

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration)
between)
UNITED STATES POSTAL SERVICE) Case No. Q06C-4Q-C 08228294
and)
AMERICAN POSTAL WORKERS)
UNION, AFL-CIO)
)

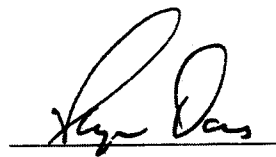
BEFORE: Shyam Das

APPEARANCES:

For the Postal Service: Neftali Pluguez, Esquire
For the APWU: Darryl J. Anderson, Esquire
Lee W. Jackson, Esquire
Kelly Scott, Esquire
Place of Hearing: Washington, D.C.
Dates of Hearing: August 1-2, 2012
January 29, 2013
February 20-21, 2013
Date of Award: August 13, 2013
Relevant Contract Provisions: Article 32.1.C
Contract Year: 2006-2010
Type of Grievance: Contract Interpretation

Award Summary:

The grievance is resolved on the basis set forth in the final paragraph of the above Findings. I retain jurisdiction for 90 days to resolve any dispute over implementation of this Award.

A handwritten signature in black ink, appearing to read "Shyam Das", is written over a horizontal line.

Shyam Das, Arbitrator

On June 4, 2008, the APWU initiated a Step 4 dispute, subsequently appealed to arbitration, relating to the Postal Service's obligation, pursuant to Article 32, Section 1.C of the 2006 National Agreement, to furnish the Union at the local level notification of subcontracting of bargaining unit work at local installations.

Section 1 of Article 32 of the National Agreement sets forth the following provisions relating to 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 the Union at the national level when subcontracting which will have a significant impact on bargaining unit work is being considered and will meet with the Union while developing the initial Comparative Analysis report. The Employer will consider the Union's views on costs and other factors, together with proposals to avoid subcontracting and proposals to minimize the impact of any subcontracting. A statement of the Union's views and proposals will be included in the initial Comparative Analysis and in any Decision Analysis Report relating to the subcontracting under consideration. No final decision on whether or not such work will be contracted out will be made until the matter is discussed with the Union.

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.

(Emphasis added.)

At issue in this case is Section 1.C which was first agreed to in the 2006 National Agreement.

As set forth in the Union's 15-day statement of issues and facts:

It is the APWU's position that Article 32, Section 1.C., requires notification to the local union of subcontracting of bargaining unit work at local installations. However, when subcontracting might have significant impact on bargaining unit work, pursuant to the

notification requirements of Article 32, Section 1.B, the Postal Service is required to give notification to the Union at the national level.

The Postal Service's 15-day statement asserts:

It is the Postal Service's position that, under the applicable language, notification is required only for a "Field level" decision to subcontract bargaining unit work. Consequently, under the language of Article 32.1.C, notification to the Union at the local level is not required for the decision made at the Local level to subcontract bargaining work. The Union's interpretation of the language of Article 32.1.C unnaturally expands the requirements for notification.

The Postal Service's 15-day statement also maintains that Article 32.1.C provides for notification to the local union "where area subcontracting takes place." At arbitration, the Postal Service clarified: "Our understanding is the field is anything above the local level.... It's not just the area. It could include the districts."

In the negotiations that preceded the 2006 National Agreement, subcontracting was addressed at both the main table and an Article 32 subcommittee. The deliberations of the subcommittee, by agreement, were off the record.

On September 14, 2006, the Union submitted at the main table a proposal on Article 32 - Subcontracting. In prior contract negotiations the Union unsuccessfully had sought advance notification of proposed local subcontracting. In this proposal, it stated in relevant part:

Issue

In many cases, local unions are not notified of proposed subcontracting or management's intent to subcontract. Failure to provide advance notice deprives the Parties of the opportunity for resolution prior to implementation.

* * * *

Proposal

The American Postal Workers Union, AFL-CIO proposes to amend Article 32.1.B to provide advance notice to the union at the local level when it is proposed to subcontract.

Together with its proposal, the APWU presented a series of Bullet Points including the following:

Problem:

- Many Local Unions are deprived of the opportunity to resolve subcontracting issues prior to implementation because they are not notified of Management's proposal or intent to subcontract.

