual and prior National level arbitration decisions when it made its decision to subcontract bargaining unit work when it made its decision to contract with a third-party vendor to install the Surface Visibility Phase One Refresh III? In addition, whether the Postal Service violated Article 32 and Article 19 by failing to notify the Union of the multi-year maintenance service agreement for the above referenced Postal Equipment? If yes, then 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 Surface Visibility. It is the Union's position that this additional subcontracting decision was not identified in the Postal Service's June 13, 2011 letter to President Guffey nor its Article 32 Consideration document. The Postal Service's June 13, 2011 notification 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 Surface Visibility Phase One Refresh (SPORE) III. As you were previously notified by letter dated December 1, 2004, the installation of necessary additional wiring junction boxes and access points will be through a national contract and remain under warranty.
>
> The deployment of the upgrade will be to a minimum of sixty-three sites nationwide. The deployment will include Local Area Network (LAN)/wireless LAN equipment upgrades to include wiring, equipment installation, and configuration. The deployment is scheduled to be completed by end of fiscal year 2012.
>
> No significant impact to the bargaining unit is anticipated.

The Postal Service's undated and unsigned Article 32 Memorandum identified the scope of the subcontracted as:

> **IV. CONCLUSION**

> After considering fill Article 32 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. Maintenance craft employees do not routinely possess the required technical skills and expertise for the installation, testing, and validation that would meet the SPORE Ill Project work requirements, and USPS does not have the required tools and/or Installation and test equipment for these systems.

It is our position that the contracting out of this SPORE Ill Project will have no significant impact on bargaining unit work. To meet the Postal Service's requirements and complete this project in a timely manner, at the lowest cost, and with the least amount of disruption to operations and customer service, outsourcing the work to an external contractor that specializes in this type of work is in the best interest of the USPS and the public.

In this regard it is the Union's position that the Postal Service's undated and unsigned 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.

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's 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; Surface Visibility is a program designed to collect data from mail handling units (trays, tubs, sacks, etc.) mail transport equipment, and yard trailers that move within Postal's, surface transportation network, and transmit that data through the Postal switched network to designated endpoint servers. Based on this data, it is the Union's position that Surface Visibility 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 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.

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. 194T-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 #: HQTT20120059
USPS #: Q11T4QC12105213

Dispute Date: 2/16/2012
Contract Articles: 19, Subcontracting; 32, Subcontracting Maintenance work;

cc: Industrial Relations

Transmission Report

Date/Time	05-11-2012	04:45:47 p.m.	Transmit Header Text	
Local ID 1	2022893746		Local Name 1	Maintenance
Local ID 2			Local Name 2	

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(reduced sample and details below)
Document size : 8.5"x11"

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

May 10, 2012

Gary Gleaspie
Assistant Director,
Maintenance Division
1300 L Street, NW
Washington, DC 20005

202-842-4213 (Office)
202-289-3746 (Fax)

gldeaspie@apwu.org

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Coordinator, Northeast Region
Miranda Vogel
Coordinator, Southern Region
Omar M. Gonzalez
Coordinator, Western Region

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. HQ1T20120059.
USPS No. Q1IT4QC12105213; Surface Visibility Phase One Refresh III

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 530 of the Administrative Support Manual and prior National level arbitration decisions when it made its decision to subcontract bargaining unit work when it made its decision to contract with a third-party vendor to install the Surface Visibility Phase One Refresh III? In addition, whether the Postal Service violated Article 32 and Article 19 by failing to notify the Union of the multi-year maintenance service agreement for the above referenced Postal Equipment? If yes, then 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

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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

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Mike Morris, Director
Industrial Relations
1300 L Street, NW
Washington, DC 20005
202-842-4273 (Office)
202-331-0992 (Fax)

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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

February 16, 2012

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. HQTT20120059; Contracting with a 3rd -Party Provider to Install the Surface Visibility Phase One, Refresh (SPORE) III

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

By letter dated June 13, 2011, received by the Union June 14, 2011, the Postal Service notified the Union that it was considering contracting with a third-party provider to install the Surface Visibility Phase One, Refresh (SPORE) III. It claimed this upgrade would occur in sixty-three (63) sites nationwide. According to the Postal Service the upgrade will include Local Area Network (LAN) and Wireless LAN equipment upgrades along with wiring, equipment installation and configuration. It claimed the work was scheduled to be completed by end of fiscal year 2012.

ISSUE: Whether the Postal Service violated Article 32 Section 1 of the National Agreement and Section 530 of the Administrative Support Manual and prior National level arbitration decisions when it made its decision to subcontract this work as well as failing to provide the Union with requested relevant information?

The Union alleges that the Postal Service's subcontracting decision stands in conflict with Arbitrator Das's awards in cases Q94T-4Q-C-97031616 and Q94V-4Q-C-96044758 and is an attempt to overturn these precedent setting national level interpretive arbitration decisions.

In addition the Union alleges that contracting out of this work, which has been historically performed by career maintenance employees, violated Article 32 Section 1 of the Collective Bargaining Agreement. Article 32 requires the Postal Service provide documentation t

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 #: HQTT20120059
Dispute Date: 2/16/2012

Case Officer: Gary Kloepfer
Contract Article(s): 19, Subcontracting; 32, Subcontracting Maintenance work;

cc: Resident Officers
File

Transmission Report

Date/Time	02-16-2012	07:39:15 p.m.	Transmit Header Text	
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Local ID 2			Local Name 2	

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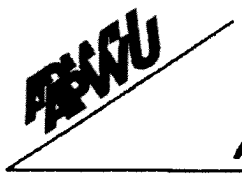

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Mike Morris, Director
Industrial Relations
1300 L Street, NW
Washington, DC 20005
202-842-4273 (Office)
202-331-0992 (Fax)

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Coordinator, Western Region

Initiate National Dispute

February 16, 2012

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. HQTT20120059; Contracting with a 3rd-Party Provider to Install the Surface Visibility Phase One, Refresh (SPORE) III

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ISSUE: Whether the Postal Service violated Article 32 Section 1 of the National Agreement and Section 530 of the Administrative Support Manual and prior National level arbitration decisions when it made its decision to subcontract this work as well as failing to provide the Union with requested relevant information?

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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