

NATIONAL ARBITRATION PANEL

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In the Matter of the Arbitration )  
between )  
UNITED STATES POSTAL SERVICE ) Case No. Q06V-4Q-C 09343253  
and )  
AMERICAN POSTAL WORKERS )  
UNION, AFL-CIO )

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BEFORE: Shyam Das

APPEARANCES:

For the Postal Service: Julianne W. Bramesco, Esq.  
John C. Oldenburg

For the APWU: Darryl J. Anderson, Esq.  
Sarah T. Kanter, Esq.

Place of Hearing: Washington, D.C.

Dates of Hearing: August 5-6, 2013

Date of Award: May 16, 2014

Relevant Contract Provisions: Article 32

Contract Year: 2006-2010

Type of Grievance: Contract Interpretation

Award Summary:

The grievance is denied.

A handwritten signature in black ink, appearing to read "Shyam Das". The signature is fluid and cursive, with a long, sweeping line on the left and more distinct letters on the right.

Shyam Das, Arbitrator

In 2009, the Postal Service converted the Postal Vehicle Service (PVS) trucking operation in Columbus, Ohio, to Highway Contract Route (HCR). HCRs are postal routes driven by employees of private trucking companies under contract with the Postal Service. At the time of this conversion, the Postal Service operated 162 PVS operations throughout the country and the APWU's Motor Vehicle Service (MVS) unit was comprised of approximately 13,365 employees, of whom about 8,000 were drivers.

In an effort to make PVS operations more efficient and decrease costs, the parties at the national level developed a "Work Rules Pilot MOU" designed to address the efficiency challenges of the PVS workflow. On or around February 2009, the Postal Service proposed the adoption of the Work Rules Pilot in Columbus, but the local union opted not to participate. The Postal Service then decided to explore outsourcing the Columbus PVS operation.

The Postal Service provided notice to the Union under Article 32.2 that it was considering a mode conversion in Columbus on April 28, 2009.<sup>1</sup> On July 23, 2009, the Postal Service notified the Union that it had made a final decision to convert the Columbus PVS operation to HCR. This mode conversion eliminated 54 driving jobs in the MVS. The Union filed the present grievance protesting that the Postal Service failed to comply with the advance notification and other requirements of Article 32.1.B when it implemented the mode conversion in Columbus on August 31, 2009.

Relevant provisions of the applicable 2006 National Agreement include the following:

## ARTICLE 32. SUBCONTRACTING

### Section 1. General Principles

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<sup>1</sup> Frederick Brill, Program Manager for Headquarters for Postal Vehicle Service, testified that "mode conversion" is a term of art that refers to outsourcing where the entire facility is converted from PVS to HCR.

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.

(See Memos, pages 369,371,404 and 412)

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.

## Section 2. Motor Vehicle Craft- Highway Movement of Mail

A. The American Postal Workers Union, AFL-CIO, and the United States Postal Service recognize the importance of service to the public and cost to the Postal Service in selecting the proper mode for the highway movement of mail. In selecting the means to provide such transportation the Postal Service will give due consideration to the public interest, cost, efficiency, availability of equipment, and qualification of employees.

B. For highway contracts covered by Article 32, Section 2, the Union will be furnished the information enumerated in Paragraph C below. This information will be furnished at least sixty (60) days prior to the scheduled installation of the service. Within forty (40) days of being furnished such information, the Union may request a meeting to discuss a specific contract(s). Within forty-five (45) days of being furnished such information, the parties will exchange the basic cost analyses in order to facilitate discussions. The parties will meet on or before the sixtieth (60) day. At no time will the subject highway contract(s) for which a meeting has been requested be awarded prior to the actual meeting.

C. The information will include the following in a concise summary form:

1. A statement of service including frequency, time of departure and arrival, annual mileage, and proposed effective date of contract.
2. Equipment requirements. If not comparable to standard USPS equipment available at that facility, the reasons therefore along with the cubic foot justifications are to be provided.
3. A statement as to whether the proposed contract is a renewal of an existing contract and/or a partial or completely new contract solicitation.
4. For contract renewals, the current contractual cost is to be provided along with any specifics, if the terms of the renewal are modified to whatever degree.
5. If the new contract solicitation replaces in part or in whole existing Postal Vehicle Service (PVS) service, specifics as to the existing PVS service are to be provided as to the span of operating time, equipment utilized, annual cost, how the PVS employees impacted will otherwise be utilized and the projected United States Postal Service cost for subcontracting the work in question.

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(Underlining added.)