* * * *

Solutions:

- Incorporate in Article 32.1.B the requirement to provide advance notice to the union at the local level when it is proposed to subcontract.

APWU Executive Vice President Greg Bell held the position of Director of Industrial Relations in 2006. On December 2, 2006, following conclusion of negotiations, he and Manager of Contract Administration John Dockins -- the Postal Service's chief negotiator -- signed off on changes to Article 32, including the addition of Article 32.1.C. Bell testified that while the Union did not achieve advance notification, it did get local notification.

Bell testified, based on his 35 years of experience with the Postal Service, that historically the term "field" is a general description that encompasses every level of the Postal Service except National or Headquarters level.¹ Bell pointed to provisions in the 2006 National Agreement in which the terms "Area", "District" and "Local" are used, and to an MOU at page 320 of the Agreement which includes the terms "national-level" and "field-level" in a context

¹ The Union notes the following definition in Section 101(2) of the Postal Field Service Compensation Act of 1955: " 'postal field service' includes all operations and organization units of the Department, other than the departmental operations and organization units in the headquarters offices of the Post Office Department at the seat of the Government...."

where it is clear that "field-level" encompasses local level. He noted this is the only use of the word "field" in the 2006 National Agreement, other than in Article 32.1.C. Bell also cited the following definition of "field" included in the Glossary of Postal Terms published by the Postal Service that was in effect at the time Article 32.1.C was negotiated: "A general designation for postal locations other than Headquarters and its related units. These include 10 areas and 85 districts."

Other Union witnesses with extensive Postal Service experience similarly testified regarding their understanding of the use of the term "field" or "field level" by management and Union. Phil Tabbita, APWU Manager of Negotiation Support & Special Projects, presented a compilation of excerpts from numerous Postal Service manuals and other documents, including Article 19 handbooks, manuals and regulations, which expressly or implicitly define "field" to encompass local plants and facilities and/or use "field" as a contrast to "headquarters".

The Union presented evidence to show that following the 2006 National Agreement going into effect in early 2007, local management began to provide notice to the local union of local contracting out decisions in both Louisville and Pittsburgh. These notices, for the most part, consisted of copies of Article 32 Due Consideration Worksheets completed to document compliance with Article 32.1.A when local maintenance management declined to perform requested work. In Pittsburgh, the notice was provided to the local union on the same day as the worksheet was completed. In Louisville, these notices were provided every two weeks, mostly after the work had been performed. At both locations, local management ceased providing such notices after Manager of Contract Administration Patrick Devine sent an email from Headquarters to Area management on October 19, 2007, providing "clarification on the new Article 32.1.C language," in which he stated:

The new language was explained at length at the various Joint training sessions and follow-up contact has resulted in unanimous and oft-repeated counsel/advice that notification is required only for outsourcing which comes from above the Local level, as high as the National level....

* * * *

At negotiations, the Union complained that Local union officials were not always aware of national outsourcing initiatives and would be completely surprised when such national initiatives arrived at the door of their facility. Common examples include the deployment of mail processing equipment, whose installation was outsourced to a third-party, usually the manufacturer of the equipment. When the equipment arrived, the Local would know little or nothing about the outsourcing.

As a courtesy, it was decided that Local unions should be given notification to avoid undue conflict between the parties.....

Unfortunately, some confusion has stemmed from the use of the term "Field." The APWU has insisted that "Field" equals Local, and has demanded notification at times for every single possible Local subcontracting scenario.

The Postal Service position has been consistent: if "Local" had been intended, the word "Local" would have been used (twice).

Instead, "Field" was used. The term "Field," as discussed with the APWU at the Article 32 discussions during negotiations, is a term found in the "Guidelines for Considering National Outsourcing Initiatives." These guidelines were updated in September 2005.

Exhibit II of the Guidelines contains the February 11, 2002 "Checklist for Considering Outsourcing Initiatives Field Level." The document explains at length the "...steps/work tasks and documentation for completion and submission to the national level for concept review and approval." Obviously, Local outsourcing projects do not require "submission to the national level for concept review and approval."

