

ARBITRATION AWARD

April 2, 1981

UNITED STATES POSTAL SERVICE
Spokane, Washington

-and-

Case No. A8-NA-0481

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. 980-1-79 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.

Grievance Data:

Date

Grievance Filed:	December 10, 1979
Step 4 Meeting:	January 23, 1980
Appeal to Arbitration:	February 15, 1980
Case Heard:	October 28, 1980
Transcript Received:	November 17, 1980
Briefs Submitted:	February 6, 1981

Statement of the Award:

The grievance is denied.

RECEIVED
APR 6 1981
Arbitration Director
Labor Relations Department

BACKGROUND

This grievance protests the Postal Service's action in engaging a contractor for the highway movement of mail in Spokane, Washington. 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 adequate consideration to the factors mentioned in Article XXXII, Section 4A and to the Union's proposals. It urges that these failures constitute a violation of the 1978 National Agreement. The Postal Service disagrees with this analysis, both from the standpoint of the facts and the nature of its contractual obligations.

Solicitation No. 980-1-79 was issued by the Postal Service on January 26, 1979. It advertised for bids for a surface transportation contract for the movement of mail on certain routes in Spokane. A contractor had been performing this work. Its contract was due to expire on June 30, 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 estimated total annual mileage at 88,445.

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 took the actual driving time on the Solicitation, added ten minutes at the beginning and end of each trip, and translated these numbers by multiplication into annual driver hours. It concluded that this transportation work would call for 10,855 driver hours (11,180 hours when adjusted for contingencies) and would represent a cost

to the Postal Service of \$146,783 per year. It submitted these claims to the Postal Service in mid-March 1979.

The Western Region of the Postal Service went through the same calculations on a Form 5505 in early June 1979. Its findings, however, were quite different. It maintained that 18,705 driver hours (19,267 hours when adjusted for contingencies) were involved and the cost to the Postal Service would be \$281,392 per year.

Meanwhile, contractors were submitting bids for this transportation work. The low bid appears to have been \$215,488. This price was much lower than the Postal Service's \$281,392 cost of converting to its own vehicles and drivers but much higher than the Union's \$146,783 cost figure. Given this conflict, Postal Service Headquarters chose to make its own cost study in mid-June 1979. That was done by a Fleet Control officer in the Vehicle Operating Division. He maintained that 14,900 driver hours (15,347 hours when adjusted for contingencies) were involved and the cost to the Postal Service would be \$230,061 per year. He explained that his calculations had 4,000 more driver hours because the Postal Service would have had to add drivers to its work force and would also have had to piece together schedules to make eight-hour driver days. He claimed the Union's figures were unrealistic because they failed to account for what these added drivers would do before and after their trips.

The Postal Service relied on this Headquarters cost study. It stressed that the cost of this transportation work with its own vehicles and drivers would be roughly \$15,000 more than the low bid received from a contractor. It decided to contract out the work. It notified the Union of its intentions in July 1979 and provided the Union with a copy of this Headquarters cost analysis.

The Union asked the Postal Service to delay awarding the contract. It disagreed, of course, with the Postal Service's cost figures. But it also wished to send one of its consultants to Spokane to study the situation and attempt to develop a plan for the use of Postal Service vehicles and drivers on the work in question. The Postal Service agreed to the delay. A Union consultant visited Spokane in late September 1979 and spent several days reviewing the operation of this postal facility. His opinion was that this surface transportation

work could be handled by Postal Service vehicles and drivers. He suggested that clerks could be removed from their regular mail processing jobs and reassigned to driver work as needed and that other employees could be hired to handle the lost mail processing time. He built eight-hour schedules by combining mail processing and driving time into a single job. His proposal was later explained to the Postal Service.*

The Postal Service sent the Union proposal to Spokane (and the Western Region) to evaluate its feasibility. The Spokane reply was that the proposal was unworkable. Local Management asserted that it "could not afford to lose mail processing hours during crucial time periods" and that it "did not wish to add additional employees for mail processing over and above their normal complement to provide drivers [for] these routes..." It estimated that the Union proposal would mean 3,700 extra mail processing hours. It believed the proposal would prevent it from being able to meet its "customer service" commitments.

In view of this report from Spokane Management, the Postal Service decided to use a contractor for the disputed work. It met with the Union and explained its position, especially its belief that the Union proposal was not feasible. It engaged the contractor in December 1979.

The Union protested. It asserted that the use of a contractor for this surface transportation work was, under the circumstances of this case, a violation of Article XXXII, Section 4. That provision reads in part:

"A. The American Postal Workers Union... and the...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

* The Union made another cost evaluation in July 1979 with updated figures. Its conclusions were the same as before except that the cost of doing the work with Postal Service vehicles and drivers was increased from \$146,783 to \$172,079. Still another Union evaluation in September 1979 had a much lower cost figure.

selecting the means to provide such transportation the Postal Service will give due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees.

