

REGULAR ARBITRATION PANEL

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 In the Matter of the Arbitration)
 between)
 UNITED STATES POSTAL SERVICE,))
 and)
 AMERICAN POSTAL WORKERS)
 UNION, AFL-CIO)

) GRIEVANT: Class Action
)
) POST OFFICE: Trenton VMF
)
) USPS CASE NO. A00V-4AC 07013678
)
) APWU CASE NO. TNJ06121V
)
)
) **OPINION & AWARD**
)
) (Representative Case)
 -----)

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

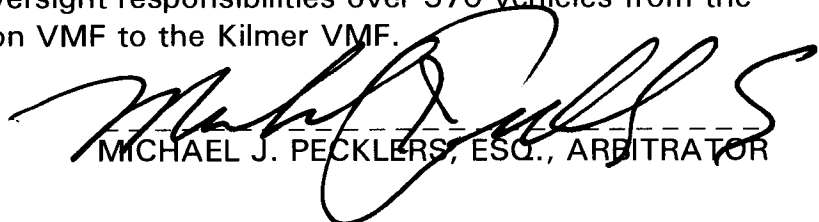
For the USPS: Vincent Solimine, Labor Relations Specialist
Laurie Rodriques, Labor Relations Specialist/TA
Carl Sauerborn, Manager Trenton VMF

Place of Hearing: Trenton, New Jersey
 Date of Hearing: May 6, 2008
 Record Closed: June 10, 2008
 Date of Award: July 9, 2008
 Relevant Provisions: (Articles 3; 5; 15; 32)
 Contract Year: 2006 - 2010
 Type of Grievance: (Contract – Vehicle Maintenance Oversight)

AWARD SUMMARY

The grievance is sustained. The APWU has demonstrated that the Postal Service violated Articles 5 and 32 of the National Agreement, when it realigned maintenance oversight responsibilities over 370 vehicles from the 077 area from the Trenton VMF to the Kilmer VMF.

Dated: July 9, 2008



 MICHAEL J. PECKLERS, ESQ., ARBITRATOR

I. BACKGROUND OF THE CASE

The case at bar concerns 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. A grievance was initiated at Step 1 on October 25, 2006. At that time, the APWU alleged that the Postal Service took unilateral action in violation of Article 5 of the National Agreement, when the maintenance responsibilities were moved from Trenton to Kilmer, since Management failed to bargain with the Union over the changes. A retaliation claim was also made, based upon a grievance settlement from June 2006.

In denying the grievance on October 26, 2006, the Postal Service adopted the position that on September 11, 2006, a Labor-Management meeting was held at the Trenton VMF with representatives from the TMAL APWU. At this meeting, the upcoming realignment of maintenance responsibilities for vehicles in the Central New Jersey District was discussed. A decision was then made to move maintenance responsibility for 370 vehicles assigned to post offices in the 077 area (Monmouth County) from the Trenton VMF to the Kilmer VMF. Management therefore believed that this district level decision to realign the CNJ District's vehicle/VMF assignments to better correspond with existing staffing at the 3 VMFs in the District was countenance under its Article 3 rights. *See generally*, PS Form 2608, GRIEVANCE SUMMARY - STEP 1, at Exhibit J-2, page 5.

Upon VMF Manager Sauerborn's denial of the grievance, the Union executed its STEP 2 GRIEVANCE APPEAL FORM on November 1, 2006. This alleged violations of the National Agreement not limited to Articles 5 & 32. *Id.*, at page 6. The DETAILED STATEMENT OF FACTS indicated 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. A PS Form 2608 was also sought. *Ibid.*

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On November 27, 2006, the APWU advanced the case to Step 3 on the basis that the Postal Service's Step 2 designee failed to render a Step 2 decision within the time limits outlined in Article 15.2 (Step 2) F. The STEP 3 GRIEVANCE APPEAL FORM substantially recited the Union's contentions made at the previous steps of the grievance procedure. *Id.*, at page 4. 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. *Id.*, at pages 2-3. Finally, on February 15, 2007, the APWU appealed the matter to binding arbitration, per Article 15, Sections 2 and 4 of the National Agreement. *Id.*, at page 1.