In a March 4, 2013 National Arbitration award in Case No. Q10V-4Q-C 12324573, Arbitrator Stephen Goldberg held that Article 32.1.B, not Article 32.2, applies to a mode conversion that would have a significant impact upon bargaining unit work. He also rejected the Postal Service's contention that Article 32.1.B applied only to contracting out that is national in scope. In that case, he held that the Postal Service's proposal to convert all PVS operations in California to HCR would have a significant impact on bargaining unit work, stressing that, although regional in scope, the mode conversion would displace a "substantial number of bargaining unit employees" -- in excess of 800 -- and that there appeared a strong likelihood that the California PVS operations once fully contracted out would not return.

### UNION POSITION

The Union asserts that the Postal Service violated the National Agreement when it contracted out fifty-four (54) driving jobs and eliminated all PVS work from Columbus without complying with Article 32.1.B. The Postal Service contracted out the PVS trucking operation in Columbus without giving the Union advance notice and an opportunity for input into the decision under Article 32.1.B. The Union contends that when PVS operations at a facility, such as Columbus, are terminated and replaced by HCR contractors, the Postal Service is required to follow the process outlined in Article 32.1.B. The Union alleges that the mode conversion in Columbus had a significant impact on bargaining unit work and that Article 32.1.B applies when subcontracting has a significant impact on bargaining unit work.

Article 32.1.B requires that, when contracting that will have a significant impact on bargaining unit work is being considered by the Postal Service, it must give the Union advance notification; it must meet with the Union while developing its initial Comparative Analysis Report; and it must consider the Union's views on costs and other factors, together with proposals to avoid subcontracting or minimize its impact. The Union argues that the language of Article 32.2 and the history of its application until 2006 show that its use is appropriate for HCR renewals and contracting out of PVS work that is limited to an individual route or a limited number of routes, not to a mode conversion of an entire facility.

The Union asserts that the recent Goldberg decision regarding the California mode conversion is applicable to the facts in this case. Two factors were important to Arbitrator Goldberg's analysis of whether or not the contracting out in California had a significant impact on bargaining unit work: (1) the number of drivers affected; and (2) the likelihood that once a PVS operation had been fully contracted out, the work will not return to the bargaining unit.

In this case, the Union argues that there was a significant impact on the bargaining unit because the entire Columbus PVS trucking operation was eliminated. The loss of the 54 driving jobs in Columbus represents approximately \$16.4 million dollars over the length of the HCR four-year contract. In addition to the overall loss of approximately \$16.4

million dollars to the bargaining unit, the Union argues that the negative effect on individual drivers should be considered. All 54 drivers were excessed to jobs in other crafts, which required different skills and were more physically demanding. In some cases, these jobs were on less desirable shifts. According to the Union, since the mode conversion 13 drivers retired and three were injured on the job. Moreover, transfer to other crafts could result in the loss of their no-layoff protection under Article 6.2 -- a matter in dispute between the parties -- as well as the "Layoff Protection" MOU applicable to employees with less than six years of service.

The Union stresses that when the Postal Service converts an entire PVS operation to HCR, like it did in Columbus, history shows it never brings that work back into the bargaining unit. The Postal Service has not shown that the considerations -- a) recruitment of employees; b) reactivation of maintenance facilities; c) need for supervisors; and d) need for new trucking equipment -- that led Arbitrator Goldberg to conclude the work in California was unlikely to return are any less applicable in this case.

The Union also analogizes the mode conversion in Columbus to the contracting out that occurred in the Boston Airport Mail Center (AMC) in 2005, when the Postal Service undertook the Article 32.1.B process, as it should have done in this case. The Union asserts that the Postal Service in that instance determined that contracting out the Boston AMC, which affected 0.5% of the clerk craft, had a significant impact and triggered application of Article 32.1.B. The Union states that the mode conversion in Columbus affected 0.4% of the entire MVS bargaining unit, and 0.7% of all drivers in the unit. According to the Union, the percentage of jobs lost to the bargaining unit in the previous subcontracting in Boston was deemed by the Postal Service to have a significant impact, and it is in line with the percentage in Columbus.

The Union requests that the arbitrator find the conversion of the Columbus PVS to HCRs had a significant impact on bargaining unit work within the meaning of Article 32.1.B, and the Postal Service violated the National Agreement by failing to follow the procedures of Article 32.1.B. The Union asks the Arbitrator to require the Postal Service to: (1) restore PVS operations at the Columbus P&DC; (2) employ 54 full-time regular drivers at the Columbus

P&DC; and (3) make the bargaining unit whole for compensation lost since the contracting out occurred.

### EMPLOYER POSITION

The Postal Service argues that it properly undertook the mode conversion in Columbus in accordance with Article 32.2, and not Article 32.1.B. Article 32.1.B is only triggered by subcontracting having a significant impact upon bargaining unit work, and, the Postal Service insists, the PVS mode conversion in Columbus did not have a significant impact on the MVS craft. When there is no significant impact triggering Article 32.1.B, then Article 32.2, which applies to Motor Vehicle Craft subcontracting, applies. Thus, the Postal Service asserts that it properly undertook the subcontracting in Columbus in accordance with the procedural requirements of Article 32.2.

