

ARBITRATION AWARD

November 9, 1981

UNITED STATES POSTAL SERVICE
Baton Rouge, Louisiana

H8C-NA-C 25

-and-

Case No.(A8-NA-0510)

AMERICAN POSTAL WORKERS UNION

Subject: Subcontracting - Highway Movement of Mail

Statement of the Issue: Whether the Postal Service's actions in selecting a contractor to handle the highway movement of mail in Solicitation No. 380-152-79 rather than having such work done by its own vehicles and drivers was a violation of Article XXXII of the National Agreement?

Contract Provisions Involved: Article XXXII, Sections 1 and 4 of the July 21, 1978 National Agreement.

<u>Grievance Data:</u>	<u>Date</u>
Grievance Filed:	January 3, 1980
Step 4 Meeting:	January 23, 1980
Appeal to Arbitration:	February 15, 1980
Case Heard:	April 16, 1981
Transcript Received:	May 1981
Briefs Submitted:	August 9, 1981

Statement of the Award: The grievance is denied.

BACKGROUND

This grievance protests the Postal Service's action in engaging a contractor for the highway movement of mail in Baton Rouge, Louisiana. The Union alleges that the Postal Service improperly inflated the cost of performing this mail transportation service with its own vehicles and drivers and that this cost, realistically calculated, was much less than the contractor's price for the same work. It believes the Postal Service thus failed to give "due consideration" to the factors mentioned in Article XXXII, Section 4A. It urges that this failure constitutes a violation of the 1978 National Agreement. The Postal Service disagrees.

Solicitation No. 380-152-79 was issued by the Postal Service on July 16, 1979. It advertised for bids for a surface transportation contract for the movement of mail on various routes in Baton Rouge. A contractor had been performing this work. Its contract was due to expire in early September 1979. The Postal Service sought to determine, through this Solicitation, whether it should continue to use a contractor for this surface transportation work or whether it should convert to Postal Service vehicles and drivers. The Solicitation stated, among other things, the number and nature of the vehicles required, a schedule of the trips contemplated, and the mileage and driving time involved in each trip. It required nine vehicles - five with a 1200-cubic foot capacity, three with 750 cubic feet, and one with 300 cubic feet.

The Postal Service notified the Union that a new surface transportation contract was being considered and gave it a copy of the Solicitation. The Union then evaluated the cost of performing this transportation work with Postal Service vehicles and drivers. Its calculations were made on a Form 5505 with almost all of the relevant data being furnished by the Postal Service. However, it had to make its own determination of "Driver Cost." The crucial factor in this cost figure is the number of driver hours anticipated per year. The Union connected the various trips together into runs which promised to minimize driver idleness. It took the total time encompassed on these runs - loading time, driving time, unloading time, probable idle time of less than 30 minutes, and ten minutes at the beginning and end of each run - and translated this figure by multiplication into annual driver hours. It concluded that this transportation work would call for 14,905 driver hours (15,352

when adjusted for contingencies) and would represent a cost to the Postal Service of \$226,124 per year.* It submitted this data to the Postal Service in late September 1979.

The Postal Service's Vehicle Operations Division made its own cost calculation on a Form 5505. It used Baton Rouge trip schedules prepared by the Southern Region, schedules which contained much the same information as the Solicitation. However, the Southern Region and the Union did not combine these trips into precisely the same runs. Because of this, the Postal Service's figures produced a greater amount of idle time. And the Postal Service included in driver hours not just idle time of less than 30 minutes but idle time of more than 30 minutes as well. These conditions led to a total of 16,428 driver hours (16,920 when adjusted for contingencies) and a cost of \$256,707 per year.

The Postal Service had a Highway Transportation Specialist, J. Bell, who was evidently in charge of this matter. He took these two cost estimates and made further changes. To the Union's cost figure, he added \$6,601 to reflect a 43 cents per hour wage increase for employees and \$5,390 to reflect highway taxes foregone.** The result was a cost of \$238,116 per year. To the Postal Service's cost figure, he also added the \$5,390 for taxes foregone. There was no need to add the \$6,601 because the Postal Service calculation was based on the higher wage rate. The result was a cost of \$262,097 per year.

In the meantime, contractors were submitting bids for this transportation work. The low bid appears to have been \$259,379. This price was slightly lower than the Postal Service's \$262,097 cost of having the work done with its own vehicles and drivers but much higher than the Union's \$238,116 cost figure.

* This total is actually the sum of "Driver Cost" and "Vehicle Cost" with the latter figure, like the former, also varying according to the number of driver hours.

** This \$5,390 is what a contractor would have to pay for state and local taxes in the event it was awarded this contract. The Postal Service does not pay such taxes on its vehicles.

The parties' representatives met on November 14, 1979, to discuss highway contracts for Baton Rouge and other cities. They disagreed on the propriety of the Postal Service engaging a contractor. However, there does not appear to have been any detailed discussion of their cost calculations for the Baton Rouge work or the reasons for the sharp difference in their cost estimates. Several telephone conversations also took place on the highway contracts. But, again, no attempt was made to confront or resolve the parties' disagreement on cost.