Further, the document goes on to set forth the "Preparatory [sic] Requirements" for Field Level outsourcing initiatives. These include presentation to SIAG [Strategic Initiative Action Group], the development of a Comparative Analysis (required only when there is significant impact to the bargaining unit), and a review by Finance. Again, these are not Local outsourcing projects.

For these reasons, despite claims to the contrary by the APWU, the position of the Postal Service has been that Local outsourcing projects (tire changes, window washings, etc) do not require notification.

[Emphasis in Original.]

During the 2006 negotiations, Devine was the Postal Service's lead spokesman on maintenance craft issues. He worked under Dockins. At arbitration, Devine explained the Postal Service's position that the term "Field level" in Article 32.1.C is derived from the SIAG guidelines, which are referred to in his October 19, 2007 email quoted above.

Beginning in late 2005, Devine stated, the Postal Service provided notice and held discussions with the APWU regarding a national initiative to subcontract AMC (Air Mail Center) work at numerous locations. On January 17, 2006, the Union submitted an information request which included a request for a copy of the SIAG guidelines -- an internal Postal Service document -- and this was provided on February 16, 2006. Exhibit II of the SIAG guidelines is entitled: "Checklist for Considering Outsourcing Initiatives - Field level." Devine reiterated the explanation included in his October 19, 2007 email as to why local, "run-of-the-mill" outsourcing projects are not encompassed by Exhibit II.

In the 2000 Interest Arbitration before Arbitrator Stephen Goldberg, the Postal Service opposed (successfully) the Union's proposal to change Article 32 to provide notice at the local level. As stated in the Goldberg Award:

It [Postal Service] asserts that (1) in view of the volume of minor local subcontracting of work such as cutting lawns, painting, etc., requiring notice at the local level would place a substantial burden on local management with no corresponding gain in the retention of bargaining unit work....

Devine testified that the Postal Service's initial response to the Union's September 14, 2006 proposal to amend Article 32.1.B to provide advance notice to the union at the local level in 2006 negotiations was similar. Devine also pointed out that Article 32.1.B -- which the Union proposed to amend -- covers contracting out that has a significant impact on bargaining unit work.

Devine related that on October 23, 2006, the Postal Service responded to the Union's proposal with a proposal to establish timeframes within which to accomplish the

required meeting and discussions with the Union -- which had been added in the 2000 Goldberg Award. Devine testified regarding the Postal Service's proposal:

Q. And was it meant as an exchange for what the Union was asking for?

A. We wanted to have -- let me answer it bluntly. If the Union would have agreed to these time frames, I would have gone back and recommended to Mr. Dockins that we give the Union what they were looking for in terms of the notice that they were seeking under 32.1.B. It was that point. Unfortunately, they never gave us this. So as a compromise what was negotiated was that field level as it came from those outsourcing SIAG guidelines, that was what was inserted into the contract.

Devine was asked whether, in reference to the SIAG guidelines, he discussed the term "field level" with APWU negotiator Bell. He responded:

Not at length. The proposal for the language for 32.1.C. was at his suggestion to -- for the new language in Article 32 with the explanation that it referred to this document.

According to Devine, when Bell presented him with the language now in 32.1.C, which for the first time included the word "field", Devine said: "Where are you coming up with 'field'? I thought you were looking for local notice." Devine stated Bell responded: "That's from your guidelines."

Devine stated it was his understanding that Article 32.1.C covered contracting out that had a significant impact on the bargaining unit that was not generated at the national level -- which would be subject to 32.1.B -- but at the field level. Local initiatives are not covered, he said, because they would not have a significant impact. If the Postal Service had agreed to provide notice of local subcontracting, he added, it would have been placed in 32.1.A which covers local, run-of-the-mill subcontracting. Notably, however, the Union's proposal was not to change 32.1.A, but 32.1.B.

In rebuttal, Bell testified that during the 2006 negotiations he had no separate meetings with Devine related to Article 32, and never had any discussion with Devine or any Postal Service official regarding the SIAG guidelines and how they might relate to the language now in Article 32.1.C. Bell insisted that he was not the source of the term "Field level" in 32.1.C. On the contrary, the Postal Service proposed that language and the Union had no issue with it.

