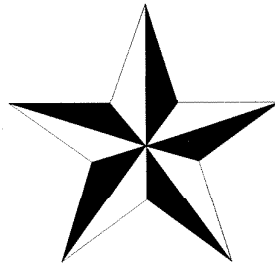


SUBCONTRACTING OF BARGAINING UNIT MAINTENANCE WORK

CASE SYNOPSSES



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SUBCONTRACTING OF BARGAINING UNIT WORK PLANT EQUIPMENT ARBITRATION CITATIONS



1. Richard Mittenthal - H8C-NA-C-25

Unfortunately, the words, 'due consideration' are not defined in the National Agreement. Their significance, however, seems clear. They mean that the Postal must take into account the five factors mentioned in Paragraph A in determining whether or not to contract out surface transportation work. To ignore three 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."

2. Benjamin Aaron - NC-E-11359

It is now well settled that parties to an arbitration under a National Agreement between the Postal Service and a signatory Union are barred from introducing evidence or arguments not presented at preceding steps of the grievance procedure, and that this principle must be strictly observed. The reason for the rule is obvious: neither party should have to deal with evidence or argument presented for the first time in an arbitration hearing, which it has not previously considered and for which it has had no time to prepare rebuttal evidence and

argument.

Rebuttal to Management's Claim That it Complied With Article 32

1. Wayne E. Howard - E7T-2N-C-21843

It is a well-established rule of contract interpretation that specific provision of a collective bargaining agreement take precedence over general provisions. Thus, Section 535.111 of the ASM which specifically governs the subcontracting of maintenance of postal equipment takes precedence over Article 32 of the Agreement which on its face is to be taken as a general principle. Therefore, the controlling principles found in Section 535.111 are that bargaining unit employees are to perform such repair work with two exceptions...

2. Charles W. Kohler - K90T-1K-C-95044205 / 95044200

However, Part 535 of the ASM does not list the unavailability of equipment as a reason to subcontract work done on postal equipment, including letter boxes. A number of national level settlements at Step 4 have concluded that Part 535 of the ASM must be used to evaluate whether the subcontracting of maintenance work is proper.

3. Elliott Goldstein - C7T-4M-C-34067

The Arbitrator sustained the Union's grievance which protested management's decision to subcontract the repairs of dock doors. **The Arbitrator stated on page 17 that management has an obligation to act in good faith and to give "genuine" managerial consideration to the factors set forth in Article 32, rather than merely going through the motions.** Based on the submitted evidence in this case the arbitrator found the subcontracting decision to be in violation of Article 32 as management's decision lacked genuine managerial consideration.

4. John C. Fletcher - C7T-4D-C-21543 / 21544 / 21545

The Arbitrator sustained the Union's grievance which protested management's decision to subcontract the painting of the interior of the Chicago Bulk Mail Center. **This Arbitrator found that management did not comply with the literal intent of Article 32 as well as the spiritual intent when it brought strangers in to perform bargaining unit work. The Arbitrator states on page 9 that more than a self-serving statement that due consideration was given is needed and that management is required to demonstrate that due consideration was given.**

5. John C. Fletcher - I90T-1I-C-94052280

The Arbitrator sustained the Union's grievance which protested management's decision to subcontract the installation of dock leveler supports. **The Arbitrator rejected management's claim that it gave good faith consideration to any Article 32 factors in making the decision to subcontract.** In finding for the Union the Arbitrator awarded compensation equal to the work opportunity lost by members of the Craft.

6. John C. Fletcher - I90T-1I-C-95003723 and 95003726

The Arbitrator sustained the Union's grievance which protested management's subcontracting decision involving the repair of Dock Door Seals and Dock Door Levelers. The Arbitrator ruled that the Postal Service's failure to articulate any Article 32 factors at the lower grievance steps prevented them from raising Article 32 factors at the arbitration hearing. Thus the Arbitrator ruled that management failed to consider any Article 32 factors when it made the decision to subcontract the work in question.

7. Lawrence R. Loeb - D90T-4D-C-94004922

The Arbitrator sustained the Union's grievance which protested management's decision to subcontract the painting of the interior walls of the Louisville, Kentucky P&DC. **The Arbitrator ruled that the Postal Service was required to give a good faith analysis of the factors outlined in Article 32 prior to making the decision to subcontract. The Arbitrator also found that management did not follow the sequential steps outlined in the Administrative Support Manual regarding the subcontracting of Plant Equipment.** In ruling in the Union's favor, the Arbitrator ordered the bargaining unit to be compensated at the overtime rate for all hours the subcontractor painted the Louisville Facility.

8. John C. Fletcher - I90T-1I-C-94054291

Management violated Article 32 of the National Agreement and Part 530 of the ASM, when it used a contractor for the remodeling of PEDC area of the Omaha facility. Management has not shown that it gave due consideration to the criteria of Article 32, Section 1, prior to issuing the contract. **Management also violated the Agreement when it failed to furnish the Union with the data and information it requested concerning the contract.**

9. Thomas F. Levak - E90T-1E-C-94059285Page 7 & 8

The Union's ability to demonstrate that management failed to follow that mandated procedure is obviously limited. It can only do so if it is provided the documentation relied upon by management. The Union does not have an automatic right to that documentation, it must make a formal request pursuant to the National Agreement. But once it makes a formal request for relevant documentation, its right to be provided that information is absolute. The National Agreement guarantees that right in no less than three provisions: Article 15, Section 2, Step 2(d), Article 17, Section 3, and Article 31, Section 3.

When management fails to comply with those provisions, the Union has two contractual remedies. First, without filing a separate grievance, it can ask an arbitrator to exclude the withheld evidence from the arbitration hearing, and/or it can ask the arbitrator to resolve the issue in dispute against the Postal Service. Second, it can file a separate grievance, in which it can ask an arbitrator to

direct the Postal Service to comply with the production provisions of the National Agreement.¹

As far back as 1984, the Arbitrator held, citing decisions of other Regional Arbitrators, that the failure of the management to honor its contractual obligation to produce relevant documentation and information constitutes a fatal procedural error, even in cases where direct prejudice is not found. (See W1C-5K-D-20450).

