REGULAR ARBITRATION PANEL

In the matter of the Arbitration between UNITED STATES POSTAL SERVICE and AMERICAN POSTAL WORKERS UNION, AFL-CIO	GRIEVANT: Class Action POST OFFICE: Charlotte, NC USPS CASE # K06T-1K-C08232921 APWU CASE # 61108EJ

BEFORE: HARRY R. GUDENBERG, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Garfield Tavernier
Labor Relations Specialist

For the A.P.W.U.: Charles Robbins
National Business Agent

Place of the Hearing: Charlotte, NC

Date of Hearing: April 29, 2010

Date of Award: May 27, 2010

Relevant Contract Provisions: Article 32

Contract Year: 2008

Type of Grievance: Contract

AWARD: The grievance is sustained. The remedy is discussed on page 7 of the full decision.

Arbitrator:

Harry R. Gudenberg

In accordance with the terms of the National Agreement the parties appointed the undersigned as the Arbitrator to hear this dispute and issue a decision and award.

At the hearing the parties were afforded full opportunity to present oral and written evidence, examine and cross examine the witness who testified under oath, engage in oral argument, and otherwise support their positions.

The testimony and evidence of the parties and their positions and arguments presented at the hearing have been fully considered in the issuance of this opinion and award.

ISSUE STATEMENT

The Union said the issue to be resolved was: Did the Postal Service decision to subcontract the work in question at the Charlotte facility violate the National Agreement and its associated Handbooks and Manuals? If so, what shall the remedy be?

The Service said the issue was: Did the subcontracting of the installation of the Operator Interface Panel (OIP) circuit card by a vendor violate the provisions of Article 32 of the National Agreement?

These issue statements are basically the same since the Union agreed the OIP circuit card was the work in question and will be decided in the following discussion and decision.

SUMMARY OF THE CASE

In March 2008 the Union became aware of the fact that a contractor was going to perform and did perform certain work which they claimed bargaining unit employees were qualified to perform as described in a postal work order issued in October 2007 for OIP circuit cards.

The union steward requested information about this subcontracting, including a copy of the contract and the associated work order.

The steward was informed by management that no such data was available but, in their opinion, it made good business sense to have the subcontractor perform this work.

At Step 1 management said the contractor was originally contracted to move this machine and this move was to include any upgrades that may have come out during the time the machine was in the contractors possession and that Article 32 was performed for the subcontract to move the machine.

At Step 2 the Union stated that since they had received no information from management they could not determine if management had given any due consideration to the subcontracting factors specifically referenced in Article 32.

The grievance was unresolved at Steps 2 and 3 and the positions of the parties remained unchanged, including at the arbitration hearing.

DISCUSSION AND DECISION

Initially it must be stated that there was no dispute over the ability or qualifications of the postal employees to perform the work in question.

There was a disagreement over the remedy requested by the Union at the hearing.

The Union said they were seeking pay for sixty four (64) hours of work which should have been performed by bargaining unit employees.

The Service said the remedy requested during the grievance process was for thirty two (32) hours of work.

The modification work order contained the following provision:

…"The estimated time for implementing this modification is 8 four-hour maintenance windows *(32 hours total), emphasis supplied,* using at least two maintenance personnel.

Since this language is unequivocal this dispute involves 32 hours, and not the 64 hours of work which the Union claimed was the violation and should have been performed by bargaining unit employees.

Article 32 disputes have a long history between the Postal Service and the Union and have resulted in a number of National arbitration decisions that are binding in regional arbitration disputes. See, for example, Case #A8-NA-0481 and Case H8-NA-C 25, (1981), Arbitrator Mittenthal.

These cases have often been cited for the meaning of the

words "due consideration" contained in Article 32 when evaluating the need to subcontract and are well known to the advocates.

In another National arbitration decision provided at the hearing by the Union in Case #H4C-NA-C 39, (1987) Arbitrator Bloch said the following:

> "The current labor agreement between the parties contains no prohibition, per se, on subcontracting of work. However, 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 (sic) (lightly). 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."

These cases were introduced into evidence by the union to support their position of the procedural contractual violation.

The union also relied on the provisions of the Administrative Support Manual (ASM) at Section 531 to support their claim that this was work that was within the purview of the

bargaining unit and should have been performed by them.

The rational of management for having the work performed by the subcontractor, as a part of the movement of the machinery itself seems logical.

What does not seem logical is the lack of information provided to the union to justify this determination.

The language of Arbitrator Bloch, supra, in his National decision has applicability to this dispute.

This is especially so since management, in their grievance response, said that Article 32 was considered in the original subcontract, and it was this subcontract that included the requirement to make any upgrades that may have come out during the time the machine was in the contractors possession.

All that was necessary, based on this statement, was to support the expressed rationale with a copy of the referenced contract provisions included in the movement of the machinery. This was not done.

The Service and the Union have negotiated the terms and conditions of Article 32, Section 1. The parties are obligated to live up to these terms.

As stated in the National decision, supra, notification and discussion are requirements and are not mere formalities.

The sharing of information when a subcontracting concern is raised by the union, as in the facts in this case, might well resolve many disputes.

Since this was not done, and management claimed they did not

have to do so, a contractual violation must be found to have occurred.

Therefore, the remedy requested of providing thirty two hours of pay for the work in question is appropriate and is awarded for disbursement to those employees who would have been assigned to accomplish this work order.