

Motor Vehicle Division

American Postal Workers Union, AFL-CIO

VMF  
Sub-Contracting

William Burrus  
President

Robert C. Pritchard  
Director

Michael O. Foster  
Assistant Director

The Vehicle Maintenance Facilities (VMFs) are facing a struggle to retain work they have performed in the past, and getting the new work that is coming into the Postal Service that should be performed by VMF employees. It is something that has not been addressed by a position paper by the National. I hope that this satisfies those who are requesting help. There is no sure way to grieve a subcontracting issue that will guarantee winning the grievance. However, there are five basic articles that the Postal Service violates in the majority of subcontracting cases, (Articles 3,5,19,32 and 39). Almost universally, the Postal Service violates Article 19, Handbooks and Manuals. An Article 19 violation should be cited in virtually every subcontracting grievance filed. Article 39.3.D should be cited because it gives MVS jurisdiction over our positions. The best and most successful argument that has been put forward by the Union to recapture work is the Article 5, Prohibition of Unilateral Action arguments that are put forward under past practice. We have a very good history of recapturing work that VMF once performed. If you have an Article 5 Violation that you can clearly prove, you should not include the Article 32 .1 in your grievance. There are occasionally Article 3 violations, which is the Management Rights Article. The article refers to violating the laws and regulations when issuing Vehicle Maintenance Agreements to subcontract work. On occasion, it may be argued that there are EPA violations that should be grieved under Article 3. We have not really addressed EPA issues in this paper, but this refers to work that is performed in the parking lots of stations and branches, and even on occasion, in VMF's. The last Article violated is Article 32.1. This is the Subcontracting article. It is the most difficult to win, and there is no solid history of winning this work. This should be argued for new work; work that was never done by the VMF, or when the Article 5 argument is weak. It is not to say that you can't use the cost factor when you put forth your Article 5 grievance, but opening the door to the Article 32 argument is very dangerous and should be avoided, if at all possible. This paper also discusses the new language in Article 39.2.A.12. The filling of vacant positions is interlocked with Subcontracting.

This paper discusses the steps that you need to take to gain the information needed to put forth a solid Subcontracting grievance. It starts with the gathering of information. You will need access to the PO-701, Fleet Management Handbook, and the AS-707A, Contracting for Vehicle Maintenance Handbook which the USPS obsoleted, but the APWU has appealed to National Arbitration.

The AS-707A (Contracting for Vehicle Maintenance) Sec. 1.4.1. states, " Vehicle Maintenance Agreements (VMA's) should generally not be used by offices where vehicle maintenance is available in-house ." This language is going into the new PO-701. That means if you have the personnel to do the work, the USPS should not contract the work out. To start your grievance investigation, you should make certain requests for information.

Request a copy of the Fleet Efficiency Indicators derived from the Vehicle Maintenance Cost Report (dollars). This is a VMAS report. This will show how efficiently the VMF is being run. This is described in Section 445 of the PO-701, under the heading of "Fleet Efficiency Indicators". It should show what the ratio is in dollars of contracted labor verses in-house VMF labor. This will let you know where you stand in terms of how much of your work is actually being contracted out.

Request a VMF roster, which is also a VMAS report.

Request a copy of the Official Management Staffing Survey (OMSS) Report and the On the Rolls Personnel Employees Statistics (ORPES) Report for the last 6, or 12 months for all Motor Vehicle Craft employees in your VMF. Study the roster, OMSS and ORPES reports to find out how many positions and people you had before the particular contract went into effect, and how many positions, and people you have afterwards. Any loss of jobs will be the evidence needed to support your "Significant Impact" argument, and can be used in fashioning the remedy. It is also the primary information needed for your Article 39.2.A.12 grievance. You can justify this request by stating, "We are investigating an Article 39.2.A.12 grievance."

If you know of a specific VMA, you should request a copy of PS Form 7381, Requisition Form for the work in question. In many cases, these contracts are let out on a non-competitive basis. The justification for that is in Part D of the Form 7381. You should scrutinize this very carefully. Make sure you include a specific request for the entire contract.

Request a copy of the initial evaluation if the VMA has been in existence for over ninety (90) days. This is prepared by the contracting officer's representative. This person is the hands-on person who will be administering the VMA and accepting work as complete and satisfactory that was let out under the VMA. You will use this informational data to compare that document to the knowledge you will have acquired, or will acquire, regarding the performance of the contractor. (Whether the work was satisfactory.) If you could show that this VMA Inquiry was not completed, or it was completed in a manner that was not truthful, it would undercut the credibility of management. The COR may be a witness for management and against the Union's interest, but they may also be a very important ally. You must judge this on a case by case basis. You must carefully examine the VMA Service Inquiry and compare it to the information that you have acquired from the 4541's, and work orders for the same vehicles for the same work, and any other signs that would say that the contractor is doing poor work. This will become important if the VMA Inquiry does not reflect inferior work, but gives a favorable rating to the contractor.

Request access and review of the VMA administrative file. This is maintained by the COR. It must contain a copy of the VMA and any modifications, a copy of the Vehicle Maintenance Service Log Sheets, copies of all monthly billing summaries, and approved form 4541's. The VMA Administrative file should have all correspondence to and from the supplier, and memoranda of phone calls, meetings and other conversations having any bearing on the VMA. The last two can be especially enlightening in determining why the Postal Service decided to contract out this work and who were the moving forces to do this.

It would be helpful to include any particulars that you already know into your request for information, such as:

1. The contractor (by name) that is now doing this work. Most of the auto mechanics, and especially the Storekeeper, will have all of the information needed so that your request cannot be procedurally rejected, and thus delayed. You should also request to interview the COR (Contracting Officer Representative). This is the person who plays a major role in administering VMA's, placing orders, inspecting, and accepting services performed in

processing the 4541's, and maintaining the records. Section 4.3 of the AS-707A states, "When maintenance, or repair work has been completed, the COR must ensure that it is inspected to see that it was done satisfactorily, or ensure that a warranty for the work has been provided by the supplier." This is important, and you must ask how this is done, and request four examples of when they inspected the work, what they found wrong with it, and how the COR has addressed it. If the COR did not inspect the work themselves, then who did? Request to interview the person, or persons who inspected the work. Generally, the work is not inspected, and even when the work is inspected and found deficient, the VMF manager has not resubmitted the work to the contractor to be fixed. You need to document this because this is a violation of Article 19, but it also flies in the face of cost and efficiency if you use Article 32.1. You need to know how they verify the work on a Form 4541 as required under Section 4.4 of the PO-707A, Payments, and what the procedure is to compare the cost to the estimate.

You should ask the COR what his qualifications are because the PO-707A, Part 2.4.2. Qualifications and Availability, states that the COR should be well qualified to perform the duties and known to be conscientious and trustworthy. Further, as the performance of COR duties may take substantial time from other duties, the recommending official must determine that sufficient time can be available for the recommended individual to properly perform COR responsibilities. You should pay specific attention to the answer to questions concerning accepting the services performed, because normally the COR, if he is knowledgeable enough to accept the work as sufficient, they will not be accepting and processing the 4541's. That is, usually a storekeeper's function. Normally, the COR is not qualified to deal with both the 4541's and inspect the service being performed. Most VMA's are supposed to be put out for competitive bid. You should ask for proposals that were put out for bid and the response from each company that bid to perform the work. Make sure that the bid that was accepted states that it will do everything that was put forth in the original solicitation to the vendors. You should be especially sensitive to any link (blood relative, past employee, ECT) between management and the contractor.

While these issues that you will raise concerning the information provided on the Form 7381 may not cause an arbitrator to invalidate a VMA and return the work to the craft, compliance with the Handbooks and Manuals is part of management's responsibility. The fact that management fails to adhere to their Handbooks and Manuals, and issue contracts that may or may not be the most competitive, will go to your Article 32.1. argument under the five factors.

Those five factors are:

- (1) public interest
- (2) cost
- (3) efficiency
- (4) availability of equipment
- (5) qualification of employees

They will be impacted by management's failure to comply with the Article 19 requirements. The Form 7381 will most likely impact the cost and efficiency argument. It may also fly in the face of public interest. It may also impact the availability of equipment and the qualification of the employees. Study the Form 7381 very carefully, keeping in mind the Article 32.1 arguments that will come later.

Also, if the VMA is to be in excess of \$2,500 during the initial period of issuance, service contract wages, and fringe benefit determinations must be included with each agreement. This means that the contractor must pay his/her employees a minimum wage, and benefit package as determined by the Department of Labor for the occupation for which the work will be performed. These wages and benefits are determined regionally, and must be included in the initial paperwork. If they are not, or if the contract pays below the minimum Department of Labor Service Contract Act wage level, there is also a violation of Article 3 which states, "The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations". This is a violation of law; it should bring enough weight to terminate the VMA. This still does not guarantee that the work will now be performed by VMF employees. The area wages can be found on the Department of Labor's website.

2. Investigate to determine whether or not the VMF lost any positions either through attrition, reversion, or abolishment. You can do this by reviewing every position that has been posted and not filled, or has disappeared due to abolishment, reversion, or simply ignored. The numbers from the OMSS, and ORPES Reports should match the current seniority list totals by occupational group. If it doesn't, you're missing people and positions. The VMF Roster Report that is generated from VMAS should actually list the names of the individuals. Sometimes, VMF's hold positions open by using fictitious names, or using supervisor's names as filling bargaining unit positions. That way, those positions, and hours are held in the system. This is just another way to investigate to see if you are missing bodies. This again, will support your argument that the Craft suffered significant impact, and that vacant positions must be filled under Article 39.2.A.12. In the new contract, Article 39.2.A.12 requires management to fill residual vacancies, and you can now link the non-compliance of Article 39.2.14.12 with contracting out. If you can get them to comply with the contract, and get the positions filled, the Postal Service must find work for the new employee (i.e. the contracted out work). Besides that, it is only logical that when you lose 2000 hours of work, it impacts the Craft and there is a pool of hours already in the budget of the VMF, so there is no real negative impact on the Postal Service budget. Remember, even though no current employee lost any work, hours, or benefits; it's the Craft, as a whole, that lost the position, hours and employees. Therefore, this had "a significant impact on the bargaining unit work" (Art. 32.2.B). If you have an Article 39.2.A.12 grievance, it should be filed separately and not included in the Subcontracting grievance.
3. Is your VMF a 24-7 operation? How many hours a day is the VMF open? The question that needs to be answered honestly by the union is: "Is it possible for the VMF to do the work being contracted out"? Are there additional hours that the VMF could be open to perform this work? Is there additional space in the VMF to accommodate additional employees? How much overtime is scheduled for each of the occupational codes? Are the people in these OCC Codes maxed out? This is a very important issue for the OCC group whose work is being contracted out. If you have PTF's, are they getting their 40 hours within 5 days? Most likely, none of these arguments will win your grievance by themselves, but they will enhance the Article 5, 19 and 32 arguments. Staffing and work hours is a management decision and management is not prohibited from enlarging the staff, or the hours that the

bargaining unit works. Also, keep in mind that overtime costs the Post Office 150% of the wage of the employee, but that straight time costs the Post Office 142% of the straight time wage because of benefits. When comparing cost for VMF Mechanics to the outside contractor, go to Vehicle Maintenance Bulletin V-01-99, Section III; it states that the Post Office charges \$30.74/hr. to others and is the total cost of a Mechanic. Any contractor that charges more is NOT COST EFFECTIVE.

There are questions that will have a negative impact on your ability to retain, or secure work that is being subcontracted. The first issue that always seems to arise is how far behind in Preventive Maintenance Inspections (PMI's) is the VMF. Obviously, if you have a large number of services that are in the arrears, this may diminish your argument that you can perform the work. You have to give an honest assessment of the number of services that your VMF is late with. In other words, certain VMF's can be fifty behind and that will be very good, but a very small VMF could be fifty behind and it would have a serious impact. You have to ask why this came about. If it were deliberate on management's part not to attempt to complete their mission of providing service to the fleet, this will help you. It will diminish their argument that there is already too much work for the VMF. The next question you need to ask is; "do you have the equipment to perform the work that is being contracted out"? Normally, most VMF's have this equipment. However, there is a list in the back of the PO-701, Required Tools and Equipment for VMF's. There is also a list of tools that each Mechanic should have. If you need equipment that is beyond what is required, it will make your argument more difficult, especially if this equipment is excessively costly, such as a paint booth.

4. Show that the VMF has the capability, equipment, and employees to perform the work in question. Get statements to substantiate your contentions. Have any of the VMF employees performed the contracted work in question? Is the work regular "C" Services that the VMF employees normally perform? The Article 5, past practice argument is the strongest, and to date, the most effective argument that the MVS Division has used to prevent work from leaving, or bring work back to the VMF.

The Article 5, past practice argument is relatively easy to prove, but it involves a lot of work. The type of work being performed, whether it is something as specific as transmission work that the VMF has done in the past, or work tags at a specific station, or branch, or services at an outlying station, you need to document that we have done the work in the past. The longer it can be documented that we have done the work, the better. Work orders are only kept for a few years, and you should be able to go and get a Vehicle Utilization Report from VMAS, which will show where vehicles are assigned. From that, you can determine which vehicles were at the specific stations and branches, if that is the work being subcontracted. Look at the work orders and make copies of work being performed on them by VMF personnel. This will show that we did the work in the past, therefore, we have the capability and we have had the manpower. This will put the burden on management to prove that something has changed and makes it no longer feasible to have the VMF continue to perform this work. Even if they make a strong argument, continue to press the argument that the work we performed once is the work that we should continue to perform.

If a new station and branch has opened, and they try to subcontract that work, document that we did the work in that area at another station, or branch. The mere shifting of the vehicles, or the shifting of stations does not constitute new work, and that we did do the work even though those vehicles were assigned to a different location within the VMF's area of service.

Take statements from the Lead Technicians, or any other employee with direct knowledge. These are the employees who perform the work. The longer we did the work, the stronger our argument is. Most of your Mechanics who have been in the system for ten years or longer will make excellent witnesses because they know the history. If they cannot remember when we first did that work, the argument can be made that VMF personnel has been performing the work for ten years, or more. Many times your stockroom personnel are privy to this information and they can be a valuable source of documentation. Stress to the employees that by preserving this work, the Union is preserving their jobs. They have a vested interest in seeing that we retain the work we did in the past, so that in the future, the VMF will have enough work for everyone who is currently employed.

You should also interview the VMF supervisor and perhaps the Fleet Manager. If these people are long time VMF employees, many times, they understand the stake that the Union has in preserving the work, and they understand that if the Union preserves work for the VMF employees, it preserves their job also. Many times they will give information, or collaborate information; even though the manager above them would rather they not cooperate with the Union. If they sign a statement, that is excellent. If they give you information, and they refuse to sign a statement, you should write them a letter giving the most accurate summation possible of what they said during that interview, and send it to them by certified mail unless, in your opinion, that will hurt your investigation, or intimidate the cooperating management person. If you mail them a letter, and they do not refute it, it will be held in high regard during arbitration. It is very difficult for them to go back and deny that they said it after they received a certified letter stating their position and they did not contest it. Remember, the Article 5 argument is the strongest, but it can also be reinforced by Article 19 and sometimes, Article 3, and Article 32.1 arguments. Which argument you put forward, except for perhaps the Article 19 argument, should be judged on the facts. It is always wise to include the Article 19 argument in this sort of grievance because ultimately, there are handbooks that govern Subcontracting, and they are almost always violated. You should also cite Article 39.3.1 which gives MVS jurisdiction.