10. Mark I. Lurie - H94T-1H-C-98068944

When the Union grieves the legitimacy of such subcontracting, it has the burden of proving a negative; that Management did not do something. This burden would be impossible to satisfy, and Article 32.1.A would be impossible to enforce, if there were not an implicit obligation on Management's part to show, prima facie, that its subcontracting decision was based upon the due consideration of one of the factors. Since the Service controls the information about its own decisions, it cannot remain mute and then assert that the Union has failed in its burden of proving a deficiency in Management's decision-making process.

11. Irwin J. Dean, Jr. - D94T-1D-C-96065320

"As the Union correctly observes, documents such as the Union requested are evidence of whether or not due consideration of Union interest was given as required under Article 32. Furthermore, the Service's failure to provide documentation which is vital to preparation and development of the Union's case is seldom regarded as harmless error.....**The Service's failure to provide the Union with requested documentation suggests either that no such documentation exists or that, if it exists, it is harmful to the Service's position. In either instance, the Service's failure to furnish the requested information certainly would support the entertainment of an adverse inference against the Service.**" [At Page 7]

13. Irwin J. Dean, Jr. - D94T-1D-C-96080772

The Administrative Support Manual sets forth a general proposition that maintenance work is to be performed by members of the maintenance craft. It authorizes exceptions, however, under which the Service may subcontract work if subcontracting is economically advantageous or if sufficient qualified personnel are unavailable to prosecute the work. Article 32, likewise, contemplates that bargaining unit work will be performed by bargaining unit members. Although it provides additional bases beyond economic advantage and the unavailability of qualified personnel, the Union did not rely upon the additional bases set forth in Article 32 to support its claims in these proceedings. **As a practical matter, therefore, there is no substantive distinction whether the Union's claims are deemed to arise under Article 32 or under the provisions of the Administrative Support**

¹ Regarding those alternative remedies, see generally, Elkouri & Elkouri, How Arbitration Works, BNA, 5th Ed., Ch. 8, Evidence, "Requesting the Production of Evidence," p. 419 et. Seq., Hill & Sinicropi, Evidence in Arbitration, BNA, 2nd Ed., Ch. 14, Evidence From Adversaries or Third Persons, "Duty of an Adversary to Produce Evidence," p. 278 et. seq.

Manual.....In this case, there is no claim that the administrative support manual is inconsistent with Article 32 and it is entitled to independent arbitral enforcement.. {Pages 10 and 11}

Although the prior Dean Award (D94T-1D-C-96065320) concerned the allocation of the burden of proof in a case arising under Article 32, as indicated above, Article 19 and the Administrative Support Manual impose comparable obligations upon the Service. Furthermore, because the Administrative Support Manual contemplates that maintenance duties will presumptively be performed by bargaining unit personnel, subject to narrowly defined exceptions, it is entirely appropriate to impose comparable standard of proof incases arising under Article 19 and the provisions of the administrative Support manual which it incorporates into the parties' agreement. **[Page 12]**

As already noted, however, the burden assigned to the Union in subcontracting disputes consists principally of establishing the fact that subcontracting has occurred and that the subcontracted work was of a type that the bargaining unit can perform. The Union has met that burden in this case. The Service has failed to refute the Union's evidence or to provide an adequate justification for subcontracting the work. As observed by Arbitrator Fletcher in United States Postal Service, No. I90T-1I-C-94054291 (April 29, 1996) (unpublished), management must itself come forward with some evidence to explain the basis for contracting out work that the bargaining unit is capable of performing. It is not enough t note that the collective bargaining agreement, as well as the manuals, handbooks and policies incorporated into that agreement contemplate instances in which subcontracting will be permitted. The Service must, further, provide sufficient detail to support its claim that these projects are such instances.

14. Donald F. Sugerman

J90T-1J-C-94013758 / J90T-1J-C-94013759

In this case Arbitrator Sugarman sustained the Union's grievances which protested the Postal Service's decision to subcontract bargaining unit work, specifically the installation of lights on the dock at the BMC and subcontracting painting, removal and installation of walls, lights, electrical receptacles and ceilings. The arbitrator ruled, in the Union's grievance involving the dock lights, those bargaining unit employees who would have performed this work are to receive 48 hours of overtime at the rate that existed at the time of the filing of the grievance. The arbitrator made a similar ruling for our grievance involving the remodeling/refurbishing of the offices and locker rooms, which he described as removing and building new walls, painting, moving and installing lights, adding and removing electrical outlets and reinstalling drop ceilings. The arbitrator, in granting the grievance, remanded the remedy for the remodeling grievance to the parties. The remand decision was made due to the fact that the Postal Service did not produce any documents regarding its subcontracting decision.

- ☐ [At page 7] USPS claims that the contract must be looked at as a whole and since some of the work may have been beyond the ability and qualifications of unit employees to perform it follows that the subcontract is beyond attack. I must respectfully disagree . . . **If the USPS contention were correct, the Employer could avoid its contractual obligation by including desperate work in the same contract, some of which could be performed by unit employees and some of which could not. Such activity would**

not be within the spirit of the Agreement nor within the intent of the negotiators.

- [At pages 7 and 8] The USPS argument concerning availability of employees is not compelling. **There is no evidence that all available qualified employees were working to full capacity. Even were it otherwise, no evidence was submitted to show that having the employees do this work on overtime would not have been cost effective.** Finally, the evidence fails to establish that USPS considered the criteria required by the Agreement in deciding to subcontract. No facts were provided and none could be as the persons who made the decision were no longer available to testify as to the rationale for having contracts rather than employees perform the work.
- [At page 8] APWU requested a copy of this contract in 1993. Presumably it was available at that time. It was a document the Union needed in order for it to evaluate whether it had a viable grievance. The failure on the part of the USPS to produce this document violated Article 31, Section 3 of the National Agreement.

15 James J. Odom, Jr. - H90T-1H-C-95050276

At page 5 - "...There is, however, the mandate of Article 32.1.A to give due consideration to the five enumerated factors, one of which is cost. In this circumstance, I view Management's failure to provide its cost analysis **(and the details of its consideration of efficiency and unavailability of qualified personnel, as well)** as a demonstration of a lack of good faith."