Tabbita, who kept the APWU's 2006 negotiating records, also testified regarding the evolution of the language in Article 32.1.C. At 6:15 p.m. on November 20, 2006 -- the final day of negotiations -- the Union received a counterproposal from the Postal Service regarding Article 32. It included a provision in Article 32.1.B for the Union to provide its statement of views and proposals within 120 days of receipt of advance notification thereunder and the following Article 32.1.C provision:

When a decision has been made at the Local level to subcontract bargaining unit work, the Union at the Local level will be given notification.

Some additional discussions ensued, and at 11:00 p.m. the Postal Service delivered a further proposal with some additional language in 32.1.B and a change in its earlier 32.1.C proposal to refer to a decision to subcontract made at the "Field level," rather than the "Local level." Tabbita recalled no discussion as to the reason for this latter change or whether it was supposed to have some specific meaning. Tabbita discussed this change with Bell and other APWU officials and they concluded that "Field level" was better because, in addition to local decisions, it encompasses area and district level decisions that might otherwise fall through the cracks. At 11:55 p.m., Tabbita testified, he met with Devine and gave him a Union counteroffer, which consisted of the Postal Service's 11:00 p.m. proposal with handwritten revisions to the Postal Service's proposed additional language in 32.1.B. Tabbita said he briefly described what the Union was seeking to achieve with those revisions, and there was no further discussion. As finally signed off by Bell and Dockins on December 2, 2006, no changes were made in Article 32.1.B, but 32.1.C, as rewritten by the Postal Service in its 11:00 p.m. November 20 proposal, was included.

Tabbita also stated that on November 14, 2006 the Union had made an information request relating to and referring to the SIAG guidelines. He explained that this was done in connection with the Union's effort to accommodate the Postal Service's concern regarding the length of time it was taking to complete the Article 32.1.B process. Tabbita added that his understanding of the term "field" used in the SIAG guidelines is no different than when it is used elsewhere -- it covers everything but national outsourcing, including local initiatives. Some items in the field level checklist might not apply to local initiatives, he noted, but that is equally true of area and district initiatives.

UNION POSITION

The Union stresses that in successive National Agreement negotiations it consistently has sought greater protections against the subcontracting of bargaining unit work, including notification at the local level. In 2006 negotiations, the Union emphasized that local unions are deprived of the opportunity to resolve subcontracting issues prior to implementation simply because they are unaware of the Postal Service's intent to subcontract, and ultimately was successful in obtaining language requiring local notice.

The record shows, the Union asserts, that at 6:15 p.m. on November 20, 2006, the last day of negotiations, the APWU received a Postal Service proposal which contained language requiring local notice when a subcontracting decision was made at the "Local level." The Union negotiating team discussed this proposal amongst themselves before receiving an additional proposal from the Postal Service at 11:00 p.m. This proposal contained the language that eventually became Article 32.1.C, requiring notice at the local level when subcontracting decisions are made at the "Field level." This was the first appearance of the term "Field" in Article 32.1.C proposals. The Union officers were pleased with the change because they believed that it now "covered everything" and would apply to local, area and district subcontracting initiatives.

The Union argues that the term "field", as used in Article 32.1.C, should be given the meaning the parties have mutually understood it to mean for nearly 60 years. As the Union

has demonstrated, legislation dating to 1955 makes clear that the distinction between "field" and headquarters always has been used to separate headquarters from everything outside of it, including all postal facilities at the area, district and local levels. The APWU and the Postal Service have a long bargaining history demonstrating their mutual understanding that the term "field" means all locations outside of headquarters. The Union contends that the Postal Service position in the present matter that "Field-level" refers only to area and district levels is belied by the tremendous amounts of postal documents, including those put into evidence by the Union in this case, that use "field" to refer to everything other than headquarters. This basic distinction between "field" and "headquarters", the Union reiterates, has been consistently used for decades.