5. Request **ALL** the bills (Form 4541) from the particular contractor and study them to determine (a) frequency of work performed, (b) cost per hour, as well as the number of hours needed to perform the work. Is the contractor getting more hours to perform the job? The AS 707A, Exhibit C, Part 1, (p.3) states, "Prices quoted must include applicable Federal, State, and Local taxes. Labor charges must not exceed the manufacturer's flat rate, or rates from a standard manual, such as Chilton's." The PO-701 requires management to use the manufacturer's ERT times and the VMF Mechanics are generally held to those times. The contractor should not be allowed to bill for more hours than the ERT time used by the VMF. Who shuttles the vehicles to the contractor? If VMF employees are used, those work hours must be added to the cost of the contract, and are those costs included. The PO-701,

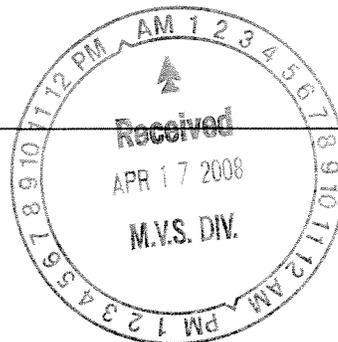
Section 376:21, Shuttling Cost, states, "Be sure to include the driver's time and the cost per mile of operating the vehicle in the cost analysis." The cost analysis is what is used to determine the total cost of the contract. Have the VMF Mechanics had to fix the repairs that the contractor was paid to do? We call these comebacks, and they are not easy to find unless you are familiar with the VMF paperwork. They are hidden in the VMAS system and vehicle jackets. However, the PO-701, Section 522.11, Local Contracts requires the VMF to include a warranty provision in local contracts. The last sentence states, "Local Exchange Unit records must reflect the use of applicable warranties and monitor exchange part failure rates." Now, this is for exchanged parts, but it does require them to have a warranty, and it requires them to monitor the warranty of local contracts. This is rarely done, and it is a violation of the PO-701, and a way that we have subsidized local contractors. You must hunt each bill down with the corresponding PS Form 4541 that are maintained in the vehicle jacket. Then look at the next few repairs in the jacket on either the Form 4543 (work order), or the Form 4541, and determine whether or not the repair, or some part of the service had to be fixed by the VMF after the contractor submitted a bill for the repair.

6. You must request copies of all correspondence that local Management supplied to the Union at the National Level prior to the work being contracted out in compliance with Art. 32.1. Also, force local management to substantiate every contention they give you, specifically when they claim it's cheaper to contract out the work. Force them to prove that every number they use is a legitimate number such as a labor cost, or the amount of time needed to perform the job in question. (Flat Rate Manual or the APWU ERT Book for LLV's)
7. Make sure that all of management's responses are in writing whenever practical. If management refuses to provide written statements, write management a letter giving management's position, as you understood it. It is very important to present management's position accurately so that they can be held to their original position if the grievance goes to arbitration.
8. Schedule a Labor/Management meeting with the Fleet Manager, and the VMF Supervisor. It may bring some of these facts to light. It's a starting point, even if nothing comes out of it. It also puts management on notice that the APWU is very concerned and prepared to fight for the work.
9. The remedy for a grievance filed on VMF subcontracting must include, returning all the contracted work to the VMF to be performed by VMF employees. It should ask for compensation for the work that was contracted out; in other words, a make whole remedy. It should specifically state that the contact should cease and desist and that the contract should be terminated immediately. Even though the grievance asks for immediate termination of the contact, if the Postal Service is willing to sit down and settle this in a manner that is favorable to the Union, i.e., returning the work to the VMF, remind management's representative that according to the AS-707A, Section 4.7, the contract can be terminated by the Postal Service with thirty (30) days notice and there is no monetary penalty for the Postal Service if this is done. Also, most VMA's can be effectively stopped just by not sending the vehicles, or parts to the contractor. Information requests must be in writing, and dated. If management fails to supply information in a timely manner, a denial of

information grievance must be filed within fourteen (14) days. This is a separate grievance, but copies of it should be placed in the subcontracting grievance.

The most important aspect of this remedy is to recapture the work. Monetary awards are great and they are good morale builders. But the real intent of a VMF Subcontracting grievance is to recapture the work, or to stop the work from being contracted out.

SUPPLY MANAGEMENT



April 14, 2008

Mr. Robert Pritchard  
Director, MVS Division  
Motor Vehicle Division, APWU  
1300 L Street NW  
Washington DC 20005-4107

Dear Mr. Pritchard:

Enclosed are schedules for routes that meets the Article 32 criteria and need a PVS cost evaluation.

**2008 Renewals/Solicitation**

Area	HCR	Solicitation	Terminus	Terminus
NE	01541	060-95-08	Central Mass P&DC, MA	Lincoln Center Sta, MA
NE	028L2		Providence P&DC, RI	Wakefield, RI
GL	46530		South Bend P&DC, IN	Winona Lake, IN
GL	46540		South Bend P&DC, IN	Shipshewana, IN
GL	46542		South Bend P&DC, IN	Etna Green, IN
SE	302M2		Atlanta P&DC, GA	Tyrone, GA
SE	37842		Knoxville P&DC, TN	Powell, TN
SE	370L5		Nashville P&DC, TN	National Fulfillment (Lebanon), TN

Please fax cost comparisons to my direct fax number 202-268-0114.

If you need additional information pertaining to these routes, please contact Raphette Alston at 202-268-3473 or fax 202-268-0114

Sincerely,

Russell A. Sykes  
Manager, Surface Transportation CMC

for

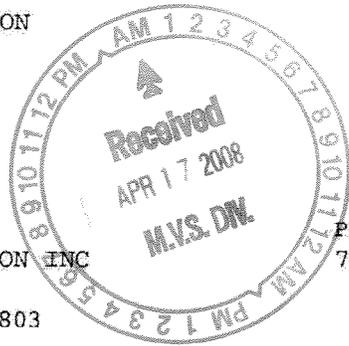
Enclosure

cc: Jackie Adona, Labor Relations Specialist, Room 9142  
Certified RRR: 7007 2560 0002 5734 0419

*Ren*  
*SE*

HCR SCHEDULE INFORMATION

HCR: 37842, KNOXVILLE P&DC, TN - POWELL, TN  
 CONTRACT TERM: 07/01/08 TO 03/31/12  
 ADMINISTRATIVE OFFICIAL: KNOXVILLE P&DC, TN  
 ESTIMATED ANNUAL SCHEDULE HOURS: 4,296  
 ESTIMATED ANNUAL SCHEDULE MILES: 88,238.8



EFFECTIVE DATE:  
07/01/08

SUPPLIER NAME AND ADDRESS: DAVENPORT TRANSPORTATION INC  
 1244 MEEKS RD  
 BLAIRSVILLE GA 30512-9803

PHONE:  
706-745-3719

A	A	A	PART				A	A	A
5	3	1	TRIP	TIME	NASS	2	4	6	
7	X7	W7	FREQUENCY	ZONE	CODE	W7	X7	7	
0800	0420	0140	LOAD/UNLOAD/CASE			0420	0705	1055	
0830	0455	0210	Lv KNOXVILLE P&DC, TN	ET Ar	377	0415	0700	1050	
0905	0525	0240	Ar OAK RIDGE, TN	ET Lv	37830	--	--	--	
0920	0535	0255	Lv OAK RIDGE, TN	ET Ar	37830	--	--	--	
0940	0555	0315	Ar CLINTON, TN	ET Lv	37716	--	--	--	
0955	0605	0325	Lv CLINTON, TN	ET Ar	37716	--	--	--	
1015	0625	0345	Ar POWELL, TN	ET Lv	37849	0355	0640	1030	
1030	0640	0355	LOAD/UNLOAD/CASE			0355	0640	1030	
TT48	TT48	TT48	VEHICLE REQMT			TT48	TT48	TT48	
44.0	44.0	44.0	MILEAGE			12.0	12.0	12.0	

A	A	A	PART				A	A	A
11	9	7	TRIP	TIME	NASS	8	10	12	
QQ	W7	W7	FREQUENCY	ZONE	CODE	W7	W7	QQ	
1645	1340	1145	LOAD/UNLOAD/CASE			1340	1645	1930	
1650	1350	1200	Lv KNOXVILLE P&DC, TN	ET Ar	377	1330	1630	1905	
--	--	1230	Ar OAK RIDGE, TN	ET Lv	37830	1300	1600	1835	
--	--	--	Lv OAK RIDGE, TN	ET Ar	37830	--	1550	1820	
--	--	--	Ar CLINTON, TN	ET Lv	37716	--	1525	1755	
--	--	--	Lv CLINTON, TN	ET Ar	37716	--	1500	1745	
1720	1420	--	Ar POWELL, TN	ET Lv	37849	--	1435	1730	
1725	1425	1245	LOAD/UNLOAD/CASE			1245	1425	1725	
TT48	TT48	TT48	VEHICLE REQMT			TT48	TT48	TT48	
12.0	12.0	21.0	MILEAGE			21.0	44.0	44.0	

FREQUENCY IDENTIFICATION:

ANNUAL TRIPS:

7	Sundays	52.18
QQ	Daily except New Year's Day and Christmas Day	363.25

FREQUENCY IDENTIFICATION:

W7	Daily except Sundays and New Year's Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day	308.07
X7	Daily except Sundays	313.07

VEHICLE REQUIREMENTS:

QTY	DESCRIPTION	LENGTH	CUBES	PAYLOAD
2	Two Axle Tractor (Single Drive)			42000
2	48 Foot Tandem Axle Trailer	48	3000	47000

PHYSICAL LOCATION OF POINTS SERVED:

CLINTON  
 US POSTAL SERVICE  
 1121 N CHARLES SEIVERS BLVD  
 CLINTON TN 37716-9998  
 615-457-2188

KNOXVILLE P&DC  
 US POSTAL SERVICE  
 1237 E WEISGARBER RD  
 KNOXVILLE TN 37950-9997  
 865-558-4572

OAK RIDGE  
 US POSTAL SERVICE  
 301 S TULANE AVE  
 OAK RIDGE TN 37830-9998  
 423-483-7830

POWELL  
 US POSTAL SERVICE  
 3329 SHROPSHIRE BLVD  
 POWELL TN 37849-9998  
 423-947-6110

TRIP PURPOSE AND MAIL CLASS:

<u>TRIP</u>	<u>PURPOSE</u>	<u>MAIL CLASS</u>
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## American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

April 17, 2008

**Robert C. Pritchard**  
Director  
Motor Vehicle Service Division  
1300 L Street, NW  
Washington, DC 20005  
(202) 842-4240 (Office)  
(202) 842-8517 (Fax)

**Jack Elrod, MVS Director**  
Greater Smokey Mountain Area Local  
American Postal Workers Union  
P. O. Box 50161  
Knoxville, TN 37950

### National Executive Board

William Burrus  
President

Cliff "C. J." Guffey  
Executive Vice President

Terry Stapleton  
Secretary-Treasurer

Greg Bell  
Industrial Relations Director

James "Jim" McCarthy  
Director Clerk Division

Steven G. "Steve" Raymer  
Director, Maintenance Division

Robert C. "Bob" Pritchard  
Director, MVS Division

### Regional Coordinators

Sharyn M. Stone  
Central Region

Jim Burke  
Eastern Region

Elizabeth "Liz" Powell  
Northeast Region

William E. "Bill" Sullivan  
Southern Region

Omar M. Gonzalez  
Western Region

Dear Jack:

Enclosed is the **2008 solicitation** for the following **HCR's** listed below:

- 37842 Knoxville, P&DC, TN – Powell, TN

In order to meet the 60-day deadline HCR submission to the Postal Service, I am requesting your assistance in reviewing the enclosed route(s) and within 30-days of this letter, provide us with a written report along with any documentations, justifications or suggestions that we can provide to the USPS to prove that MVS can perform the work efficiently.

Sincerely,

Robert C. Pritchard, Director  
Motor Vehicle Service Division

Enclosures: Notification letter from USPS dated 4/14/08  
HCR Information sheets for the above mentioned route(s)

cc: file

Michael Williams, President, Greater Smokey Mountain Area Local  
Ulysses Coneway, Southeast Region MVS, NBA

RCP:yd/opeiu#2/afl-cio

Robert C. Pritchard  
Director  
Motor Vehicle Service Division  
1300 L Street, NW  
Washington, DC 20005

Dear Mr. Pritchard,

Enclosed are Cost Analysis for SE 37842 Knoxville P&DC/ Powell.  
Included are the following items:

1. Estimated Annual Mileage Analysis
2. Estimated Annual Hours Analysis
3. Estimated Annual Salary Cost Analysis
4. Per Mile Vehicle Cost Analysis
5. Route, Mileage, and Travel Time, Acquired from Mapquest
6. VMF's Vehicle Report for Tractor and Trailer

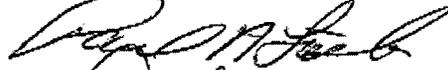
Our office appreciated the opportunity to provide this analysis and we hope this helps in reacquiring SE 37842.

We did not, however, have time to calculate the cost of MVS incorporating Se 37842 into some existing runs, which would surely provide even more savings to the Postal Service

Our office also hopes this might open the door for a few other runs we have questioned in the past as to the cost efficiency of having them done by contractors.

Thank you again for the opportunity and please contact us if any other assistance is needed.

Paul Foster/ MVS Craft Director



David Webb/ MVS Shop Steward



Greater Smoky Mountain Area Local #263

P.O Box 50161

Knoxville, Tn 37950-0161

**Mileage Analysis for SE 37842 Knoxville P&DC/ Powell**

According to the HCR Schedule Information form provided to our office the total estimated annual miles for HCR run 37842 is **88,238.8**.

Using the trip frequency identification information provided on the HCR Schedule Information form and using mileage totals obtained from Mapquest website, the estimated annual miles calculated by this office are listed below:

Knoxville P&DC to Oak Ridge P.O .....	<b>19.15 miles</b>
Oak Ridge P.O to Clinton P.O .....	<b>15.53 miles</b>
Clinton P.O to Powell P.O .....	<b>14.08 miles</b>
Powell P.O to Knoxville P&DC .....	<b>11.16 miles</b>
<b>Total of estimated miles per round trip.....</b>	<b>59.92 miles</b>

**Trip Frequency Identification:**

Trip 7 (Sundays).....	<b>52.18 annual trips</b>
Trip QQ (Daily except New Year's Day and Christmas Day.....)	<b>363.25 annual trips</b>
Trip W7 (Daily except Sundays, New Years, Independence Day, Labor Day, Thanksgiving, and Christmas.....)	<b>308.07 annual trips</b>
Trip X7 (Daily except Sundays).....	<b>313.07 annual trips</b>
<b>Total annual trips .....</b>	<b>1036.57</b>

Total annual trips of **1036.57** multiplied by total trip miles of **59.92** shows a total estimated annual mileage of = **62,111.27**

This shows a discrepancy between the HCR calculations and PVS' calculations of **26,127.53 estimated annual miles**.

This is a significant difference in total estimated annual mileage that shows just the beginning in savings cost PVS can provide.

### **Estimated Annual Hour Analysis for SE 37842 Knoxville P&DC/ Powell**

According to the HCR Scheduled Information form provided to our office, the annual scheduled hours for HCR run 37842 is **4,286**.

Using the scheduled drive times as noted on the HCR Schedule Information form and the allotted time allowed for loading and unloading mail, each trip has an **estimated trip time of 3.08 hours**.

After reviewing each trip and allowing for additional pre-trip time required by the Department of Transportation and allowing additional drive time for unforeseen circumstances (I.E. weather, traffic, etc.) we have calculated an **estimated total trip time of 3.5 hours**.

By taking the estimated total trip time of **3.5 hours** and multiplying it by the total annual trips of **1,036.57** as documented on the HCR Schedule Information form, we calculate the estimated total annual hours are **3,628**.

This shows a discrepancy of **658 estimated total hours**.

This is a significant difference in the estimated total annual hours that continue to show the savings PVS can provide.

