

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration) GRIEVANT: Class Action
)
between) POST OFFICE: Trenton VMF
)
) USPS CASE NO. A00V-4AC 07013678
UNITED STATES POSTAL SERVICE,)
) APWU CASE NO. TNJ06121V
and)
)
AMERICAN POSTAL WORKERS) **AWARD ON MONETARY DAMAGES**
UNION, AFL-CIO)

BEFORE: MICHAEL J. PECKLERS, ESQ., ARBITRATOR

APPEARANCES:

For the APWU: Russ Knepp, National Business Agent MVS
Thomas M. LaFauci, TA/Witness
Michael Strano, MVS Craft Director TMAL

For the USPS: Vincent Solimine, Labor Relations Specialist
Laurie Rodrigues, Labor Relations Specialist/TA
Carl Sauerborn, Manager Trenton VMF

Place of Hearing: Trenton, New Jersey

Date of Hearing: May 6, 2008

Record Closed: June 10, 2008

Date of Award on Merits: July 9, 2008

Last Best Offers:
APWU: August 16, 2008
USPS: August 25, 2008

Date of Monetary Award: September 24, 2008

Relevant Provisions: (Articles 3; 5; 15; 32)

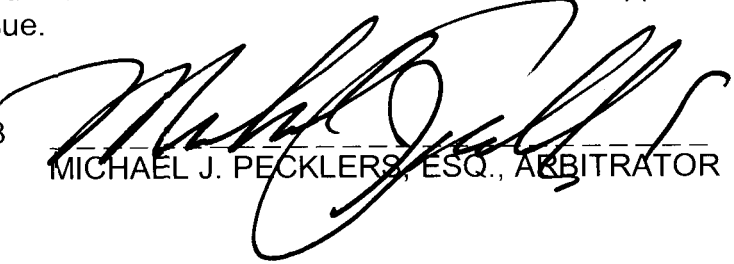
Contract Year: 2006 - 2010

Type of Grievance: (Contract – Vehicle Maintenance Oversight)

AWARD SUMMARY

For the reasons expressed more particularly in the body of this Monetary Award, the Union's Last, Best, offer in the amount of \$336,938.00 is awarded. Following a careful review of all evidence adduced at hearing, coupled with my prior Award, and after full consideration of the respective position statements, I find that this is the more reasonable position based upon the rationale advanced by the APWU and the evidence of record. This amount shall therefore be paid immediately to the Union for distribution to the unit members identified in the Step 2 Appeal. No duplicate payments shall issue.

Dated: September 24, 2008



MICHAEL J. PECKLERS, ESQ., ARBITRATOR

BACKGROUND

This matter relates to the Postal Service's decision to shift the maintenance oversight responsibilities for 370 vehicles from the 077 zip code from the Trenton VMF to the Kilmer VMF. On October 25, 2006, the APWU initiated a grievance protesting this action, which proceeded through the negotiated grievance procedure without resolution. This alleged violations of the National Agreement not limited to Articles 5 & 32, with the DETAILED STATEMENT OF FACTS indicating that:

[d]uring the period of October 13, 2006 thru October 25, 2006 the Postal Service removed approximately 370 vehicles from the Trenton NJ VMF bargaining unit and assigned them to the Kilmer VMF, which is in violation of Article 5 of the parties' Collective Bargaining Agreement.

On or about September 11, 2006 the Postal Service notified the Union that they were moving 370 vehicles from the Trenton NJ VMF to the Kilmer VMF. This was a unilateral action that took effect on October 1, 2006, since the Postal Service failed to bargain with the Union over the changes.

This action was in retaliation for protected activities on a grievance that was signed on 6-29-06 since the grievance was brought up at the meeting by Mr. DiSomma.

As to relief, the APWU sought that the 370 vehicles be returned to the Trenton, NJ APWU Motor Vehicle Craft bargaining unit, with the affected employees made whole at the applicable overtime rate of pay up to 60 hours per week and/or a lump sum payment of \$500.00 each. When Management's Step 2 designee failed to issue a timely Step 2 Answer, the Union advanced the case to Step 3, with the STEP 3 GRIEVANCE APPEAL FORM substantially reciting the contentions made below. On January 25, 2007, the parties agreed to arbitrate the case as representative of the attached list, pursuant to an ARBITRATION, DIRECT APPEAL & STEP 3 REVIEW, and on February 15, 2007, the APWU appealed the matter to binding arbitration, per Article 15, Sections 2 and 4 of the National Agreement.

