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REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

**AMERICAN POSTAL WORKERS
UNION, AFL-CIO**

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) **GRIEVANT: Class Action**

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) **POST OFFICE: West Palm Beach**

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) **USPS Case No.: H06T-1H-C 08374323**

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) **APWU Case No.: 30608068**
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BEFORE: Andrew M. Strongin, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Susan Haywood, Labor Relations Specialist

For the Union: Larry Nienow, National Arbitration Advocate

Place of Hearing: 3200 Summit Blvd, West Palm Beach, FL 33416

Date of Hearing: March 18, 2010

Date Record Closed: March 18, 2010

Date of Award: May 10, 2010

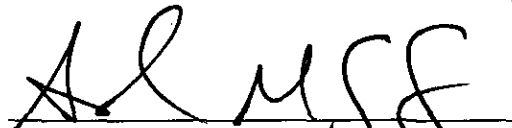
Relevant Contract Provision: Article 32

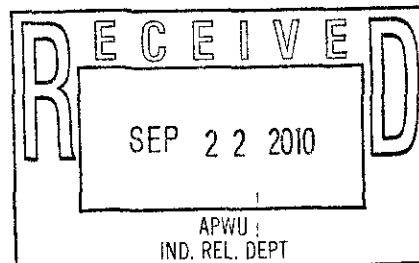
Contract Year: 2006

Type of Grievance: Contract

Award Summary:

The Service admits that it failed to give due consideration to the five factors of Article 32.1.A of the National Agreement, and that a make-whole award is appropriate. Given the Service's repeated and continuous failure to provide relevant remedial information to the Union up to and including the date of hearing, and the lack of evidence that such information can be provided at this late juncture, the remedy shall be measured by the only currently available evidence, which is the Maintenance Manager's estimate of the subcontractor's labor cost, as contained in his belated Article 32 analysis.


Andrew M. Strongin, Arbitrator



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This grievance protests the subcontracting of the disassembly, transport, and installation of a Low Cost Tray Sorter from Cincinnati, Ohio to the West Palm Beach P&DC in 2008. The Union contends that the work was subcontracted without the prerequisite "due consideration" of the five factors of Article 32.1.A of the National Agreement, and asks that all affected employees be made whole.

The subcontract was awarded effective August 21, 2008, and the Service did not conduct its Article 32 "due consideration" until September 24, 2008, one month after the subcontract's effective date. Maintenance Manager Kenneth R. Goodrich, who conducted the Article 32 analysis, reportedly advises that he was not aware of the equipment relocation until after the subcontract was awarded, and, consequently, that he performed his analysis after the subcontract was awarded. The Service thus admits that, "there is no question that the Postal Service violated the National Agreement in that management failed to give due consideration to the Article 32 elements prior to making the decision to subcontract." Postal Service Opening Statement (emphasis in original). The parties stipulate, therefore, that the only issue to be decided in this proceeding is that of appropriate make-whole remedy for the admitted violation.

In requesting a make-whole remedy, the Union emphasizes that it timely sought from the Service, but even to date has not been provided, information relevant to the cost of the subcontract and the number of hours worked by the subcontractor's employees. Based on the Service's failure to provide the requested information, the Union argues that the appropriate measure for a make-whole remedy is the only evidence that exists in the record, which is the Service's own estimate of the labor cost as set forth in Goodrich's belated Article 32

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the success of any business or organization. The text outlines various methods for recording transactions, including the use of journals, ledgers, and spreadsheets. It also discusses the importance of regular audits and reconciliations to ensure the accuracy of the records.

The second part of the document focuses on the importance of maintaining accurate financial statements. It explains that these statements provide a clear and concise overview of the organization's financial performance. The text discusses the different types of financial statements, such as the balance sheet, income statement, and cash flow statement, and provides guidance on how to prepare them. It also emphasizes the importance of transparency and accuracy in these statements.

The third part of the document discusses the importance of maintaining accurate tax records. It explains that proper record-keeping is essential for calculating taxes and avoiding penalties. The text outlines the various types of tax records that should be maintained, such as receipts, invoices, and bank statements. It also provides guidance on how to organize and store these records for easy access.

The fourth part of the document discusses the importance of maintaining accurate payroll records. It explains that these records are essential for calculating wages, taxes, and benefits. The text outlines the various types of payroll records that should be maintained, such as time sheets, pay stubs, and tax forms. It also provides guidance on how to prepare and store these records.

The fifth part of the document discusses the importance of maintaining accurate inventory records. It explains that these records are essential for tracking the flow of goods and services. The text outlines the various types of inventory records that should be maintained, such as purchase orders, sales orders, and inventory sheets. It also provides guidance on how to prepare and store these records.