Bell continued to study the matter for the Postal Service. He concluded there were other factors which militated against the use of Postal Service vehicles and drivers for the Baton Rouge work. He believed: that the performance of this work in-house would require many new hires; that most of their time would be spent in mail processing rather than vehicle driving; that this would have a negative impact on the efficiency of the operation; that at least one supervisor would have had to be added to the work force; that the Solicitation called for certain vehicles, five 1200-cubic foot vans, which were probably not available to the Baton Rouge Post Office; that the Postal Service would have had to lease these 1,200-cubic foot vehicles or, in the alternative, use smaller vehicles which would have increased the number of trips beyond those set forth in the Solicitation; that this too would have meant greater cost; and that there was no motor vehicle craft and no qualified truck operators in the Baton Rouge work force.*

Bell recommended, under these circumstances, that the mail transportation work be given to the contractor with the low bid. Management approved his recommendation. Labor Relations was so advised and it in turn wrote the Union on December 5, 1979, stating the Postal Service's intention of using a contractor for the Baton Rouge work. Its letter added that "if the Union still desires to meet..." and discuss the proposed contract, it was prepared to arrange such a meeting. No Union request was made for a further meeting. Management notified the Union in a December 20, 1979 letter that "the Postal Service has awarded contracts in the amount of...\$259,379 on Solicitation 380-152-79... Baton Rouge..." The Union grieved a short time later.

* Bell also asserted that the Union cost figure was understated because it had improperly ignored much driver idle time on the false assumption that such time could be effectively devoted to mail processing.

DISCUSSION AND FINDINGS

The question, simply stated, is whether the selection of a contractor in December 1979 to handle the intra-city movement of mail in Baton Rouge was a violation of Article XXXII, Section 4A. Much the same issue was before the arbitrator in Case No. A8-NA-0481. The observations made there with respect to the meaning of Article XXXII are equally applicable here. They bear repeating:

"Article XXXII, Section 4 concerns the contracting out of the highway movement of mail. Paragraph A describes the Postal Service's substantive obligation; Paragraphs B through G describe the Postal Service's procedural obligations...

"Paragraph A recognizes that mail must be transported on the highways and that this can be accomplished in different ways. The Postal Service has done this work either with its own vehicles and drivers or through the use of contractors. It agreed in Paragraph A that, in determining which of these alternatives to follow, it would give 'due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees.' These factors are not weighted. Article XXXII, Section 4 does not say, for example, that 'cost' is more important than 'efficiency' or vice-versa. It simply requires that these factors be given 'due consideration.'

"Unfortunately, the words 'due consideration' are not defined in the National Agreement. Their significance, however, seems clear. They mean that the Postal Service must take into account the five factors mentioned in Paragraph A in determining whether or not to contract out surface transportation work. To ignore these factors or to examine them in a cursory fashion in making its decision would be improper. To consider other factors, not found in Paragraph A, would be equally improper. The Postal Service must, in short, make a good faith attempt to evaluate the need for contracting out in terms of the contractual factors. Anything less would fall short of 'due consideration.'

"Thus, the Postal Service's obligation relates more to the process by which it arrives at a decision

than to the decision itself. An incorrect decision does not necessarily mean a violation of Paragraph A. Incorrectness does suggest, to some extent at least, a lack of 'due consideration.' But this implication may be overcome by a Management showing that it did in fact give 'due consideration' to the several factors in reaching its decision. The greater the incorrectness, however, the stronger the implication that Management did not meet the 'due consideration' test. Suppose, for instance, that 'cost' is the only factor upon which Management relies in engaging a contractor, that its cost analysis is shown to be plainly in error, and that it would actually have been cheaper for the Postal Service to use its own vehicles and drivers. Under these circumstances, the conclusion would be almost irresistible that Management had not given 'due consideration' in arriving at its decision."*

I - Cost

This dispute is attributable, in large part, to the parties' disagreement on the "cost" of performing the transportation work with Postal Service vehicles and drivers. The difference in their cost estimates stem from the use of different driver hours, 14,905 by the Union and 16,428 by the Postal Service. That conflict is due to two considerations. First, the parties seem to have combined the various Baton Rouge trips into different runs. The Union runs produce less idle time (i.e., the delay for the driver between the end of one run and the start of the next) than the Postal Service runs. Second, the parties cannot agree on the proper treatment of idle time in their calculations. The Union considers idle time of less than 30 minutes to be unuseable and has included such periods in driver hours. It apparently believes that longer periods can be devoted to mail processing and has hence excluded those periods from driver hours. The Postal Service claims that all such periods, up to 45 minutes and even longer, do not permit effective reassignment and should therefore be included in driver hours.

* The footnotes to the quoted excerpt have been omitted.

