

How to Determine Whether or Not A Subcontracting Violation Exists When Mail Transportation Duties are Let Out on a Regular Basis.

To determine whether or not an Article 32 violation exists, review the PS Forms 5398's, Performance Records on your dock area for the 24 hour period starting at 0001 and ending at 2400 during a weekday. Use a set of 5398's that are utilized from Tuesday thru Friday to ensure inclusion of all the HCR numbers.

The Highway Contract Route (HCR) number is the five-digit number assigned to each HCR and is usually found in the first column of numbers on the PS Form 5398's.

The first three digits of the HCR number are known as the **prefix** and represents the headout point of that HCR contract. This prefix is the same as the first three numbers of the zip code assigned to your installation.

The last two digits of the HCR number are known as the **suffix** and represents how that contract was let out.

An HCR contract let out on a regular basis has a numbered suffix while a contract let out on an emergency has a fifth digit suffix of "U" thru "Z". (As per Management Instruction DM-1 50-83-2)

Beginning Your Investigation

Review a set of PS Form 5398's and make two lists on a piece of paper.

One list will contain those HCR numbers" originating from your facility that have a letter suffix and the other will contain those HCR numbers originating from your facility that contain a numerical suffix. You can tell that an HCR originates from your facility as the first three numbers of the HCR will be the same as the zip code prefix of your facility.

We will concentrate on those numerical suffixes as those denote HCR let out on a regular basis.

HCR contracts let out on an emergency basis take a slightly different but easier path of investigation since all the paperwork and decisions were made locally. Also, the arguments are different since the investigating shop steward must determine what the nature of the emergency was that prompted the use of an emergency HCR contract.

Comparing what you have gathered from the PS Form 5398's, use Brother Pritchard's list and eliminate any HCR numbers that appear on both your list and the National's list.

The remaining list of HCR numbers will constitute the basis of your investigation. For each HCR that you identify *as* NOT being on Brother Pritchard's National's list, you must obtain the following:

- (1) **PS Form 7405. Transportation Services or Proposal & Contract for Regular Service** will tell you the contract number, date of solicitation, beginning and ending dates the contract is in effect, the cities and state(s) that the mail transportation service will run between, the rate of compensation, bid or proposal, who the bidder/offerer is and the U.S. Postal Service's official that caused this contract to be executed. This form is maintained locally in the AO's files on the contractor. (P0-501, Section 212.2b and 221)
- (2) **PS Form 7409. Notice of Acceptance - Transportation Services Contract Bid or Proposal for Regular Service** will tell you for what terms the contractor accepted the contract. It will tell you the contract number, date of solicitation, beginning and expected ending dates of the contract, the rate of compensation, the contractor's name and address and the signature and title of the postal official who authorized the contract. This form is maintained locally in the AO's files on the contractor. (P0-501, Section 221 a).
- (3) **The Statement of Service and Schedule** will tell you the times and locations the contractor must show up and where he must go. It also tells you the mileage and frequency of every trip the contractor is required to make. This form is maintained locally in the AO's copy of the HCR's file. (It's the HCR's Form 4533).
- (4) **PS Form 5443. Contract Route Statement. Schedule and Specifications** will list any changes made to the terms of the contract during its lifetime, the effective dates of any changes and how it affects the annual mileage, rate of pay or rate per mile compensation as applicable. This form is maintained locally in the AO's copy of the HCR's file. (P0-501, Sections 221 b and 442e).
- (5) **Anything else you feel will support the Union's case** such as any LMOU provisions or locally posted notices or instructions.

Making Your Determination

After obtaining the above documents, you will then analyze them to determine whether or not the HCR contracts left on your list meet the following criteria outlined in Article 32.2G:

- (1) "A fixed annual rate contract over \$100,00 per annum, but not more than 350 miles in round trip length, and

- (2) An annual rate or non-annual rate contract such as local drayage, spotting or shuttle service where the estimated annual compensation will exceed \$45,000, and
- (3) Not more than 8 hours in operating time from terminus to terminus.
- (4) Being then operated by bargaining unit employee(s) of the Motor Vehicle Craft, regardless of annual cost, round trip length or operating time.”

If only one of the above Article 32.26 criteria is NOT met, there is no violation and your investigation of that particular HCR is concluded.

However, if the HCR’s in question meet all the provisions above, you then have a violation.

Other documents that can be gathered to further support your argument are listed below.

- (1) **PS Form 7406. Amendment to Transportation Services Contract**, if available, will show who authorized any amendment to an HCR contract and what those amendment(s) are. Each P Form 7406 generated will have a corresponding line item entry on the PS Form 5443 in the HCR’s file. This form is maintained locally in the AO’s copy of the HCR’s files. (PO-501 Section 442b).
- (2) **PS Form 7440 (or Form 7440AT) Contract Route Service Order** tells you who authorized the service changes and describes those changes. This form is maintained locally in the AO’s copy of the HCR’s files. (PO-501, Section 441 c).

