REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	Grievant:	Class
between	Post Office:	Western Area
UNITED STATES POSTAL SERVICE	USPS Case:	E10T-4E-C 11388721
and		
AMERICAN POSTAL WORKERS UNION, AFL-CIO	APWU Case:	12011

BEFORE:	Arthur T. Voss, Arbitrator
APPEARANCES:	
For the U.S. Postal Service:	Nels Truelson, Labor Relations Specialist
For the Union:	Charles Sundgaard, National Business Agent Gary Kloepfer, Assistant Director, Maintenance Division
Place of Hearing:	USPS Western Area Offices, Denver, CO APWU Offices, Aurora, CO
Date of Hearing:	December 13, 2012 February 14, 2013 February 15, 2013
Record Close Date:	April 17, 2013, reopened and closed September 26, 2013
Date of Award:	October 30, 2013
Relevant Contract Provision:	Article 32 of the National Agreement; Section 535 of the Administrative Support Manual
Contract Year:	2010-2015
Type of Grievance:	Contract

AWARD SUMMARY

The Grievance is sustained. The Postal Service impermissibly entered into a subcontract with the Diebold company to perform lock repairs and changes on Neighborhood Delivery and Collection Box Units. The Service is directed to promptly terminate the Diebold contract which is the subject of this proceeding. The Arbitrator retains jurisdiction in this proceeding for a period of 120 days as set forth herein.

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Arbitrator

I INTRODUCTION AND ISSUES

This case consumed three days of hearing. The first day was held on December 13, 2012 at the USPS Western Area Offices, 1745 Stout Street, Denver, Colorado. The second and third days were held on February 14 and 15, 2013 at the APWU Local Office, 15677 East 17th Avenue, Aurora, Colorado. A formal transcript of the hearing was taken by Atkinson-Baker, court reporters, and copies of the transcript, consisting of approximately 800 pages, were distributed to both parties and the Arbitrator at the conclusion of the hearing. The parties were provided the opportunity to present oral and documentary evidence, and all witnesses testified under oath as administered by the Arbitrator. The parties stipulated that the steps of the grievance procedure had been followed and that the matter was properly before the Arbitrator for final and binding decision. Upon conclusion of the hearing, the parties exchanged written briefs. The Union's brief was accompanied by 24 awards. Management's brief included 16 awards. The Arbitrator has considered each of these decisions in rendering his award in this case. Due to the complexity of this case, the voluminous transcript and evidence, and issues personal to the Arbitrator, the Arbitrator requested an extension of time to August 15, 2013 in which to issue his award in this case, to which both parties agreed. On August 13, 2013, Arbitrator Shyam Das issued an award in a National Arbitration, Case No. Q06C-4Q-C 08228294. The Union, asserting that this award was relevant to the instant case, requested that the record be reopened and that the Arbitrator receive that award. The Arbitrator subsequently determined that he should receive the Das award and requested the parties to submit argument as to the relevancy and applicability of that award to this arbitration. These arguments were received at the end of September 2013, the reopened record was again closed, and the Arbitrator requested the parties' concurrence to issuance of his award by October 31, 2013. Both parties agreed to this request.

The Arbitrator at hearing held in abeyance a ruling on whether certain exhibits tendered by the parties should be admitted into the record. The Arbitrator determines that all

such exhibits are hereby admitted into the record, with the Arbitrator deciding the relevance and weight, if any, to be accorded those exhibits.

The Arbitrator finds that the issues to be decided in this case are:

Whether Management violated Article 32 of the National Agreement or Section 535 of the Administrative Support Manual (ASM) when it subcontracted changes and repairs to Neighborhood Distribution Collection Box Units (NDCBUs) and other centralized delivery receptacles in the Western Area? If so, what should the remedy be?