Upon the representative case's assignment to the Regular Panel, I was later appointed to serve as the Arbitrator. On notice to the parties, I convened a hearing in Trenton, New Jersey, on May 6, 2008. At hearing, the parties were provided with full opportunity for oral argument; for the introduction of relevant documentary evidence; and for the examination and cross-examination of witnesses. A stipulation was also entered into the record, that the instant case would serve as a representative case. Post hearing briefs were submitted, and returnable with a June 6, 2008 postmark date. The record in the case was then closed on June 10, 2008, after my receipt of the submissions.

On July 9, 2008, I issued my OPINION & AWARD in the case. This sustained the grievance, and *inter alia* remanded the case to the parties for meaningful discussion of an agreement upon a monetary award to be paid to the bargaining unit members identified by the Union in its moving papers. See, AWARD at page 33. However, as jurisdiction was retained, in the event that the parties were not able to agree upon a figure within 45 days, I directed that they each send me their Last, Best offer of settlement, with a short, written justification, within 60 days thereafter. Such was the case, and the Union provided me with the same on August 16, 2008. The Postal Service's submission was later received on August 25, 2008. As provided for in the AWARD, the within is accordingly

awarded on monetary damages, based upon the rationale advanced coupled with the evidence of record.

CONTENTIONS OF THE PARTIES AT HEARING & IN BRIEFS

The American Postal Workers Union

The APWU initially submits that it challenged the Postal Service's reassignment of historically performed bargaining unit work from the Trenton VMF to contract work locations in the New Brunswick area. The Union emphasizes that it did not – and does not – contend that all of the vehicle maintenance work was always performed by the Trenton VMF for these 370 vehicles. Moreover, the APWU does contend and has proven, that the Postal Service has contracted work out of the USPS bargaining unit umbrella, which historically was performed by the Trenton VMF.

The Union acknowledges that the Postal Service is permitted to contract out vehicle maintenance under Article 32. However, said contracting must meet the parties negotiated criteria as stated in Article 32, Section 1. The contract language is then liberally quoted by the Union, particularly subsection A., which provides that "[t]he employer will give due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract." The guidance offered by the definition of "due consideration" provided by Arbitrator Mittenthal in his landmark National Award in Case No. AS-NA-0481 is then relied upon.

From the Union's perspective, the evidence of record developed by MVS Director/Steward Mike Strano clearly proves that the Postal Service failed to meet any semblance of its required burden regarding efficiency or cost under the "due consideration" requirement. Instead, Management never presented one shred of evidence in support of any attempted/realized consideration of any of the Article 32.1 "we factors," at any stage of the grievance appeal process including at the arbitration hearing.

The APWU avers that it submitted multiple requests for information to the Postal Service during the course of the processing of the grievance. The Union argues that, however, Management failed/refused to present it with the information. This information is required to have been presented by the Postal Service in response to the Union's request under Article 17.3, 31.3, as well as Article 15.2, Step 2 (d). The detailed history of these information requests is then provided. On the basis of Management's violation of Article 17.3, 31.3 & 15, and repeated denial of information in these cases, the APWU affirms that the Postal Service must not – and cannot – be permitted to now respond with positions or evidence in any attempt to answer the Union's contentions or projected data due to the withholding of information.

The Union further instructs that in conjunction with the USPS denial of information is the fact that the Postal Service has presented no evidence in support of any espoused Step 2 decision to the APWU. It goes on to recognize that Article 15.2 Step 2 (d) requires full cooperation, full development, and full exchange of both parties' positions, no later than at the Step 2 meeting. Concluding that the Postal Service failed in their Step 2 obligations, the APWU cautions that Management must not be now permitted to use present arguments or evidence, which was not presented to support their position at Step 2. The National Award of Arbitrator Aaron in Case No. NC-E-1139, as well as numerous Regional Awards including my own, are then supplied to buttress this contention.