16 Patrick Hardin - S7V-3W-C-32838

Beginning on page 6 and continuing, the Arbitrator makes comment regarding the Postal Service's obligation to provide specific data which demonstrates that it gave good faith consideration to the factors listed in Article 32 of the National Agreement when it made its decision to subcontract bargaining unit work. In addition at Page 9 the Arbitrator states:

There was a second deficiency in Management's rebuttal of the Union's case. Although Mr. Gould testified in generalities that the subcontract was awarded on the basis of cost and efficiency, there was not detailed evidence disclosing which officers of Management considered the five factors of Section 32, when they did so, what information they considered, or what weight they gave to each, and why. In this case, as I have explained above, only Management had access to that information. Apart from Management Exhibit 1, which was inadmissible because it was offered for the first time at arbitration, the details of Management's "due consideration" were never brought forward.

17 Lamont E. Stallworth - C0T-4S-C-18910 and I90T-1I-C-94059146 / 94059150

Responding to the Postal Service's claim that the Union was barred from articulating its Article 32 position during arbitration the arbitrator states on page 33:

It is the undersigned Arbitrator's opinion that in the instant grievance that the subcontracting issue at hand was intricately involved with the staffing package created by the Service and that the Service should be in a prepared position to defend it. See also, United States Postal Service and American postal Workers Union, (Clifton NJ) (Arb. George S. Roukis, June 13, 1990) Case Nol N4C-1P-C-34812 and United States Postal Service and American Postal Workers Union, (Camden, N.J.) (Arb. Bernard Cushman, January 20, 1992) Case No. E7C-2B-C-7011.

18 Edwin H. Benn - J90T-1J-C-96008981

At page 5 - Management generally has latitude in the use of subcontractors. However, and perhaps because this case was so old, the Service was apparently unable to and offered nothing in this case to show why Management utilized a subcontractor at Garfield Park which could have fallen into the permissible realm of Management's authority to use subcontractors. All Management said throughout was that it did not understand the nature of the Union's claim and, during the lower steps of the grievance procedure, considered the matter as only an overtime dispute. **However, I have found that the Union gave Management sufficient information to put in on notice that the nature of the claim was the subcontracting of custodial services at the Garfield Park Station during the period April 21 through May 13, 1995. There is simply nothing before me offered by the Service to rebut the Union's demonstration.**

The Service does point out that the Union improperly cited some sections of the Agreement which are irrelevant to the instant dispute or do not exist. The Union does not dispute that error. But grievances were never designed to be written with the specificity and precision required in legal pleading for court actions (See Elkouri and Elkouri, How Arbitration Works, 5th ed. Pages 329 - 330). Although perhaps not drafted and progressed with the skill of an accomplished trial lawyer, as discussed above, the grievance sufficiently put Management on notice of the nature of the subcontracting dispute, the location of dispute and when it occurred. In this case, that is enough.

19 Lamont E. Stallworth - I94T-1I-C-98009558

Page 21 - In the instant grievance, the Union asserts that the Service filed to provide requested relevant information so that the Union could determine if the Service had indeed given good faith consideration to the subcontracting factors. It is the position of the Union that such a lack of relevant information provided in a timely fashion effectively prevented the Union from competently challenging or discussing the decision to subcontract prior to the work actually being performed. Based upon the record evidence, the Arbitrator must agree.

"Based on the facts and circumstances of the instant grievance, the Undersigned Arbitrator finds

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that the Postal Service violated the collective bargaining agreement, handbooks and manuals when the Service subcontracted out the installation of hardware for the card key security system at the BMC. Accordingly, the instant grievance is sustained. The remedy is as follows: (1) The Service is to cease and desist from contracting out the disputed work that may be performed by bargaining unit members; and (2) The Service is to 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 the bargaining unit members but for the instant violation."

The Postal Service attempted to claim that the Union had waived its right to claim management violated Article 32 due to the fact that the Local had omitted this Article citation on its Step 2 Appeal form. The Arbitrator rejected the Postal Service's theory and ruled that the issue of the Union's grievance was subcontracting, as such, the Postal Service's knowledge of this fact early on did not preclude the Union from raising an Article 32 violation (See page 19)

The Arbitrator also favorably ruled on the Union's claim that management failed to demonstrate an economic advantage by failing to produce information regarding cost prior to the decision to subcontract. The Arbitrator ruled - "...that in order to assert the fulfillment of Article 32 obligations, it is incumbent upon the Service to show that it would realize a cost savings or "economic advantage" by awarding the disputed work to subcontractors."

20 Lamont E. Stallworth - I90T-11-C-93034497

Responding to the Postal Service's argument that Postal employees were not qualified to perform electrical work, the arbitrator states on pages 18 and 19:

On the other hand, the Union argues that the sole defense of the Service to the subcontracting is the unsubstantiated claim that Postal employees could not have performed the work in question, ostensibly because of the lack of state licensing. The Union further submits that the position of the Service is supported neither under the terms of the National Agreement nor by the facts of the instant grievance as the Service is not obligated to have licenced electricians, or plumbers, pipe fitters, stationary engineers and the like for the performance of maintenance tasks in its facilities. In addition, the Union states that such work has been performed by bargaining unit employees in the past, even though they acted without a state electrical license. As the Union notes, there is nothing in the Agreement, manuals or handbooks which requires that qualification standards for hiring and promotion include requirements that employees have to have or acquire licenses under state authority.

It is the opinion of the Undersigned Arbitrator, who is bound first and foremost to the terms and conditions set forth in the National Agreement and accompanying manuals, that the Union is correct. As the Union states, the Service was obligated by the National Agreement under Article 32 to give "due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract." The Service is also required to notify the Union of such work and provide information to the Union to support the need for subcontracting the work. The Union notes that the Service was obligated to consider each of these

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elements prior to making the decision to subcontract.

The record evidence demonstrates that the Service failed to discuss the subcontracting out of work with the Union, and subcontracted out the work without providing the Union with the requested information.

21 Lamont E. Stallworth - I90T-1I-C-94056229 / 94056230

On page 36 the arbitrator makes the following sound contractual rational regarding the Postal Service's failure to provide requested relevant documentation during the lower steps of the grievance arbitration process:

In the instant grievances, it is the Arbitrator's opinion that the Union was not able to mount a sufficient challenge to the actual merits of the subcontracting work because it had little to no information to go on, such as cost comparisons, the number of employees required and/or tools needed for the disputed work, the scope of the work or any timetables involved. The Undersigned Arbitrator is therefore compelled to agree with the Union that because the decisional process of the Postal service was flawed that the Arbitrator need not reach a decision on the merits of the subcontracting itself. On the basis, the Undersigned Arbitrator must sustain the instant grievance.