II BACKGROUND

Lock changes and repairs to NDCBUs have historically been performed by the Maintenance Craft and were substantially performed in the Western Area by that craft until subcontracted to the Diebold company in October 2011. In 2010, Management undertook an analysis of Western Area NDCBU lock changes and repairs which had been performed by Maintenance Craft personnel during 10 months of the fiscal year 2009. This review entailed analyzing hourly data for such work contained in the Electronic Maintenance Activity Reporting System (eMARS) in order to derive an average in-house cost for NDCBU lock changes/repairs for the period. This analysis showed that the average time to complete a lock change/repair, including travel time, was 2.7 hours, equating to a cost of $131.22 per work order at a $48.60 level 7 Maintenance Mechanic hourly rate. In Management's view, the data derived from this analysis suggested that subcontracting the work should be explored in an effort to determine whether it might be more economically and efficiently performed using this alternative. Management commenced negotiations with the Diebold company, which ultimately resulted in a contract in which Diebold agreed to perform the work at a fixed charge of $38.17 per lock change/repair. All minor repairs were covered under this fixed charge with "major repairs" (involving NDCBU installation, pedestal replacement and concrete work) to be bid separately by Diebold. Management then undertook a review of the five factors set forth in Article 32.1.A of the National Agreement, concluding in March 2011 that the cost using Diebold would approximate one third of that were the

work performed in house ($38.17 versus $131.22). Given this perceived economy, the decision was made to employ Diebold to perform NDCBU lock repairs and changes.

The parties stipulated that Management did not notify the Union of the Diebold subcontract pursuant to Article 32.1.B or 32.1.C of the National Agreement. Instead, Management by letter dated July 14, 2011 to each of the Union's Western Area National Business Agents (NBAs) advised:

> This is to advise you that on March 18, 2011 Western Area Maintenance made the decision to contract out lock changes and repairs to NDCBU's and other centralized delivery boxes throughout the Western Area after giving due consideration to the factors outlined in Article 32 of the 2006-2010 Collective Bargaining Agreement. Attached is a copy of the Article 32 due consideration and other relevant information used in this determination. No significant impact to the bargaining unit is anticipated.

By letter dated August 11, 2011 to each of the Western Area National Business Agents, Management forwarded the final Diebold subcontract.

Following issuance of Management's July 14, 2011 advice to the NBAs, two of the NBAs, on behalf of their Western Area regions, timely filed separate class grievances protesting the Diebold subcontract. These grievances were filed as permitted by Article 15..2.Step3.(f) providing:

> In order to discourage the filing of multiple local grievances involving any new or changed District or Area-wide policy, instructions, or guidelines, the APWU Regional Coordinator or National Business Agent may file one grievance concerning such policy, instructions, or guidelines, directly at Step 3 of the grievance procedure.

On November 10, 2011, Management and the Union entered into a Memorandum of understanding (the November 10 MOU) reciting

> The parties agree that [the two separate NBA grievances) were properly and timely filed on the subject of subcontracting lock changes and repair and are now combined by this agreement into grievance E11T-4E-C 11388721/W12011 (the instant grievance). It is

understood that this grievance extends to the entire Western Area. Requests for information will be made by a National Business Agent and relevant information will be provided by Western Area Labor Relations. Requests will be consolidated and there will not be duplicate requests/submissions. In the event local grievances have already been filed, it is agreed they shall be held locally pending the outcome of the Area Level grievance. The parties agree it is in each other's best interest to process this single grievance on the subject, therefore no additional grievances will be filed on this issue within the Western Area.

After numerous Step 3 meetings and discussions culminating on June 18, 2012, Management on June 22, 2012 issued its Step 3 decision denying the grievance. The Union's appeal to arbitration was timely filed on July 6, 2012. (Joint Exhibit 2)

III TESTIMONY AND EVIDENCE

The parties stipulated to certain facts at hearing. These included that NDCBU lock changes and repairs have historically and primarily been bargaining unit work, and that Management did not provide notices to the Union of its subcontract decision under either Articles 32.1.C or 32.1.B of the National Agreement. The Arbitrator's award in this case turns in large part on documentary evidence in the record, together with arbitral case authority submitted by the parties. Nevertheless, a brief synopsis of salient testimony presented at hearing is in order.

Mr. Kloepfer is APWU's Assistant Director for the Maintenance Division at Headquarters. The essence of Mr. Kloepfer's testimony was that (1) Article 32.1.C of the CBA requires notice to the Union at the Local level when a subcontracting decision has been made, and, (2) that Management was required to provide the Union prior notice under Article 32.1.B of its decision to subcontract.[1]

Charles Sundgaard is National Business Agent, Maintenance Division. He first testified as to his participation in the grievance steps from its initial filing through his function as

[1] Article 32.1.C on its face does not require prior notice of a decision to subcontract. The Union in its opening statement confined its notice argument to Article 32.1.C, first raising the alleged Article 32.1.B violation in its opening statement on the second day of hearing. Given the rationale for the Arbitrator's award, the issues of new argument and prior notice need not be addressed.