1/ A Step 2 Answer was later provided by the Step 2 designee, as reflected by Exhibit J-2(a). For the reasons set forth under the STATEMENT OF THE CASE portion of this AWARD, this document has not been considered.

Following the representative case's assignment to the Regular Regional Panel, I was duly appointed to serve as Arbitrator. On May 6, 2008, a hearing was held in Trenton, New Jersey, and proceeded in an orderly manner. At hearing, the parties were provided with a 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. In lieu of closing arguments, post hearing briefs were submitted, and returnable with a June 6, 2008 postmark date. The record was closed on June 10, 2008, following my receipt of the submissions. In arriving at the within OPINION & AWARD, I have carefully considered all evidence of record, coupled with respective arguments and abundant case citation. This AWARD is issued in timely fashion, pursuant to the thirty (30) day time period prescribed by Article 15.5.B.8 of the National Agreement, and as contained in my contract with the parties.

II. FRAMING OF THE ISSUE

Did the Postal Service violate Article 5 and Article 32 of the C.B.A., when they changed the responsibility for maintenance oversight of 370 vehicles from the 077 area from the Trenton VMF to the Kilmer VMF? If so, what shall be the remedy?

III. RELEVANT CONTRACT LANGUAGE [Exhibit J-1]

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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:

A. To direct employees of the Employer in the performance of official duties;

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees.

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 the law.

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**ARTICLE 15
GRIEVANCE ARBITRATION PROCEDURE**

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Section 2. Grievance Procedure Steps

* * *

Step 2:

* * *

(d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from

witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Article 31. ****

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**ARTICLE 32
SUBCONTRACTING**

Section 1. General Principles

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

* * *

IV. STIPULATION

- This representative case is to include all cases identified and found at page 3 of Exhibit J-2. The parties also agree that they shall meet for the purpose of determining any other cases that shall be included. In the event of a dispute, they have agreed that I shall retain jurisdiction.

V. SUMMARY OF THE RELEVANT TESTIMONY

Mike Strano

Mr. Strano is the TMAL MVS Craft Director/Steward, and testified on the Union's case-in-chief. He initially explained that the grievances were filed because the Postal Service removed 370 trucks from the bargaining unit, which the Trenton VMF previously worked on. The Union found out about this at a September 11, 2006 meeting, when the Postal Service advised that it was removing the 370 trucks for the 077 zip code that Trenton VMF did the scheduled maintenance on. Mr. Strano maintained that the impact of this

action was significant, as one mechanic left in October, and the Lead Auto Technician PS-8 position was reverted in December.

The MVS Craft Director offered that the F/T tractor trailer operators shuttle the vehicles; referenced the arbitration award of Arbitrator Blanca Torres on this issue; and submitted that there had been a significant reduction of overtime hours as a result of the shuttling being lost. Turning to Exhibit J-2(a), Mr. Strano represented that he had never received a Step 2 answer from the Postal Service, and allowed that this was the first time he had seen the document.

Mr. Strano explained that when these vehicles left Trenton, they were repaired by subcontractors. He offered that the chart at Exhibit U-2 was developed from Management's report and other grievances. Where the word "projected" is used, he said this was because he did not have the report for AP 12. He then divided by 10 and multiplied by 12. The FY 2005 & 2006 projected average contract labor cost at Kilmer of \$248,852 was then arrived at by adding the \$303,624 + \$194,080 from each of those years, as reflected at page 5 of Exhibit U-1, and then dividing by 2. Mr. Strano confirmed that the cost for FY 2007 was actual, and FY 2008 projected.