22 Lamont E. Stallworth - I94T-1I-C-97075046

Beginning on page 23 and continuing onto page 24 the arbitrator addresses the Postal Service's failure to produce relevant economical data:

It is the Undersigned Arbitrator's opinion that if the Service needed to subcontract out such work, which could clearly be performed by Service employees, it was imperative that the Service properly inform the Union in accordance with the National Agreement and the ASM. To do so, the Service was contractually required to abide by the requirements of Article 32. It is clear from the record evidence that the Service failed to do so prior to making the subcontracting decision. As the testimony of Mr. Close suggests, the Service only provided an invoice regarding the work awarded to the subcontractor. **The Service provided no contract, cost comparison or any reason why bargaining unit members could not do this work was provided to the Union. Although the testimony of Mr. James Bruhn for the Service indicates that local management did consider cost, timeliness and safety factors, Mr. Bruhn also admitted that he did not know why such information was not provided to the Union.**

While it is clear that the Service does have the general right to subcontract, it is the Undersigned Arbitrator's opinion that the Service does not have an unfettered right to do so. The Service is required under Article 32 to respect the process that informs the Union as to the viable need, if any, for subcontracting and allow the Union the opportunity to respond. It is the opinion of the Undersigned Arbitrator that the Service failed to fulfill such contractual requirements.

23 John C. Fletcher - 194T-11-C-97117569

This is Arbitrator Fletcher's decision for the above referenced grievance which protested local management's decision to subcontract the upgrading of the battery room in 1997. Arbitrator Fletcher ruled that there was no evidence that procedures for subcontracting were followed. Accordingly, he ruled that the Maintenance Craft employees are to be compensated an equivalent number of hours to those worked by the contractor in the facility, for the lost work opportunity.

At page 6, "Demonstrating a justification for subcontracting Craft work under Article 32 and shown that an economic advantage exists under Section 535.112 of the ELM are burdens that Management must shoulder when a subcontracting decision is challenged. These burdens, singularly and collectively, have not been satisfied in this record."

At page 7, "Management must not only say that it has the right to contract out work if it meets the five criteria identified in Article 32, but it must actually meet these criteria, and when challenged on a specific project, demonstrate that it did indeed meet the criteria."

At Page 7, "This record, or more correctly the lack of an adequate record justifying the subcontract under Article 32 and Section 535 of the ASM requires that the grievance be sustained. **Maintenance Craft employees are presumed entitled to be assigned all of the work of their Craft unless the subcontracting exceptions are met.**

24. George R. Shea Jr. C90T-1C-C-94009173

[At Page 15] The Arbitrator further determines that evidence of such notification, consultation and sharing of information would be evidence that the Service did give due consideration to the cost and efficiency of having the Work in Question performed by unit personnel. The Service cannot support its contentions regarding its compliance with Section 32.1-A. with speculative or unsupported assertions by supervisors (Roberts, D94T-4D-C 99076412 (2001) & Fletcher, 194T-11-C-97117569) but must provide some empirical evidence in support of its claim that it gave due consideration to the Section 32.1.A factors when making the determination to subcontract the Work in Question. (Kelley, B94T-1B-C 97079522 (1999))

**Awards Addressing Cost as the Determining Factor
for
Plant Equipment Subcontracting**

1. Step 4 Settlement H7T-4K-C-22603 / H7T-3C-C-14397 / H7T-3C-C-21569

The issue in these grievances involves contracting out maintenance work.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in these cases. **In addition, we agreed to remand these grievances to the respective regions for application of Part 535 of the Administrative Support Manual.**

2. Harvey A. Nathan - C0T-4J-C-2471

Moreover, the Service failed to give "due consideration" to the factors listed in Article 32. In particular, the Service offered a cost comparison that was prepared by former Superintendent Milewski after the grievance was filed. **There is no evidence that any cost comparison or other consideration of cost was made prior to the subcontracting in issue here. (page 12)**

3. James P. Martin - C1V-4A-C-36906

The claim of an emergency based upon efficiency is farcical; obviously, it would be the opinion of management that it could much more efficiently run the Post Office if the Union would take its Contract and go fishing. The Postal Service has been told numberless times that it may be efficient only within the limits of the contracts agreed to between it and the Union; this case illustrates an extreme example of management ignoring that message.

5. John C. Fletcher - C0T-4S-C-20278

In finding that the Postal Service violated Article 32 when it subcontracted work of maintenance and repair of dock door tensioning springs, **the Arbitrator noted that the Postal Service had failed to show that it was less costly to have the work done by a subcontractor.**

6. Harvey Nathan - C1T-4C-C-23371

On page 9 the Arbitrator stresses that Article 32 requires the Postal Service to give due consideration to certain factors when evaluating the need to subcontract. He also states that 535 of the ASM provides further guidance regarding subcontracting. **The Arbitrator found that management in this case did not give full consideration to all real cost variables. He equated the lack of full consideration to all real cost variables was a violation of the due consideration requirement in Article 32.**

7. John C. Fletcher**I94T-4I-C-98093746**

Attached is Arbitrator Fletcher's decision for the above referenced grievances which protested local management's decision to subcontract the movement of four (4) electrical panels on the work room floor. The Arbitrator sustained the grievance by ruling that the grievance was arbitrable and that management violated the Agreement when it used a subcontractor to relocate four electrical panels in the Milwaukee, Wisconsin Postal Facility.