The sixth part of the document discusses the importance of maintaining accurate customer records. It explains that these records are essential for understanding customer needs and preferences. The text outlines the various types of customer records that should be maintained, such as contact information, purchase history, and feedback. It also provides guidance on how to prepare and store these records.

The seventh part of the document discusses the importance of maintaining accurate employee records. It explains that these records are essential for managing the organization's human resources. The text outlines the various types of employee records that should be maintained, such as resumes, performance evaluations, and training records. It also provides guidance on how to prepare and store these records.

The eighth part of the document discusses the importance of maintaining accurate contract records. It explains that these records are essential for managing the organization's legal obligations. The text outlines the various types of contract records that should be maintained, such as contracts, agreements, and amendments. It also provides guidance on how to prepare and store these records.

The ninth part of the document discusses the importance of maintaining accurate compliance records. It explains that these records are essential for ensuring that the organization is following all applicable laws and regulations. The text outlines the various types of compliance records that should be maintained, such as policies, procedures, and training records. It also provides guidance on how to prepare and store these records.

The tenth part of the document discusses the importance of maintaining accurate risk management records. It explains that these records are essential for identifying and managing potential risks. The text outlines the various types of risk management records that should be maintained, such as risk assessments, risk registers, and incident reports. It also provides guidance on how to prepare and store these records.

analysis, or the lump sum of \$91,580.00, to be divided between all affected employees.

The Service acknowledges that a make-whole monetary remedy is appropriate, but argues that affected employees are not entitled to be paid for more than 60 hours per service week in the time period they were available to perform the disputed work, which is the most that they would have been entitled to work under the Agreement. The Service argues, too, that the subcontractor ultimately performed the work in significantly less time than the Maintenance Manager estimated, so that payment of the amount sought by the Union would constitute a windfall.

Ordinarily, a make-whole remedy in a subcontracting case would turn not upon the estimated labor cost of a subcontract, but instead on some measure of actual damages. Arbitrators differ over the question whether such actual damages should be measured, for example, by the subcontractor's labor cost or by the number of hours devoted by the subcontractor to bargaining unit work, whether at straight time or overtime rates. In cases where evidence of actual damage is not available or is difficult to discern, it is not uncommon for questions of remedy to be returned to the parties for settlement. *See, e.g.,* Case No. H7C-NA-C 36 (Mittenthal 1993) ("It may not be easy to construct a money remedy or to identify the injured employees. But the parties have been confronted in the past by remedy problems every bit as complicated as this one and they have been able through hard work and imagination to fine a mutually acceptable solution.").

This case, however, is not an ordinary case. The Union requested cost information relating to the disputed subcontract in September and October 2008. In its October 8, 2008, grievance, the Union again requested relevant information, and sought a remedy measured either by the "appropriate overtime rate for all

The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that proper record-keeping is essential for ensuring transparency and accountability in financial operations. The text outlines various methods for collecting and organizing data, including the use of spreadsheets and specialized accounting software. It also highlights the need for regular audits and reconciliations to identify and correct any discrepancies or errors in the records.

The second part of the document focuses on the analysis and interpretation of the collected data. It describes how to calculate key financial ratios and metrics, such as the profit margin, return on investment, and liquidity ratios. The text provides detailed explanations of what these metrics indicate about the organization's financial health and performance. It also discusses the importance of comparing these metrics against industry benchmarks and historical data to gain a better understanding of the organization's position relative to its peers and over time.

The third part of the document addresses the communication and reporting of the findings. It outlines the structure and content of various financial reports, such as the balance sheet, income statement, and cash flow statement. It provides guidance on how to present the data in a clear and concise manner, using tables, charts, and graphs to enhance the readability and impact of the reports. The text also discusses the importance of providing context and commentary on the data to help stakeholders understand the underlying trends and implications.