**Annual Salary Cost Analysis for SE 37842 Knoxville P&DC/ Powell**

In estimating the annual salary cost to the U.S. Postal Service in utilizing PVS for HCR run 37842, many factors have been considered. We have based the salary at the mid-level 7 step I. We have also taking in to consideration the cost of the many benefits provided to the employee and have itemized them below:

Base annual salary, level 7, step I.....	<b>\$47,175.00</b>
Base hourly rate.....	<b>\$22.68</b>
Annual Thrift Saving's matching contributions calculated at 5%.....	<b>\$2358.75</b>
Annual Thrift Savings matching contribution per hourly rate.....	<b>\$1.14</b>
Annual Medical Benefit cost calculated at \$200 a pay period.....	<b>\$5,200.00</b>
Annual Medical Benefit cost per hourly rate.....	<b>\$2.50</b>
Annual Sick Leave Benefit cost.....	<b>\$2358.72</b>
Annual Sick Leave Benefit cost per hourly rate.....	<b>\$1.13</b>
Annual Leave Benefit cost.....	<b>\$3628.80</b>
Annual Leave Benefit cost per hourly rate.....	<b>\$1.75</b>
Annual miscellaneous Employer costs (I.E. Life Insurance, etc).....	<b>\$1000.00</b>
Annual miscellaneous Employer costs per hourly rate.....	<b>\$0.48</b>
<b>Total Adjusted Gross Hourly pay rate.....</b>	<b>\$29.68</b>

The estimated annual hours for HCR run 37842 as noted in "Estimated Annual Hours Analysis" are **3628**. By multiplying the **3628** hours by the "Total Adjusted Gross Hourly pay rate of **\$29.68** we arrive at total salary cost excluding Sunday Premium pay and Night Differential pay of **\$107,679.04**

Sunday Premium estimated total scheduled hours for HCR run 37842 is **182.63** Sunday Premium pay rate for Level 7, Step I is **\$5.67** for a total Sunday Premium cost of **\$1,035.51**.

Night Differential estimated total scheduled hours for HCR run 37842 are **1914.80**. Night Differential pay rate at Level 7, Step I is **\$1.48** for a total Night Differential cost of **\$2,833.90**.

Total Annual Salary cost is calculated below:

Total Annual Straight pay cost.....	<b>\$107,679.04</b>
Total Annual Sunday Premium cost.....	<b>\$1,035.51</b>
Total Annual Night Differential cost.....	<b>\$2,833.90</b>
Total Annual Salary cost.....	<b>\$111,548.45</b>

Once again this is based on a mid level pay rate with estimated cost of benefits paid by the U.S.P.S calculated within the hourly rate. What can not have a price placed on it is the fact that professional, uniformed MVS drivers, representing the U.S.P.S in Postal vehicles, would be out in the public eye making these deliveries and letting the public know that their mail is in safe hands

### Per Mile Vehicle Costs for SE 37842 Knoxville P&DC/ Powell

In calculating the per mile cost for HCR run 37842, many factors have been taken into consideration, including fuel mileage and usage, monthly maintenance, and vehicle purchase costs.

Fuel mileage was calculated by analyzing the actual mileage our drivers are getting in the vehicles which would be utilized for HCR run 37842. The actual mileage was calculated at **5.8 miles per gallon**. Also, fuel costs were calculated at the current street price of **\$3.98 per gallon**, a much higher rate, due to soaring oil prices, than what the contractor's bid would have been based on. Our office, however, understands this might not be what the Postal Service pays for fuel when buying at a bulk rate. We were unable to acquire the actual price paid by the Postal Service to have fuel delivered to their own underground tanks, which are located on the P&DC's property.

Monthly maintenance costs were calculated by estimating the cost of oil changes every 10,000 miles at **\$175.00**, and tire replacements, once every 100,000 miles, at a cost of **\$246.00 per tire**. (This was an average price for a Continental brand truck tire).

Vehicle purchase costs were calculated using the "Asset Value" listed on documentation our office received from our local VMF office. This documentation shows the "Asset Value" for a tractor being **\$90,022.00** and the "Asset Value" for a trailer being **\$14,905.00**. We also estimated the life expectancy of each vehicle being approximately 10 years.

Our office was unable to acquire any registration, or any road tax costs which the Postal Service would incur using their own vehicles. We have added an extra **\$0.05 per mile** to allow room for such costs.

The above amounts were used for the following calculations:

#### Fuel costs per mile

Annual miles.....	62,111.27
Estimated miles per gallon for Tractor-trailer.....	5.8
Estimated total annual gallons.....	10,708.83
Total annual fuel cost @ \$3.98 a gallon.....	\$42,621.14
Estimated Fuel cost per mile.....	\$0.68

**Maintenance cost per mile**

Estimated annual oil change cost @ \$175.00.....	\$1,086.94
Estimated annual tire costs (Full set of 16 tires at \$246.00 is \$3936.00. At 100,000 mile tire life expectancy, 75% of tire usage per year. \$3936.00 x .75).....	\$2,952.00
Total annual Maintenance cost.....	\$4,038.94
Estimated maintenance cost per mile.....	\$0.06

**Vehicle purchase cost per mile**

Tractor "Asset Value".....	\$90,022.00
Trailer "Asset Value".....	\$14,905.00
Total tractor & trailer "Asset Value".....	\$104,927.00
Total annual miles over 10 year life expectancy.....	621,112.7
Estimated vehicle purchase cost per mile.....	\$0.16

**Total estimated costs per mile for utilizing postal vehicles**

Estimated fuel cost per mile.....	\$0.68
Estimated maintenance cost per mile.....	\$0.06
Estimated vehicle purchase cost per mile.....	\$0.16
Extra cost per mile added for unforeseen items.....	\$0.05
Total estimated cost per mile.....	\$0.95
Total estimated vehicle cost for HCR run 37842.....	\$59,005.70

Our office tried to account for every cost that the Postal Service would occur in using their own vehicles and we hope this itemized list helps in providing the needed information to show the benefits of utilizing MVS for HCR run 37842.

MAP: AEMM0150

U. S. POSTAL SERVICE  
VEHICLE INQUIRY

VEHICLE NUMBER: 6618606

VEHICLE STATUS:

**THIS VEHICLE IS ACTIVE**

AREA: SOUTHEAST LOCATION: 131 M/M: 3107 CHASSIS: 1M2AK01Y97N003376  
DISTRICT: 320 FINANCE: 114382 YEAR: 06 PO NUM: 1DVPLE-05-B-3015

AXLES	<u>2</u>	TRANS CODE	<u>A</u>	ASSET VALUE	<u>90022</u>	SALE AMT	<u>          </u>
DRIVE AXLES	<u>1</u>	TRANS TYPE	<u>5</u>	ASSET INCR	<u>1559</u>	GAIN/LOSS	<u>          </u>
BODY TYPE	<u>8</u>	TRANF REASON	<u>3</u>	EQUIP COST	<u>          </u>	OUTSD EXP	<u>          </u>
DRIVE	<u>L</u>	STORG REASON	<u>          </u>	SALVG VALUE	<u>900</u>	PREP EXP	<u>          </u>
VEHICLE TYPE	<u>D</u>	REPL REASON	<u>          </u>	AP/S DEP	<u>73</u>	TYPE SALE	<u>          </u>
MAKE CODE	<u>18</u>	STORG DATE	<u>          </u>	A/P DEP	<u>931</u>	DISPL DATE	<u>          </u>
VEHICLE AGE	<u>01</u>	WARR DATE	<u>0909</u>	ACCUM DEP	<u>21101</u>	DEPRE ADJ	<u>          </u>
CAPACITY	<u>23</u>	ACQ DATE	<u>0906</u>	UNDEPRE BAL	<u>68021</u>	FRT COST	<u>1560</u>
SALVG PCT	<u>.01</u>	TRANS DATE	<u>0807</u>	BOOK VALUE	<u>68921</u>	SERVICE LIFE	<u>096</u>
FUNC CODE	<u>MV</u>						

F1- INQUIRE

F2 - FORWARD

F3 - PREVIOUS MENU

F4 - BACKWARD

F10 - ERASE

F11 - MAIN MENU

ESC - END SESSION

ENTER VEHICLE NUMBER AND PRESS F1 TO INQUIRE MORE RECORDS

P: 10/11

10: 802022093746

MAY-13-2008 08:06 FROM: KNOX TANS 8655584562

MAP: AEMM0150

U. S. POSTAL SERVICE  
VEHICLE INQUIRY

VEHICLE NUMBER: 0748060

VEHICLE STATUS: **THIS VEHICLE IS ACTIVE**

AREA: SOUTHEAST LOCATION: 731 M/M: 4491 CHASSIS: 1RZ17C2CXV2004332  
DISTRICT: 370 FINANCE: 474634 YEAR: 97 PO NUM: 102590-97-B-1460

AXLES	<u>2</u>	TRANS CODE	<u>T</u>	ASSET VALUE	<u>14905</u>	SALE AMT	<u>          </u>
DRIVE AXLES	<u>0</u>	TRANS TYPE	<u>1</u>	ASSET INCR	<u>          </u>	GAIN/LOSS	<u>          </u>
BODY TYPE	<u>9</u>	TRANS REASON	<u>3</u>	EQUIP COST	<u>          </u>	OUTSD EXP	<u>          </u>
DRIVE	<u>N</u>	STORG REASON	<u>          </u>	SALVG VALUE	<u>745</u>	PREP EXP	<u>          </u>
VEHICLE TYPE	<u>M</u>	REPL REASON	<u>          </u>	AP/S DEP	<u>32</u>	TYPE SALE	<u>          </u>
MAKE CODE	<u>29</u>	STORG DATE	<u>          </u>	A/P DEP	<u>120</u>	DISPL DATE	<u>          </u>
VEHICLE AGE	<u>06</u>	WARR DATE	<u>0501</u>	ACCUM DEP	<u>10297</u>	DEPRE ADJ	<u>          </u>
CAPACITY	<u>39</u>	ACQ DATE	<u>0501</u>	UNDEPRE BAL	<u>3863</u>	FRT COST	<u>1200</u>
SALVG PCT	<u>.05</u>	TRANS DATE	<u>0601</u>	BOOK VALUE	<u>4608</u>	SERVICE LIFE	<u>120</u>
FUNC CODE	<u>MT</u>						

F1 - INQUIRE            F2 - FORWARD            F3 - PREVIOUS MENU            F4 - BACKWARD  
F10 - ERASE            F11 - MAIN MENU            ESC - END SESSION

ENTER VEHICLE NUMBER AND PRESS F1 TO INQUIRE MORE RECORDS

P:11/11  
TO: 82022893746  
MAY-13-2008 08:06 FROM: KNOX TANS 8655584562



# American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

**Robert C. Pritchard**  
Director  
Motor Vehicle Service Division  
(202) 842-4240 (Office)  
(202) 842-8517 (Fax)

May 30, 2008

**CERTIFIED MAIL RETURN RECEIPT 7002 2410 0004 7721 8025  
(Via-Facsimile Transmission)**

**National Executive Board**

William Burrus  
President

Cliff "C. J." Guffey  
Executive Vice President

Terry Stapleton  
Secretary-Treasurer

Greg Bell  
Industrial Relations Director

James "Jim" McCarthy  
Director Clerk Division

Steven G. "Steve" Raymer  
Director, Maintenance Division

Robert C. "Bob" Pritchard  
Director, MVS Division

John Dockins, Manager  
Contract Administration, Labor Relations  
United States Postal Service  
475 L'Enfant Plaza, SW Rm#4630  
Washington, DC 20260

Dear John:

Enclosed are the cost evaluations of the American Postal Workers Union for the following Highway Contract:

<u>HCR</u>	<u>TERMINI</u>
46542	South Bend P&DC, IN – Etna Green, IN
46540	South Bend P&DC, IN – Shipshewana, IN
46530	South Bend P&DC, IN – Winona Lake, IN
370L5	Nashville P&DC, TN – Nat'l Fulfillment (Lebanon, TN)
028L2	Providence P&DC, RI – Wakefield, RI
01541	Providence P&DC, RI – Lincoln Center STA, MA
302M2	Atlanta P&DC, GA – Tyrone, GA
37842	Knoxville P&DC, TN – Powell, TN

**Regional Coordinators**

Sharyn M. Stone  
Central Region Coordinator

Mike Gallagher  
Eastern Region Coordinator

Elizabeth "Liz" Powell  
Northeast Region Coordinator

William E. "Bill" Sullivan  
Southern Region Coordinator

Omar M. Gonzalez  
Western Region Coordinator

Sincerely,

Robert C. Pritchard, Director  
Motor Vehicle Service Division

cc: Russell Sykes, Manager, Surface Transportation CMC

RCP:ydl//opeiu#2//afl-cio

37842 Knoxville P&DC, TN - Powell, TN

HCR#	Vehicle Type	Ann. Sched Labor hours	20 mins add'l run	20 mins add'l run + Orig. Labor hours = New Labor hours	New Labor hours (by) *driver rate - (box 17) (\$37.80 van) (\$38.26 tractor) = Labor Cost	Labor Cost	Ann. Schedule Miles	Number of Miles x Cost per mile @ \$0.00(box 20)	Cost per mile	Cost Per mile + Labor Costs = total PVS Operating Cost
37842	Tractor	4,296	443	4,739	\$38.26	\$181,314.14	88,238.80	\$0.85	\$75,002.98	\$256,317.12
				0		\$0.00			\$0.00	\$0.00
				0		\$0.00			\$0.00	\$0.00
				0		\$0.00			\$0.00	\$0.00
				0		\$0.00			\$0.00	\$0.00
				0		\$0.00			\$0.00	\$0.00
				0		\$0.00			\$0.00	\$0.00
				0		\$0.00			\$0.00	\$0.00
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				0		\$0.00			\$0.00	\$0.00
				0		\$0.00			\$0.00	\$0.00
				0		\$0.00			\$0.00	\$0.00
				0		\$0.00			\$0.00	\$0.00
				0		\$0.00			\$0.00	\$0.00
				0		\$0.00			\$0.00	\$0.00

\*1-23-2008 Driver rates based on Southeastern Area



## American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

May 14, 2008

Robert C. Pritchard  
Director

Motor Vehicle Service

202/842-4240 (Office)  
202/842-8517 (Fax)

### National Executive Board

William Burrus  
President

Cliff "C. J." Guffey  
Executive Vice President

Terry Stapleton  
Secretary-Treasurer

Greg Bell  
Industrial Relations Director

James "Jim" McCarthy  
Director, Clerk Division

Steven G. "Steve" Raymer  
Director, Maintenance Division

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Eastern Region Coordinator

Elizabeth "Liz" Powell  
Northeast Region Coordinator

William "Bill" Sullivan  
Southern Region Coordinator

Omar M. Gonzalez  
Western Region Coordinator

SENT CERTIFIED MAIL – RETURNED RECEIPT & VIA FAX (7002 2410  
0004 7721 8117)

John Dockins, Manager  
Contract Administration, Labor Relations  
United States Postal Service  
475 L'Enfant Plaza, S.W.  
Washington, DC 20260

Dear John:

The APWU is requesting a meeting to discuss the following  
Highway Contract Routes according to Article 32.2.B.

HCR

TERMIN

37842

Knoxville P&DC, TN – Powell, TN

Sincerely,

Robert C. Pritchard  
Director  
Motor Vehicle Service Division

RCP/ndh opeiu#2 afl-cio



## American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

### Robert C. Pritchard

Director  
Motor Vehicle Service Division  
(202) 842-4240 (Office)  
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Northeast Region Coordinator

William E. "Bill" Sullivan  
Southern Region Coordinator

Omar M. Gonzalez  
Western Region Coordinator

Dear Brother/Sister,

It has come to our attention that the postal service has informed you that they plan on doing a cost comparison between PVS and HCR at your installations. We assume that these actions are management's response to the recently initiated Step 4 challenging management's failure to conduct a comparative cost analysis when considering contracting out PVS. We feel that these costs are never true cost comparisons, or true over all costs as mandated under Article 32 of the contract.

Listed are some general questions that should be asked when an HCR is being considered at your installation.

1. Request a list of all driving vacancies, or perhaps all MVS vacancies within 50 miles, 100 miles, and 500 miles of your installation. Compare these vacancies with the amount of drivers you have. *(Remember there are 3 installations in your area that the postal service has converted to HCR and they need an excess of 110 vacancies to place these employees into.)*
2. Request a copy of the administrative costs for excessing. This should include:
  - a. Salaries for people that perform the study.
  - b. Salaries for people that conduct all of the excessing meetings. *(Your local president should be more familiar with what is involved because of their experience with the Clerk Craft excessing.)*
3. Ask what the potential cost will be for moving these employees into these existing vacancies.
4. Will the postal service issue Voyager Credit Cards for the contractor's expenses? *(Receipts for their transactions must be reconciled against submitted costs.)*
5. Ask what the cost will be for the reconciliation of the contractor's receipts.
6. Ask if the contractors will be allowed to park on postal property, if yes;
  - a. ask what the dollar value would be on a yearly basis.
7. Will the contractor's be given office space in the post office, if yes;
  - a. ask what the overhead will be by square footage in the building on a yearly basis.
8. Will the contractor's be allowed to use restrooms within the post office? Some facilities have dedicated restrooms for them to use.