In January Of 1998, the Local Union learned that bargaining unit work, moving four (4) small electrical boxes approximately 20 feet, had been subcontracted. This type of work has been performed in the past and continues to be performed by Level 6 Maintenance Electricians and Level 7 Mail Processing Equipment Mechanics (MPEs). In order to determine if a violation of the Agreement had occurred, John Bender submitted a Request for Information dated January 7, 1998 to Pete Milewski, Manager, Maintenance Operations, seeking ten (10) different items regarding the electrical work being performed on the 3rd floor for the V-series panels. After ten (10) days Mr. Bender submitted a second request on January 17, 1998 to Mr. Milewski as no information from the initial RFI had been received by the Union. After twelve additional days, Mr. Bender submitted a third request on January 29, 1998 to Mr. Milewski as no information from the first two RFI's had been received by the Union. After another seven (7) additional days, Mr. Bender submitted a fourth request on February 5, 1998 to Mr. Milewski as no information from the first three RFI's had been received by the Union. At the arbitration the Service still had not provided the requested information. At the hearing the Postal Service claimed that the work was beyond the capabilities of the bargaining unit Electricians and MPE's and that we were not available to perform this type of work.

- ☐ In rejecting the Postal Service's position regarding complexity and time constraints the ruled that the Postal Service's position was grossly overstated.. He ruled that this was the type of project that should be done in-house.
- ☐ He found that the voltages involved were within ranges authorized for Postal Service Electricians
- ☐ He found that there was no complex wiring involved.
- ☐ He found that there were two Electricians and over 40 MPE's available to perform this work
- ☐ He also found that the position description of a Level 7 MPE contained just this type of work, "alteration of equipment and circuits as directed."

REBUTTAL TO FULL EMPLOYMENT ARGUMENT

1. John C. Fletcher 190T-11-C-96023145 / 96063841 / -96063847

The Arbitrator found that the Service had violated Article 32 when it contracted the tasks of sandblasting, priming, and painting of mail boxes. The arbitrator's decision was based on the following items:

- a. The Milwaukee Office had two paint booths that met OSHA and EPA standards.
- b. *The Parties Stipulated That The Letter Box Mechanics And Painter Were Fully Employed During The Time The Work Was Performed by a Subcontractor. "Full Employment Goes to "Availability." While "Availability" Is Addressed in Article 32 With Respect to Equipment, it Is Not Addressed With Respect to Employees. The Criteria With Respect to Employees Is "Qualification." Accordingly, If Qualified Employees Are on The Roles, Full Employment Is Not Justification For Subcontracting."*
- c. The cost comparisons presented by the Service was skewed. "The burden of establishing that it was cost effective to have a contractor do the work rested with Management. It failed to be persuasive in this area, thus it has not met its burden on this point."

2. Laurence M. Evans D98T-1D-C-99256929

The Union's Class Action grievance protesting the subcontracting of project cleaning and replacing 600 + existing lighting fixtures with energy saving new ones is sustained due to the Postal Service's failure to demonstrate it gave good faith consideration to the subcontracting factors set forth in Article 32 Section 1.A of the National Agreement.

[At page 5] "What emerges from the record here is that management, relying mostly on assumptions, concluded early-on that the project was too big and complex for its Clarksburg in-house personnel. Management assumed that, if in-house personnel were given this project, it would detract from the performance of their regular duties because of its duration. Thus, management assumed that personnel in Clarksburg would not be available to handle the project."

{The importance of the award is the arbitrator's footnote which reads as follows: "If this were the sole criterion, no potential "subcontract" could ever be performed by in-house personnel because these employees would normally always be occupied with their regular duties and assignments..}

3. George R. Shea Jr. C90T-1C-C-94009173

[At Pages 15 & 16] The Arbitrator further determines that, while the Service is correct that the performance of the Work in Question may have had to be performed on an overtime basis this, except as an element of cost comparison, is not a factor set forth in Article 32 to be considered in making the evaluation of the need to subcontract, and cannot be a determining reason to disqualify unit personnel from performing the Work in Question. (Robins, N1V-1J-C-16080).

COST COMPARISONS

1. RODNEY E. DENNIS H98T-1H-C-9928645

Subcontracting, Fork Lift Repairs. When the Postal Service considers contracting out bargaining unit work, it is required to apply certain standards to its decision. Those standards are specified in Article 32 of the National Agreement, as well as in ASM Regulation 535. ASM Regulation 535.111 states that maintenance of Postal equipment should be performed by Postal Service personnel whenever possible. That regulation protects the bargaining unit work from indiscriminately being given to outsiders. The regulation, however, also specifies that, under certain conditions, Management has the right to contract out where capable employees are not available and where it is more economical to do so. Article 32 of the National Agreement also addresses this principle. In order to justify contracting out of bargaining unit work, Management must have a sound basis for its decision. It must be able to prove, for example, that it is more economical to contract out the work than perform it with bargaining unit members. This can not be based on just the say—so of Management. It must be based on a cost analysis of the situation with justifiable comparative figures.

2. Mark L. Reed - H90T-1H-C-95007687

The Arbitrator ruled that in the absence of written cost comparison that the Postal Service cannot show the subcontractors were more economically advantageous. On page 3 he wrote, **“Without a viable cost comparison, how can it be shown that it was economically advantageous to install the system? The answer is obvious, it can't. Management has failed to show that it was economically advantageous to obtain the services of a private contractor- in lieu of those furnished by its own employees.”**

REBUTTAL TO CONSTRUCTION

1. **D. Andrew Winston - E94T-1E-C-98066207**

page 14 - "ASM Section 535.112, unlike Section 535.27, specifically makes reference to facility "maintenance," not "another type of service," such as construction. Lest one ignore the common meanings of the words, there is a difference between "maintenance" and "construction". However, if ASM Section 535.112 is to be read in conjunction with Section 535.21 through 26, as it surely is, then it must also be read in conjunction with Section 535.27. Hence, ASM Section 535.112 does not apply only to maintenance service contracts but to contracts for "another type of service," such as construction.

2. **George R. Shea Jr. C90T-1C-C-94009173**

[At Page 11] In responding to the Postal Service claim that the subcontracted work was not "maintenance" work, the arbitrator in a footnote made the following statement, "Applying the provisions of Section 13-505.1 of the MS Handbook and Section 535.111 of the MS-47, the Arbitrator determines that the Work in Question is 'Maintenance' work as that term is use in those Article 19 Manuals.