The shuttle costs associated with the subcontracting done at Kilmer were next discussed, as indicated by page 14 of U-2. Mr. Strano confirmed that he did not get the information on the cost of using Somerset Hills Towing from October 1, 2007 through January 4, 2008, but said that the figure of \$75,376 (minus 4 months) was exclusively for the 370 trucks that were taken away from the Trenton VMF. Pages 15-16 of Exhibit U-2 also establishes that on September 27, 2006, this had already started, as Call # 2165 demonstrates that Somerset Hills Towing picked up a vehicle at the Morganville P.O., which was part of the 077 area, and towed it to Milltown. The same thing may be seen from Call # 2170, when on September 30,

2006, a truck was picked up at the Morganville P.O. and shuttled to East Brunswick. Mr. Strano submitted that this program was not supposed to start until October 1, 2006.

Returning to his summary sheet at page 1, Mr. Strano verified that his projected average for contract labor at Kilmer was \$686,807 for FY 2007 & 2008, and stressed that this was after the trucks were moved from the Trenton VMF. By way of comparison, he observed that this projected figure was \$248,852 for FY 2005 & 2006. This represented an increase of \$357,955 he said.

Moving to the cost of in-house labor at the Trenton VMF, the witness explained that the average scheduled vehicle maintenance duration was 5 hours at a cost of \$42.24 per hour. This reflected a cost of \$211.20 per vehicle times 2 PM per year, for a total of \$422.40 for each vehicle. Multiplied by the total of 370 vehicles, this cost was \$156,288, he allowed. Included on the sheet was also the cost of the Tractor Trailer Operator run in the amount of \$87,859, which was 2,080 hours at \$42.24. Mr. Strano went on to detail that the loss of Job ID # 6502647, Lead Automotive Technician PS-8 due to the realignment of vehicle maintenance responsibilities from PP 25 of 06 through PP 08 of 2008 equals a loss of 2,880 hours. The December 1, 2006 letter from Manager VMF Carl Sauerborn to TMAL President Bill Lewis at page 4 of Exhibit U-2 was also identified.

As the testimony continued, Mr. Strano described how he took USPS Payroll/TACS records, and combined the number of OT hours each individual listed in the grievance worked going back over the year prior to the 370 trucks being moved to the Kilmer P & DC under the realignment. This included 7,414.13 overtime hours for the 26 pay periods measured in 2005-2006, which was before the move; and 5,822.75 hours for the 40 pay periods in 2006, 2007, 2008. According to Mr. Strano's calculations, the

end result after the realignment was an average loss of overtime per pay period of 139.59.

Mr. Strano then recalled the events of the September 11, 2006 meeting with the Postal Service, at which the Union was notified that effective October 1, 2006, 370 vehicles from the 077 area were being moved from Trenton to Kilmer. He denied that due consideration was given to this move by the Postal Service under *Mittehthal*, and maintained that the APWU had no input into this decision. In regard to the former, the MVS Craft Director revisited the bills for subcontracting services provided by Somerset Hills Towing, and applied an average hourly contractor rate of \$64.76, versus the bargaining unit hourly rate of \$42.24.

Concerning how Article 5 was violated, Mr. Strano posited that this was a unilateral action by the Postal Service. Management had a meeting and said here's what we are going to do. This was just dictated, he urged, with Management saying they were taking 370 trucks from Trenton and sending them to Kilmer.

Upon cross-examination, Mr. Strano testified regarding Exhibit J-2(a), and allowed that he said he had not seen it, then suggested that the numbers looked different and said he was not sure. On the issue of a significant impact to the bargaining unit, Mr. Strano pointed to the 2 jobs that were lost, at 2,080 and 2880 hours respectively. He then clarified that the TTO job still exists. Therefore, the bargaining unit lost the work but not the job. As to the question of whether all the OT hours were related to the 370 trucks, Mr. Strano reiterated his prior testimony, as to how the computations were made.

The MVS Craft Director later returned for limited rebuttal testimony to confirm that at the September 11th meeting, Manager Dave DiSomma brought up the settlement agreement at Exhibit U-3, making reference to the fact that "you have the 086 grievance." On cross, Mr. Strano allowed that

this may have meant that they were doing more now in-house.