*(There is a much higher cost involved for restroom privileges than the average cost for the building.)*

9. Will the cost comparison the post office has worked out for the contractor's include fuel costs? In many cases the postal service has compared Motor Vehicle PVS costs with fuel against the contractor's without including the expense to fuel these vehicles.
10. Ask the postal service what impact a conversion will have on your VMF employees if they transfer the equipment out of your installation.
11. Most installations have PVS drivers pick up empty equipment during the work day. This fuel cost is generally not included on their costs comparison. The routes the postal service show only include the transportation of mail to and from the stations and branches, and the AO's, to the main plant.
12. Ask what the expected cost will be for the collection of empty equipment, and how it will be figured into the overall cost of the conversion.
13. What cost saving will be realized by the elimination of supervisory jobs in transportation as a result of the conversion.
14. Ask what the actual cost of your commercial fleet is.
  - a. Average cost per mile, for straight trucks, tractor trailers, single axle, and double axle vehicles; depending on what kind of equipment you have; 7 Tons, 9 tons and 11 tons. *(This can generate this with a VMAS report based on the class of truck.)*
  - b. Find out how many miles a year your commercial fleet is driving. What we found is the postal service greatly inflates the distance between stops for the HCR contractor's which makes it appear they are cheaper by the mile allowing them to come in (seemingly) at a reduced cost, and make money. We have found that mileage figures are being doubled in some instances. You can get a fairly good idea based on your routes and the miles your drivers are putting on their trucks per year.

Although these questions are extensive, they are important in obtaining strong, supporting documentation in our fight to maintain the integrity of the U.S. Mail, and to keep our Motor Vehicle Craft gainfully employed.

Please contact my office if you have any questions.

Yours in union solidarity.



Robert C. Pritchard, Director  
Motor Vehicle Service Division

RCP:yd//opeiu#2//afl-cio

STEPHEN F. LYNCH  
9TH DISTRICT, MASSACHUSETTS

COMMITTEE ON FINANCIAL SERVICES

SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE,  
AND GOVERNMENT-SPONSORED ENTERPRISES  
SUBCOMMITTEE ON HOUSING AND COMMUNITY  
OPPORTUNITY  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

COMMITTEE ON OVERSIGHT AND  
GOVERNMENT REFORM

SUBCOMMITTEE ON NATIONAL SECURITY AND  
FOREIGN AFFAIRS  
SUBCOMMITTEE ON FEDERAL WORKFORCE,  
POSTAL SERVICE, AND THE DISTRICT OF COLUMBIA

ASSISTANT DEMOCRATIC WHIP

Congress of the United States  
House of Representatives  
Washington, DC 20515-2109

221 CANNON HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-8273  
(202) 225-3984 FAX

88 BLACK FALCON AVENUE  
SUITE 340  
BOSTON, MA 02210  
617-428-2000  
617-428-2011 FAX

PLYMOUTH COUNTY REGISTRY BUILDING  
155 WEST ELM STREET  
SUITE 200  
BROCKTON, MA 02301  
508-586-5555  
508-580-4692 FAX

WWW.HOUSE.GOV/LYNCH

September 22, 2008

Mr. Charles K. Lynch  
District Manager  
USPS Boston District  
25 Dorchester Avenue  
Boston, MA 02205-9988

Dear Mr. Lynch:

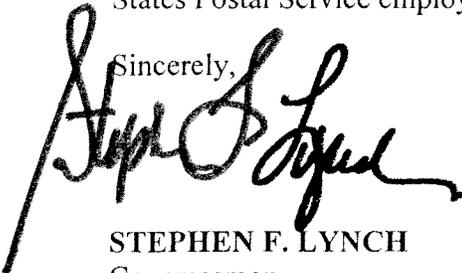
I am writing in regard to concerns brought to my attention recently, relative to the contracting out of maintenance and repair work performed on USPS vehicles. As United State Representative for the Ninth Massachusetts District, I represent the USPS Boston District and many USPS employees. Additionally, I hold a seat on the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia.

It is my understanding that vehicle maintenance work is currently being contracted out at an hourly rate which exceeds that of USPS maintenance craft employees. In addition, I have seen photographic documentation that some work done at the VMF may not have adhered to established maintenance guidelines, risking harm to the environment. Also of grave concern is that these contractors have access to universally familiar USPS vehicles and are authorized to remove them from the premises, but may not be vetted to ensure that there is no threat to homeland security.

I know that the USPS strives to operate an efficient, responsible, and fiscally prudent agency. However, these concerns, if conveyed accurately to me, seem contrary to that goal. It is my hope that you can provide a detailed explanation of USPS motor vehicle maintenance policy and the process by which these contractors are selected.

I look forward to your response and to continuing to work with you on matters concerning United States Postal Service employees and customers.

Sincerely,



STEPHEN F. LYNCH  
Congressman  
9<sup>th</sup> District  
Massachusetts

# AMERICAN POSTAL WORKERS UNION AFL-CIO BOSTON METRO AREA

137 South Street, Boston, MA 02111  
(617) 423-APWU  
Fax (617) 728-9156

**Moe Lepore**  
General President  
**Bob Dempsey**  
Vice President/Treasurer  
**Paul Kilduff**  
Director Industrial Relations  
**Robert J. Keough**  
Clerk Craft President  
**Wayne Greenside**  
Maintenance Craft President  
**Bill Weaver**  
M.V.S. Craft President

September 26, 2008

John E. Potter, Postmaster General  
United States Postal Service  
475 L'Enfant Plaza, SW  
Washington, DC 20260

Dear Postmaster General Potter,

My name is Bill Weaver. I am the Motor Vehicle Craft President in Boston, MA, and the Motor Vehicle Craft President for the State of Massachusetts. I am writing to you, not just as a union official, but also a concerned postal employee and citizen. I am very concerned about our company and its future.

These are the concerns I have and would like to make you aware of them. If you don't already know.

- 1.) In Boston, we have a contract repair facility that sends one of their employees to pick up a postal vehicle to be transported to their facility for repairs. The contract employee shows no ID. We have no list of the subcontractor's employees and their background checks. We just hand him the keys and he drives away. On the other hand, all postal workers who operate these trucks have background checks and are individually trained on each vehicle, and are trained on the security of the vehicle and mail. The contractor has none of this training.

As you know, a postal vehicle is the most trusted and recognized vehicle on the road today. It can go virtually anywhere unchallenged. It could be catastrophic if this vehicle fell into the wrong person's control. Remember the Oklahoma Federal Building and the World Trade Center bombings?

- 2.) The Boston Vehicle Maintenance Facility (VMF) has three tow trucks, and our Chelsea VMF has one tow truck. These tow trucks sit idle while management subcontracts out vehicle towing and vehicle shuttling to Export Towing Company, at a cost of \$171.20 for a one-ton vehicle and \$197.60 for a two-ton vehicle, to be towed each way to and from a facility.

In Boston, Export Towing Company, on an average, is being paid \$7,345.00 per week since February 2008 for towing services.

- 3.) Management made a decision to eliminate Non-Scheduled Day Overtime in Vehicle Maintenance.
- 4.) Management made a decision to subcontract out that work, which could have been done in-house on overtime. In some cases, subcontracting is being done at two or three times the in-house overtime rate.

We all read the Postal Service has fallen on hard times. We are being asked to be more productive, sell more, go that extra mile for the Service. But how do you expect to sell that concept to your employees when they see their work going out the door at a greater cost to the Postal Service, than doing the work in-house? How do you expect for them to be loyal, hard working employees when they see their company being mismanaged? We wonder if we have a future here. I think not if this fiscal irresponsibility is allowed to continue. Why is this subcontracting being done? It makes no fiscal sense.

I look forward to your response.

Sincerely,



Bill Weaver  
M.V.S. Craft President  
Boston Metro Area Local 100  
American Postal Workers Union, AFL-CIO

WW/et  
opeiu #6; afl-cio

cc: Moe Lepore, General President, Boston Metro APWU  
William Burrus, National President, APWU  
Robert Pritchard, National Director, M.V.S. Division, APWU  
Timothy C. Haney, V.P., Northeast Area Operations, USPS  
Charles Lynch, Boston District Manager, USPS  
Congressman Stephen F. Lynch, 9<sup>TH</sup> District, MA

## REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	Grievant: Class Action
between	)	Post Office: Seattle VMF
UNITED STATES POSTAL SERVICE	)	USPS No: E00V-4E-C 03022446
and	)	APWU No: 101602HDL
AMERICAN POSTAL WORKERS	)	
UNION, AFL-CIO	)	

BEFORE: Eduardo Escamilla, Arbitrator

### APPEARANCES:

For the U.S. Postal Service: Carol Manago  
For the Union: Bruce Bailey

Place of Hearing: Seattle, Washington  
Date of Hearing: February 9, 2005  
Date of Award: March 4, 2005  
Relevant Contract Provision: Articles 32  
Contract Year: 2000-2003  
Type Grievance: Contract

### AWARD SUMMARY

The Postal Service violated Article 32 when it subcontracted vehicle maintenance repair work without due consideration to the factors listed in Article 32. In light of employees' availability to perform the subcontracted work, the Postal Service is directed to cease and desist from further subcontracting and is directed to compensate employees for hours worked by subcontractors.



Eduardo Escamilla  
Arbitrator

MAR 08 2005

## ISSUES

### Postal Service statement of issues:

(1) Did the Postal Service violate Articles 32 and 8 of the National Agreement when it initiated temporary commercial assists at the following locations:

- (a) East Union Station of Seattle, WA post office on approximately September 20, 2002;
- (b) Wallingford Station of Seattle, WA Post Office on approximately August 21, 2002;
- (c) Main Office of Kent, WA Post Office on approximately August 13, 2002;
- (d) Carrier Annex of Kent, WA Post Office on approximately August 13, 2002;
- (e) Covington Station of Kent, WA Post Office on approximately July 17, 2002;
- (f) Maple Valley, WA Post Office on approximately July 9, 2002?<sup>1</sup>

(2) Did the Postal Service violate Article 32 and 8 of the National Agreement when it initiated Vehicle Maintenance Repair Agreements at Covington Station of the Kent, WA Post Office on November 1, 2002 and at the Maple Valley, WA Post Office on December 20, 2002?

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<sup>1</sup> The parties stipulated to the accuracy of the dates listed in the Postal Service's issues statement.

Union's statement of issue:

Was there a violation of the National Agreement when the Postal Service contracted out vehicle maintenance work from the Seattle Vehicle Maintenance Facility? If so, what is the appropriate remedy?

**STATEMENT OF FACTS**

Relevant contract provisions:

**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 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 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.

Statement of facts

The Union filed the instant grievance on October 16, 2002, alleging that the Postal Service violated the National Agreement, handbooks and manuals when it

subcontracted the repairs and maintenance of its vehicles normally performed by bargaining unit employees in the Seattle VMF<sup>2</sup> garages. The Seattle VMF consists of several garages, with the main garage in Seattle and auxiliary garages in Lynnwood, Bellevue, and Federal Way. The Union also complained that the Postal Service did not notify it of the subcontracting until October 15 even though the subcontracting had begun in July. The Union asserts that the Postal Service failed to give it an opportunity to present its views on minimizing the impact on the bargaining unit, which allegedly eroded the work available to qualified employees.

In early October 2002, the motor vehicle craft steward received complaints about overtime from employees at the Seattle VMF's main garage in Seattle. The employees complained that supervisors issued new instructions to them about overtime. They could not work overtime unless they could finish the project within one hour, a departure from past practice.

An interim manager assumed responsibilities for the facility around June 2002 at which time he implemented the actions giving rise to the issues presented herein. The interim manager denied the alleged new overtime policy but did state that he asked for volunteers to work overtime on Sundays rather than have employees work overtime after their scheduled hours because he believed that it was more productive to assign overtime in this manner. Employees remained available for overtime, but were not assigned to work overtime in the same amount and manner before the interim manager assumed his position.

Pursuant to requests for information, the steward discovered that the interim manager had reduced overtime by subcontracting out vehicle maintenance work for vehicles at certain post offices, work normally performed by the Seattle garage

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<sup>2</sup> Vehicle Maintenance Facility

employees. Although the subcontracting began in July 2002, the Postal Service did not pursue any timeliness argument in defense of the grievance.

The disclosed documents revealed that the contractors' rate for services is roughly double the rate of pay of employees. The contractors charge approximately \$60 to \$79 per hour while the maintenance employees' hourly rate is approximately \$33, including costs of all benefits.

The Union acknowledged that contracting service work has occurred in the past, but maintains that it has never occurred in this magnitude. The steward also asserted that the records show the subcontractors work was inadequate as their work had to be redone by employees. The Postal Service agrees that certain contracted repair work has been redone because of the contractors' faulty work, but it asserts that this is true for work initially performed by employees themselves. The interim manager did not consider the redo work a factor when he decided to subcontract out the work.

Maintenance employees perform three types of repair work. Scheduled repair work is performed at the garage pursuant to a set schedule requiring specified work and any other additional work that is brought to the attention of the garage when the vehicle has the scheduled work performed.

Unscheduled work is work that is performed at the various post offices where the vehicle is located. This type of work requires sending employees from the various garages to the different post offices. Unscheduled work is clustered so to maximize an employee's trip to different locations. When the garage receives work requests from a post office, a work order is initiated. A maintenance employee is assigned that work, along with other clustered work.

Emergency road side work requires immediate response from the garage as a vehicle has broken down while in use by a letter carrier. The letter carrier may wait with

the vehicle, but more often, post office management will send a replacement vehicle to the carrier so that the route may be completed. The Postal Service could not present any occurrence when the letter carrier waited until the mechanics arrived.

The Union acknowledged that a concerted effort is made not to send maintenance employees to do road calls during rush hours because of the obvious implications of lost time due to traffic. This reasoning is the main impetus the interim manager implemented the subcontracting endeavors.

The Union complains the Postal Service never notified it of its intent to subcontract work as required under Article 32. The Postal Service informed the Union at the step 2 meeting that Vehicle Maintenance Agreements would be implemented for the Covington and Maple Valley post offices. The Postal Service never notified the Union of the subcontracting at any other locations, prior to the filing of the grievance. The Union further asserts that the notice given at the step 2 meeting is insufficient as Article 32 requires that notice be given at the national level, which admittedly was never done. The Union believes that the magnitude of subcontracting had a substantial impact on the Seattle vehicle maintenance employees because of lack of overtime, possible reduction of workforce, and lack of opportunity for promotion because of the potentially reduced work force.

By letter dated October 15, the interim manager restated his version of a labor management meeting held on October 8. At that meeting, the Postal Service informed the Union that the Maple Valley and the Covington Post Offices would be placed under VMAs<sup>3</sup>. In the October 15 letter, the Postal Service asserts it informed the Union that,

“The VMA was considered due to the length of time, distance and traffic problems that currently exist in reference to the overall impact to these stations and the time it has taken for the BMC VMF employees and the

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<sup>3</sup> Vehicle Maintenance Agreements

Bellevue VMF employees to respond in a timely manner to meet the Maintenance Requirements on a daily bases of these facilities.

The travel distance of 45 minutes without traffic and 1 hour average with heavy traffic one way for Covington and 30 minutes to one hour average for Maple Valley one way is not cost effective for the Postal Service especially for minor tag repair responses that take time away from performing daily scheduled maintenances at vehicle maintenance facilities.”

The Union's main argument centers on its assertion that the Postal Service did not give due consideration to the factors listed in Article 32. In addition to the costs of contractors that are approximately twice as much as employees' cost, the Union asserts that in the past when a garage's work is backed up, work is reassigned to other garages. In the instant case, the Postal Service never sought help from the auxiliary garages to aid the Seattle main garage and thus did not attempt to use all available employees prior to subcontracting out the work.

The Union believes that the Postal Service violated Article 19 when it failed to follow the procedures outlined in its handbooks regarding subcontracting vehicle maintenance work. Firstly, the Union argues that “non-VMAs” or “temporary commercial assists” is a fiction that is not based on any contractual provision. The Union further asserts that even if this type of subcontracting is permissible, the Postal Service must nevertheless still meet its obligations under the contract and handbooks before it subcontracts work. Secondly, the non-VMAs are completely void of any consideration of Article 32 criteria.