Returning to the testimony of Mr. Strano, the Union asserts that his charted cost projections (produced due to the Postal Service's refusal/failure to provide information) clearly prove greatly increased costs for vehicle maintenance due to Management's subcontracting of historically performed VMF bargaining unit work. The further argument is then advanced that the Postal Service has the burden to prove "due consideration," as defined and embraced by Arbitrator Mittenthal, once the APWU presents any prima facie case that Management's decision was arbitrary, capricious or inconsistent with cost savings or increased efficiency. The Union reiterates that Management has presented no evidence in this respect, or

even addressed any of the Article 32.1 "five factors" during the course of the grievance process through the present.

The APWU suggests that in order for me to deny the Union's case, I must agree with the Postal Service's contention that the removal of 370 vehicles has no impact on the operation of the Trenton VMF. Observing that Management's witness testified that all vehicles must be inspected annually, the Union underlines the fact that this is more than 1 vehicle per day that must be extensively inspected. On this basis, the Union characterizes the notion that there is no significant impact as totally ludicrous.

In closing, the Union contends that Management is mandated to bargain, and they did not. They made up their mind to move the vehicles, and did so with no thought to any consequence. This did nothing more than reposition the work in order to contract it out, the APWU charges. It follows by concluding that the Trenton VMF has been significantly impacted in lost work opportunities, causing a major loss to bargaining unit members' income. Therefore, for all the reasons stated at the hearing, and as supported herein, the APWU respectfully requests that I find that the Postal Service violated Article 32.1 when it subcontracted historically performed VMF bargaining unit work from the Trenton VMF to the New Brunswick subcontracting locations since October 2006. The remedy accordingly sought by the Union is the return of the work to the Trenton VMF and the payment to the Trenton Motor Vehicle craft bargaining unit, for all work performed since the reassignment of the subject work out of the controlling bargaining unit.

The United States Postal Service

The Postal Service acknowledges the Union's allegation that Articles 5 & 32 of the National Agreement, specifically, were violated when Management changed the maintenance oversight for 370 vehicles from the 077 Area (Trenton VMF) to Kilmer. Reference is thereafter made to the fact that this is a lead case for all grievances filed on this issue to date. The Postal Service asserts that

Management exercised their rights under Article 3, after notifying the APWU of their intentions. In that regard, Trenton VMF Manager Carl Sauerborn testified credibly that a meeting had taken place on September 11, 2006, in the Trenton VMF. Present at this meeting were Vito Cella, District Manager, Central New Jersey; Dave DiSomma, Manager Operations Support; Ron Rutkowski, Manager Vehicle Maintenance Kilmer; Carl Sauerborn, Manager Vehicle Maintenance Trenton; Bill Lewis, President APWU Trenton Metro Area Local; and Mike Strano APWU MVS Craft Director, TMAL. According to the Postal Service, at that time, there was discussion on this issue. And while there may not have been agreement, the Union was notified and given an opportunity for input. Ultimately, it was Management's decision to make the realignment effective October 1, 2006, to coincide with the start of the Postal Services fiscal year.

The Postal Service recalls that Mr. Sauerborn also testified that the trucks in question were originally assigned to Kilmer, but during Postal reorganization from the old divisions to districts that occurred in 1992, Management decided that the responsibility for the trucks from the 077 offices would be moved from Kilmer to Trenton. This was done because Kilmer would be taking on responsibility for the vehicles assigned to the 078-079 area, which had been moved away from Northern New Jersey to Central New Jersey.

Management advises that in 2003, the responsibility for approximately 600 vehicles from the 078-079 area went back to the Northern New Jersey District, which left Kilmer with about the same amount of trucks (about 1000) that were assigned to Trenton. However, Kilmer had 38 employees and Trenton had only 25, the Postal Service cautions. And although each truck is normally scheduled to be seen in the VMF once per year, it made more sense to realign the responsibilities to better match existing staffing.