The Postal Service distinguishes the circumstances of the Columbus mode conversion from the recent California PVS case. In the California case, Arbitrator Goldberg held that the outsourcing of work resulting in the excessing of 800 employees at 13 sites, and consisting of at least 10% of the then-existing PVS drivers, would have a significant impact on bargaining unit work. Goldberg articulated two factors in support of his conclusion: (1) the number of affected employees; and (2) the probability that once outsourced, the operations would never be restored. The Postal Service stresses that the elimination of the PVS service in Columbus, where a total of only 54 PVS drivers were employed in a single average-sized location, affected less than 1% percent of all such positions. Thus the Postal Service argues that the Columbus mode conversion does not represent a sufficiently large percentage of either the work force or of the PVS facilities so as to have a significant impact. Additionally, the Postal Service asserts that the barriers cited by Arbitrator Goldberg to restoring operations once fully outsourced in California are not present in Columbus.<sup>2</sup>

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<sup>2</sup> Those barriers were: (1) the California emissions regulation would require retrofitting the equipment; (2) a new PVS workforce would have to be recruited; (3) the vehicle maintenance facilities would have been eliminated; and (4) supervisory staff over a PVS operation would similarly have to be recruited anew.

The Postal Service acknowledges that it followed the process outlined in Article 32.1.B when it subcontracted the Boston AMC. However, the Postal Service explains that it treated AMC subcontracting in Boston in accordance with Article 32.1.B because it was a segment of a larger program of which Boston was only a part. The Boston employees lost their facility, expediting their outsourcing, before the remainder of the proposed program, involving 79 AMCs distributed nationwide, was able to get underway. The Postal Service argues that there is no evidence that the outsourcing of the PVS facilities in Columbus was part of a larger program.

The Postal Service notes that while the term "significant impact" in Article 32.1.B has been applied in previous arbitration awards -- citing the 2013 Goldberg California PVC decision and Case No. Q94T-4Q-C 97031616 (2010 Das), involving Associate Office Infrastructure (AOI) work -- arbitrators have not drawn a precise line between what is "significant" and what is not. The Postal Service argues that the specific facts of the mode conversion in Columbus need to be considered, and that ruling that the subcontracting in Columbus has a significant impact is illogical and would do harm to the meaning of the collective bargaining agreement. The mode conversion at a single run-of-the-mill facility involving only 54 PVS drivers domiciled at a single site in Columbus, Ohio simply does not rise to the level of significant impact.<sup>3</sup>

In Columbus, the Postal Service first sent a notice of a proposal to outsource on April 28, 2009. Following the proposal and the ensuing process (which involves the exchanging of data as required by Article 32.2.B and C), the Postal Service sent a letter on July 23, 2009, notifying the Union that it had made a final decision to convert the Columbus PVS operation to HCR. Ultimately, the Postal Service found positions locally for all 54 drivers at saved rate and grade. The Postal Service argues that when assessing the correct process pursuant to the National Agreement, it justifiably determined that the mode conversion contemplated in Columbus would not have a significant impact on bargaining unit work. The specific facts of the mode conversion need to be considered because every mode conversion cannot be significant

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<sup>3</sup> The Postal Service cites to the dictionary definition of "significant" in its brief. Significant, according to Webster's II New College Dictionary (2001) is "momentous: important."

if the meaning of Article 32.2.C.5 is to be preserved. The Postal Service asserts that it complied with Article 32.2 and requests that this grievance be denied.

### FINDINGS

The parties have not defined the term "significant impact on bargaining unit work" in Article 32.1.B. Its application necessarily has to be considered on a case-by-case basis, taking into account any relevant National Arbitration precedent, and keeping in mind the consequences of a finding that subcontracting of particular work will have a significant impact. Arbitrator Goldberg pointed out in his 2013 California PVC decision that the Award of the 2000 Interest Arbitration Panel (chaired by Arbitrator Goldberg) provided the Union with a considerably greater role than it previously had in the discussions leading to a decision whether or not to subcontract work that is subject to the requirements of Article 32.1.B, and that:

This, as the Postal Service recognizes, is likely to be a lengthy process. Indeed, APWU Manager of Negotiation Support and Special Projects Phil Tabbita testified before the 2000 Interest Arbitration Panel that a Section 32.1.B analysis of a proposed contract that would have a significant effect on bargaining unit work could take as long as a year to complete. The extensive analysis and lengthy time period required in Article 32.1.B proceedings... [is] far removed from the 60 days allotted under Article 32.2 for the exchange of information and discussion....

I am not persuaded by the Union's contention that, regardless of the relative amount of work and number of affected employees or other circumstances, a mode conversion of an entire facility always should be deemed to have a significant impact. As the Postal Service points out, Article 32.2.C.5 expressly contemplates that an HCR subject to Article 32.2 -- not Article 32.1.B -- procedures may involve replacing "in part or in whole existing Postal Vehicle Service (PVS) service." (Emphasis added.)