The Union asserts that management failed to substantiate how the shop was behind in their services. The manager never identified work that was behind in excess of two weeks which is the timeline to determine if the work back log is excessive and unacceptable. The Union argues that the number of vehicles with delayed scheduled service amounted to only one month's of work, and that only half of that number could

be considered excessive under the Postal Service's own regulations. The Postal Service regulations allows for a two week period to perform the service on a vehicle. Thus, only half of those vehicles would be beyond the two weeks leniency time frame.

In response to the grievance, the interim manager's step 2 grievance decision states there was no loss of hours, no loss of craft positions and that overtime was 1.61% higher in 2002 than in 2001. He stated that overtime was offered to employees on weekends, specifically on Sundays when the fleet was not in use in order to maximize the effectiveness of use of overtime. Furthermore, he states it is management's prerogative whether to assign overtime or not and whether to use it prior to using any commercial vendor assists or VMA. He denies that he contracted out any maintenance service because he did not use a VMA, but rather he used non-VMAs agreements, as he considers non-VMAs not to be subcontracts. He further maintains that Article 32 is not applicable to vehicle maintenance VMA issues as Article 32 only applies to HCR contracting.

He explained that he obtained temporary commercial assists in order to meet safety requirements on approximately 85 vehicles out of 539 as the VMF facilities were too far behind on services "due to lost labor hours from craft employees." He concluded that, "Management clarified their position to the Union and due to this procedure not being common practice and is occasional and temporary in nature which does not constitute permanent contracting of VMF functions with the exception of Maple Valley and Covington Washington Postal Facilities, management has denied this request at step 2..."

The manager further stated that the Seattle maintenance facility was experiencing an "abnormally high increase of Sick/FMLA cases as well as heavy hours of Union Time, Military Time, training hours, COP limited Duty Cases and Light Duty cases." He stated that the use of leave by employees was also a motivating factor for seeking maintenance assistance.

The manager relied on numerous contract and handbook provisions to justify his actions. Article 3 is the management rights clause that gives the Postal Service unilateral discretion in making operational decisions. The manager repeatedly asserted that the contract, Article 3, places no limitation on him to subcontract vehicle maintenance service, and because Article 32 is inapplicable to VMAs, his actions were permissible under the contract.

Handbook AS-707 relates to contracting vehicle maintenance agreements. The purpose of the handbook is to provide guidance on obtaining vehicle maintenance and repairs services through vehicle maintenance agreements, which are ordering agreements entered into by the Postal Service and suppliers of vehicle maintenance services. The handbook further states that VMAs should generally not be used by offices where vehicle maintenance is available in-house, but when the VMF "cannot meet its requirements, such an office may submit a VMA request that justifies the need for supplementary services." (Section 1.4)

Of importance, the handbook states that VMA "will ordinarily be awarded only when it is determined that the requesting office requires vehicle maintenance services at least six times per month. Less frequent requirements may be met through local purchasing authority." (Section 1.4.2) It further states that VMA procedures may be used only when an office estimates that its vehicle maintenance expenditures will exceed \$2000 per year and that requirements for smaller quantities may be met through local purchasing authority. (Section 1.4.3) The Postal Service did not submit any information at hearing regarding costs of anticipated service costs or frequency of service.

The manager never explained what contractual provision gives him authority to enter into "non-VMA agreements" or "temporary commercial assists". The contract, handbooks, and manuals are void of any references to these nomenclatures. He did

however referenced he had authority to make purchases if the amount did not exceed \$2000. His testimony can best be describe that he has the right under ASF 707 (a), Section 3.41 to enter into non-VMA agreements if he feels it is in the best interest of the Postal Service and the expenses are less than \$2000.

The interim manager explained the differences between the two types of subcontracting. Under VMAs, the contract can be terminated with 30 day notice, while non-VMAs have no notice requirement. Under non-VMA agreements, the manager can negotiate costs of service with the contractors. Under VMAs, he cannot negotiate fees because that is performed by purchasing personnel after they review the locales' wage survey.

The manager explained that the Postal Service has used non-VMAs when the need has arisen and the when need is of a short duration. If the need is for a longer duration, then the Postal Service utilizes the VMA process which is coordinated with purchasing personnel. The manager can choose contractors when utilizing non-VMAs, but may not choose the contractors when using VMA process; rather he prepares reports for the purchasing office of the various potential contractors. Currently, none of the non-VMAs initiated in 2002 have continued. Only the two VMAs in Covington and Maple Valley continued.

He acknowledged that after he ceased using non-VMAs, the work increased for bargaining unit employees. He also acknowledged that he did not maximize overtime hours for employees on the overtime desired which is a list of employees who volunteer to work overtime when needed.

The manager testified that when he assumed responsibilities for the garage he was faced with a large back log of work. He decided to reduce the backlog by using non-VMAs as he could not hire any new employees, nor was it practical to expend overtime hours by sending employees from the main garage to the post offices that were

in the fringe areas. He decided that it was economically prudent to keep the employees at the garage and subcontract the work to local vendors where the costs could be minimized. He reasoned that although the hourly rate was doubled for subcontractors, he nevertheless incurred a saving because the employees sent to the fringe areas would not be in a nonproductive status traveling approximately one hour each way.

Finally, the manager did not consider the impact a VOMA employee could have had on the cost or efficiency of repair work at the distant post office when he subcontracted out that work. VOMA employees are assigned to work at post offices with the additional duties to perform minor vehicle repair work, including some of the work that was subcontracted.

## ANAYLSIS

### Arbitral authority

In Case S7V-3W-C 32838 (Hardin, 1991), the arbitrator sustained the grievance holding that the Postal Service violated Article 32 when it subcontracted out work. Of importance to this case, the arbitrator concluded that the facts showed the lack of rationale, reasoning and facts to support the "due consideration" obligation by the Postal Service.

In Cases H98V-4H-C 01207153 and H98V-4H-C 01207174 (Tranen, 2002), the arbitrator concluded the Postal Service violated Article 32 by failing to give "due consideration" to the factors articulated in Article 32.1. He cited Arbitrator Snow in Case H7C-NA-C 96 and H0C-NA-C 6, wherein he stated, "Generally, the Union must show that the decision to subcontract work was made without regard to one or more of the factors set forth in the parties' agreement and, thus was arbitrary and capricious...." Citing Arbitrator Mittenthal, Case A8-NA-0481, Arbitrator Tranen reasoned that a process by which "due consideration" is undertaken is an element necessary for the

Postal Service to establish. He rejected the Postal Service's argument that the shop's back log in preventive maintenance did not "in and of itself give rise to a finding that cost, efficiency, the availability of qualified men, and public interest had been evaluated and considered." He adhered to Arbitrator Mittenthal's conclusions that management had failed, "To make a good faith attempt to evaluate the needs of contracting out in terms of the contractual factors," which falls short of "due consideration." Furthermore Arbitrator Mittenthal concluded that, "the Postal Service must take into account the five factors mentioned in paragraph A in determining whether or not to contract out. To ignore these factors or to examine them in cursory fashion in making its decision would be improper."

In *Case A90V-4A-96021662* (Calee (sp), 1997), the arbitrator concluded the Postal Service violated Article 32 when it closed a motor vehicle machine shop and contracted out the work. He reasoned that the contract does not give the Postal Service the unilateral right to subcontract, but rather the right is qualified. He held, "The Company has the right to subcontract work as long as doing so does not adversely impact the job security or continued employment of the present employees". He rejected the Postal Service argument that the contract was not violated because no bargaining unit employee lost their job. He reasoned the Postal Service's interpretation of Article 32 was overly narrow and applies to situations other than loss of bargaining unit positions. He interpreted Article 32 to mean that the Postal Service constraints are applicable when the subcontracting has "an adverse impact on job security or continued employment of the present employees."

The parties in that case also argued the scope of the term "significant impact" of the bargaining unit work; whether the impact is judged on a local or national basis. The union argued that Article 32 should be construed that the adverse affect should apply to the bargaining unit as a whole, while the Postal Service argued that the impact should be restricted to the facility in question as it argued that no employee at the facility lost their job. The arbitrator concluded that Article 32 does not restrict itself to any particular

facilities, and therefore it must be read that the impact is on the bargaining unit as a whole.

### Conclusions

Articles 1, 3, 5 and 32 create major rights for both the Union and the Postal Service. It is universally accepted that management rights clauses such as Article 3, creates a Postal Service right to operate its facilities in a legitimate, lawful manner to accomplish its mission by using sound business decisions regarding cost and efficiency, including staffing level and use of personnel. Contract interpretation requires that specific contract provisions prevail over general provisions. Such is the case when comparing the general management rights clause to specific employees' rights provisions. This cannot be made clearer than by the management rights proviso that the exclusive managerial rights are "subject to the provisions of this Agreement and consistent with applicable laws and regulations." This proviso makes the management rights clause subservient to Article 32 and the restrictions imposed on management to subcontract work.

In Article 1, the Union recognition clause, management agrees to recognize the Union as the representative of its employees regarding terms and conditions of employment who perform work in a defined bargaining unit. When the Postal Service actions and decisions affect the scope of the bargaining unit work by removing work from employees, Article 1 justifies the Union challenging such action. The preservation of bargaining unit work is a fundamental right and goal in every labor agreement that can only be changed through mutual agreement.

Article 32 brings forth the parties' agreement that under certain circumstances, the Postal Service may subcontract out bargaining unit work. However, it is important to understand that the Union has not altered its philosophy and goal to retain as much bargaining unit work that it can, and prevent any further erosion of bargaining unit work

by requiring the Postal Service to strictly adhere to the subcontracting provision. The Union did not waive all its rights to preserve bargaining unit work under Article 32. To the contrary, Article 32 should be read as a limitation on the Postal Service's right to subcontract. The Postal Service does not have carte blanche right under Articles 3 and 32 to subcontract out bargaining unit work. Article 32 emphasizes this restriction and articulates five factors that the Postal Service must consider before subcontracting out any bargaining unit work.

Initially, I reject the Postal Service's position that Article 32 is not applicable to subcontracting vehicle maintenance repair work and reject the interim managers' assessment that Article 32 is superfluous. Article 32 is a broad right given to the Postal Service without limitation to the various crafts covered by the contract. If Article 32 was inapplicable to a particular craft, the parties would have indicated the restriction in the clause. Furthermore, absent Article 32 applicability to vehicle maintenance repair work, the Postal Service would have no apparent contractual right to subcontract any vehicle maintenance repair work.

The Postal Service's argument that it need not consider any ramifications of Article 32 because it utilized "temporary commercial assists" or "non-VMA agreements" fails to consider that any type of outsourcing is subcontracting. The contract does not place any definition on the term "subcontracting" so as exclude non-VMA outsourcing from the general definition and contractual restrictions on subcontracting.

Work normally performed by bargaining unit employees is reserved for bargaining unit employees. Any attempts to assign this work to non-bargaining unit employees or non-employees infringes on the Union's fundamental right under the contract to demand that all such work be only performed by bargaining unit employees, whether the assignment is through VMAs or non-VMA agreements. Without this basic tenet of labor relations, the parties' negotiations for a contract would be an act of futility as an employer could denigrate the bargaining unit integrity by outsourcing bargaining

unit work. Thus, the Postal Service is obligated under Article 32 to give "due consideration" to the listed criteria when it subcontracts bargaining unit work pursuant to either VMA or non-VMA methods of outsourcing.

I reject the Union's assertion that the Postal Service violated Article 32.1 B by failing to provide notice at the national level. The record is clear that the Postal Service from July to October did not notify the Union at the local or national level of the subcontracting of vehicle repair work. The Postal Service attempts to justify its conduct by firstly arguing that notification is not required under Article 32 because the subcontracting did not have a significant impact on the bargaining unit and secondly, the local Union cannot complain about lack of notice when the notice is required only at the national level.

After considering the parties arguments, I find that the Postal Service did not violate Article 32.1.B. Subcontracting out work under any circumstances must be considered an action that will ultimately have a significant impact on employees. Subcontracting is an erosion of bargaining unit work which may result in loss of future positions, loss of overtime hours, and promotions. Subcontracting would also deprive current employees an opportunity to move along the employment ladder.

However, the "significant impact" criterion is associated to "bargaining unit work". The contract identifies the bargaining unit to comprise of all Postal Service employees and does not break down bargaining unit to individual groupings such as local union's jurisdictional area. To interpret this clause in any other fashion would require the national parties' involvement in every subcontracting issue for each local union. It is unimaginable that the national parties would entertain such an endeavor because of the logistics and costs involved in attempting to administer local issues at the national level. If the parties intended to apply a different meaning to the term "bargaining unit work" other than its national application, they would indicate such meaning in the clause.

"Bargaining unit work" without any contractual definition in Article 32 must be given its broad interpretation.

I find that subcontracting of the Seattle VMF repair work does not have a significant impact on the bargaining unit as a whole. The decisions made by the Seattle VMF management do not under these circumstances effect any other garages throughout the country. Accordingly, the Postal did not have an obligation under Article 32.1.B to notify the union at the national level of its intent to subcontract.

The resolution of the substantive issues centers on whether the Postal Service gave "due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees". Due consideration imparts a good faith effort by the Postal Service to evaluate the necessity of subcontracting bargaining unit work. This burden is a high burden that must be supported by objective, substantiated evidence. The Postal Service must have more than an opinion that subcontracting is the best means of performing the work. It must have quantitative evidence to support its assertion of due consideration. For the reasons discussed below, I find that the Postal Service failed give due consideration to the listed criteria and thus the subcontracting of vehicle maintenance work under VMA agreements and "non-VMA agreements" violated Article 32.1.A.

My analysis begin with the interim manager's perception that Article 32 does not apply to vehicle maintenance repair work but only applies to subcontracting HCR work. With this belief, I find that the interim manager's decision to outsource the work would not necessarily involve the consideration of the five factors. Why should he consider these criteria if he believed that the criteria did not apply to the outsourcing of vehicle maintenance work?

Nevertheless, the interim manager testified that he gave due consideration to the criteria. He explained that it would serve the public interest if he outsourced the work.

His testimony was couched in very general terms and at best he could only identify the possibility that it would serve the public interest to send out individuals closer to the point of service because the service would be provided more rapidly. He argued that if employees from the garage serviced vehicles that broke down during the routes, the letter carrier would unnecessarily wait at the vehicle for the Seattle based mechanics to arrive. No substantive evidence was supplied to support this assertion. To the contrary, the interim manager admitted that when vehicles are disabled while on route, a substitute vehicle is delivered to the carrier as soon as possible so that the route will be completed thereby assuring the public interest's of promptly delivering the mail is met.

With respect to costs, the interim manager did not explain the glaring inconsistency of his assertion that it was more cost effective to contract out the work, when the hourly cost of subcontracting is approximately twice as much as employee's hourly rate. His attempts to explain this economic inconsistency were more akin to his explanation concerning public interest. However, these two criteria are distinct and each must be considered on its own merits. Under ASM 535, maintenance of Postal Service equipment should be performed by employees unless it is economically advantageous to outsource the work. I find that the evidence failed to establish that outsourcing the repair work met this criterion.

The interim manager explained that it was simply more efficient to keep all of the mechanics at the garages working on the vehicles rather than sending them out on long trips (approximately 1.5 to 2 hours) to work on vehicles at the various distant post offices. He explained that it was management prerogative how to best utilize its manpower to meet its operational obligation. This explanation can be applied to any situation whereby alternate work sources are available. However, the Postal Service cannot simply decide to subcontract out work because it is cheaper and quicker to do the work elsewhere. The National Agreement is designed in part to protect employees' job. Management's discretion under Article 3, however, cannot infringe on any contractual right granted to employees, such as the expectation of continued

employment through the preservation of work. It is also noted that the "distant" justification for subcontracting is inapplicable to several of the post offices where vehicles were serviced under non-VMA agreements. Thus, the Postal Service's explanation fails close scrutiny because some of the vehicles were not located at distant post offices.

