

In the Matter of the Arbitration Between:

UNITED STATES POSTAL SERVICE

AND

Case No. H4C-NA-C-39

THE AMERICAN POSTAL WORKERS UNION
AFL-CIO

Hearings held March 30 and April 13, 1987

Before Richard I. Bloch, Esq.

APPEARANCES

For the Union

Anton Hajjar, Esq.

For the Postal Service

Jesse L. Butler, Esq.
Robert P. Sindermann, Jr., Esq.

OPINION

Facts

In early 1985, the Postal Service began testing a program by which stamps would be sold by consignment in nationwide retail businesses. Stamps have been sold through those outlets for many years, but, prior to the instant program, this has been done through periodic bulk purchases, for the most part, although there have been certain limited consignment sales programs in some areas. There is no question, however, that the instant program represents a substantial expansion in pre-existing arrangements.

This grievance, filed by the union in October 1986, contests

the Postal Service's failure to provide advance notification of the consignment program. The union also contends that the program will have a significant impact on bargaining unit work.

Issues

Did the Postal Service fail to comply with the subcontracting procedures of Article 32? If so, what shall the remedy be?

Union Position

The Union claims there was neither notification nor discussion of the subcontracting program prior to its implementation. Management confined itself to briefing the union on a plan that was already a fait accompli, says the union.

Additionally, the Postal Service erred in calculating the various costs and benefits. Inasmuch as the program will have a significant impact on bargaining unit jobs, says the union, and considering the violation of the procedural requirements for instituting the program, the arbitrator must issue a cease and desist order, accompanied by a cancellation of existing contracts.

Postal Service Position

The Postal Service denies that the present program amounts to subcontracting and, therefore, contests the notion that any Article 32 notification and discussion procedures were applicable.

Even assuming the procedures were applicable, however, says the employer, they were fulfilled.

ARTICLE 32
SUBCONTRACTING

Section 1. General Principles

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.

B. The Employer will give advance notification to Unions at the national level when subcontracting which will have a significant impact on bargaining unit work is being considered and will meet to consider the Unions' views on minimizing such impact. No final decision on whether or not such work will be contracted out will be made until the matter is discussed with the Unions.

Analysis

The current labor agreement between the parties contains no prohibition, per se, on subcontracting of work. However, Article 32 sets forth certain procedural constraints concerning notification, meeting and discussion of the matter with the union as well as the employer's obligation to give "due consideration" to a variety of factors, including costs and efficiency, among other things. Assuming good faith compliance with the procedural requirements of Article 32, the Postal Service is otherwise unimpeded in the subcontracting process. Those requirements are not to be taken likely. If they are not satisfied, "no final decision on whether or not such work will be contracted out" may be made. The obligation to notify and to discuss with the union the aspects of the plan are not to be reduced to mere formalities or cursory briefings.

In this case, the Union says it was not afforded such an

In this case, the Union says it was not afforded such an opportunity, that the Postal Service had already determined how and when the program was to be administered, that it never received a formal invitation to an Article 32 meeting and that any contact with the Union was merely a one way "briefing" by the Postal Service with no opportunity for meaningful input or discussion by the Union.

There is considerable dispute as to whether the stamp consignment program amounted to subcontracting. It is unnecessary to examine that question in the context of this case since, for the reasons that follow, one concludes that management complied with the requirements of the National Agreement.

There is little question as to the procedural requirements of Article 32; they are essentially three-fold. Management must:

1. Give "advance notification" when it is considering subcontracting that will have a "significant impact" on bargaining unit work.
2. Meet with the Union to consider its views on minimizing such impact.
3. Discuss the matter with the Unions prior to a final decision on the subcontracting program.

Reasonably speaking, this means that, in the overall, the Union is to be consulted and the matter is to be discussed between the Company and the Union. This is not a new conclusion; Arbitrator Mittenthal has made the same observation:

The purpose of the meeting is apparently is to give the union an opportunity to attempt to persuade the Postal Service to change its course,...(Case A8-NA-0481, at page 8)

In this case, management sent the Union two letters that amply served as notification of the project. On March 11, James Gildea wrote to Moe Biller, President of the APWU, stating as follows:

Dear Mr. Biller:

The Postal Service is conducting a stamp sales by consignment study wherein private companies will receive an initial issuance of stamps in the amount of 1-month's projected sales. The purpose of the study is to test the feasibility of expanding the number of face-value service points for customer convenience.

Testing is scheduled to be conducted in San Diego, California, and Akron, Ohio, beginning mid FY 1985, and continuing for one year.

We will notify you of the dates of testing when they have been determined. Should there be questions regarding the foregoing, please contact Andrea Wilson at 245-4729.

Sincerely,

/s/

James C. Gildea
Assistant Postmaster General
Labor Relations Department

And, in April, when the Postal Service concluded that it would expand the consignment study, it again notified the Union:

Dear Mr. Biller:

By letter dated March 11, 1985, you were informed that the Postal Service is conducting a stamp by consignment study.