The Postal Service underscores that Mr. Sauerborn explained that there was no adverse impact to the bargaining unit in the Trenton VMF. No one lost their position, and only 1 vacant position was reverted. The reversion was done in accordance with Article 37 and not grieved separately. Careful attention is also

paid by Management to the remedy requested by the Union, with the Postal Service reminding me that the APWU has not asked for the job back, but only that overtime up to 60 hours be paid to all of the remaining employees. Management stresses that it also presented worksheets based on the VMF work load, which were completed by Mr. Sauerborn. These summarized Postal data, that indicated that the move actually resulted in more work being brought into the Trenton VMF. The number of in house VMF services increased. In fact, during FY 2006 when the oversight for the 077 vehicles was still in Trenton, 1082 preventive maintenance (PM) services were performed in-house by the Trenton VMF employees. In FY 2007 after the oversight for the 370 trucks was returned to Kilmer, they performed 1287 PM services.

The Postal Service responds to the Union's position that overtime hours were reduced by asking me to remember that overtime is not a contractual guarantee. Rather, Management decides if, when, and where overtime will be used. Once that decision has been made, Article 8 must be followed when scheduling overtime. Despite this fact, the Postal Service represents that there is no significant impact on overtime. The overtime hours were already trending down in FY 2006 before the move, it argues.

Testimony is also pointed to by Management that explained that the reason the overtime continued to trend down was attributed to the fact that the vehicles were now in better condition because they had already been seen for PM service in the VMF after several years of not being seen in the VMF, due to the Trenton closing caused by the anthrax attack. This is substantiated by the facts previously stated above, the Postal Service maintains. It reiterates the fact that more services were done during the year, because the vehicles required less labor hours per service. Even after all of this, there was testimony that the overtime percentage averaged 9% in FY 2007. And in the 3 month period immediately preceding the change in oversight, the Trenton overtime percentage averaged 9%. The Postal Service allows that prior to that and during FY 2005, the overtime percentages were slightly higher. But as explained above, that was attributed to

the VMF trying to catch up after resuming operations and the overall poor condition of the vehicles.

Management affirms that the Union presented no evidence that the amount of subcontracting increased, with the exception of the once per year PM service of all of the 370 trucks performed by local contractors. It reports that practice did not change. In fact, Mr. Sauerborn provided testimony and documents that showed that the subcontracting of the service on vehicles under the maintenance oversight of the Trenton VMF decreased dramatically. In FY 2006, when Trenton had maintenance oversight of the 077 vehicles, 1038 PM services were contracted out, for a total cost of \$230,857.00. By way of comparison, the Postal Service urges that in 2007 after the vehicles were returned to Kilmer, only 188 PM services were contracted out at a cost of \$45,299.00. This represents approximately an 80% reduction.

The Postal Service insists that the documentation the Union presented is not relevant, as the numbers are related to the costs of subcontracting and the work load for the Kilmer VMF. Management instructs that the Trenton Metro Area Local does not have jurisdiction to file grievances on behalf of the Kilmer VMF, which is covered by the APWU Central Jersey Area Local. In addition, the costs and numbers are affected by many other factors, such as costs related to the other 1000 plus vehicles; rising repair costs; staffing issues in Kilmer, etc. They therefore are not an honest and true representation of costs related to the 370 trucks from the 077 area. The conclusions reached are accordingly also without merit.

Management contends that the APWU has failed in its burden to prove that the Postal Service violated Article 32, as stated in the Union's initial Step 2 Appeal. Instead, no evidence was presented to support the contention that the Postal Service acted in retaliation for protected activities related to a prior grievance settlement that was signed on June 29, 2006. There additionally was testimony provided that Management has been and is still in compliance with the settlement, and has no motive to retaliate.

As to the alleged violation of Article 5, which was not even on the original Step 2 Appeal, the Postal Service denies that any evidence has been presented as to how this article was violated. Repeating the circumstances of the September 11, 2006 meeting at the Trenton VMF with the representatives of the TMAL, Management amplifies that the upcoming realignment of the maintenance responsibilities and oversight for the trucks in question was discussed. The Union was advised of Management's intentions, and had an opportunity for input. This was considered, but ultimately the decision to make the move was made in the best interests of the Postal Service.