AS 707, 1.4.2 and 1.4.3 instructs the interim manager that VMAs may not be used when vehicle maintenance is available in-house, unless the VMF cannot meet its requirements. It is the Postal Service obligation to show that it could not meet its work requirements by utilizing all of its employees whether on regular or overtime basis. The mere fact that a back log exists does not create the presumption that employees are unable to meet the Postal Service requirements. There must be an affirmative showing that the work back log prevents the Postal Service from accomplishing its goal of the prompt delivery of mail. The Postal Service did not show that any post office faced a crisis of any nature in the delivery of mail because of the maintenance back log.

Additionally, AS 707 requires the Postal Service to affirmatively show that VMA are necessary because service will be required more than six times a month and that the costs will exceed \$2000 on a yearly basis. The Postal Service did not present any evidence to meet its burden to justify the use of VMA under AS 707.

The Union also pointed out that the manager failed to utilize all of its resources prior to outsourcing the repair work. In the past, the Postal Service has transferred work from one garage to another when a back log existed in one particular garage. The Postal Service did not utilize this option, nor did the interim manager assert that he even considered it.

With respect to the availability of employees to perform the work, the Postal Service argues that the back log of work displayed that insufficient man power was available to complete the work on a timely basis. This case arose because employees

complained about the interim manager's decision to cut back overtime. Although, the Postal Service is not obligated to work overtime, this option must be considered before outsourcing work, especially when the cost of each option decidedly favors assigning overtime rather than outsourcing. The interim manager's decision to cut back the overtime opportunities exacerbated the issue of employee availability to perform scheduled service work. This decision must be viewed detrimental to the Postal Service argument that employees were unavailable to perform service work. I find that employees were available to perform service work, but the Postal Service chose not to use them which action is violative of ASM 13, Section 1.4.2 and 1.4.3 which mandates the use employees to perform maintenance work on Postal Service equipment.

Finally, the interim manager's written explanation that employees were not available because of all of their absences raises issues of significant importance. I shall only touch on the most glaring example. The interim manager decided to subcontract out work because employees were spending too much time performing union work. The contract protects employees from any retaliation for engaging in union activity. Outsourcing work because of employee's union activities, without question, tends to interfere and restrain employees from engaging in such activities. If the Postal Service can erode bargaining unit work because employees engage in union work, it logically follows that those employees will refrain from their contractual and statutory rights to engage in such activities. Thus, the Postal Service decision is ostensibly a violation of employees' statutory rights granted under the National Labor Relations Act<sup>4</sup>. For this reason alone, the Postal Service's decision to outsource the work violated the National Agreement.

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<sup>4</sup> National Labor Relations Act as amended, Section 8(a) (1), 29 U.S.C. [Sec. 158.] (a) states, "It shall be an unfair labor practice for an employer (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7"

As in all conduct between the parties, the contract imposes a good faith obligation on the parties. Thus, the Postal Service must make a good faith effort to abide by the subcontracting restrictions and not merely play lip service to them by making cursory indulgent attempts to comply with those factors. Based on the entire record, the manager's belief that Article 32 was inapplicable to VMAs, and belief that non-VMAs does not constitute subcontracting, I find that the Postal Service failed to meet its good faith effort obligation to refrain from subcontracting unless it met the due consideration requirement under Article 32..

For all of the above stated reasons, I conclude that the Postal Service violated Article 32.1.A by outsourcing all Seattle VMF vehicle maintenance repair work.

### **AWARD**

The grievance is sustained. The Postal Service is ordered to terminate the Covington and Maple Valley VMAs. Inasmuch as employees were available to perform the subcontracted work and the Postal Service reduced overtime because of its subcontracting decisions, the Postal Service is further ordered to compensate the garage employees with equal shares at the overtime rate for all hours worked by all subcontractors.

REGULAR REGIONAL ARBITRATION PANEL

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In the Matter of the Arbitration	(	Grievant: Class Action
	)	
between	(	Post Office: Salt Lake City, Utah
	)	
UNITED STATES POSTAL SERVICE	(	USPS Case No. E94V-4E-C 96076525
	)	
and	(	APWU Case No. 006596DCY
	)	
AMERICAN POSTAL WORKERS	(	
UNION, AFL-CIO	)	

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BEFORE: D. Andrew Winston, Arbitrator  
595 Canyon Boulevard  
Boulder, Colorado 80302  
303/440-9779  
*DAndrewLaw@earthlink.net*

APPEARANCES:

For the U.S. Postal Service: Paul Salazar, Labor Relations Specialist  
1760 West 2100 South  
Salt Lake City, Utah 84199-9401  
801/974-2968

Ann Downing, Research Specialist  
(January 7, 2000, hearing)

Nancy Oman, Advocate, Labor Relations  
(August 24, 2000, hearing)

For the Union: Bruce Bailey, National Business Agent, Western Region  
MVS Division  
150 E. Colorado Boulevard, Suite 208  
Pasadena, California 91105  
626/585-1404

Mike Egan, Motor Vehicle Craft Director, Salt Lake City Area  
(January 7, 2000, hearing)

Robert Menna, Maintenance Craft Director  
(August 24, 2000, hearing)

Place of Hearing: 1760 West 2100 South  
Salt Lake City, Utah 84199

Dates of Hearing: January 7 & August 24, 2000

Date Hearing Closed: September 6, 2000

Date of Award: September 19, 2000

Relevant Contract Provision(s): Articles 3, 5, 19, & 32; AS-707A, Chapter 1; POM § 740.

Contract Year: 1994-98

Type of Grievance: Contract

#### ISSUE

Did the Service violate the Agreement when it subcontracted out thirty-one (31) vehicles from the Sandy, Utah post office for scheduled maintenance during March and April 1996? If so, what is the appropriate remedy?

#### RELEVANT CONTRACTUAL PROVISIONS

##### ARTICLE 3 MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted...

**ARTICLE 5  
PROHIBITION OF UNILATERAL ACTION**

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

**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.

**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.

**AS-707A  
Contracting for Vehicle Maintenance Agreements  
Chapter 1  
Policy**

**1.1 Purpose**

This handbook provides guidance on obtaining vehicle maintenance agreements (VMAs). A VMA is an ordering agreement entered into by the Postal Service and a supplier of vehicle maintenance

services. It sets forth the terms and conditions upon which a binding contract may be entered into at a later date, through placement and acceptance of an order.

#### **1.4 Restrictions**

##### **1.4.1 USPS Maintenance Available**

VMAs should generally not be used by offices where vehicle maintenance is available in-house. However, when the Vehicle Maintenance Facility (VMF) cannot meet its requirements, such an office may submit a VMA request that justifies the need for supplementary services. VMAs should not be used to acquire inventory items for a VMF.

### **Postal Operations Manual 740 Vehicle Maintenance**

#### **741 Maintenance Objective**

The objective of the vehicle maintenance program is to insure safe, dependable, and economical performance of USPS-owned vehicles at minimum cost and minimum vehicle downtime. Achievement of this objective requires an emphasis on *preventive maintenance* rather than on repair of deficiencies. Preventive maintenance provides for scheduled lubrication and examination of all vehicles in accordance with established standards, at prescribed intervals.

#### **742 Maintenance Organization**

**742.1 Definitions.** The USPS maintenance organization is based on the concept of the vehicle maintenance facilities (VMF)...

**742.3 Staffing.** VMF staffing is based upon planned repair work and is established only in accordance with demonstrated need...

#### **744.2 Commercial Maintenance**

**.21 Criteria.** In general, commercial maintenance and repair service should be considered whenever economically advantageous to the USPS...

### **RELEVANT FACTS**

It is undisputed that during March and April 1996, the Service engaged a subcontractor, Pappy's Automotive & RV Service, to perform scheduled vehicle maintenance on thirty-one (31)

vehicles from the Sandy, Utah post office, and that no written notice was given to the Union beforehand. This grievance arises from that subcontracting.

At the arbitration hearing, the parties stipulated as follows: (1) the cost of subcontracting was higher than if the work had been done in-house; (2) the vehicles at issue are the responsibility of the Salt Lake City Vehicle Maintenance Facility ("VMF"); (3) the work performed by the subcontractor had previously been performed by the VMF; and (4) the subcontractor's invoices and the signed spot log requests authorizing the expenditures identify the vehicle worked on by its number, as well as the cost of the service to the vehicle.

Scheduled maintenance occurs approximately every six (6) months on light vehicles, and requires on average from eight (8) to twelve (12) hours per vehicle.

Since October 1994, the Service was behind on approximately one hundred eighty (180) scheduled maintenances. In an effort to catch up, an abbreviated scheduled maintenance program was implemented beginning in October 1995, and in January 1996, the Service started using overtime. Neither effort succeeded in eliminating the backlog.

Michael Egan, Auto Mechanic Level 6 at the VMF and then the Craft Steward, testified at the hearing as follows.

The VMF performed the scheduled maintenance on the Sandy, Utah post office's vehicles before, during and after March and April 1996, the period of subcontracting.

Fleet Maintenance Bulletin No. V-11-93, dated February 25, 1993, requires contractors to use the Preventive Maintenance Inspection (PMI) Guidelines during all PMIs, including filling out check sheets. The subcontractor did not do this on the thirty-one (31) vehicles at issue. Hence, those vehicles were not properly certified as safe to operate on Utah highways. Mr. Egan brought this failure to the attention of Richard Davis, VMF Manager. Since that time, contractors have complied with this requirement.

The Service gave no justification for the subcontracting, as required by AS-707A, § 1.4.1. Mr. Davis provided no explanation or documentation reflecting that due consideration was given to any public interest, *e.g.*, safety, or efficiency. The other enumerated considerations were not an issue because equipment has always been available, and the qualifications of the VMF employees could not

be in question as they had done the work in the past. The Service did not inform the Union about the subcontracting.

On May 1, 1996, the Union, through Mr. Egan, submitted a written information request to the Service for photocopies of the contract(s) with the subcontractor and receipts from the subcontractor, as well as a list of the vehicles repaired in March and April 1996. The same request was made on May 17, 1996. The information was eventually turned over but not before the Step 2 meeting.

There were complaints regarding being constantly behind on scheduled maintenances. The Service did use overtime in the past but never caught up.

No regular wages were lost by VMF employees to the subcontractor. However, the significant loss was the loss of the opportunity to do the work, which could have been done during regular hours or on overtime. A change in employment conditions occurred when the rumor about subcontracting began to circulate. As a result, the VMF employees felt more "under the gun."

In mid-May 1996, Mr. Egan was told by Wayne Moon, VMF Supervisor, and Tyler Lee, Supply Supervisor, that the March and April 1996 subcontract was entered into due to an emergency and that the decision to subcontract out the work was made by Mr. Davis.

Mr. Davis testified at the hearing as follows.

In 1996, the VMF was responsible for over two thousand (2,000) vehicles in Utah and Montana.

The Sandy, Utah post office is a vehicle perimeter office with a Vehicle Operations Maintenance Assistant ("VOMA") whose job includes routine simple vehicle maintenance and repairs and contracting out vehicle maintenance. The Sandy, Utah post office had a contract with a local vender to provide vehicle maintenance services. In 1995, the contract was terminated because of problems with the vender. At that time, the VMF assumed responsibility for maintenance of the Sandy, Utah post office's fleet of vehicles.

The Service resorted to subcontracting in March and April 1996 because the VMF staffing was geared to the number of vehicles for which it had responsibility, and the addition of the Sandy, Utah post office's fleet put the VMF over and above the allocation for the number of vehicles on which it could work. The VMF was behind on over one hundred (100) to one hundred ten (110)

vehicles - three (3) to four (4) weeks past due on regular preventive scheduled maintenance - when it took on the Sandy, Utah post office's fleet.

Mr. Davis had meetings with the VMF staff regarding the backlog. He assigned overtime and work on Saturdays. During this time, employee use of sick leave increased.

Vehicles were breaking down on the street. As a result, Mr. Davis had the VOMA seek a new subcontractor.

When deciding to subcontract out the vehicle maintenance, Mr. Davis considered the safety of the vehicles, the public image and efficiency of the operation, and that no work was being taken away from the VMF employees, who had more than enough work and who were performing it.

There were no complaints or grievances from the Union that the subcontractor's work was substandard.

The Sandy, Utah post office paid for the maintenance of its thirty-one (31) vehicles.

Vehicle maintenance was subcontracted out in 1994, and the Union filed no grievance. The Service was also subcontracting out the maintenance on other vehicles in 1996.

In response to the Union's June 6, 1996, written request for "copy of service contracts allowing work to be done," the Service provided one (1) contract with Packer Glass Company. Mr. Davis stated that there was no particular reason why the Service provided just that one (1) contract to the Union. In response to the Union's request for "any proof of an emergency for vehicle maintenance in the spot log for March and April 1996," the Service provided nothing. Mr. Davis testified that there were no emergencies.

If VMF mechanics had performed the work done by the subcontractor, it would have taken longer because VMF mechanics are more familiar with the vehicles, do a more thorough job, do things in excess of the checklist due to their experience with the vehicles, and would likely be called away during the course of the day to do other things.

It is possible that VMF mechanics may have been able to do the work on overtime that was performed by the subcontractor.

Mr. Davis tried to discuss the Article 32 requirements with Doug Youngfield, then the Vehicle Maintenance Craft Director, at Step 2 but Mr. Youngfield refused.

No VMF employees lost pay, benefits, overtime pay or leave because of the subcontracting. The Service tried to reduce the backlog using VMF employees. Nevertheless, the Service was behind on services of city vehicles when it subcontracted out the maintenance of the Sandy, Utah post office's vehicles.

### UNION'S POSITION

The Service improperly subcontracted out the work from the VMF. A past practice existed of the VMF performing the work, even utilizing overtime.

The Service did not follow its own procedures when it subcontracted the work. It instituted the subcontracting unilaterally in violation of Article 5, thereby affecting the pay of VMF employees. It did not notify the Union prior to implementing subcontracting.

The Service at first denied that vehicle maintenance was being subcontracted out. It attempted to delay, hinder and block the grievance by providing little, no or incomplete documents. The Service tried to conceal the subcontracting.

Article 3 vests certain rights in the management "subject to the provisions of this Agreement and consistent with applicable laws and regulations." The Service is restricted in using subcontractors when the work can be done in-house.

The service gave no justification for subcontracting in violation of AS-707A, § 1.4.1.

It is not common to perform scheduled vehicle maintenance through subcontracting.

The Service was behind on scheduled vehicle maintenance since 1994. Yet, all of a sudden, the Service implements subcontracting. The reason for subcontracting was a complaint from the Postmaster for the Sandy, Utah post office regarding the condition of the vehicle fleet. The VMF Manager took the easy way out by utilizing subcontracting. It did not, however, relieve the backlog.

The Union asks that the grievance be sustained, that the Service be ordered to cease and desist from such subcontracting in the future, and that the VMF mechanics be compensated for one hundred fifty (150) hours at the overtime rate for the hours worked by the subcontractor.

The Union cited and relied upon the following arbitration decisions and authorities: Arbitrator Snow, *Case #A-C-N-6922 (1990)*; excerpt from "Past Practice in Contract Administration," *Michigan Law Review*, Vol. 59 (1961), pp. 1027-42; Arbitrator Plant, *Case #H90V-4H-C 96010822*

*(Atlanta, GA 1999); Arbitrator Marx, Case #B94V-4B-C 93023682 DB30310094 (Manchester, NH 1999); Arbitrator Hardin, Case #S7V-3W-C 32838 (Tampa, FL 1999); and Arbitrator McCabe, Case #90V-4A-96021662 95794L (New York City, NY 1997).*

### SERVICE'S POSITION

Scheduled maintenance on 80-100 vehicles was not being done in a timely manner. Overtime did not put a dent in the maintenance need. The Service was not catching up and there was a continual backlog.

Articles 3 and 32 give the Service the right to manage its operations, so long as certain requirements are met. Article 32, §§ 1.A and B state the general controlling principle in this grievance.

This grievance involves thirty-one (31) vehicles and a two (2) month period of time. Prior to subcontracting, the Service determined that Article 32 was the means by which to accomplish it. Article 32 factors were given due consideration. Subcontracting had been done in the past and it was done in this case without employees losing hours. The Union has not proven by clear and convincing evidence substantial harm, a violation of Articles 3, 19 or 32 of the Agreement, or that the Service's conduct was intended to deprive VMF employees of work.