SPECIFIC LANGUAGE v. GENERAL LANGUAGE

1. **Arbitrator Thomas Germano in case E1T-2W-C-18967 addressed the specific language v. general language issue beginning on page 13 and continuing onto page 14 he states:**

The contract Article which is more relevant to the issue at hand is Article 19 which incorporates the provisions of all handbooks, manuals and published regulations to the Agreement, providing of course that they contain no language that conflicts with the National Agreement. Under Article 19, the provisions of the Administrative Support Manual (ASM) and the Maintenance Series Handbook (MSH) are entitled to Agreement status so long as they are not in conflict with the Agreement. In each case, these additions to the Agreement expand upon and clarify language contained in other Articles of the Agreement without being in conflict with the Agreement. For instance, Article 32, which the Postal Service argues contains the controlling language regarding the instant grievance, is expanded to include additional, not conflicting, standards regarding the subcontracting of the maintenance of postal equipment by Section 535.111 of the ASM. Since it is a well-established rule of contract interpretation that specific provisions of a collective bargaining agreement take precedence over general provisions, Section 535.111 of the ASM which specifically governs the subcontracting of maintenance of postal equipment takes precedence over Article 32 of the Agreement which provides only general principles in this regard.

AWARDS ADDRESSING THE REMEDY

1. Edwin H. Benn - I90T-1I-C-93036556

The type of relief sought by the Union is more typical of a remedy in a subcontracting case. In those situations where an employer improperly subcontracts bargaining unit work, the employees have suffered a loss of work opportunities because strangers to the contract have performed work that otherwise would have been performed by the bargaining unit.

2. George R. Shea Jr. - C90T-1C-C-94009173

In the absence of any evidence regarding the number of hours worked by the Contractor LCJ complete the Work in Question or the number of hours the Grievants would have worked to complete the Work in Question and in consideration of the Service's assertion that the Work in Question would have to be performed by unit personnel while on overtime, **the Arbitrator, as an appropriate remedy in this matter, awards the Grievants collectively an amount equal to the labor costs of the Construction Contract, said labor costs to be determined by subtracting the cost of materials from the Construction Contract price.**

LICENSING and ADHERENCE TO REGULATIONS

1. Frederick P. Kessler - I94T-1I-C-98017257

[at page 12] The Minnesota law applies to Federal facilities, including the Post Office. Assuming that it is equally applicable to fertilize: and wed killer applicators, there is no reason that an employee of the Postal Service should not have been given the chance to obtain the appropriate license. The fact that a license must be secured is not a sufficient reason to justify contracting out the task. A truck driver must secure a special license in order to operate a vehicle for hire. The license requirements may be more stringent than those required for some regular drivers license. That alone is not sufficient to justify contracting out all of the trucking contracts. An employee operating a heating unit in a building may need a special license. A security guard may need a permit to carry a weapon. Licensure alone without other reasons, cannot be a bar to keeping a job, or job duties, within a bargaining unit. **The Postal Service must give the employee the**

Gary Kloepper, National Representative at Large
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opportunity to secure the license before they can contract out. Failure to do so is to riot give "due consideration" to the factors required.

Job security, and the maintenance of the bargaining unit, are among the most important priorities that a union can advance. Both are jeopardized by decisions to automate production or by decisions to contract out all or part of the tasks performed in certain positions.

The Postal Service and the Union have entered into numerous memorandums of understanding regarding lawn care at Postal facilities. With that history, it is difficult to describe the decision, to subcontract the fertilizing of the lawn as not having a "significant impact" on the labor relationship, and the implementation of the Labor Agreement. The Union clearly views the action as a slippery slope, which may ultimately lead to the contracting out of all of the lawn care functions, even though the dollar amount in question is not currently substantial.

The dispute is an issue of significance to the Union. The five factors in Article 32 of the Labor Agreement must be considered by the Postal Service. The Postal Service failure to give the employees the opportunity to secure any necessary licenses was arbitrary and capricious. Consequently, the decision must be set aside.

2. HARVEY NATHAN - J87T-1J-C-90022669

Postal Service violated the National Agreement when it subcontracted the work of sandblasting and painting street letter boxes. The maintenance of postal equipment should be performed by postal employees unless it can be shown by the Service that capable personnel are not available or that the work is experimental or unusually complex, none of which exceptions apply in this case. However, no back pay is appropriate because the function of arbitration is to remedy a violation, not to provide a penalty.

[At page 8] The differences in emphasis are also not just stylistic. They affect who must come forward with the evidence. Because the language of Section 535.111 favors in-house maintenance, there must be a presumption that the work should be done in-house unless either of the exceptions apply. The Union has the burden of coming forward with evidence that the exceptions do not apply.

[At pages 9 - 10] Management claims that for the painting to be done on the premises it would have to bring the facility formerly used for painting up to federal safety and health regulations. However, this is standard operating procedure. Of course, federal safety and health standards have to be followed with painting the same as they have to be followed in all other postal operations involving equipment. Where there are vehicle emission standards, postal vehicles must meet them. Where there are exposed machinery parts the regulations protecting employees must also be in place. And where subcontractors perform work on facility of plant equipment, such as HVAC work, they must also be in compliance with the appropriate safety and health standards. There is simply no explanation in this case as to why federal standards for painting are such that management can avoid the requirements of Section 535.111 merely because costs associated with this work would be incurred. Moreover, in this case there is a facility where painting had been done and to a limited extent is still performed (on postal vehicles). It is not as if the Service were required to build a new

Gary Kloepfer, National Representative at Large
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facility from scratch. In the absence of any evidence as to why management should be excused from what appears to be a rather obvious violation of the National Agreement, the grievance must be sustained. This work must be restored to the bargaining unit as soon as the Service can install the equipment necessary to do the work.

POSTAL SERVICE'S FAILURE TO MAKE A FULL AND DETAILED STATEMENT OF FACTS AND CONTRACTUAL PROVISIONS RELIED UPON

Joseph A. Sickles - D98T-1D-C-00215554

In my view, this case is resolved by the Mandates of Article 15 of the National Agreement. There is no argument that the dispute was appealed to Step 2 of the grievance machinery. At that Step, not only must the Management designee "...make a full and detailed statement of facts and contractual provisions relied upon..." the Management designee must furnish to the Union a written decision which must include (1) all relevant facts, (2) the contractual provisions involved and (3) the detailed reason for denial of the grievance. [Page 4]

"Of course, the Union may appeal to the next step if a Step 2 decision is not received, which it did here. Thus, a failure to render a timely - or time extended - Step 2 decision is not automatically fatal. But, it certainly may have an adverse bearing upon Management's capabilities of presenting evidence at the hearing."

