

In accordance with the terms of the National Agreement the parties appointed the undersigned as the Arbitrator to hear this dispute and issue a decision and award.

At the hearing the parties were afforded full opportunity to present oral and written evidence, examine and cross examine the witnesses who testified under oath, engage in oral argument, and otherwise support their positions.

The testimony and evidence of the parties and their positions and arguments presented at the hearing and thereafter have been fully considered in the issuance of this opinion and award.

ISSUE STATEMENT

The Service raised an initial issue of arbitrability. The Service claimed the grievance was not appealed to Step 3 of the grievance process on a timely basis. The Service requested this issue be first resolved and the case proceed on the merits only if found to be arbitrable.

On the merits, should they be reached, the issue was defined as: Did the Postal Service violate Article 32 of the National Agreement when they subcontracted the installation of a door at the vehicle maintenance facility (VMF)? If so, what shall the remedy be?

OPINION

A grievance was filed in January 2008 which claimed management had violated the National Agreement when they failed to notify the local union they intended to subcontract the installation of a door at the VMF.

The Union said this was work within the ability of the general mechanics and should have been performed by them.

During the grievance process the Service raised an issue of timeliness of the Union's appeal of the grievance to step 3.

The Union explained they had verbally agreed to an extension of time with management in order for management to file their step 2 answers and provide the union with the subcontracting data requested by them on the standard request for information form.

When management failed to provide an answer or any of the requested information the union appealed the grievance to step 3.

Management at step 3 said the appeal was untimely since the union had stated that it was more than one week past the agreed upon extension when they appealed the grievance to step 3.

The grievance file did not contain any management positions at either step 1 or 2 although the Service in their step 3 answer claimed there was a step 2 decision and evidence supporting the reasoning for their action. There was also no written agreement to an extension of time.

While management said the union did not prove an extension actually existed management did not have any witnesses testify that an extension did not exist or refute the Union's contentions.

While the negotiated time limits in the Agreement for the filing of grievances must be strictly followed, in this case neither party could clearly prove or disprove that an extension had been agreed to by them.

Without any written position of the Service prior to their step 3 grievance answers and without any witness statements to dispute the lack of an agreed upon extension, which was testified to by the union steward, the position of the Union that the grievance was properly appealed is upheld.

While a written extension agreement would have properly resolved this issue, management's failure to provide any details of their claimed answers to the grievance brings into question the validity of their subsequent untimely claim.

As to the merits of the dispute, Article 32 Subcontracting at Section 1. General Principles states:

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

In the 2006-2010 Agreement the following language was added:

C. When a decision has been made at the Field level to

subcontract bargaining unit work, the Union at the Local level will be given notification.

At step 3 the Service claimed the new language added to the Agreement in 2006 clearly distinguishes between "Field" and "Local" when the decision is made by local management.

According to the Service, its position is that "Field" does not mean "Local" and the Union is seeking to obtain an interpretation never intended by the language of this provision.

The Union disagrees with management's position and considers these two terms synonymous.

The Service provided a lengthy written description on how this language was derived. None of the parties present at these national negotiations for the Service or the Union was called to testify to the actual intent of the language, which might occur if this issue was disputed at the National level. Without such direct testimony the language must stand on its own.

This conflict is reminiscent of the ruling of Arbitrator Mittenthal in his National decision on subcontracting in Case #H8C-NA-C 25, in which he analyzed the language of Article 32, Section 1, paragraph A and the words "due consideration". He said, in pertinent part:

"Unfortunately, the words 'due consideration' are not defined in the National Agreement"...

Neither are the words "Field or Local" defined or otherwise

explained in the language added to the Agreement in 2006.

The issue of subcontracting has plagued the parties for many years. Numerous decisions on both sides of this issue have been issued at the National and local levels yet such disputes continue unabated.

In the instant dispute witnesses for the union accurately described the door and work that had been subcontracted.

Management's witness had difficulty explaining the nature of the work which had been done by the subcontractor or why the work could not have been done by the general mechanics. The Service, for the first time at the hearing, also raised an issue of an electronic security system that had to be installed as a part of the new door as a reason why this work had to be subcontracted.

An on site inspection of the area and door in question was made during the hearing and this viewing was more supportive of the testimony of the witness for the union than for the version explained by the management witness.

Other arbitrators have held that National level awards support the position that so long as the Service gives the factors in Article 32, Section 1 Paragraph A due consideration, management can choose to subcontract or not.

Management might even have rational reasons to choose to

subcontract when the result might be more expensive, or for other reasons, but such decisions can still be valid if due consideration has been given.

See for example, Case # E98-1E-C00054927 (2008), and Case #C06T-1C-C08026795 et al, (2008).

In the instant dispute what has been lacking is any rationale or explanation of the reasons why management determined this small project had to be subcontracted.

The Service, from the evidence presented in the case file and the grievance papers at Steps 1 and 2 provided no answers or information on this subcontract.

At step 3 they provided no further factual reasons but, as previously discussed, their contention that "Local" outsourcing projects do not require prior notification to the Union, although they made reference to a step 2 answer that, if it existed, was not referenced anywhere else.

The Service did state in their step 3 answers that the door was being installed in a leased facility and the work had to comply with State regulations.

The union's witness testified that employees had worked on doors within the building on previous occasions.

As has often been stated, better communications among the parties might go a long way to avoiding these types of disputes.

An explanation of why certain work was to be subcontracted as well as a rationale showing the lack of impact on bargaining unit employees might well mitigate these types of issues.

As to the Service's explanation of the meaning of the words "Field and Local" it was certainly the intent of this language, until these terms themselves are further clarified, to give notification to the Union at the Local level of subcontracting.

Since no notice or rationale was provided to the Union during steps 1 and 2 of the grievance process, the grievance is sustained.

The Union, as a remedy for this violation sought payment for the hours subcontracted to bargaining unit employees. The number of hours involved was stated as between thirty four (34) to forty (40) hours.

The parties are directed to ascertain the exact number of hours involved within these two numbers of hours and to provide payment at the straight time rate for such hours, not to exceed forty (40) hours to be paid to such employee or employees who would have normally been assigned to accomplish this limited task.

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