"B. For highway contracts covered by this Section and expiring on June 30, the Unions will be furnished the information enumerated in Paragraph D below by February 15 of the calendar year in which the contract is expiring. No later than April 1, the Union may request a meeting to discuss a specific contract...In situations where a meeting is requested by the Union, the parties will exchange their basic cost analyses no later than ten (10) days in advance of the actual meeting...

"D. The information will include the following:

1. A statement of service for each route, including the annual mileage, equipment requirements, and current contractual cost for all existing routes.
2. The schedule for each highway contract.

"F. The parties agree that the following factors will be used in any cost comparisons of the type of transportation mode to be selected:

1. The Motor Vehicle employee costs for Motor Vehicle Operators will be Level 5, Step 9 and Level 6, Step 9 for Tractor-Trailer Operators, as per the wages current at the time.
2. The vehicle costs will be computed from the last two quarters of the Vehicle Make/Model Cost Reports. These costs will be computed separately for each Region...

3. The Postal Vehicle Service will be charged 10 minutes at the start and 10 minutes at the end of each route, regardless of the vehicle used."
(Emphasis added)

DISCUSSION AND FINDINGS

I - The National Agreement

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. Some general discussion of these obligations is necessary to the resolution of this dispute.

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.

* Ignoring all factors would involve a lack of "due consideration." Examining them in a cursory fashion might constitute "consideration" but certainly not the "due consideration" contemplated by Paragraph A.

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.**

Paragraphs B through G involve the procedure to be followed when the use of a contractor is contemplated. First, the Postal Service must furnish certain information to the Union by a certain date. That information includes a description of the nature of the contractor's anticipated route - mileage, equipment, vehicle cost, wage level, etc. Second, the Union analyzes this data to determine what it would cost the Postal Service to handle the route with its own vehicles and drivers. Certain conventions are employed in this analysis. Third, the Union may request a meeting to discuss the proposed contract. In that event, the parties are expected to exchange cost

* Conversely, a correct decision does not preclude finding a violation of Paragraph A where the proofs reveal a lack of "due consideration."

** None of this is inconsistent with Arbitrator Gamser's observation in Case No. AB-NAT-6291 that the contracting out language "does not go on to provide that if the Employer could undertake the work as efficiently and cheaply with its own employees and its own equipment then it cannot enter the subcontracting arrangement."

analyses at least ten days prior to the actual meeting. The purpose of the meeting apparently is to give the Union an opportunity to attempt to persuade the Postal Service to change its course, that is, to use its own vehicles and drivers instead of engaging a contractor. Any failure by the Postal Service to provide the necessary information or to meet with the Union on request would be a violation of its procedural obligations.*

The emphasis on "cost" in these paragraphs indicates that the parties viewed relative cost as an important factor in the contracting out decision. That does not mean, however, that "cost" is a controlling consideration. Had that been the parties' intention, they surely would not have listed "cost" as merely one of five factors which influence the contracting out decision.

II - Cost

This dispute arises in large part from the parties' disagreement as to how the "cost" of performing the transportation work with Postal Service vehicles and drivers should have been calculated in this case.

The Union insists its cost estimate was prepared "strictly in conformity with Article XXXII..." Its calculation was based on actual driver hours required by the contemplated routes plus 10 minutes added to the start and end of each route. It asserts that Form 5505 was meant to compare only actual driving cost and that the Postal Service has incorrectly added non-driving hours to its calculation. It alleges that the true cost of performing the work with Postal Service vehicles and drivers was no more than \$172,079. It emphasizes that this figure was considerably less than the contractor's price of \$215,488.

The Postal Service, on the other hand, contends that actual driver hours fail to reflect the real cost of having this work done by its vehicles and drivers. It states that Management would have had to hire additional employees, that the routes in question did not lend themselves to the creation of eight-hour driving schedules, that the new employees would have spent only about one-third

* Such failure might even have some bearing on the Postal Service's "due consideration" obligation.

of their time driving, that the rest of their time would have involved mail processing, and that Management did not need these extra mail processing hours. Hence, it says its Form 5505 correctly reflected not just actual driver hours but also the non-driving hours of the additional employees. It believes all of these hours were properly part of the cost comparison. Its calculation indicated the cost of performing the work in-house would be no less than \$230,061. It stresses that this figure was considerably more than the contractor's price of \$215,488.

Paragraph F of Article XXXII, Section 4 describes "factors" to be "used in any cost comparisons of the type of transportation mode to be selected." Those factors concern both driver and vehicle cost to the Postal Service in having the work performed in-house. As for driver cost, two conventions are mentioned. The first is that driver cost must be based on the Level 5, Step 7 wage rate then in effect for Motor Vehicle Operators*; the second is that driver cost must incorporate "10 minutes at the start and 10 minutes at the end of each route..."

Neither of these conventions addresses the issue raised by the parties. The first simply identifies the hourly rate which is to be multiplied by total employee hours. It has nothing to do with the determination of what hours are to be used in the calculation. The second requires that employee hours include two discrete 10-minute periods at the start and end of each route. The significance of that inclusion is not at all clear. One could argue that the 10-minute periods were intended as the only permissible addition to actual driving time. But that is not what Paragraph F says. It is equally reasonable to argue that the 10-minute periods, when added to driving time, establish no more than a floor on the employee hours to be used in the calculation. Such a floor should certainly not be construed as a ceiling on employee hours. The fact is that nothing in Paragraph F precludes the addition of other non-driving time to employee hours where appropriate. Nor does Form 5505 appear to preclude such an addition.