Management goes on to deny that there is a contractual requirement to bargain with the Union, because the action did not affect wages, hours, or any other term or condition of employment, as defined in section 8 (d) of the NLRA, per Article 5. The Postal Service returns to the retaliation claim because of the grievance settlement signed on June 29, 2006, but urges that Management entered into the same voluntarily and continues to abide by the terms of that agreement today. In that regard, the Union presented no evidence that the changes made were anything but a Management decision to match the work load to staffing, to maximize the efficiency of the operation.

In closing, the Postal Service renews its attack upon the Union's remedy requested in the case. It asks that I look closely at the facts in the case, and base my decision on whether or not the APWU has proved its case. It avers that Management followed the proper procedures and made their decisions based on sound business practices. Management also did not act in an arbitrary or capricious manner, and there was no retaliation for protected activity. There was no loss or harm to the bargaining unit, and their overall workload actually increased. Finally, the Union was given advance notification locally, and there was no increase in the amount of subcontracting being performed on the vehicles in question. For all of the foregoing reasons, the Postal Service requests that I find there was no contractual violation, and deny the grievance in its entirety.

STATEMENT OF THE CASE

Following a remedial remand which resulted in fruitless settlement discussions, the parties provided me with their Last, Best, offers on the monetary Award in the instant case. The APWU maintained that it calculated the appropriate and reasonable remedy for Contract Scheduled Maintenance performed by contractors within the 077 area specifically for the 370 vehicles identified in my award. In that regard, the Union indicated that it reviewed the USPS Vehicle Management Accounting System actual dollar costs for the 370 vehicles, with the monthly cost being \$23,915.00. Therefore, for the 23 month period identified in the Award, the total cost paid to contractors was **\$550,045**.

The Union additionally calculated what it again describes as the appropriate and reasonable remedy for the Contract Shuttle Work performed by contractors within the 077 specifically for the 370 vehicles by reviewing the USPS Vehicle Management Accounting System. On this basis, it asserts that it arrived at the actual dollar costs for the 370 vehicles, which was \$5,384.00 monthly. According to the APWU, this resulted in a total cost paid to contractors for shuttling work of **\$123,832.00**, during the 23 month period.

Combining these figures, the Union counseled that this equates to \$673,877.00. This figure was reduced by 50%, which represented the Union's Last, Best, Offer of **\$336,938.00**. It suggested that these calculations are well grounded within the evidence presented and the parameters of my decision. It further scolded the Postal Service for arriving at its calculated amount for the scheduled maintenance at the straight-time rate, as if the Motor Vehicle Craft could have performed the work on regular shifts. The APWU argued that it is clear this could not have been possible, as all Motor Vehicle Craft employees were working during the contracted period, with no stand-by designation. The Postal Service is also accused of miscalculating the Contract Shuttle Work by low-balling the cost to only \$9,448.67, since the monthly cost alone was \$5,384 for each of the 23 months.

The Postal Service firmly adopted the position that any monetary award should not enrich a particular party, nor should it encourage undue gain in future grievances. Such an award must also consider financial burdens inherited from a business environment. Lastly, Management instructed, it must not prevent a business from managing its operation pursuant to contractual parameters. The Postal Service provided a summary of the two (2) meetings between the parties on the monetary issue, and charged that the Union at no time produced any facts or documentation that would support its proffer of settlement. Management on the other hand, presented documents and explanations on how their figures were arrived at.

The Postal Service went on to contend that since the Union failed to substantiate the reasoning for its proposed settlement offer, any information sent in as an APWU submission should not be considered. Such acceptance of information would place the Postal Service at an unfair disadvantage as to not being able to rebut the Union's calculations and reasoning, Management cautioned. The following calculations were then provided by the Postal Service in arriving at its Last Best Offer of **\$56,414.29**:

Employee Average Hourly Rate —	\$25.3652
Number of Vehicles Moved To Kilmer —	370
Average Work Hours Per Vehicle —	5 Hours
$\$25.362 \times 370 \times 5 =$	\$46,925.62

Employees Average Hourly Rate —	\$25.3652
Number of Vehicles Towed —	370 (3 Vehicles Towed Per Trip)
Average Work Hours per Tow —	3 Hours
$\$25.3652 \times 123.3 \text{ (Trips Made)} \times 3 =$	\$9,488.67