Step 3 representative for the consolidated grievance. After stating that he interpreted Article 32.1.C as requiring notice to the Locals, he testified as to alleged harm sustained by the Union as a result of the Diebold subcontract. He testified that "Some [excessing)...were a direct result of the [NDCBU) work going away, being contracted." (Tr. p. 202); and "....if the question is, did we experience excessing as a result of this contract, the answer is emphatically yes. And that is not opinion. That is fact." (Tr. p. 203); and "However, in one case that comes to mind, because of the Diebold contract, we had APWU bargaining unit employees excessed, but not out of the installation but to another bargaining unit, represented by another Union." (Tr. p. 214) The witness initially did not provide any specific example of excessing adversely affecting the bargaining unit, stating "I have grievances in the system right now, that have yet to be adjudicated, that pertain to excessing because the work no longer exists and they're no longer needed." (Tr. p. 202) On the final day of hearing, Mr. Sundgaard was recalled as a witness. During that session, Mr. Sundgaard offered an example of alleged excessing of maintenance employees due to subcontracting. Specifically, he testified that at Fort Collins, Colorado, there had been, according to information he had been provided by Western Area Labor Relations Specialist (LRS) Scott Sutton, an excessing event resulting from the Diebold subcontract:

> Now, there were four maintenance employees at the time, three of which were excessed into a different bargaining unit, the carrier craft, and one remained in the APWU bargaining unit but reduced not in salary but reduced in occupational level to a custodian....We were told that the work these people are doing no longer exists. Diebold has taken over the work, we have no further need for them, this is the reason for the excessing action. That is not speculation. That is not hearsay. That is a fact. (Tr. pp. 532, 541)

Connie Mrazek is a retired Postal Service employee. Her most recent position had been as a Maintenance Operations Support Clerk in Phoenix, Arizona. Among other duties, since 1999 she performed data entry and tracking for work performed by letter box mechanics in the Phoenix metropolitan area, and ran reports from the eMars system. Andy Henderson was her immediate supervisor. Ms. Mrazek addressed the Article 32 data prepared by Management as set forth in Joint Exhibit 3, and specifically

the determination that during Fiscal 2009 the average time to perform NDCBU lock changes and repairs in the Western Area was 2.7 hours per work order. She testified that this number was significantly overstated, based on her review of Phoenix area work order data and email communications she had received from the Field Maintenance Manager for Alaska and Wyoming. (Tr. p. 317) She stated that after reviewing numerous work orders for the Phoenix area she had never seen the time required to change/repair an NDCBU lock exceed .3 to .5 hours. (Tr. p. 338 and Union Exhibit. 14). In her view, Management's finding of 2.7 hours per work order "was just not possible...." (Tr. p. 327) Ms. Mrazek also testified that the eMars data utilized by Management in arriving at the 2.7 hour average consisted of an employee's daily workload on all NDCBU's, as individual work orders were never entered into the eMARS system. (Tr. 335-337) She additionally offered her opinion that the contracted Diebold price to change/repair NDCBU locks exceeded that which the Postal Service would have incurred had it used in-house personnel. As evidence of this she referred to Union Exhibit 15 reflecting that the Diebold bid for replacing two entire NDBCU's and two Arrow Locks was $1052 versus an actual work order for the same type of work by USPS maintenance personnel of $202.96.[2] On cross examination, the witness confirmed that her estimate of .3 to .5 hours to complete a lock changes/repairs did not include travel time to and from the repair location and that, on an area wide basis, it might be more representative to include travel time in the estimate. (Tr. p. 415)

Mr. Sundgaard was then recalled to the witness stand, through whom Union Exhibits 12, 21 and 22 were admitted. Each of these Exhibits constitute job descriptions for various maintenance personnel including Building Maintenance Custodian, Maintenance Mechanic and Letter Box Mechanic, and contain duties including "Performs designated letter box and Neighborhood Collection Delivery Box Unit maintenance and repair work", "....performs repair, relocation or modification of equipment or systems....", and "Repairs street letter, collection and storage boxes....".