* Or the Level 6, Step 9 wage rate when Tractor-Trailer Operators are involved.

The Postal Service included non-driving time, beyond the 10-minute periods, in its cost calculation in this case. It had some basis for doing so. It felt that new employees would have had to be hired because of the routes in question, that these routes were bunched together at the same times of day, that the new employees hence would have been driving only about one-third of the time, that the rest of their time would have been spent in mail processing, and that Management had no real need for these extra mail processing hours. Given such circumstances, it determined that the cost of having the work done in-house should include all of the new employees' hours - both driving and non-driving time. This determination does not appear to have been arbitrary or capricious.

None of this discussion should be read as blanket approval of any single method of cost calculation. Absent any clear direction in the National Agreement and absent proof of any mutual understanding as to how employee hours are to be measured, the arbitrator's inquiry is limited. I find there was some reasonable basis here for the Postal Service's action in lumping together driving and non-driving time in making its cost analysis. It follows that the Postal Service had rational grounds for concluding that the cost of performing the work in-house was greater than the contractor's price.

III - Efficiency

"Cost" was not the only matter which the Postal Service considered. It became evident in June 1979 that there were substantial differences between the parties' cost analyses. Those differences have been discussed in Part II of this opinion. The Union asked that Management delay engaging a contractor until it had an opportunity to study the Spokane situation in an attempt to devise a plan which would enable the Postal Service to perform the disputed work in-house. The Postal Service agreed to the delay. The Union made a study. Its recommendations were that clerks be removed from their regular mail processing jobs and be reassigned to driver work as needed and that new employees be hired to handle the lost mail processing hours. It built eight-hour schedules by combining mail processing and driving time into a single job. It contemplated five such jobs.

Spokane (and Western Region) Management was asked to evaluate the Union proposal. It did so.

Management's view can be summarized briefly. It believed the reassignment of clerks to driver work would mean the loss of mail processing hours during critical time periods. Those clerks would have to be taken off of scheme distribution work essential to the sorting of first-class mail. That would, of course, be disruptive. Management hence would have to fill these lost hours with a group of new hires who would have to learn scheme distribution. If the new hires were treated as full-time employees and placed on eight-hour schedules, there would be too many mail processing hours. For the clerk-drivers would only be driving about one-third of the time.* If, on the other hand, the new hires were treated as part-time employees and placed on split schedules (or less than eight-hour schedules), Management would have to create other full-time jobs to comply with its "maximization" obligation. And perhaps it would still have too many mail processing hours. Management felt the Spokane facility had been operating effectively and did not require the additional mail processing hours implicit in the Union proposal.

For those reasons, the Postal Service considered the Union proposal to be unworkable. Its position was that this proposal would detract from the "efficiency" of the Spokane facility.

IV - Due Consideration

The issue before the arbitrator is whether the Postal Service gave "due consideration" to the factors in Article XXXII, Section 4, Paragraph A in making its decision to contract out.

The answer should be obvious from what I have already said in Parts II and III of this opinion. The Postal Service did give "due consideration" here to the factors of "cost" and "efficiency." There was some reasonable basis for Management's belief that the "cost" of performing

* Most of the clerk-drivers would have handled two short routes in the early morning and two or three short routes in the afternoon. In some of these situations, it would have been impossible to get any mail processing work from the clerk-driver between successive routes.

the work in-house was greater than the contractor's price. There was surely good reason for Management's belief that the Union proposal would not have served the interests of "efficiency." Both factors played a role in Management's final decision in December 1979 to engage a contractor.

The Postal Service's cost analysis may or may not be correct. But even if it were incorrect and a presumption of impropriety were warranted, I find that the Postal Service's evidence of why it acted as it did is sufficient to overcome any such presumption. Management satisfied the "due consideration" test. There has been no violation of Article XXXII, Section 4, Paragraph A.

V - Procedure

The final matter relates to the procedure to be followed when the Postal Service anticipates contracting out. That procedure is set forth in Paragraphs B through G.

The Postal Service complied with this National Agreement procedure. It appears to have furnished the necessary information to the Union in a timely manner. It exchanged cost analyses with the Union. It met with the Union, at the latter's request, to discuss its intent to contract out the disputed work. Thus, it did everything Paragraphs B through G called upon it to do.

Indeed, the Postal Service went further. It agreed, after meetings with the Union, to delay the contracting out in order to give the Union an opportunity to go to Spokane and study the situation. It later received a copy of the Union's proposal which was the product of this study. It sent that proposal to Spokane Management for evaluation. It made the final decision to contract out only after Spokane Management had decided that the Union's proposal was unworkable. On these facts, it cannot be said that the Postal Service denied the Union any of its procedural rights under Paragraphs B through G.

AWARD

The grievance is denied.


Richard Mittenthal, Arbitrator