The final part of the document discusses the ongoing nature of financial reporting and the need for continuous improvement. It emphasizes that financial reporting is not a one-time activity but a continuous process that requires regular updates and revisions. It also discusses the importance of staying up-to-date on changes in accounting standards and regulations to ensure compliance and accuracy in the reporting process. The text concludes by encouraging organizations to embrace a culture of transparency and accountability, where financial reporting is seen as a key tool for driving growth and success.

hours worked by the contractor,” or “if no hours are available pay the APWU designated employees the price of the contract.” The Union repeated those information and remedial requests in its Step 2 grievance dated October 9, 2008. To date, the Union has not yet been supplied with the information it requested, notwithstanding the fact that the Service knew the Union to be concerned about an inability to establish the hours worked by the subcontractor’s employees for purposes of computing an appropriate make-whole award. At hearing, which convened on March 18, 2010, nearly 18 months after the filing of the Step 1 grievance and the Union’s initial request for information relevant to establishing a sound basis for a make-whole remedy, the Service still was not able to produce any cost information other than the Maintenance Manager’s estimate of the labor cost (\$91,580.00), and the appreciably higher total cost of the contract (\$178,300.00). The Service’s advocate did assert that the subcontractor ultimately performed the work more quickly than Goodrich estimated in his Article 32 analysis, but there is no evidence to support that assertion. Upon questioning of the advocates by the Arbitrator, it appears that the parties agree that the information the Union has been seeking will be difficult to obtain, if it can be obtained at all, and that they have not been able to reach a mutually agreeable resolution to the problem.

Appropriate respect for the proper functioning of the grievance procedure generally, and the process for requesting and providing relevant information specifically, counsels in favor of an award of the estimated labor costs (\$91,580.00) to be divided among all affected employees. The Service’s desire to limit the amount of the make-whole award is understandable, but the Service cites no contractual authority or arbitral precedent for limiting the award to the difference between the hours worked by bargaining unit employees during the time of the subcontracting, and the total hours they could have been required or allowed

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This not only helps in tracking expenses but also ensures compliance with tax regulations. The second part of the document provides a detailed breakdown of the company's financial performance over the last quarter. It includes a comparison of actual results against budgeted figures, highlighting areas of both strength and weakness. The third part of the document outlines the company's strategic goals for the upcoming year. It focuses on increasing operational efficiency, expanding market reach, and investing in research and development. The final part of the document provides a summary of the key findings and recommendations. It suggests that while the company has made significant progress, there are still several areas that need attention to ensure long-term success.

to work under the Agreement at that time. The Arbitrator rejects as inadequate that proposed measure of damages. Full employment of available employees generally is not a defense to subcontracting violations under the parties' Agreement and related arbitral precedent with which the Arbitrator is familiar, and it bears noting that such a limitation on a make-whole remedy would permit the Service to violate Article 32.1 with virtual impunity in any facility where employees are fully occupied.

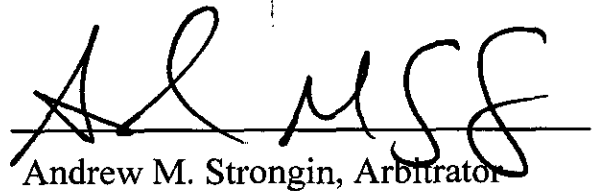
The typical measure for subcontracting violations, as noted, is actual damages. The best evidence of actual damages, in light of the Union's particular remedial request, would be an accounting of the actual hours devoted by the subcontractor's employees to the disputed work. That information presumably was available to the Service, but was not made available to the Union despite repeated requests dating back almost 18 months. If the Service attempted to obtain that information, there is no evidence in this record either to prove it, or that it could be obtained now, at this late juncture. So far as this record shows, the Service has been content to rely on the labor cost estimate of the Maintenance Manager, rather than to concern itself with the Union's request for potentially more accurate information that ultimately might have proved less costly to the Service, and despite the clear requirements of Article 31.3 of the Agreement, which requires the Service, upon request, to furnish to the Union all relevant information necessary for the enforcement of the Agreement. There is no reason to conclude, on this record, that the missing evidence will be forthcoming now, and it is to be observed that the parties already have had almost 18 months to attempt to settle what the Service now confesses was a violation of Article 32.1.A. To date, the parties have not been able to fashion a mutually acceptable remedy for the violation, leaving the Arbitrator to conclude that a remand will be unlikely to result in a mutually

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data. The second part of the document provides a detailed breakdown of the financial data for the quarter. It includes a table showing the revenue generated from various sources, as well as the associated costs and expenses. The final part of the document concludes with a summary of the overall financial performance and offers recommendations for future improvements. It suggests that by implementing more rigorous controls and streamlining the reporting process, the organization can achieve better financial stability and growth in the coming year.

acceptable resolution. Accordingly, the Arbitrator concludes that a remand will be unhelpful to the parties' efforts finally to resolve this matter.

DECISION

The grievance is sustained. Grievants shall be made whole for their losses, measured by an award of \$91,580.00 to be divided among all affected employees. The Arbitrator retains jurisdiction to resolve any questions that may arise over application or interpretation of the remedial provisions of this Award.


Andrew M. Strongin, Arbitrator

Takoma Park, Maryland

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