The Postal Service emphasized that these calculations represented the cost of labor resulting from the 370 vehicles worked on at Kilmer during the period in question. The figures represent straight time earnings since OT would not have

been utilized while working on the vehicles. And if maintenance was not completed on a vehicle during a day, it would have been continued the following work day. Management further argued that the Union has not demonstrated that overtime would have been utilized to work on the vehicles, and to attempt to bring that in now would bring in evidence not presented at Step 2. After discussing the financial information provided at the second meeting, the Postal Service humbly requested that my decision be a just representation of the sum due the Union, and not harmful to the Postal Service's operational needs. It also should not cripple an organization that enables hundreds of thousands of employees a livelihood, while providing a necessary service to our nation.

At pages 25-28 of my Award, I discussed background information concerning the dispute, and summarized damages positions and cost projections. I believe that this will be instructive for the purposes of the instant monetary damages award:

By way of introduction, the record establishes that all the vehicles in question are from the 077 area and are physically housed at the post offices where they are recorded as assets. For administrative purposes, oversight over the maintenance of the trucks is administratively assigned to a VMF (Vehicle Maintenance Facility), which in this case was the Trenton VMF. There are different types of maintenance performed on the vehicles, both scheduled and unscheduled. The unscheduled and other maintenance was accomplished by subcontracts with local garages. That maintenance is not at issue in the case before me. The yearly preventive maintenance ("PM") that was performed by MVS bargaining unit members is. Simply put, the instant dispute concerns the realigning of the oversight responsibilities from the Trenton VMF to the Kilmer VMF. The vehicles did not change, and remained at their local post office.

The APWU categorically rejects any suggestion that the realignment of the maintenance for the 370 vehicles in question from Trenton to Kilmer had a limited, if any, impact on the TMAL MVS bargaining unit. I have diligently endeavored to wade through the scrum of damages figures and cost comparisons that the Union provided through Mr. Strano on its case-in chief, and believe that the easiest way to digest the same is to discuss them individually, as follows.

Projected Average Contract Labor Costs

MVS Craft Director Mike Strano, testified that when the 370 vehicles were removed from Trenton's oversight, they were repaired by subcontractors. The chart at Exhibit U-2 was developed from Management's report and other grievances. This demonstrates that the projected average cost for contract labor at Kilmer VMF in FY 2005 & FY 2006 was 248,852. After the realignment, it was projected to be \$686,807 for FY 2007 & FY 2008. He confirmed that the figures for 2007 were actual, and only 2008 was projected. By his figures, this represented an increase of \$357,955.

Shuttle Costs

The Union contends at page 14 of Exhibit U-2 that Tractor Trailer Operator Route Number 08622 was created to shuttle vehicles to and from the 077 area offices to the Trenton NJ VMF for repairs, and urges that this run was created in conjunction with Arbitrator Blanca Torres' decision in Case TNJ 96-022V. This then enumerates the cost incurred by the Postal Service for subcontracting the shuttle work to Somerset Hills Towing to perform the work normally done by the bargaining unit. Because no reports were provided from October 1, 2007 through January 4, 2008, the figure of \$75,376.40 is missing 4 months. These figures included:

\$29,625.00 from 9-26-06 through 3-27-07;
 27,076.50 from 3-28-07 through 9-30-07;
 —
 18,674.90 from 1-5-08 through 2-26-08.

Preventive Maintenance of Vehicles Done In-House At Trenton VMF

Mr. Strano calculated the cost of the PM performed at the Trenton VMF to be \$156,288 annually. This assumed that 2 PMs would be done each year, and was broken down on the basis of an average duration of 5 hours for the service, times an hourly wage of \$42.24. This reflected a unit cost of \$211.20 for each of the 370 vehicles, each time the PM was performed.

Reversion of Job ID # 6502647

The TMAL MVS Craft Director also charged that the reversion of this position due to the realignment resulted in a loss of a total of

2,880 hours from PP 25 through PP 08 of 2008. In support of this position, the Union points to a December 1, 2006 letter from Mr. Sauerborn to TMAL President Bill Lewis. See, Exhibit U-2, at page 4. This stated in full:

Mr. Lewis,

As previously discussed, this letter serves as notification of reversion of one vacant Automotive Technician PS8 position, Job ID # 6502647, at the Trenton VMF.