Evidence presented by the Union refutes the Postal Service's assertion that the term "Field" as used in Article 32.1.C came from the SIAG guidelines for national outsourcing and, therefore, should not be read to encompass the local level, in addition to the area and district levels. But even if the SIAG guidelines were the source of the term "Field" in Article 32.1.C, the Union insists, the Postal Service's argument remains unconvincing. The Postal Service errs by arguing that "field" as used in the SIAG guidelines does not encompass local, as well as area and district, outsourcing initiatives because the guidelines are not meant to apply to local outsourcing initiatives. On the contrary, the SIAG guidelines state that:

While these Guidelines apply specifically to National outsourcing initiatives they also provide basic guidance for locally initiated outsourcing initiatives. For this reason both the Checklist for Considering National Outsourcing Initiatives and the Checklist for Considering Outsourcing Initiatives - Field Level are provided.

In other words, the Union stresses, the guidelines -- unilaterally published by the Postal Service -- equate "field" with local, thereby refuting the Postal Service's position in this case that "field" may be read to include only area and district levels.

The Union stresses that after the effective date of the 2006 Agreement, the Postal Service began giving local notice of local subcontracting decisions. The Union provided documentation of notices of subcontracting decisions being given to local unions in Louisville

and Pittsburgh. Eventually, however, the local unions stopped receiving these notifications following the October 19, 2007 email sent by Manager Devine to Area Postal Service managers informing them that "notification is required only for outsourcing which comes from above the Local level, as high as the National level."

The Union maintains that the Postal Service's effort to now assert that in the 2006 negotiations it was ascribing a meaning to "field" different from the mutually understood meaning cannot be a justification for allowing the Postal Service to get out from under a provision in the National Agreement.

Finally the Union insists that the Postal Service has not shown that the usual application of the term "field" in the application of Article 32.1.C would be impractical. The record shows that many local postal installations enter into one master agreement that provides for numerous separate services to be performed by a contractor. In those cases, the local union must be notified when the master agreement is entered into, but does not have to be notified when each service is to be performed as long as the services are performed pursuant to the contract of which the local union has been notified. Moreover, with regard to individual small contracting out decisions, it bears emphasis that Article 32.1.C does not specify when the notice must be provided. The only record evidence of how such individual decisions are made shows that it would be simple and not time-consuming for local managers to inform the local union as the decisions are being made.

EMPLOYER POSITION

The Postal Service contends that Article 32.1.C was a compromise designed to inform local unions when "Field level" subcontracting, decided or developed outside of the "local" facility, would occur so that local unions would know when contractors would be working in their facilities. This is what the Postal Service agreed to do. If "local" had been intended, the word "local" would have been used twice in the language of Article 32.1.C, or the language would have been incorporated into 32.1.A which indisputably applies to "run-of-the-mill" "Local level" subcontracting. In this grievance, the Postal Service asserts, the Union improperly is

seeking an interpretation of Article 32.1.C very similar to its initial negotiating proposals and what the APWU has been trying to gain since 1994, but without having to give up what the Postal Service sought in return with respect to imposing time limits in the application of Article 32.1.B.

The Postal Service asserts that subcontracting work normally assigned to APWU crafts, other than the motor vehicle craft covered by Article 32.2, either is characterized as: Article 32.1.A "local" "run-of-the-mill" subcontracting -- involving work which will not have a significant impact on the bargaining unit; or Article 32.1.B subcontracting -- which has a significant impact on the bargaining unit.

The Postal Service asserts that the Union did not rebut the testimony of Manager Devine that the term "Field level" as found in Article 32.1.C came directly from the checklist (Exhibit II) of the SIAG guidelines, which the parties understood never was intended for local, run-of-the-mill" subcontracting historically covered under Article 32.1.A.

Moreover, the Postal Service contends, to understand what the parties intended by the use of the term "Field level" it is important to recognize what the parties were trying to accomplish with that language. They were responding to a significant problem that the APWU expressed was occurring, namely that local unions were being surprised when contractors would arrive at their respective local installations to perform work when subcontracting was decided or developed outside of their facilities.