It was noted in the January 22, 1990 Award in S4C-3D-C-58486:

...failure of the employer to render a timely decision in any of the steps... simply moves the grievance to the next step... **Of course, by failing to respond at Step 2, the Postal Service is deemed to have admitted that (1) the grievance is timely, and (2) the relevant facts recited in the grievance are true.** [Page 5]

3. **Linda DiLeone Klein J90C-1J-C-94013796**

While it can be said that Management's arguments were capably and fully explained at the hearing and in the post-hearing brief, there is nevertheless merit to the Union's contention that the "explanation was too late". At Step 1, Management claimed that it had the right to staff and schedule. At Step 2, Management simply denied the grievance and said that it had "corrected the problem". Not only does this answer reflect an admission of the existence of a problem which had been "corrected", but it also fails to meet the criteria of Article 15.2.f.; the relevant facts were not set forth and there was no detailed reason for the denial; furthermore, Management did not indicate why it did not agree on a pecking order sooner or why it failed to utilize qualified SPBS employees on their non-scheduled days in

order to meet staffing needs. **The Step 2 decision was not in compliance with the National Agreement and it further suggests an admission of a violation of the National Agreement between July 28 and September 16, 1993. The failure of Management to disclose its position during the processing of the grievance deprived the Union of the opportunity to consider the reasons for the denial, to address Management's arguments and to reevaluate the grievance on its merits. To present new evidence/argument at the hearing has been described by various Arbitrators as "arbitration by ambush", and this is what occurred here. Based upon this violation of Article 15.2, the Union's position must be sustained. [Pages 6 & 7]**

ISSUE

Did the Postal Service's decision to subcontract the bargaining unit work in question violate the National Agreement and its associated handbooks and manuals? If yes, then what shall the remedy be?

RELEVANT CONTRACT LANGUAGE ARTICLE 19 HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. At the request of the Union, the parties shall meet concerning such changes. If the Union, after the meeting, believe the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Union upon issuance.

Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to transitional employees only to the extent consistent with other rights and characteristics of transitional employees negotiated in this Agreement and otherwise as they apply to the supplemental work force. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to transitional employees pursuant to the same standards and procedures found in Article 19 of this Agreement.

ADMINISTRATIVE SUPPORT MANUAL

Section 531.21 Definitions

531.21a ***Plant Equipment.*** Includes the building's physical structure, utilities, and environmental systems.

531.5 **Maintenance Capability**

531.51 **Offices With Maintenance Capability**

531.511 **Definition**

A maintenance-capable office is an office that has assigned maintenance personnel qualified to maintain a facility and the equipment installed in that facility. In addition, the office must maintain a maintenance stockroom and

be authorized to requisition repair parts from the material distribution centers.

532.22 Installation

Approved modifications are installed on field equipment by Postal Service personnel when feasible. When personnel, time, special equipment, or cost limitations preclude using Postal Service personnel, contract services may be used (see procurement policies and regulations in the Purchasing Manual).

533.4 Building Maintenance

533.41 Postal Service-Owned Buildings

533.411 Scope

The Postal Service is responsible for ensuring the cleaning and maintenance of all postal-owned facilities, including maintenance of plant equipment. The postmaster or other installation head has jurisdiction over the facility, grounds, and appurtenances, and is responsible for their operation and maintenance.

533.412 Maintenance Responsibilities

The Postal Service is responsible for:

- e. Making necessary changes, modifications, repairs, and improvements to facilities (see Handbook F-66 series on investment policies and procedures).

Section 535 Maintenance Service Contracts

535.112 Facility and Plant Equipment

Contract service is encouraged for USPS-operated facility and plant equipment maintenance, when economically advantageous.

535.13 National Agreement Considerations.

Installation heads must be knowledgeable about Article 32, Subcontracting, of the National Agreement with the postal unions, before considering contract maintenance service.

535.27 Other Contract Service

If another type of contract service is needed, forward a complete description of the service desired, the need for it, and the estimated cost and duration of the contract to the purchasing service center (PSC).

**ARTICLE 31
UNION-MANAGEMENT COOPERATION**

Section 3. Information

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or his designee. All other requests for information shall be directed by the National President of the Union to the Senior Assistant Postmaster General for Human Resources.

Nothing herein shall waive any rights the Union may have to obtain information under the National Labor Relations Act, as amended.

**ARTICLE 32
SUBCONTRACTING**

Section 1. General Principles

- A. The Employer will give due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract.
- 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 to consider the Union's views on minimizing such impact. No final decision on whether or not such work will be contracted out will be made until the matter is discussed with the Union.

**ARTICLE 38
MAINTENANCE CRAFT**

Section 1. Introduction

All craft positions listed in the P-1 Handbook assigned to the Maintenance Craft shall be under the jurisdiction of the Maintenance Craft Division of the American Postal Workers

Union, AFL-CIO.

Section 2. Definitions

- B. Installations.** A main post office, airport mail facility, terminal, bulk mail center, maintenance overhaul and technical service center or any similar organizational unit under the direction of one postal official, together with all stations, branches and other subordinate units.
- G. Occupational Group.** In the Maintenance Craft, occupational group shall be determined by position designation and level.

Mr. Arbitrator,

The specific contract language of Section 535.112 of the Administrative Support Manual (ASM) along with the general language of Article 32 Section 1.A of the National Agreement are the relevant Contractual provisions governing the subcontracting of bargaining unit work as it relates to the facts of this grievance. The language contained within these two contractually binding sections must be used together when determining whether the Postal Service violated the National Agreement at the time it made the decision to subcontract the bargaining unit work in dispute. As such, any right the Postal Service may have to subcontract bargaining unit work involving Plant Equipment has been substantially restricted through the clear and unambiguous language of Section 535.112 the ASM and Article 32 of the National Agreement as well as negotiation at the Headquarters level. This fact is further emphasized by a Step 4 settlement addressing the contractual language that governs the Postal Service's subcontracting decisions involving Plant Equipment. This Step 4 settlement requires the parties to comply with Part 535 of the Administrative Support Manual when making subcontracting decisions regarding Plant Equipment.