Tom LaFauci

Mr. LaFauci is a Lead Automotive Mechanic L9 domiciled at the Kilmer VMF, as well as MVS Craft Director for the Central Jersey APWU Local. He offered brief testimony on the Union's case. This included confirmation of his familiarity with the instant representative grievance, and of the fact that the vehicles were reassigned to his facility. Mr. LaFauci testified that while the craft's work load increased, there had been no OT since February 2008. Moreover, he maintained that "all the work goes out the door." No cross was undertaken by the Postal Service.

Carl Sauerborn

Mr. Sauerborn is the Manager VMF in Trenton, and offered testimony for the Postal Service. Mr. Sauerborn initially explained that he was present at the September 11, 2006 Labor/Management meeting, and listed the other participants, who included among others, Vito Cetta, Dave DiSomma, Bill Lewis, and Mike Strano. The Manager testified that a discussion took place regarding the changes in Management oversight for the trucks, with the vehicles from the 077 area sent back to Kilmer. He explained that prior to 1992, Kilmer had the oversight. Then realignment took place with the Northern New Jersey District, and Kilmer took over responsibility. They were then reassigned to Trenton, which was later closed due to anthrax. By January 2005, Trenton was again operational, he said.

Mr. Sauerborn advised that the Kilmer VMF and Trenton VMF had almost the same number of vehicles, however, when they went and reviewed staffing, there were 38-40 employees at Kilmer, and only 25 in Trenton. The possibility was then looked at to have the vehicles currently at Trenton go

back to Kilmer. The decision was made to do so starting in FY 06, which began October 1, 2006. Regarding the meaning of "oversight," Mr. Sauerborn explained that the truck belongs to the post office that it is assigned to, and is an asset. He maintained that the truck did not move, and stayed at the post office where it was assigned. Instead, just the responsibility for the oversight of it shifted.

In response to who did the majority of the work, the Manager reported that it was probably 50 - 50. And while oversight was with the Trenton VMF, he tried to get the trucks in once a year for scheduled or preventive maintenance. Mr. Sauerborn recalled that 18 months prior, they had gone to contractors, after they were trying to play catch-up following the anthrax tragedy. He characterized the vehicles as being in poor condition during the time frame going back to 2005. On the Union's claim that Article 5 was violated, the Manager submitted that his position on the 2608 was that whether he had 100 trucks and did 1 PM or had 50 trucks and did 2, it had no impact. In fact, after the realignment, this just brought more work to the Trenton VMF, and decreased the use of contractors. Expanding on this, he allowed that when they had the 077, they did 1,000 PMs a year. Afterwards, it was about 1,200. These figures were buttressed by reference to the charts contained in Exhibit M-1.

On the question of subcontracting costs, Mr. Sauerborn stressed that \$230,000 had been spent when Trenton had oversight. However, after the realignment, this number dropped to around \$45,000. Exhibit M-2 additionally tracks the in-house scheduled and unscheduled repairs, he proffered. The Manager reported that Exhibit M-3 followed the OT at the Trenton VMF both before and after October 2006; informed that the axis on the left is the percentage of overtime for 2005; and suggested that OT was trending down from October 2006 on, when they got up to speed. He

observed that the percentage had been high, when it got bad. Exhibit M-4 showed the number of OT hours as a percentage of work hours, he testified. This resulted in an overall impact to the bargaining unit of being able to move more vehicles in and out. And three months prior to and after, there was the same OT.

The Manager was later recalled as a rebuttal witness, and repeated his prior testimony as to what was discussed at the September 11th meeting. He denied that he had heard any discussion of the 086 settlement or a related comment by Dave DiSomma.

VI. CONTENTIONS OF THE PARTIES

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 subcontract-

ing 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.