The Postal Service also stresses that the 2006 negotiating proposals that ultimately resulted in the notice provision in Article 32.1.C evolved from the notice provision in 32.1.B. The purpose of that requirement is to provide an opportunity for the parties to discuss the impact of proposed contracting out on the bargaining unit. There is no such notice requirement for national level subcontracting which would have little or no impact on the bargaining unit. If the notice requirement in 32.1.B was intended to permit the Union to discuss the impact on the bargaining unit, the Postal Service argues, there is no reason why the notice requirement in 32.1.C should be interpreted differently. In the Postal Service's view, the Union's

interpretation distorts the intent of Article 32.1.C's notice requirement from a discussion of impact between the parties to becoming a grievance filing aid for the APWU.

In short, the Postal Service maintains, the correct application of the obligation to provide notice for subcontracting depends on whether it is run-of-the-mill, local subcontracting or whether it is subcontracting which could have a significant impact on the bargaining unit. It is very unlikely that a run-of-the-mill, local subcontracting project would have a significant impact on the bargaining unit, and such local subcontracting, thus, comes under the provisions of Article 32.1.A. The Postal Service insists that the Union clearly did not achieve local level notification for local level subcontracting covered by Article 32.1.A.

The Postal Service asserts that, although memories were challenged as to which party revised the language from "Local" to "Field" on the last day of the 2006 negotiations, there is no evidence this change was discussed between the parties, and there was no mutual understanding that the change to "Field level" from "Local level" had an all encompassing effect so as to include all locations outside of headquarters. The Postal Service argues that the Union's internal discussion that somehow they were getting more than what they were asking for without giving up anything defies logic. A more logical conclusion is that the change from "Local level" to "Field level" indicated that Article 32.1.C applied to subcontracting decided or developed in higher than local level offices which could have a significant impact on the bargaining unit. This would serve to cure the significant problem the Union had expressed regarding local unions being surprised when contractors arrived to perform work in their facilities. Certainly, the Postal Service would not have obligated itself to provide notice at the local level for local contracting out decisions which it previously had made clear it considered a substantial burden on local management, with no corresponding gain and without getting anything in return.

The Postal Service argues that the Union's interpretation of "Field level" should be rejected as the APWU's negotiators had reason to know of the interpretation the Postal Service placed on the term "Field level." Moreover, the Postal Service contends, applying the doctrine of reasonable expectations, it is clear that the Union's claim to have achieved more

than they were asking for without giving anything in return is an unreasonable interpretation of the language in issue.

FINDINGS

At the outset of the 2006 negotiations, the Union proposed that the Postal Service be required to provide local unions with advance notice of proposed subcontracting of local work. At 6:15 p.m. on November 20, 2006 -- the last day of negotiations -- the Postal Service submitted an Article 32 proposal to the Union which included the following Article 32.1.C provision:

When a decision has been made at the Local level to subcontract bargaining unit work, the Union at the Local level will be given notification.

Somehow, between 6:15 p.m. and 11:00 p.m. the Postal Service's proposal changed to the language ultimately agreed in Article 32.1.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.

According to Union witnesses, this change from "Local-level" to "Field level" was made by the Postal Service and presented to the Union without further elaboration or explanation. Those witnesses stated that Union negotiators discussed the change among themselves and concluded that the term "Field level" was acceptable because it expanded the scope of 31.1.C to include not just decisions made at the local level, but those made at the district or area level -- all of which are encompassed in the term "Field level." The Union presented substantial documentary and testimonial evidence to support its contention that the term "field" or "field level" as applied to Postal Service operations historically has been consistently used to refer to all levels of the Postal Service other than national or headquarters.²

² Among the many Article 19 and non-Article 19 documents cited by the Union are the Employee and Labor Relations Manual (ELM), Handbook F-101 (Field Accounting Procedures),

Except for its reliance on the SIAG guidelines, as in effect at the time of the 2006 negotiations, the Postal Service did not refute or contradict the Union's evidence as to the generally accepted meaning of "field" or "field level."