This position, Job ID # 6502647, was recently vacated by Ed Bashford due to the expedited bidding process. (Krohn's PS 8 vacancy # 5721347 filled by Karuzis; Karuzis' PS9 vacancy # 6502659 then filled by Bashford; Bashford's PS8 vacancy # 6502647 reverted.)

This action is necessary due to the realignment shifting vehicle maintenance responsibilities of nineteen 077 area offices from the Trenton VMF to the Kilmer VMF(s) in the district.

Lost Overtime Opportunities After Realignment

The APWU compiled OT figures from TACS reports for the individuals identified in the instant representative grievance both before and after the realignment of the 370 vehicles. During the 26 pay periods in 2005-2006, when the vehicles were in Trenton, a total of 7,414.13 hours were worked, or an average of 285.15 hours per pay period. *Id.*, at pages 17-18. After the vehicles were realigned to Kilmer, during the 40 pay period[s] identified for the balance of 2006, and 2007-2008, the same employees worked 5,822.75 hours of overtime, or an average of 145.56 hours per pay period. By the Union's count, this resulted in a loss of 139.59 OT hours per pay period. *Id.*, at 19-21.

A review of the record indicates that the TTO job continues to exist, and that the craft lost the work, but not the job. The other position was apparently reverted properly, and no separate grievance was filed contesting the same. Indeed, the Union does not seek the restoration of this position. That said, these considerations are germane to my analysis.

The Postal Service has properly observed that there is no guarantee of OT, and I realize that the OT figures do not necessarily reflect time only spent on the 370 trucks that were removed. Nevertheless, there was a

significant reduction in OT for bargaining unit members after the realignment.

The Union has clearly established that the Trenton VMF bargaining unit was adversely impacted by Management's action by focusing on the yearly preventive maintenance or PM. There is no dispute that this work was historically done by the craft. And while Mr. Strano's calculations assumed that this would occur 2 times per year, Mr. Sauerborn testified that he tried to get the vehicles in once a year, as the APWU has highlighted in its brief. When contrasted with the cost of contract labor, this alone establishes the Union's *prima facie* case, to say nothing of the shuttling issue.

For its part, the Postal Service paints a rosy picture for me: PMs at Trenton are up; OT which had been trending down is up 9 %; subcontracting costs are down by 85%. However, by virtue of my evidentiary rulings, I may not consider any of this evidence, or the historical data Mr. Sauerborn referenced, because it was not raised at Step 1. Rather, in defense of its actions, Management vigorously embraced Article 3, which it believed enabled the realignment at hand. This language confers broad discretion upon the Postal Service to manage its affairs. By its express terms, however, it is not absolute and must be applied 'subject to the provisions of this Agreement, ***.'

The language of the final paragraph highlights the evidentiary box the Postal Service placed itself in, by virtue of its failure to issue a timely Step 2 denial in this case. This necessitated an evidentiary ruling that Management was barred under *Aaron* from attempting to raise these able contentions for the first time at hearing, with the PS Form 2608 serving as the basis for the Postal Service's position in the case. It is equally axiomatic that in fashioning a monetary damages award, I am limited to the consideration of arguments properly made before me by the parties at hearing or in their briefs. For this reason, the entire position statements advanced before me at hearing and in brief were summarized in full.

The Postal Service's Last Best Offer of Settlement accuses the Union of not providing any facts and/or documentation that would support its proffer of settlement, and argues that for this reason, any information sent in as a Union submission should not be considered because Management would be placed at an unfair disadvantage. I recognize that the manager of Labor Relations authored

the Postal Service's monetary submission, in the absence of the labor relations specialist who was on the file. He ably attempted to comply with the instructions provided by my remand.

From my perspective, the Union provided ample evidence of its damages calculations at hearing, which I summarized at length in the Award. My hope was that Management would attempt to utilize these as a template for the computation of the monetary remedy in settlement of the representative case. If this was not accomplished, my direction was that the last best offers be submitted. At page 33, I went on to say that "I will then award the more reasonable position based upon the rationale advanced and the evidence of record." This did not contemplate the submission of new evidence or argument. Management's valid claim of financial hardship and reductions in volume have therefore not be considered, as they were not made at Step 1. The Union submission tracks the testimony and documentation previously submitted and memorialized. No hardship has accordingly been visited upon the Postal Service by my consideration of the same.