Include a copy of your seniority list showing all qualified Motor Vehicle Craft employees that are available to perform the work. Also a copy of every PS Form 4533, MVS Schedule, including auxiliary runs that are currently in effect during the time frame(s) of the HCRs in question.

Review of the PTF MVO/TTO clock rings to determine whether or not these drivers got their 40 hours a week. Pay particular attention to whether or not the PTF’s worked six days and holidays during the dates the HCRs were in effect.

Your review and applicable copies should go back to the starting date the HCR began enjoying our work.

IMPORTANT!, You **MUST** submit a request on your standard RFI form asking the following questions from local management before filing your grievance at Step 1:

- (a) **What consideration was given to public interest, efficiency, availability of equipment and qualifications of employees while the Postal Service evaluated the need to subcontract out the mail transportation duties in HCR(s) #_____? (Fill in the blank with the HCR #s in question. You will note that the question of "cost" is not included.)**
- (b) **What was the result of that evaluation and who made both the initial and final determination to contract out these mail transportation duties? The Union is requesting copies substantiating the above.**
- (c) **The Union requests a copy of any Postal Service notification to the APWU at the National Level notifying the Union that the Postal Service is considering contracting out the mail transportation duties contained in HCR(s) # (List the HCR(s) in question.**

This RFI will force the Postal Service to come up with the required notification as the grievance is filed.

You will not only be looking for any written notification that, in virtually all cases cannot or will not be provided, but you will also be investigating **WHEN** this notification took place, before or after the HCR went into effect.

If the above request goes unanswered, you must pursue obtaining the written answers, perhaps filing an Unfair Labor Practice with your local NLRB office.

If no written answer is received, the additional Article 17.3 and 31.3 violations should be included on your grievance form.

The Postal Service, on the local level, has rarely come up with this information and in most cases has simply verbally responded, claiming they gave that notification to the Union at the National level, sending you to obtain it from APWU in Washington, DC.

Your response at the local level should be based on the missing HCR number(s) *in* Director Pritchard's printout. This printout is all the runs currently in effect at the date on the cover letter. The Postal Service was sent a copy by certified mail asking for any comments as of this writing. The Postal Service has NOT responded to Brother Pritchard's cover letter.

Any refusal or denial to supply the documentation warrants an NLRB charge with the additional issue being addressed at your Step 1 hearing AND raised on your Step 2 Appeal form with the additional violations of Articles 17.3 and 31.3 appearing in item 11.

Filing Your Grievance

Your Step 2 Grievance Appeal Form should include, but not be limited to the following:

Item 11: Contractual Articles Violated

- **Violations of Articles 1 3, 5, 19, 32, 39.3D&E, P0-501, Pub 41 et. al.,** (and 17.3 & 31.3 if any RFIs were denied or ignored. Also include anything else you think will support your contentions in Item 12.)

Item 12: Detailed Statement of Facts/Contentions of the Grievant

- **“The Postal Service violated the National Agreement when it contracted out mail transportation duties between _____ and _____ found in HCR #'s _____,:** (List the two termini involved, **the headout** point and the furthest point serviced by the contract and the **HCR** number. This can be found on each HCRs Statement of Service and Schedule. List each applicable HCR number along with the termini.)
- **Specifically, they contracted out mail transportation duties to outside contract labor beginning _____ and continuing until the anticipated ending date of _____”.** (List each HCR number and the effective dates found on the PS Form 7409's).

(If applicable, cite the following:)

There was no notification to the Union at the National Level before the decision was made to contract out these mail transportation duties in violation of Article 32.”

(If applicable, cite the following:)

- **“The Postal Service is unwilling or unable to supply the requested documentation so that the Union could conduct a thorough investigation.”**

(If applicable, cite the following:)

- **“There was no consideration given to public interest, efficiency, availability of equipment or qualification of the Motor Vehicle Craft employees before this (these) HCR(s) were let out.”**

(If applicable, cite the following:)

- **"The Motor Vehicle Craft in _____ (name your home facility) incurred a significant loss of bargaining unit work opportunity when these duties were lost to the HCR contractor(s)."**

(If applicable, *cite* the following:)

- **"Part time flexible MVO's (and TTO's as dictated by the clock rings you gathered) were not utilized up to 40 hours per week and thus were available to perform these duties." (Support this by including your auxiliary run sheets. Include the Saturday and Sunday runs as well.)**

Add anything else you feel is necessary, making sure that every contention is supported by the appropriate documentation.

Item 13: Corrective Action or Remedy

- **Immediately terminate the HCR contracts _____.” (List their numbers.)**
- **Immediately assign the mail transportation duties contained in these HCRs to the bargaining unit, guaranteed for the same duration the contractor held it.**
- **Make all qualified Motor Vehicle Craft employees whole for all lost work opportunities at the applicable overtime rate. (Specifically, hour for our**

compensation is requested.”

Include anything else you feel should be part of the corrective action.