The Service does not deny the costs involved in subcontracting. The Union has never stated clearly how Articles 3 and 19 connect to this grievance. The Union made no objection at Step 2 regarding Article 32 compliance. Thus, the Union has cited no specific contractual violations.

The subcontractor's failure to complete PMI checklists does not invalidate the subcontract.

The grievance has no merit. Articles 3 and 32 were followed. The subcontracting was a valid business decision and was not motivated by a desire to deprive VMF employees of work. No harm can be shown.

The Service asks that the grievance be denied in its entirety.

The Service cited and relied upon the following arbitration decisions: Arbitrator Aaron, *Case #H8N-5B-C 17682 (1983)*; Arbitrator Mittenthal, *Case #H8N-5L-C 10418 N8-W-0406 (1981)*; Arbitrator Mittenthal, *Case #H8C-NA-C 25 A8-NA-0510 (1981)*; Arbitrator Snow, *Case #H4V-NA-C 84, 85, 86 & 87 & H7C-NA-C 1, 3 & 5 (1992)*; Arbitrator Mittenthal, *Case #M8-W-0027 & M8-E-*

0032 (1980); Arbitrator Robins, Case #NIV-IJ-C-16080 (Springfield, MA 1986); Arbitrator Moberly, Case #S0V-3U-C 3651 G90V-IG-C-92041729 (Austin, TX 1994); Arbitrator Caraway, Case #S7V-3W-C 30484 (Tampa, FL 1992); Arbitrator Byars, Case #H90V-4H-C 93011408 (Tampa, FL 1994); Arbitrator Shea, Case #B90V-1B-C 93 015641 (Worcester, MA 1994); and Arbitrator Erbs, Case #CON-4Q-C66097 018-343-91 (St. Louis, MO 1992).

### OPINION

The Union's assertion of the existence of a past practice of the VMF performing the regular scheduled maintenance on the Sandy, Utah post office's vehicle fleet fails. While it is undisputed that VMF mechanics performed such services on said vehicles before, during and after March and April 1996, the period of the subcontracting, it is also undisputed that: the Sandy, Utah post office is a vehicle perimeter office with a VOMA on staff; that an outside vendor had previously performed the maintenance under a contract until that contract was terminated in 1995 due to problems with the vendor; that no grievance was filed over this previous subcontracting; and that the VMF took on the Sandy office's fleet in 1995 after termination of the vendor's contract. Given this history, I cannot find that there was a clear and consistent past practice of the regular scheduled maintenance on the Sandy, Utah post office's vehicle fleet being performed exclusively by the VMF mechanics. The evidence is to the contrary.

My conclusion in this regard is not in conflict with the parties' stipulations that the vehicles at issue are the responsibility of the Salt Lake City VMF and that the work performed by the subcontractor had previously been performed by the VMF. The first such stipulation merely states the current state of affairs, and neither stipulation negates or precludes the aforementioned history.

Throughout the grievance and even in the hearing, the Union appeared to dance around Article 32, never invoking it by name. However, this is an Article 32 grievance.

The concept of balancing competing interests when deciding whether to subcontract is built into Article 32, which, in § 1.A, directs the Service to give five (5) factors - public interest, cost, efficiency, availability of equipment, and qualification of employees - "due consideration...when evaluating the need to subcontract."

Competing interests are presented in this grievance. On the one hand, Mr. Davis testified that the Service was concerned about the threat to the public interest, cost & efficiency because of the backlog of unmaintained and, therefore, unsafe vehicles, as well as break downs on the street. Subcontracting provided a mechanism to reduce the backlog using an outside vendor with fewer distractions than VMF mechanics and who could devote more than one (1) mechanic to the work while still billing the Service for only one mechanic at a flat hourly rate. The remaining factors - availability of equipment, and qualification of employees - were not implicated in this grievance. In addition, Mr. Davis stated that he also considered that no VMF mechanic would lose any hours as there was more work than they could handle.

On the other hand, the Union had concerns about the threat of craft work being taken away from the bargaining unit and the subcontractor actually costing the Service more than if the work had been done in-house. In addition, the Service admitted that VMF mechanics may have been able to perform the work done by the subcontractor by utilizing overtime and likely would have done a better and more thorough job because of their experience, their intimate knowledge of the vehicles, and their practice of going above and beyond the minimum basic service requirements, though it would have taken them longer to complete the work for the same reasons.

It should be noted that with respect to the issue of cost, the parties stipulated at the hearing that the subcontractor cost more than if the work had been performed in-house. The subcontractor charged a flat fifty-five dollars per hour (\$55/hr.), no matter how many mechanics worked on a vehicle. Mr. Davis admitted that the work could have been done by VMF mechanics utilizing overtime. Mr. Davis also stated that Level 6 Vehicle Mechanics earn thirty dollars per hour (\$30/hr.) for straight time and forty-five dollars per hour (\$45/hr.) for overtime. Thus, subcontracting was not economically advantageous in this instance. However, cost is only one of five factors to be considered under Article 32, § 1.A.

Given the evidence, I cannot find that the Service failed to abide by the requirements of Article 32, § 1.A. The Article does not mandate any particular decision, only that the service weigh certain factors. The fact that the Union may disagree with the Service's decision after giving due consideration to the enumerated factors does not create an Article 32, § 1.A violation.

The Union also complains that it was not given the notice required by Article 32, § 1.B. What constitutes a "significant impact on bargaining unit work" is not defined by the provision and is open to interpretation. The Service subcontracted out the scheduled maintenance of thirty-one (31) vehicles for two (2) months (March and April 1996). However, there is no telling what the Service was contemplating. The subcontracting apparently stopped as a result of the grievance, the earliest record of which appears to be on or about May 1, 1996. If in the spring of 1996 the Service planned to consistently use a subcontractor(s) over an extended period of time to alleviate the backlog, that decision foreseeably could have significantly impacted the VMF work force by cutting into its work load, and, thus, the Service probably should have consulted with the Union at the national level per Article 32, § 1.B. Unfortunately, there is no evidence in this regard. As it turned out, the number of vehicles and duration was relatively few (thirty-one (31) out of a total of over two thousand (2,000) for which the VMF was responsible) and short (just two (2) months). Even with the subcontracting, the backlog was barely dented. The VMF still had more than enough work to do. No VMF employee lost hours, either straight or overtime, only perhaps an opportunity at some point for yet more overtime. Thus, I cannot find that the Service's decision in this case to engage a subcontractor posed the requisite "significant impact" triggering the Service's obligation to give advance notice to the Union pursuant to Article 32, § 1.B.

The inquiry next centers on the justification, if any, given for the decision to subcontract. The VMF was clearly not meeting the Sandy, Utah post office's or Salt Lake City's vehicle maintenance requirements. A backlog since 1994 has been acknowledged. The Agreement permits subcontracting under these circumstances per Article 19 and AS-707A, § 1.4.1.

The question then becomes whether the Service submitted a vehicle maintenance agreement (VMA) request that justified the need for supplementary services. A fair reading of the language in AS-707A, § 1.4.1 is that the permissive "may" speaks to the Service's option to resort to supplemental services whenever the VMF is not meeting an office's requirements. If the Service chooses to subcontract, then the Service must submit a request justifying the need. The Agreement is silent as to whether the request can be verbal or must be written.

In this grievance, the request was verbal. Mr. Davis directed the Sandy, Utah VOMA to find a vender. Beyond that, we do not know what Mr. Davis conveyed to the VOMA with respect to the

justification. The Sandy, Utah VOMA, Robert Turpin, did not testify. The Step 1 decision references Mr. Davis claiming an emergency existed. The Step 2 decision references the backlog, the inefficiency presented by vehicle breakdowns, the Service's right to decide the methods and means of getting the work done, POM § 744.2.21, that there were no wages or hours lost by VMF employees, and that there was no change in working conditions. Mr. Egan's un rebutted testimony was that he was told by Wayne Moon, VMF Supervisor, and Tyler Lee, Supply Supervisor, that the Service subcontracted because of an emergency. Mr. Davis, however, testified there was no emergency, and that was why no documents were produced in response to the Union's request for documents showing an emergency. Mr. Davis stated that the reasons for subcontracting were that the VMF staffing was geared to the number of vehicles for which it had responsibility (an apparent reference to POM § 742.3), that the addition of the Sandy, Utah post office's fleet put the VMF over and above the allocation for the number of vehicles on which it could work, and that the VMF was already behind on over one hundred (100) to one hundred ten (110) vehicles - three (3) to four (4) weeks past due on regular preventive scheduled maintenance - when it took on the Sandy office's fleet. Mr. Davis further testified that when deciding to subcontract, he considered the safety of the vehicles, the public image and efficiency of the operation, and that no work was being taken away from the VMF employees.

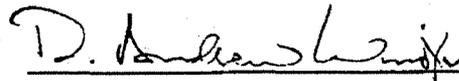
It is unclear from the evidence whether any justification was given when the VMA request was initially made. The Service appears inconsistent in its subsequently issued justifications in that they seem to have changed over time. The reasons cited are also self-contradictory in at least one respect, *i.e.*, whether or not there was an emergency. All of these mysteries would obviously not exist had the VMA request been made in writing.

The record demonstrates that Mr. Davis put in the VMA request to the Sandy, Utah VOMA and issued inconsistent and sometimes conflicting justifications after the fact. Consequently, I find, based upon the absence of evidence before me, *i.e.*, whether or not Mr. Davis' VMA request to the VOMA conveyed the justification(s) for the need for supplementary services, that the Service violated AS-707A, § 1.4.1, incorporated into the Agreement by Article 19.

Having found a contractual violation, I need not address the remaining issues as they will not support a greater remedy.

**AWARD**

The grievance is sustained. The Service is ordered to compensate the vehicle mechanics employed at the Salt Lake City VMF in March and April 1996 with equal shares at the overtime rate of the total hours worked by the subcontractor, Pappy's Automotive & RV Service.



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D. Andrew Winston, Arbitrator  
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REGULAR REGIONAL ARBITRATION PANEL

ARBITRATION IN THE MATTER OF

United States Postal Service, ]	Grievant:	Class Action
Employer, ]		
and ]	Post Office:	Tampa, Florida
American Postal Workers ]		
Union, AFL-CIO, ]	USPS Case No:	S7V-3W-C 32838
Union. ]		

BEFORE ARBITRATOR PATRICK HARDIN

APPEARANCES:

For the United States Postal Service:

William Daigneault  
Labor Relations Representative

For the American Postal Workers Union:

Daniel Powers  
National Business Agent-----

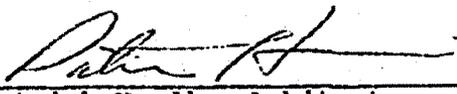
HEARD: November 21, 1991

AT: Tampa, Florida

AWARD:

The grievance is sustained. The Postal Service violated Article 32 of the National Agreement in subcontracting the delivery of 24 new LLVs on July 31 and August 1, 1990. The eight bargaining unit members who are currently seniormost and who were available to perform the work shall be paid one hour each at their normal straight time rate.

DONE this 16th day of December, 1991, at Knoxville, Tennessee.

  
Patrick Hardin, Arbitrator

### HEARING

This matter was heard by the arbitrator on November 21, 1991, at Tampa, Florida. The parties appeared as shown above and were afforded full opportunity to present evidence and argument. At the conclusion of the hearing the parties presented closing argument and waived the submission of post-hearing briefs and the arbitrator took the matter under consideration.

### ISSUE SUBMITTED

The parties did not agree on any formal statement of the issue submitted for resolution. After considering the evidence and argument of the parties, and the prior awards upon which they rely, the arbitrator deems the issue to be:

Did the Postal Service violate Article 32 of the National Agreement by giving insufficient consideration to the decision to subcontract the delivery of 24 new vehicles from the freight terminal to the General Mail Facility, at Tampa, which was performed on July 31 and August 1, 1990? If so, what should the remedy be?

### RELEVANT CONTRACT PROVISIONS

Articles 3, 15, 19, and 32 of the National Agreement between the parties are pertinent to the resolution of this dispute.

### FACTS

In late July, 1990, a shipment of 24 new Long Life Vehicles (LLVs) arrived at the Tampa, Florida, freight rail head, for delivery to stations and branches in the Tampa area. To transport the LLVs the 8 miles from the rail head to the Vehicle

Maintenance Facility, the Postal Service contracted with Arrow Wrecker Service. Using a flat-bed transporter which carried two LLVs per trip, Arrow delivered the LLVs on July 31 and August 1. The Postal Service paid Arrow \$600, or \$25 per vehicle, for that service.

In the past, bargaining unit employees had performed such deliveries of new vehicles. The Union filed this grievance to challenge the assignment of the work out of the bargaining unit. The grievance was not adjusted in the grievance procedures and is now properly before the arbitrator for final and binding resolution.

#### POSITION OF THE AMERICAN POSTAL WORKERS UNION

Bargaining unit employees were available to perform the work, and the equipment needed for the work was also available. Management did not realize any significant cost savings or efficiency by subcontracting the work. These facts establish that Management could not have given reasonable consideration to the factors specified in Article 32 before making the decision to subcontract the work. In addition, the refusal of the Postal Service to make full disclosure during the grievance procedure provides a second ground of relief. In subcontracting disputes, Management should be required to show, in the grievance steps, that it has satisfied the affirmative duty imposed by Article 32. Management made no such showing. The grievance should be sustained and the adversely affected employees made whole by the

division among them of \$600, the sum improperly paid to Arrow Wrecker Service.

#### POSITION OF THE POSTAL SERVICE

The National Agreement does not restrict the right of Management to subcontract work. Article 32 requires only that Management give "due consideration" to five specified factors, including cost and efficiency, when "evaluating the need to subcontract." In this case, those factors were duly considered. The decision to subcontract was based on considerations of cost and efficiency. The subcontractor performed the work at a lower cost than bargaining unit employees would have done, and those employees remained available for time-sensitive work for which the full range of their skills was demanded. Moreover, no harm to any employee or to the craft resulted from this decision. The Union has failed to discharge its burden of proof, and the grievance should be denied.

#### ANALYSIS AND CONCLUSIONS

The simple facts of this case conceal a difficult problem: has the Postal Service complied with the affirmative duty which the National Agreement explicitly imposes in Article 32, Section 1.A? That section declares:

The Employer will give due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract.

The duty is only to give due consideration to those factors, but it is not less than that. If Management makes a decision to subcontract before giving the five factors "due consideration," Management violates the National Agreement and the decision can be countermanded by the arbitrator, if necessary for a full remedy. In Class Action, Case No. S1V-3U-C-42697 (San Antonio, Texas, July 20, 1989), for example, Arbitrator J. Earl Williams directed the termination of an ongoing subcontract which Management had entered in violation of the Article 32 standards respecting Highway Movement of the Mail.

Moreover, the duty to give due consideration means that Management must make reasonable decisions about subcontracting. It is not to be supposed that Article 32 allows the Postal Service to proceed with a subcontract after concluding that all five of the factors weigh strongly against that course of action. As Arbitrator James J. Sherman has written, Class Action, Case No. S4T-3T-C-15225 (Oklahoma City, Oklahoma, October 13, 1986):

This contract language . . . obligates Management to act in a reasonable manner when faced with a decision between performing certain work "in-house" or by the use of a contractor. And to make certain that Management understood its obligations, under this provision, the contracting parties used the term "due consideration."

These standards are well settled, and there is no apparent dispute about the validity of them in this proceeding.

The problem here is the prior one of how the Union is to know, or -- more accurately -- to suspect, that such a violation has occurred so that a grievance may be filed and pursued. It will be a rare case in which the responsible manager will say that he considered none of the factors, or only those involving cost and efficiency. Thus, at the earliest stages the Union can only proceed by considering the circumstances: Was the work within the capability of the employees? Was the necessary equipment available? What cost savings and efficiencies were realized? What was the interest of the public, if any? If the Union's answers to those questions make the decision appear to be unreasonable, or even a close call, the Union may feel a duty to file the grievance.