Arbitrator Goldberg in his 2013 decision rejected the Postal Service's argument that Article 32.1.B applies only to contracts which are national in scope. He then focused on

two factors in concluding that the proposed contracting out of all California PVS services would have a significant impact on the bargaining unit:

Initially, the proposed contracting out, though regional in scope rather than national, would displace a substantial number of bargaining unit employees - in excess of 800. Furthermore, there appears a strong likelihood that the PVS operation, once fully contracted out, would not return.

The contracting out at issue in this Columbus PVS case, in contrast to that in the Goldberg decision, pertains to one location within Ohio with 54 affected bargaining unit members, rather than all 13 locations in California with 800 affected bargaining unit members. In the California case, 10% of the total drivers in the craft nationwide were displaced. The Columbus mode conversion had an impact on 0.7% of the drivers in the bargaining unit and less than half a percent of the entire MVS unit. Over the four-year length of the HCR, the salary and benefits of the Columbus drivers amounted to around \$16.4 million out of a total PVS salary and benefits cost of \$3.9 billion and a total drivers salary and benefits cost of \$2.4 billion. Considering the impact from a unit, rather than a local, perspective, the displacement of 54 drivers at a single installation, while significant to the individuals involved, does not, in my opinion, rise to the level of significant impact contemplated in the National Agreement.<sup>4</sup>

This case also is distinguishable from the contracting out that occurred at the Boston AMC in 2005. In Boston, the Postal Service undertook the Article 32.1.B process because the Boston AMC was the first location in a larger program to outsource AMC work at 79 AMCs distributed nationwide. There is no evidence that in this case Columbus was the first step in a larger plan to outsource PVS operations through mode conversions. At the time of the proposed Columbus mode conversion, the parties were attempting through the Work Rules Pilot

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<sup>4</sup> In my 2010 AOI decision, the focus was on whether the work at issue was bargaining unit work. I concluded that some of the work in the AOI program was within the scope of duties performed by the bargaining unit. The program itself was to be deployed in almost 8,000 of the largest associate offices on a nationwide basis. Under the circumstances in that case, I concluded that there was a significant impact requiring the Postal Service to comply with Article 32.1.B

MOU to preserve PVS work for the bargaining unit, but the Columbus Local chose not to participate in the pilot.

The other factor cited by Arbitrator Goldberg was the strong likelihood that the California PVS operation, once fully contracted out, would not return. He stated:

To be sure, as the Postal Service points out, a return of this work in house is not impossible, but is rendered unlikely by the many barriers to reinstating a PVS operation that has been shuttered for three or more years (the length of the proposed HCR contracts in the instant case). Not only must employees be recruited, which may be the least of the barriers, but maintenance facilities must be reactivated and a supervisory staff assigned. Some supervision of the HCR operation will have been necessary, but additional supervision would likely be required to directly supervise a PVS operation. Finally, in light of the California emission control regulations which triggered the instant contracting out, trucking work could not be returned in house in California until a fleet of emission control compliant trucks has been acquired - either be [sic] retrofitting the existing fleet (which may in the interim have been sold or sent to Postal facilities outside California), leasing trucks, or purchasing new trucks.

In the present case, the Postal Service pointed out that there was no equivalent to the California emission control regulations, and convincingly explained that the former Columbus PVS craft workforce remains largely in place, although in other postal positions, that former PVS supervisors continue to be employed locally and that the vehicle maintenance facility in Columbus still exists and continues to service other Postal Service vehicles. The Union did not really dispute this, but essentially argues that the Postal Service failed to show that the situation in California actually was different. Be that as it may, the factors cited by Arbitrator Goldberg have not been shown to be substantial impediments to returning the work to the workforce when the Columbus HCR contracts expire. To be sure, such a return may be an unlikely prospect. But this is not because of the sort of barriers cited by Arbitrator Goldberg, but largely because, as former MVS Craft Director Robert Pritchard asserted, the Postal Service rarely, if ever, voluntarily reconstitutes PVS operations -- "either in whole or part" -- once an HCR contract has been let. That does not provide a sound basis on which to differentiate HCR

contracts that are subject to Article 32.2 and those -- such as the California mode conversion -- that properly are subject to Article 32.1.B.

For the reasons set forth above, I find that the mode conversion in Columbus did not rise to the level of having a significant impact on bargaining unit work. Therefore the requirements of Article 32.1.B were not triggered. The Postal Service properly assessed that the mode conversion in Columbus would not have a significant impact, and that the provisions in Article 32.2 applied.

AWARD

The grievance is denied.

A handwritten signature in black ink, appearing to read "Shyam Das".

Shyam Das, Arbitrator