In addition to the test sites previously referenced, testing is scheduled to begin in April or May, at approximately 131 Giant Food Stores in Maryland, and at approximately 175 Safeway Stores in Maryland later this fiscal year.

Should there be questions regarding the foregoing, please contact Andrea Wilson at 245-4729.

Sincerely,

/s/

Thomas J. Fritsch
Assistant Postmaster General
Labor Relations Department

The Union dismisses these letters as mere standard "informational" letters. While they may have been just that, they nevertheless served the purpose contemplated by Article 32 with respect to giving advance notification. The Union responded by letter of April 10, noting that it believed the procedural prerequisites of Article 32 applied.

By letter of October 16, the Postal Service proposed a meeting on October 25th, where it would "present the program and our plans for implementation to a representative from the American Postal Workers Union..." On the one hand, it is true, as the Union contends, that this was not worded as "an invitation to an Article 32 meeting." But formal invitations and precisely turned phrases are not required by Article 32. The Union's observations that the letter was sent to the President of the Union rather than to Mr. Burrus, Vice President, and the contention that the purpose of the meeting was somehow not disclosed in advance are not conclusive. This was, after all, a meeting that was obviously in response to Mr. Burrus' earlier contentions that an Article 32 meeting was required and it is difficult to accept the Union's claims that the purpose of the meeting was somehow unknown to it. It had been the specific

subject of Burrus' earlier April 10 letter to the employer in which he contended that the assignment project constituted subcontracting of bargaining unit work, that the subcontracting would have a substantial impact on the bargaining unit, that the matter was governed by Article 32 and, finally, that the Union was demanding "the required guarantees of the agreement."

There is substantial dispute as to the nature of the resulting meeting on October 25th. The Postal Service says the Union was afforded the opportunity to provide input during that meeting and that, while the Postal Service did not believe an Article 32 meeting was required, they conducted the session in accordance with such requirements in order to allay the Union's concern. Moreover, the employer solicited the Union's input at any time thereafter, noting that the final implementation would not be until December.

The Union disputes this version of the meeting. It says the employer stressed the meeting was for "informational purposes" only. The Union had little or no time to prepare for what was, after all, a relatively sophisticated analysis, it says; the Employer's decision had already been made. It directs the arbitrator's attention to, among other things, the Employer's Step Four decision, following the grievance, wherein the Service notes that "Information on the program was given to the Union at the meeting..." and that the "APWU was advised that the program

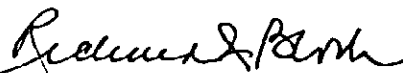
would be implemented in December of 1985." Failing any meaningful discussion of the program during the October 25th session, says the Union, it was forced to grieve the matter, which it did some four days later.

From the evidence, it is clear enough that no real discussions were had on the consignment program, at least of a nature that would comport with the overall contractual intent that the Union be able to provide the type of information that might change management's mind. Yet, to the extent the discussions fell short of this goal, it may not be said that the blame is attributable solely to management. With due regard to the obvious fact that the Union may not have had adequate time to prepare an econometric analysis of the program, it is nevertheless true that at least certain aspects of the Union's concerns were discussed during the meeting, including the possibility of further subcontracting window service and the potential impact on bargaining unit employees. Management solicited additional input from the Union during those meetings. Whether or not the December date was established in specific response to the Union's desire for further input or whether that had been the intended date all along, there was both ample time for the type of in-depth discussion required of the subject and an announced willingness on the part of the employer to engage in such dialogue. However, following the grievance some four days after the October 25th meeting, there was no further pursuit of the matter. Thus, while it may not be said that the full intent

this lapse was caused by management's having ignored its requirements. The provision demands good faith and comprehensive discussion. It does not, however, demand a formal format. Looking to the realities of what happened in this particular case, there was obvious and open chance for full airing of the matter. Management announced the program and notified the Union clearly on a number of occasions; the door was open for further pursuit of the matter. But the Union declined in this case to pursue the issue, opting instead to claim, in late October, a violation of Article 32. The claim, at that point, was premature. If, as appears to be the case, the Union's intent was to demonstrate to management that the USPS figures were in error, that the program could be run more efficiently and more to the parties' common interest by keeping it in-house, there is no reason to conclude that management would have been resistant to listening. It was clear that nothing further was to be done until at least December, and management had notified the Union and announced its willingness to receive and discuss further input. Under the circumstances, a violation of Article 32 has not been shown. One may properly require full and meaningful discussion, of a subcontracting question. But the requirement to go forward in this manner is a two-way obligation. In this case, the missed opportunity may not be attributed to management. Accordingly, the grievance will be denied.

AWARD

The grievance is denied.



Richard I. Bloch, Esq.

October 20, 1987