VII. STATEMENT OF THE CASE

The United States Postal Service ("the Postal Service" or "Management") and the American Postal Workers Union, AFL-CIO ("the APWU" or "the Union") are parties to a National Agreement, which is entered herein as Exhibit J-1. The moving papers are found at Exhibit J-2, and J-2(a). As previously noted, the subject grievance operates as a representative case, and is to include all cases found at page 3 of Exhibit J-2. The parties have also agreed to meet and determine if any other cases should be included with the same. In the event of any dispute, they have agreed that I would retain jurisdiction.

Preliminarily, as no jurisdictional impediments to arbitration have been pled by the advocates, I find that the instant grievance was timely filed and is properly before me for adjudication. As this grievance pertains to a question of contractual interpretation, the APWU bears the initial burden of making a *prima facie* showing of a contractual violation by a preponderance of the credible evidence. Should this take place, the Postal Service will be required to establish its affirmative defenses. Following my complete analysis of the evidence of record, and careful consideration of the parties' positions with supporting arbitral citation, I find that the grievance must be sustained.

At the outset, a number of evidentiary rulings must be made, which will inform my analysis of the case. The Union has argued long and loudly, that the instant rep case was appealed to Step 3 without the benefit of a Step 2 answer being provided by the Postal Service. As to the purported Step 2 answer entered at Exhibit J-2(a), TMAL MVS Craft Director Mike Strano

testified without challenge at the hearing, that he had never seen the document before the hearing date. The APWU therefore cautions against my acceptance of any new argument or evidence at the hearing.

It comes as no surprise to the seasoned advocates appearing before me, that Article 15.2 Step 2 (d) of the National Agreement imposes an affirmative obligation upon each of the parties at the Step 2 meeting, to "make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought." Further, "the parties representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Article 31."

The C.B.A. also places upon Management the additional burden of memorializing each party's position in its Step 2 answer, per Article 15.2 Step 2 (f). *See also, United States Postal Service and American Postal Workers Union, AFL-CIO*, Case No. C94C-1C-C 97020463/KAL96357 (Loeb, 2001). The practical application of the Postal Service's failure to provide a timely Step 2 answer, is that the Union is then permitted to advance the grievance to the next step, per Article 15.4.C. This happened in the instant case.

The potentially more critical implication of this inaction has been incorporated into the National Agreement via the seminal National Award of the late Arbitrator Benjamin Aaron, in *United States Postal Service and National Association of Letter Carriers*, Case No. NC-E 11359 (Aaron, 1983). This tracked the reasoning found in the prior Helene, Montana award of Arbitrator Mittenthal in *United States Postal Service and National Association of Letter Carriers*, Case No. H8N-5L-C 10418/N8-W-0406 (Mittenthal, 1981 at pp. 9-10) ("The difficulty here is the lateness of this argument. Article VX describes in great detail what is expected of the parties in the grievance

procedure."); *see also*, *United States Postal Service and National Association of Letter Carriers*, Case No. H8N-5B-C 17682 (Aaron, 1983).

At page 3 of his award in Case NC-E 11359, Arbitrator Aaron opined:

[i]t is now well settled that parties to an arbitration under a National Agreement between the Postal Service and a signatory union are barred from introducing evidence or arguments not presented at preceding steps of the grievance procedure, and that this principle must be strictly observed.

The reason for the rule is obvious: neither party should have to deal with evidence or argument presented for the first time in an arbitration hearing, which it has not previously considered and for which it has had no time to prepare rebuttal evidence and argument. The spirit of the rule, however, should not be diminished by excessively technical construction.

In the instant case, no testimony was adduced with respect to the positions adopted by the Postal Service at the Step 2 meeting, and Management opted not to address this issue in its brief. I accordingly find that the Postal Service shall be limited under *Aaron* to the contentions it raised at Step 1, as reflected by the PS Form 2608 found at page 5 of the moving papers. *See generally*, *United States Postal Service and American Postal Workers Union*, Case No. A98C-4A-C 99185114/C98191 (Pecklers, 2003); *see also*, *United States Postal Service and American Postal Workers Union, AFL-CIO*, Case No. A00C-4A-C 05083533/TNJ05067C (Harris, 2005); *United States Postal Service and American Postal Workers Union, AFL-CIO*, Case Nos. A00C-1A-D 03085006/NJD03174G; A00C-1A-D 03113596/NJD03271G (Harris, 2003).