The resolution of this kind of disagreement may be possible. But, on the present state of the record, I am in no position to make expert judgments as to how trips can best be combined into runs or how long an idle period need be before it can be effectively used for reassignment of an employee from driving to mail processing. Those questions can only be answered through detailed knowledge of day-to-day operations of the Baton Rouge facility. I have no such knowledge. Therefore, I cannot rule that the Union's driver hours are more realistic than the Company's driver hours. There is no reason to believe that either side arrived at its figure in an arbitrary or capricious manner.*

Another cost consideration is highway taxes foregone, \$5,390. The Postal Service added such taxes to its estimate of what it would cost to perform the transportation work with its own vehicles and drivers. It did so even though the Postal Service does not pay highway taxes on its vehicles. The Union objects to this addition, stressing that the Postal Service's cost figure without highway taxes would have been a few thousand dollars less than the contractor's price.

There are several problems with this argument. First, the Form 5505 used in the cost calculation has a separate line for "highway user taxes foregone." It was plainly contemplated that such taxes would be a factor in any cost estimate. That is precisely what happened. The testimony indicates that the Postal Service has always added taxes in determining what it would cost to perform transportation work in-house. Second, Management realizes that contractors pay highway taxes while the Postal Service does not. It nevertheless adds taxes in its calculation as a means of making a more accurate comparison of the true cost of the two modes of transportation. Its addition is simply a device for removing tax considerations from this comparison.

For these reasons, no confident conclusion can be drawn with respect to cost. I can neither accept nor reject the Postal Service's figure; I can neither accept nor reject the Union's figure. It follows that the Postal Service

* There are other conflicts which may account for some of the disparity in the parties' cost estimates. For example, the Postal Service used 102,361 annual miles in its calculation while the Union used 99,523 miles. No satisfactory explanation for this difference was offered by the parties.

cannot be deemed to have acted unreasonably in relying upon its cost calculations. That means, at the very least, that Management had some sound basis for believing that it was cheaper to engage a contractor than to perform the transportation work in-house. Therefore, it cannot be said that the Postal Service did not give "due consideration" to cost in contracting out this transportation work.

I I - Other Factors

The Postal Service indicated there were other factors which influenced its decision to contract out. Some were related to cost; some went beyond cost to the matter of efficiency.

Management stressed that the transportation work in question had always been performed by a contractor and that there consequently was no motor vehicle craft in the Baton Rouge facility. It believed that the use of Postal Service vehicles and drivers for this work would have required the hiring of new employees. Given these circumstances, it insisted it would have been necessary to hire at least one supervisor as well. This certainly would have been an additional Postal Service expense to be weighed in deciding whether contracting out involved a cost advantage.

Management stressed too that such new hires would have spent less than half of their time driving vehicles. It stated they would have had to be transferred to mail processing work the remainder of their time. It felt, given the time of day at which vehicle runs are made and mail is processed, that there would be little need for these extra mail processing hours. Its view was that these extra hours would have an adverse effect upon the productivity of the mail processing operation.

Management stressed also that both the Postal Service and Union cost estimates assumed that 1,200-cubic foot vehicles would be available. However, it had serious doubts about the availability of such vehicles in Postal Service garages. It suspected that, in the event the work was performed in-house, it would have had to either lease 1,200-cubic foot vehicles or do the work with 750-cubic foot vehicles. If the first alternative were followed, Management apparently thought it would incur vehicle costs beyond what was contemplated on the Form 5505. If the second alternative were followed, Management thought more runs would be needed to handle the mail which would in turn mean greater driver hours and greater cost.

Thus, the Postal Service concluded that both "cost" and "efficiency" considerations dictated performing the transportation work through a contractor rather than in-house.

I I I - Union Allegations

The Union nevertheless alleges that the Postal Service's calculations were made in bad faith and involved only a cursory review of the essential facts.

No useful purpose would be served in reciting all of the voluminous testimony as to what happened prior to the December 20, 1979 decision to engage a contractor. There appear to be weaknesses in the Postal Service's approach to the problem. But some questions can be raised with respect to the Union's approach as well. The difficulty is that the parties never really explored their differences. Neither side asked the other for a detailed explanation of its assumptions. Neither side insisted upon the identification and resolution of fact disagreements. Neither side suggested any kind of joint investigative effort at the Baton Rouge facility. Nor is there any persuasive evidence that Baton Rouge Management ever became involved at this stage in an analysis of the feasibility (or cost) of performing the work in-house. The discussions the parties had prior to December 20, 1979, simply did not deal with the ultimate questions which were raised at the arbitration hearing.

I am not persuaded that the Postal Service acted in bad faith or that it made only a cursory review of the factors in Article XXXII, Section 4A.

I V - Conclusion

The proofs in this case cannot support a conclusion that the Postal Service failed to give "due consideration" to "cost" and "efficiency" in making its decision to engage a contractor. Management has satisfied the "due consideration" test. There has been no violation of Article XXXII, Section 4A.

AWARD

The grievance is denied.

A handwritten signature in cursive script, appearing to read "Richard Mittenenthal".

Richard Mittenenthal, Arbitrator