The Postal Service's overall position in this case, as articulated in its post-hearing brief, is that Article 32.1.C requires notice to local unions of area or district initiatives that have a significant impact on the bargaining unit. Such decisions, according to the Postal Service, correspond to those covered by the Field Level Checklist (Exhibit II) in the SIAG guidelines which is the basis for the term "Field level" in Article 32.1.C.³

In support of its position, the Postal Service maintains that the term "Field level" in Article 32.1.C was first proposed by the APWU and that then APWU Director of Industrial Relations Bell told Postal Service Manager Devine that the Union had taken that term from the SIAG guidelines. Bell insists that was not the case, and bargaining history documents presented by the Union seem to indicate that the last minute change to "Field level" was proposed by the Postal Service. In any event, the evidence as a whole does not warrant a finding that the term "Field level" in 32.1.C originated with the Union or that the Union (or the Postal Service, for that matter) cited the SIAG guidelines as the source of that term prior to execution of the 2006 National Agreement.⁴

the 2007 Annual Report of the Postal Service and the Glossary of Postal Terms in effect when Article 32.1.C was negotiated.

³ In its September 30, 2008 15-day statement, the Postal Service stated that Article 32.1.C did not apply to a "decision made at the Local level to subcontract bargaining unit work." It also stated that the parties agreed in 32.1.C that "local union officers should be given notification where area subcontracting takes place." In his October 19, 2007 email to Area management, Manager Devine earlier had stated: "notification is required only for outsourcing which comes from above the Local level, as high as the National level." Neither of these documents refer to "significant impact" on the bargaining unit.

⁴ Although there was no evidence to this effect, logically it would seem possible that APWU Manager Tabbita might have referenced the SIAG guidelines when he was explaining the Union's handwritten counterproposal to Devine at 11:55 p.m. on November 20. That counterproposal involved changes to Article 32.1.B that had been proposed by the Postal Service and refers to steps set forth in the Postal Service's internal SIAG guidelines which the Union recently had received in response to a November 14, 2006 information request.

The Postal Service also contends that if the new notice provision in Article 31.1.C was intended to apply to "local", "run of the mill" contracting out, it would have been placed in Article 31.1.A which, the Postal Service argues, covers such run of the mill subcontracting. The Postal Service stresses that the Union's initial proposal for local notice was that it be included in 32.1.B which, in contrast to 31.1.A, applies to subcontracting having a significant impact on the bargaining unit. The Postal Service presented testimony to the effect that 32.1.B only covers national subcontracting proposals that would have a significant impact, and that 32.1.C was intended to apply to such proposals initiated at the area or field level. If 32.1.C was intended to cover local, run of the mill contracting, the Postal Service asserts, "Field level" would not have been substituted for "Local level." The Postal Service also argues that the Postal Service would not have agreed to provide notice of local, run of the mill contracting out -- which was burdensome to the Postal Service and provided no corresponding benefit or gain to the Union -- without the *quid pro quo* that it sought with respect to establishing timelines in 32.1.B.

Article 32.1.A establishes "General Principles." While these apply to local, run of the mill subcontracting, they equally apply to all other subcontracting by the Postal Service, including that covered by 32.1.B. To the extent the Postal Service is asserting that 32.1.B only applies to national initiatives, that is, decisions to contract out work made at the national level which will have a significant impact on bargaining unit work, the only reference to "national level" in 32.1.B is the requirement that notice thereunder be provided "to the Union at the national level." Indeed, the Checklist for Considering Outsourcing Initiatives - Field Level (Exhibit II) of the Postal Service's SIAG guidelines, on which it places great weight in this dispute, states:

Although there is no requirement for union notification during the consideration/implementation of a field-level outsourcing project, communication between local management and union officials is recommended. If there will be a significant impact on the bargaining unit, national notification is required and the procedures on the national level checklist will be followed.

(Emphasis added.)

Therefore, it is not reasonable to conclude that the mutual intent was that 32.1.C would provide local unions with notice only of contracting out decisions made at the area or district level that would have a significant impact on the bargaining unit.⁵ Notably, there is no claim by the Union in this case that notice under 32.1.C must be given in advance of the decision to contract out or that the Postal Service otherwise must follow the provisions of 32.1.B when such notice is given. On its face, 32.1.C applies: "[w]hen a decision has been made at the Field level to subcontract bargaining unit work." (Emphasis added.) Article 32.1.B, in contrast, requires advance notification when subcontracted work covered thereunder "is being considered," and provides that: "No final decision on whether or not such work will be contracted out will be made until the matter is discussed with the Union."