That is not to say that the mere absence of a Step 2 decision should establish a *per se* finding of new argument or evidence. Rather, I have previously rejected such a claim by the APWU, on the basis that a steward

treated a PS Form 2609 as the functional equivalent of the same. *See, United States Postal Service and American Postal Workers Union, AFL-CIO, Case No. A00C-4A-C 02120989/0133 (Pecklers, 2003).*

The next evidentiary issue to be addressed is the APWU's charge that the Postal Service failed to provide information previously requested. The record confirms that REQUEST(S) FOR INFORMATION were filed by the Union on November 1, 2006, and November 3, 2006. Contrary to the aggressive position adopted by the APWU on this issue in its brief, however, my reading of the record is that the Postal Service substantially complied with the information requests.

I noted only 2 exceptions during Mr. Strano's testimony. He maintained that he had not received the contract labor data at Kilmer for AP 12, and therefore arrived at the projected averages for 2005 & 2006 on Exhibit U-2 by extrapolating the same. The other data that was not received related to shuttling costs by Somerset Hills Towing, from October 1, 2007 through January 4, 2008. It is not clear from the record whether this information was purposely or inadvertently not provided by the Postal Service.

Nevertheless, as the APWU has correctly argued, it was entitled to this information under Article 15.2 Step 2 (d), Article 17, & Article 31 of the National Agreement. An adverse inference is therefore drawn against Management, as is commonly applied in such an instance. *See, e.g. United States Postal Service and American Postal Workers Union, AFL-CIO, Case No. J90T-1J-C 94013758&9/90MAINT53, 54 (Sugerman, 2001).* And were it not for my prior ruling on the absence of a Step 2 denial, the Postal Service would also have been prevented from rebutting the Union's cost projections, which were partially based on information not received. This will also memorialize a bench ruling at hearing that Mr. Strano's calculations at Exhibit U-2 were properly admitted, over the Postal Service's objection that there

was no foundation for the same.

The Postal Service was vigilant throughout the hearing, in reminding me that the TMAL does not have jurisdiction to file grievances on behalf of the Central Jersey Area APWU Local in Kilmer. I also accepted Management's standing objection to any testimony related to this at the hearing. Mr. LaFauci was in fact permitted to provide testimony notwithstanding the same. I do not take issue with this proposition. However I believe that the question of work being shifted to Kilmer to avoid compliance with contractual mandates affecting the bargaining unit at the Trenton VMF is a severable inquiry that falls squarely within my purview, and I have previously so ruled. *See, United States Postal Service and American Postal Workers Union, AFL-CIO, Case No. A00V-4A-C 06126017 (Pecklers, 2007).*

One of the Union's theories of the case is that the action taken by Management in this instance was retaliation for a settlement agreement that was reached between the parties on June 29, 2006. See, Exhibit U-3. This document resolved a number of grievances, and awarded each class member the sum of \$2,250.00. In material part, it provided:

[i]t is mutually agreed to between the parties that due to the recent change in the sub-contracting of the Preventive Maintenance Inspections and resulting repairs at the Circle Branch, West Trenton Branch, Villa Park, Downtown, Annex and Fort Dix the following is agreed to:

It is agreed that the APWU Bargaining Unit Trenton, NJ VMF employees will be afforded the opportunity to work the fullest amount of overtime up to the contractual limitation of 12 hours per day and 60 hours per week whenever local management decides to sub-contract the above mentioned work that was normally performed by the bargaining unit.