In the grievance procedure, speculation should end. There, the Union is entitled to learn Management's answers to those questions, and to learn those answers in detail. Article 15, Step 2, imposes on both parties the obligation to "make a full and detailed statement of facts . . . relied upon." In the typical dispute over subcontracting, the Union is likely come to the grievance table with only the most fragmentary information. It is Management, after all, which knows the identity of the agent or agents of Management who gave the matter the "due consideration" required by Article 32. And it is Management, and not the Union, which knows when and where they gave it, what information they considered, and the relative weight that was assigned by them to each factor and for what reasons. The

disclosure of those data to the Union no later than Step 2 enables the Union, probably for the first time in most cases, to make a fully informed evaluation of whether Article 32 has been complied with. If it is the Union's judgment that Article 32 was violated, or probably violated, the Union may make its presentations at Step 3 and at arbitration using the information disclosed by Management at Step 2.

In this case, for whatever reasons, that process did not work satisfactorily. The Union arrived at the arbitration hearing claiming that it had never received the full accounting of who had given the required due consideration to this subcontract, when and where it had been given, what information had been considered, and what factors had been relied on and for what reasons. A credible witness testified for the Union that the Step One grievance meeting had been an empty formality at which the supervisor simply said that the decision had been made and was out of his hands, or words to that effect. Another testified that the Step Two meeting had been brief and cursory. The testimony of those witnesses was not effectively rebutted, even though Management's Step 2 representative testified. It was also undisputed that one document of considerable relevance, which was offered into evidence as Management Exhibit 1, had not previously been delivered to the Union. When I nevertheless admitted it subject to proof that its contents had been revealed to the Union during the grievance procedure, there was no proof even of that, and the document was ultimately excluded.

Despite the failure of the grievance procedures to inform the Union about the bases of Management's decision, the Union presented a prima facie case. Witnesses for the Union testified that bargaining unit employees had performed the work at times in the past, that the staffing of the Vehicle Maintenance Facility in August 1990 was at or above the levels prevailing at those past times, that equipment for transporting the LLVs was available, and that there was no reason why the bargaining unit employees could not have done the work as in the past.

To oppose that evidence, the Postal Service offered the testimony of Mr. Leonard Gould, Manager of Vehicle Programs. Mr. Gould testified that the decision to subcontract the work was "ultimately" his own. He then testified, in summary, that in April, 1990, a similar lot of 24 LLVs had been shuttled from the rail yard to the maintenance facility using bargaining unit personnel as drivers. Mr. Gould testified that the April operation had required about 28 hours of employee time, and that the \$600.00 dollars paid to Arrow Towing for the July operation was a cost savings, because the wages of bargaining unit employees for 28 hours, plus the per-mile operating costs of the LLVs for the eight miles each, would have been higher than \$600.00.

There is a major deficiency in that testimony. There was no evidence that assigning the work to Postal Service employees in April added 28 hours of compensated work in the bargaining unit, either in the form of overtime, or in added hours of part-time or

supplementary employees. This point is not complicated, but it is critical. Union witnesses testified that employees did the work in April under the normal staffing arrangements.

Management, which has the records, did not show that the April assignment had caused overtime or other unusual personnel costs, or had caused the delay of time-sensitive work. In July, if employees could have shuttled the LLVs while also doing all of their normally scheduled work at the maintenance facility, all within the normal work week of the regularly scheduled employees, then the labor cost of doing the shuttle work with employees would have been, essentially, zero. All of them would have been paid for the full week at the standard rates whether they performed the shuttle work or not.

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 no 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.

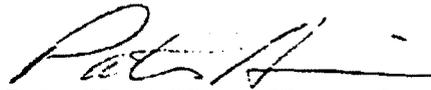
#### REMEDY

As the preceding pages should make clear, this decision is based in part on the failure of the grievance procedure. The Union was handicapped at arbitration by the lack of disclosure in the grievance procedure and the record is, for that reason, far from satisfactory. I considered remanding the matter to Step 2 so that the parties could do it right. I decided that the potential gains were not worth the added costs. I conclude that the grievance should be allowed not only because the evidence showed a violation, but also because the National Agreement provides that, in the grievance process, the Union is entitled to know chapter and verse about Management's decisions to subcontract.

I am mindful, however, that my decision rests in large part on fragmentary, even if unrebutted, evidence suggesting that the work could have been done in the bargaining unit without added cost. For that reason, I will not award the monetary sum requested by the Union, for there is no evidence that bargaining unit employees lost \$600.00 in wages as a result of Management's action. Instead, I will direct the payment of one hour's wages to each of the eight senior employees who would have done the work if matters had been otherwise. That will be a sufficient remedy for the harm to the craft. To minimize the administrative costs of compliance, the payments will be made to current employees, at current rates.

AWARD

The grievance is sustained. The Postal Service violated Article 32 of the National Agreement in subcontracting the delivery of 24 new LLVs on July 31 and August 1, 1990. The eight bargaining unit members who are currently seniormost and who were available to perform the work shall be paid one hour each at their normal straight time rate.



Patrick Hardin, Arbitrator

Knoxville, Tennessee  
December 16, 1991

8.tpavehic.arb



## **I. BACKGROUND**

The grievance considered herein was filed by the Richmond Area Local of the American Postal Workers Union (hereinafter referred to as the "Union") on behalf of the Motor Vehicle Craft employees of the United States Postal Service (hereinafter referred to as the "Postal Service") at the VMF in Richmond, Virginia. The Step 2 Grievance Appeal Form dated November 24, 1998 sets forth the following "Detailed Statement of Facts/Contentions":

On 10/23/98 the VMF started to arbitrarily and capriciously transport vehicles to stations and branches by an outside contractor (John's towing). This work was consistently and routinely performed by the bargaining unit. The Postal Service did not give due consideration to public interest, cost, efficiency, availability of equipment and qualification of employees when it subcontracted the work.

As the "Corrective Action," it was requested that the Postal Service:

Cease and desist from contracting out vehicle maintenance to outside contractors, shuttling & towing of vehicles to stations and branches. Monetary damages based on the amount paid to the towing service (contractor) for all work performed for the postal service to be divided equally between all Tour II mechanics, bodyman, tireman and garagemen.

On February 1, 1999, the Union appealed the case to Step 3 for the following reasons:

The union contends that Management has failed to bargain in good faith based on attached letters and Philadelphia Decision Case Number 4-C-18057-P by Richard H. Beddow, Jr., Administrative Law Judge. Therefore, Grievant should be made whole in every way as request in Item # Thirteen (13) of grievance. (sic)

The parties discussed the grievance at Step 3 and by letter dated April 16, 1999, Mr. John J. Simaitis, Labor Relations Specialist, denied the grievance by stating that:

The issue in this instant grievance is whether management violated the National Agreement when the VMF transported vehicles to the stations by an outside contractor.

Although the union claims that the Postal Service arbitrarily and capriciously contracted out the work, there was no evidence to support that claim. To the contrary, local management's PS Form 2608 demonstrates that the outside contract was practical, promoted efficiency, and was within the guidelines of the National Agreement. Accordingly, no contract violation has been established and the grievance is denied.

Having been unable to resolve the grievance, the case was appealed to arbitration in accordance with the procedure contained in the parties' collective agreement<sup>1</sup> and the undersigned was appointed to hear and decide the issue. A hearing was conducted in Richmond, Virginia on February 26, 2002, at which time the parties presented evidence and arguments in support of their respective positions. At the conclusion of the hearing, the record in this case was closed.

## **II. STIPULATIONS**

1. For 18 to 20 years the shuttle work has been performed by the Motor Vehicle Division.
2. On October 23, 1998, the Motor Vehicle Division was two Mechanics and one Garageman short.
3. The two Mechanics and one Garageman positions were filled in February 2002.
4. The operational window was from 5:00 a.m. to 10 a.m.
5. There are about 15 vehicles involved each day.
6. There is no Tour 1; only Tour 2 and Tour 3.
7. There was Overtime Desired List at the time.
8. There were two memos from Headquarters mandating that the preventive maintenance be performed timely on the Postal vehicles.

## **III. PERTINENT PROVISIONS OF THE AGREEMENT**

### **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.

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<sup>1</sup> Collective Bargaining Agreement Between American Postal Workers Union, AFL-CIO and U.S. Postal Service, November 21, 1998 – November 20, 2000 (hereinafter referred to as the "Agreement").

**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.

**IV. CONTENTIONS OF THE PARTIES**

**A. Union**

The Union contends that the Postal Service violated the provisions of the Agreement when on October 23, 1998, it unilaterally entered into a contract with an outside source to provide shuttle service for the Postal vehicles to the VMF. Prior to that time, the shuttle work was performed by the VMF Mechanics, Garagemen, and Body and Fender employees. The Union acknowledges that Management received two letters concerning the scheduled maintenance which are in addition to maintenance and repair as necessary. In this regard, the Union relies upon Section 1.3.1 of the AS-707A Handbook which states that facilities that "do not have vehicle maintenance available in-house" may request a vehicle maintenance agreement (VMA) with a supplier of vehicle maintenance services. However, the Union points out that since the facility at Richmond is a VMF with towing service available, there is no need for a VMA. In addition, it notes that Section 1.4.1 which provides that VMA's "should generally not be used by offices where vehicle maintenance is available in-house." According to the Union, the bargaining unit employees are fully trained and they should be used to perform all of the work, including test driving a vehicle to determine what is wrong with it. Although the Union recognizes that Section 1.4.1. allows a VMF to submit a request for a VMA if it "cannot meet its requirements," it maintains that the work in question contractually belongs to the Motor Vehicle craft and it should not have been contracted out. The Union points out that the Postal Service did not respond to the Step 2 Appeal and the Step 3 Answer merely makes reference to its position stated in the Step 1 Summary.

The Union requests that the longstanding past practice should stand and the work should be returned to the Motor Vehicle craft and the bargaining unit employees be compensated at the overtime rate for the time the subcontractor has been used to perform the shuttle work.

**A. Postal Service**

The Postal Service emphasizes that it has a responsibility to ensure the safety of its employees and the public by maintaining the Postal vehicles. In this regard, it points to the two mandates which came down from Headquarters to complete the scheduled maintenance in a timely manner. According to the Postal Service, during the period of time in question, there was a shortage of employees in the Motor Vehicle craft. It asserts that it would have been unable to meet its requirements for performing the scheduled maintenance within the window of operation, as well as meeting the standards of getting the mail to the customer on time, if it had not contracted out the shuttle work. The Postal Service submits that it has complied with the considerations set forth in Article 32 of the Agreement and, therefore, requests that the grievance be denied.

**IV. DISCUSSION AND FINDINGS**

The issue to be resolved in this case concerns whether the Postal Service violated the provisions of Article 32 of the Agreement and/or the Handbooks and Manuals by contracting out the shuttle work at the VMF in Richmond, Virginia. The existence of Article 32 demonstrates a recognition by the parties that there may be instances when subcontracting is necessary. Article 32 is not a prohibition against subcontracting, rather it provides the guidelines which must be adhered to by the parties in those circumstances. Specifically, in Section 1.A, it states that the Postal Service "will give due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract."

At the Richmond VMF, scheduled preventive maintenance and necessary repairs are performed on the Postal vehicles for the Richmond facility and several stations and branches. According to the parties, about 15 vehicles are brought to the Richmond VMF for maintenance each day and the work of shuttling the vehicles must be performed within the window of operation from 5:00 a.m. to 10:00 a.m. in order that the vehicles can be returned for mail delivery. There is no dispute that the transportation of vehicles between the branches and the VMF has traditionally been performed by the Motor Vehicle craft employees; i.e., the Mechanics, the Garagemen, and the Body and Fender employees.

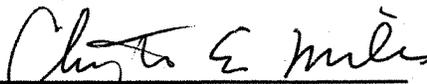
On September 9, 1998, a memorandum was forwarded from Mr. Nicholas F. Barranca, Vice President, Operations Support, to the Vice Presidents, Area Operations, on the subject of "Attention to Daily Vehicle Operator Inspections and Timely Vehicle Preventive Maintenance Inspections." Therein, it was mandated that "each Vehicle Maintenance Facility must conduct thorough and timely scheduled maintenance inspections." A subsequent memorandum was sent by Henry A. Pankey, Vice President, Mid Atlantic Area Operations, to the District Managers, lead Plant Managers, and Area Direct Reports, and he reiterated the direction that "each Vehicle Maintenance Facility must conduct thorough and timely scheduled maintenance inspections." Thereafter, on October 23, 1998, Postal Management at the Richmond VMF entered into a contract with John's Towing for transporting vehicles to the stations and branches. The Union challenges the use of an outside contractor to perform bargaining unit work.

There was no testimony or evidence presented at the arbitration hearing; however, according to Management's position contained on the Step 1 Grievance Summary, "due to current vacancies, contracting is a must to ensure scheduled maintenance is completed timely." Nevertheless, there was no documentation provided to support this position and it appears that the subcontracting was done under the guise of safety. In this regard, however, it is undisputed that one Garageman and two Mechanic positions were left unfilled for nearly three and one-half years, despite the memos from headquarters concerning the policies and practices, especially the timely performance of preventive maintenance, which are "designed to prevent the operation of unsafe vehicles." Also, there was no evidence to establish that the Postal authorities had given due consideration to "public interest, cost, efficiency, availability of equipment, and qualification of employees" prior to contracting the services for shuttling. In this regard and based upon the stipulated circumstances surrounding this case, it is clear that the shuttle work is bargaining unit work and if Management determines that it is necessary to contract such work, then it must demonstrate that it complied with the directive in Article 32 by giving due consideration to the factors set forth therein. It was not established that it did so. Although the parties further agreed that there were three vacancies in the Motor Vehicle craft at the time, there was no showing that the vacancies prohibited the use of the bargaining unit employees to do the shuttle work. There was no cost comparison or proof that it was more efficient to subcontract the work. Furthermore, there was no evidence that the Postal Service considered any alternative means to shuttle the vehicles, such as overtime or altering times for the shuttling. Consequently, the grievance filed herein is sustained, in part. The Postal

Service is directed to cease and desist from subcontracting the bargaining unit work by transporting vehicles between the Richmond VMF and the stations and branches without first giving due consideration to the factors set forth in Article 32 of the Agreement. In addition, the case is remanded to the parties for a determination of the number of hours worked by the subcontractor performing the work in question. The number of hours shall be divided among and paid to the affected Motor Vehicle craft employees at their applicable straight time rate.

**AWARD**

The grievance filed on behalf of the Motor Vehicle Craft employees at the Richmond, Virginia VMF is sustained, in part. The Postal Service is directed to cease and desist from using a subcontractor to perform the bargaining unit work of transporting vehicles between the VMF and the stations and branches without first giving due consideration to the factors set forth in Article 32 of the Agreement. The case is remanded to the parties for determination of the number of hours worked by the subcontractor in performing the work in question. The number of hours shall be divided among and paid to the affected employees at their applicable straight time rate.



Christopher E. Miles, Esquire  
Labor Arbitrator

March 27, 2002



March 22, 2006

Mr Robert C Pritchard  
Director, Motor Vehicle Division  
American Postal Workers Union  
AFL-CIO  
1300 L Street, NW  
Washington, DC 20005-4128

Certified Mail  
7002 0860 0006 9347 6435

Dear Bob:

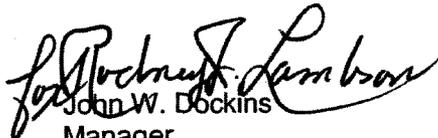
This letter is in response to your March 3 correspondence regarding the appropriate rate for labor costs per hour in a Vehicle Maintenance Facility (VMF) when considering subcontracting.

All of your prior correspondence regarding appropriate labor cost per hour appeared to have questioned the Diamler-Chrysler reimbursable warranty rate that was published in the March 25, 2004, Vehicle Maintenance Bulletin V-05-04. Therefore, all prior responses from the Postal Service addressed the reimbursable warranty rate for that specific contract and not VMF labor cost per hour that should be used for cost comparison purposes when considering subcontracting. Please understand that there is a distinct difference between a reimbursable warranty rates which is tied to a negotiated contract versus the VMF labor rate used by the Postal Service when determining whether it is appropriate to subcontract.

The appropriate VMF labor cost per hour is \$42.24. This is the labor rate per hour used by the Postal Service when determining feasibility of subcontracting. This represents the average rate for a PS-7 Automotive Mechanic.

If you have any additional questions regarding this matter please contact Rodney Lambson of my staff at (202) 268-3827.

Sincerely,

  
John W. Dockins  
Manager  
Contract Administration (APWU)