While the Postal Service ultimately decided not to agree to the Union's final 11:55 p.m. counteroffer regarding the timelines the Postal Service sought to add in Article 32.1.B, the Postal Service nonetheless agreed to the addition of the notification provision in Article 32.1.C. In the context of overall negotiation of the National Agreement, it cannot be concluded that there was no *quid pro quo* or that the language of 32.1.C should be interpreted in a restrictive manner because the Postal Service did not obtain what it was seeking in 32.1.B.

The substitution of "Field level" for "Local level" on the evening of the last day of negotiations remains somewhat of a mystery. The evidence indicates that "Field level" was in the Postal Service's 11:00 p.m. proposal, whereas "Local level" had been in its 6:15 p.m. proposal. It is unclear exactly what transpired in the interim, but neither party acknowledges having proposed the change. Based on general use of the term "field level" in the Postal Service -- as previously discussed -- it encompasses all levels, including local facility level, other

⁵ The record in this case also does not support a finding that in the 2006 negotiations the Union's sole or primary focus was on local unions being surprised when contractors would arrive at their installations to perform work when subcontracting was decided or developed outside of those facilities -- whether at the district, area or national level. The record shows that the Postal Service understood that the Union was seeking local notice of local contracting out initiatives. The Union sought advance notification at the local level so as to provide local unions the opportunity to resolve subcontracting issues at that level prior to implementation. As Union witness Robert Pritchard, National Director of the Motor Vehicle craft, also testified, the Union believed a lot of work was being subcontracted without anyone knowing it, which made it difficult to police and enforce the contract.

than national or headquarters. Even assuming that the use of this term in 32.1.C somehow was connected to its use in the Postal Service's internal SIAG guidelines -- which has not been established -- that would not exclude local level decision making. As the Union points out, the SIAG guidelines state:

While these Guidelines apply specifically to National outsourcing initiatives they also provide basic guidance for locally initiated outsourcing initiatives. For this reason both the Checklist for Considering National Outsourcing Initiatives and the Checklist for Considering Outsourcing Initiatives - Field Level are provided.

(Emphasis added.)

The Postal Service stresses that the checklist for "Field Level" initiatives in Exhibit II of the SIAG guidelines contains steps that would not apply to local contracting out decisions. The Union points out that might be equally true for district or area decisions. Moreover, the checklist also states:

This checklist is intended for potential outsourcing projects at the field level beyond which specific administrative procedures exist.

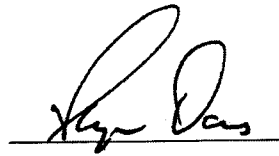
The record in this case includes Article 32 Due Consideration Worksheets routinely completed at the local level when a decision is made at that level to contract out what the Postal Service characterizes as "run of the mill" work. Therefore, even taking the SIAG guidelines into account, the evidence does not support the Postal Service's argument that the Union had reason to know of the interpretation the Postal Service asserts it attached to the term "Field level" in Article 32.1.C during the 2006 negotiations, and, objectively, it must be concluded that the term "Field level" as used in that provision includes local, as well as district and area decision making.

Accordingly, the Union's position in this case that Article 32.1.C requires notification to the local union of decisions to subcontract bargaining unit work at local installations made at the local, as well as district or area, level is sustained. As the Union acknowledges, Article 32.1.C does not require notification before a decision to subcontract is

made, and where work is subcontracted pursuant to a master agreement the local union need only be notified when the master agreement is entered into, and not when each service is to be performed thereunder.

AWARD

The grievance is resolved on the basis set forth in the final paragraph of the above Findings. I retain jurisdiction for 90 days to resolve any dispute over implementation of this Award.

A handwritten signature in black ink, appearing to read "Shyam Das", is written over a horizontal line.

Shyam Das, Arbitrator