This agreement as currently written is established by the parties to resolve all grievances identified below and both parties acknowledge that the above mentioned work was that of the Trenton VMF

employees and that it was the long standing accepted past practice at this facility which was to allow the bargaining unit to perform the scheduled maintenance prior to subcontracting the work. In the event that the signatures to the parties change and or the above work changes, then the accepted past practice can be instituted by the Union and is agreed to by the Postal Service.

Viewed simply in burden of proof terms, this assertion gathers no traction on the record evidence before me. I recognize that Mr. Strano testified that Mr. DiSomma referenced the same at one point during the September 11, 2006 Labor/Management Meeting. In my view, however, it was not clear from the testimony as to the context of the statement. The Postal Service has argued that it had no reason to retaliate, as it continues to abide by the terms of the settlement agreement. Manager VMF Sauerborn also denied hearing the comment made at the hearing. Therefore, at best, the Union's proofs are in equipoise.

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 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, ***."

Both at hearing and in the PS Form 2608 at page 5 of Exhibit J-2, the Postal Service adopted the position that the decision on the realignment of the trucks to Kilmer VMF was made "to better align the current on rolls staffing at each VMF." In that respect, Management advised that before the move, Trenton VMF and Kilmer VMF had approximately the same number of vehicles. However, Trenton had 25 employees, while Kilmer had 38. Notwithstanding this stated purpose, as it now turns out, none of the PMs are being performed at Kilmer, but by private contractors. The trucks remain at their respective post offices. There is likewise no support in the record for the comment at Block 19 MANAGEMENT'S POSITION of the 2608 that, "[a]lso, since the these vehicles are no longer assigned to the Trenton VMF, how these vehicles are serviced is now a non-local situation as it pertains to the TMAL APWU and Trenton VMF."

All good students of labor relations are familiar with the axiom, "if it looks like a duck, and it quacks like a duck, it's a duck." This chestnut has equal application in the instant subcontracting context. I do not read Article 32 of the C.B.A. to permit back door subcontracting by administrative fiat.

Moreover, as the APWU has amplified throughout the hearing, a subcontract may only be let after "due consideration" of the 5 factors articulated by Article 32.1.A has been had. *See United States Postal Service and American Postal Workers Union*, Case No. A8-NA-0481 (Mittenthal); *see also, United States Postal Service and American Postal Workers Union*, Case No. E98T-1E-C 00054927/MT2599 (Hauck, 2008); *United States Postal Service and American Postal Workers Union, AFL-CIO*, Case No. G98V1GC02059921/G02-018 (Gilder, 2007); *United States Postal Service and American Postal Workers Union, AFL-CIO*, Case No. J98T-1J-C 01204583/CM201201 (Benn, 2007). None of these factors were considered by Management, or compliance with the same even pled.

The Union has also provided an independent basis for sustaining the grievance, based upon a violation of Article 5. In *United States Postal Service and American Postal Workers Union*, Case No. A94V-4A-C 96047032/TNJ-96022V (Torres, 1998), Arbitrator Blanca Torres thoughtfully addressed the issue of shuttling at the Trenton VMF. As I found at page 9 of my award in Case No. A00V-4A-C 06126017, *supra*, "I am also of the firm opinion that a Regular Panel award is binding upon the installation where it was issued, but only persuasive for others."

At page 14, ¶ 1 of her award, Arbitrator Torres concluded:

I find that management engaged in a unilateral change in violation of Article 5 of the National Agreement. This change in practice affected the amount of overtime hours worked by the bargaining unit, decreased the frequency of shuttle work assignments for the members of the bargaining unit and decreased the bargaining unit by one employee. Therefore management is ordered to cease and desist from engaging in the unilateral action of contracting out shuttle service work performed by the bargaining unit during the scheduled tour.

Arbitrator Torres went on to order impact bargaining over the shuttling issue.