After my analysis of the record evidence and a review of my Award coupled with the respective Last, Best, offers, I am of the considered opinion that the Union's is the more reasonable based upon the evidence of record, and must be awarded. The APWU's case-in-chief and ultimate financial position was crafted to comport with the actual costs of the improper subcontracting for both the yearly Contract Scheduled Maintenance ("PM") and the Shuttling of the 370 vehicles. For its part, the Postal Service would ask me to assume facts not in evidence.

On that count, nothing in the record indicates that the scheduled maintenance would all have been done by unit members during regular work hours. And while my Award expressly recognized that OT is not a guarantee and that all of the PMs were not done on OT, by any measure, the Union demonstrated a dramatic reduction in the same following the oversight realignment of these vehicles to Kilmer. In reviewing the USPS Vehicle Management Accounting System actual dollar costs for the 370 vehicles, the

APWU cited a monthly cost for the same of \$23,915.00, or \$550,045.00 in total. This exceeded the projected figures provided by the Union at hearing. Using the unit members' average hourly rate of \$25.3652 times 1 PM of 5 hours per year for each of the 370 vehicles, the Postal Service arrived at a figure of \$46,925.62.

As to the shuttling costs, Mr. Strano testified at hearing that per Exhibit U-2, he did not receive the information on the cost of the Postal Service's using Somerset Hills Towing from October 1, 2007 through January 4, 2008. Even without this 4 month period, the figure for the subcontracting work previously determined to be bargaining unit work by Arbitrator Torres was \$75,376. Mr. Strano projected the costs of the Somerset Hills Towing subcontract through April 2008 to be \$102,296.54. On remand, the Union reviewed the USPS Vehicle Management Accounting System actual dollar costs for the relevant period, and represented them to be \$123,832, or an average of \$5,384 per month. By stark contrast, and notwithstanding the monies paid to the contractor by Management, the Postal Service calculated the amount due the Union in full for the shuttling as \$9,488.67. This figure also utilized the straight time and not overtime rate, and the record confirms that Mr. Strano offered unrebutted testimony that there had been a significant reduction of overtime hours as a result of the shuttling being lost.

Based upon the foregoing, it is abundantly clear that the APWU's Last, Best offer on the monetary issue is more reasonable based upon the evidence of record. In so finding, I am aware that an award of \$336,938 is a significant amount of money. However, there is substantial arbitral precedent for the proposition that a damages award in a subcontracting case may properly include an award of the cost of the improperly let subcontract to the bargaining unit. In this instance, it is actually 50 % of the actual costs paid by the Postal Service. Parenthetically, Management's proffer of \$56,414.29 equates to roughly 12%, and does not even fully address the cost of the shuttling subcontract. It is so ordered.

AWARD

FOR THE REASONS EXPRESSED WITHIN, THE APWU'S LAST, BEST, OFFER, IN THE AMOUNT OF \$336,938 IS AWARDED. THIS IS PREMISED ON THE FACT THAT IT IS MORE REASONABLE THAN THE POSTAL SERVICE'S BASED UPON THE EVIDENCE OF RECORD. THIS AMOUNT SHALL BE PAID TO THE UNION FOR DISTRIBUTION TO CRAFT MEMBERS IDENTIFIED IN THE MOVING PAPERS. IN THE EVENT THAT ANY OF THE EMPLOYEES HAVE PREVIOUSLY RECEIVED MONIES IN CONNECTION WITH OTHER GRIEVANCES THAT WERE PART OF THIS REPRESENTATIVE CASE, THAT AMOUNT SHALL SERVE AS AN OFFSET. JURISDICTION SHALL BE RETAINED FOR A LIMITED DURATION OF 60 DAYS TO ENSURE PROPER COMPLIANCE.

Dated: September 24, 2008
North Bergen, N.J.



MICHAEL J. PECKLERS, ESQ., ARBITRATOR