The Postal Service has argued that it complied with Article 32 and that Article 32 of the Agreement, by itself, allows for this type of subcontracting. However, as stated above, the specific language of Section 535.112 of the ASM, which permits subcontracting of this type of work only after it has been determined to be economically advantageous, contains the more restrictive and controlling language in this situation. 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 have demonstrated, no later than the Step 2 meeting, with evidence that exceeds the clear and convincing standard that it gave "good faith" consideration to the factors contained in Article 32, which in the case of Plant Equipment has been contractually limited to a demonstrated economical advantage, with the production of evidence and documents that predated the decision to subcontract. Thus, 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 Postal Service failed to provide all requested relevant information at the lower steps of the grievance procedure so that the Union could determine if the Postal Service had indeed given good faith consideration to the subcontracting factors. The clear language of Article 15 Section 2. Step 2.d required local management to produce the document(s)/evidence which demonstrated good faith consideration for the subcontracting decision no later than the Step 2 meeting. Since it did not produce the necessary relevant documentation/evidence at Step 2 or prior to the Step 2 meeting, any testimony and/or documents, etc. not previously supplied by the Postal Service must be rejected.

There is no question that when management fails to respond to requests for information and otherwise presents vague or conclusionary answers during the grievance process, it is evident that "genuine" and good faith effort to duly consider the factors has not been made. There needs to be evidence that is detailed about the five factors and the weight afforded each one. Thus the failure to provide documentation used in the making of the decision to subcontract always establishes a lack of "due consideration."

The Union will show that management's reason(s) for subcontracting the work in dispute was not supported by evidence of good faith consideration to economical factors as required by Section 535.112 nor any other factors. In fact its "Article 32 Review" worksheet was not a reasonable application of the then current contractual and handbook requirements. Although the Postal Service used this document to justify its decision to subcontract the bargaining unit work and apparently supplied a copy of the document to the Union after the decision was made to contract the work, the "Article 32 Review" is not evidence that the Postal Service gave good faith consideration to any Article 32 factors. To consult with the Union or provide relevant data after the fact is meaningless to the decision making process and is a violation of the National Agreement. The Postal Service did not submit any cost data nor any other documentation that demonstrated good faith consideration was given to economic or other required subcontracting factors. The failure of the Postal Service to provide properly requested relevant information/documentation at the lower steps of the grievance procedure prevented the Union from considering the data

as well as preparing rebuttal evidence and argument. The Postal Service, by its failure to provide requested relevant information for this grievant, has forfeited its contractual right to submit any such documents and/or testimony today. To permit the Postal Service to submit evidence, documents etc. at this late date would be a violation of the National Agreement. The Postal Service simply cannot withhold relevant information that was within its possession at all time during the lower steps of the grievance procedure.

The Union, as the moving party in this matter, has established a prima facie case which demonstrates that the Service's actions violated the Agreement. The elements of our prima facie case include proof of the following: (a) the Postal Service did contract with a non-postal contractor to perform the Work in Question, (b) the Work in Question was work which bargaining unit personnel could perform within their assigned postal duties, (c) the unit personnel were available to perform the Work in Question. The burden now shifts to the Postal Service to establish that it gave due consideration to the five factors set forth in Section 32.1.A of the National Agreement when it made the determination to use a private contractor to perform the Work in Question and determined it was economically advantageous to have the work performed by a subcontractor and not by unit personnel. (Fletcher, I94T-11-C-97117569 & Hardin, H90T-IH-C-94018829)

The Union will show maintenance employees were qualified and available to perform this work. The Union will show that the Postal Service failed to provide any evidence that good faith consideration to any of the factors identified in Article 32 such as an economic advantage, availability of employees, qualification of employees, etc. or Section 535.112 of the ASM were given good faith considered prior to making the decision to subcontract. In light of local management's decision not to provide all relevant documentation that it relied upon prior to making the decision to subcontract the work in dispute, as required by Section 535.112 of the ASM, the arbitrator must draw a negative inference from the Postal Service's refusal to provide this relative information and grant the Union's grievance.

It is a well established principle that bargaining unit employees are harmed when "strangers" or subcontractors enter the work place and perform work which is rightfully

belongs to the bargaining unit.² Not only are bargaining unit employees denied work opportunities but they are also denied the use of their seniority rights to bid to the work location of the subcontractor. The weight of arbitral authority demonstrates that when the Postal Service's subcontracting decision violates the National Agreement the bargaining unit employees can only be made whole by the immediate cancellation of the subcontract and compensating the bargaining unit employees that should have been assigned to perform the contracted work at the overtime rate of pay for all hours worked by the contractor³ The Union believes it is plain that the bargaining unit is adversely affected whenever bargaining unit work is given away to non-unit employees, regardless of whether the work would otherwise have been performed by employees already in the Maintenance bargaining unit or by new Maintenance bargaining unit employees who would have been hired into the Maintenance bargaining unit.

² Edwin H. Benn - I90T-11-C-93036556

The type of relief sought by the Union is more typical of a remedy in a subcontracting case. In those situations where an employer improperly subcontracts bargaining unit work, the employees have suffered a loss of work opportunities because strangers to the contract have performed work that otherwise would have been performed by the bargaining unit.

³ John C. Fletcher I90T-11-C-96023145 / 96063841 / -96063847

The Arbitrator found that the Service had violated Article 32 when it contracted the tasks of sandblasting, priming, and painting of mail boxes. The arbitrator's decisions was based on the following items:

1. The parties stipulated that the Letter Box Mechanics and Painter were fully employed during the time the work was performed by a subcontractor. **"Full employment goes to "availability." While "availability" is addressed in Article 32 with respect to equipment, it is not addressed with respect to employees. The criteria with respect to employees is "qualification." Accordingly, if qualified employees are on the roles, full employment is not justification for subcontracting."**
2. The cost comparisons presented by the Service was skewed. "The burden of establishing that it was cost effective to have a contractor do the work rested with Management. It failed to be persuasive in this area, thus it has not met its burden on this point."

The Union maintains that the Postal Service violated the Agreement by not demonstrating that it gave good faith consideration to the required factors prior to subcontracting the bargaining unit work in dispute. As such we respectfully request that you find in favor of the Union and award the remedy requested by the Union.