Nothing in the evidentiary record convinces me that the Postal Service engaged in impact bargaining over this issue with the TMAL at the September 11, 2006 Labor/Management meeting. Rather, this served as a notification of the implementation of the realignment. And despite the announced October 1, 2006 start date for the initiative, the Postal Service then started using the private contractor to shuttle the 077 vehicles as early as September 27, 2006, as the Union demonstrated at pages 15-16 of Exhibit U-2.

In so finding, I have considered and rejected the citation offered by the Postal Service, which is not on point. *See, United States Postal Service and American Postal Workers Union*, Case No. H94V-4H-C 97053763 (King, 1997)(the only issue before Arbitrator King was the question of whether the Postal Service violated the settlement agreement, which stated that the shuttling would not occur "solely for the purpose of circumventing overtime."); *United States Postal Service and American Postal Workers Union, AFL-CIO*, Case No. J94V-4J-C 98042695/VM6797 (Newman, 2007) (the issue framed as "whether the Postal Service violated Article 12 of the National Agreement when it involuntarily reassigned two employees whose positions had been abolished at the Waterford VMF as a result of a realignment to the clerk craft at the Pontiac facility?").

Upon the totality of these findings of fact, I conclude that the grievance must be sustained. In that regard, the Postal Service is directed to immediately restore administrative oversight for the trucks from the 077 area to the Trenton VMF. A monetary award is also proper for identified craft members for the loss of this bargaining unit work.

I am mindful, however, of the representative nature of this grievance, and aware that other grievances may have been filed on the shuttling issue, which could arguably result in a duplicate and therefore windfall damages award to the bargaining unit. It is therefore my considered opinion that a

remedial remand to the parties with retained jurisdiction is appropriate under these circumstances. In the event the advocates are unable to agree upon a correct amount of damages to be paid to the TMAL MVS Craft, they will then be required to submit their best final offers, with a short justification for the same. After reviewing these submissions and based upon the evidence of record, I will then award what I believe to be the more reasonable number.

VIII. CONCLUSION

The American Postal Workers Union has demonstrated by a preponderance of the credible evidence that the Postal Service violated Article 5 and Article 32 of the National Agreement when they changed the responsibility for maintenance oversight of 370 vehicles from the 077 area from the Trenton VMF to the Kilmer VMF.

AWARD

THE REPRESENTATIVE GRIEVANCE IS SUSTAINED AND SHALL BE APPLIED TO THE OTHER CASES PREVIOUSLY IDENTIFIED, AS WELL AS ANY SUBSEQUENTLY IDENTIFIED BY THE PARTIES. THE POSTAL SERVICE IS DIRECTED TO IMMEDIATELY RETURN THE RESPONSIBILITY FOR MAINTENANCE OVERSIGHT OF THE 370 VEHICLES FROM THE 077 AREA TO THE TRENTON VMF. THE CASE IS REMANDED TO THE PARTIES FOR MEANINGFUL DISCUSSION OF AND AGREEMENT UPON, A MONETARY AWARD TO BE PAID TO THE UNIT MEMBERS IDENTIFIED BY THE UNION IN ITS MOVING PAPERS, TO COMPENSATE THEM FOR THE CONTRACTUAL VIOLATIONS. IN THE EVENT THE PARTIES CAN NOT AGREE UPON A FIGURE WITHIN 45 CALENDAR DAYS, THEY SHALL EACH SEND ME THEIR LAST, BEST, OFFER OF SETTLEMENT, WITH A SHORT, WRITTEN, JUSTIFICATION FOR THE SAME, NOT TO EXCEED 5 PAGES, WITHIN 60 DAYS. I WILL THEN AWARD THE MORE REASONABLE POSITION BASED UPON THE RATIONALE ADVANCED AND THE EVIDENCE OF RECORD. JURISDICTION OVER ALL CASES SHALL BE RETAINED FOR A PERIOD OF 90 CALENDAR DAYS. THIS PERIOD MAY BE EXTENDED UPON THE APPLICATION OF EITHER PARTY.

Dated: July 9, 2008
North Bergen, N.J.



MICHAEL J. PECKLERS, ESQ., ARBITRATOR