[2] The work reflected in Union Exhibit 15 appears to encompass "major" work not included in the minor lock changes/repairs covered by the Diebold bid of $38.17 per work order. By terms of the Diebold subcontract, major work, after receiving the Diebold bid could be either subcontracted to Diebold or performed in house, as elected by Management.

Through the witness Union Exhibit 31, consisting of Section 535 of the ASM, was offered and admitted into evidence. As discussed below, among other matters this Section defines the term “Postal Equipment”, as well as the circumstances permitting contacting of Maintenance Service Contracts.[3]

Management first called Mr. Scott Sutton, Labor Relations Specialist, who testified telephonically. Mr. Sutton testified in rebuttal to the Union’s testimony that the Diebold subcontract had been the cause of an excessing event in Fort Collins, Colorado. In this regard, Mr. Sutton stated:

....the Fort Collins excessing event, was a result of us taking mail processing machinery and moving it from Fort Collins to Denver. There was a number of positions that were excessed as a result of that; electronic technicians, there was a MOS clerk that was impacted, and there was some maintenance mechanics that were impacted as a result of it. (Tr. p. 595)

When asked whether he had told any Union official that this excessing was a result of the Diebold subcontract, he testified “No, that wouldn’t have happened.” and that “Because they’re--if you’re referencing the Fort Collins, I’m looking at a document that shows it’s a result of equipment being relocated.” (Tr. p. 596) The witness stated that he was not aware of any other excessing event in the Western Area which occurred as a result of the Diebold contracting. (Tr. p. 596). In response to an inquiry whether all of the excessing described by the Union’s witness would have occurred absent the Diebold contract, Sutton responded affirmatively. (Tr. p. 603).

Jimmy Ball, Labor Relations Specialist for the Western Area, was called as a witness for the Postal Service. Mr. Ball confirmed that he was Management’s representative at the Step 3 hearing and that he issued the grievance denial dated June 22, 2012, included in the record as Joint Exhibit 2. Mr. Ball first laid a foundation for admission of Management Exhibit 1, the ASM 535.111 section claimed by Management to be the current version in effect. The exhibit was admitted over objection by the Union. Mr. Ball

[3] As discussed later, the Postal Service disputes this ASM 535.111 version of the exceptions under which a Maintenance Service Contract may be awarded.

testified that the Postal Service's position, notwithstanding a national award by Arbitrator Das, discussed *infra*, is that Management Exhibit 1 reflects the valid and operative ASM section relating to postal equipment subcontracting, and that it has remained in effect through five issuances of the ASM subsequent to the Das decision. (Tr. pp. 624-25) He further testified that he is unaware of any contractual language that asserts NDCBUs to be "Postal Equipment" under ASM 535.111, (Tr. p. 627) and that he did not know the exact figure but it was his understanding that the number of privately owned (versus those owned by the Postal Service) NDCBUs "could be greater than half." (Tr. p. 629) With respect to the Step 3 discussions between Management and the Union, the witness stated at Tr. p. 631:

> Mr. Sundgaard and I had intended that [the Step 3 process] would be a thorough processing, that we wouldn't have to exchange reams of paper back and forth. I took copious notes of the Union's contentions. They are summarized in the regular type [of the Step 3 decision]. The italic type is the specific contention made by the Union with regard to that.
> Once that was completed, I sent them to Mr. Sundgaard and asked him: Are these your contentions? Does this represent your contentions? I think we corrected a couple of things. He sent them back and said: Yes, that is my contentions.
> At that point, beginning on Page 4 [of the Step 3 decision] where it says 'Management Contentions,' I then set forth to answer each one of the Union's contentions, addressing them in italics for reference.

Mr. Ball testified that the Union (a) did not submit any Additions or Corrections to the Step 3 decision, (b) did not supplement the decision with any additional information, (c) did not identify a significant impact to the bargaining unit as a result of the subcontract, (d) did not specify any abolishment or excessing event caused by the contracting, (e) did not, other than a general claim of unreasonableness, challenge the data used to compile and calculate the 2.7 hour average per work order of NDCBU lock changes/ repairs, and (f) did not challenge the accuracy of the data generated by the eMARS system. (Tr. pp. 634-38)

Mr. Ball's direct examination concluded with an explanation of the documents contained in Joint Exhibit 4 and which were attached to his Step 3 decision. These Exhibits speak for themselves and included (a) the MOU between the parties dated November 10, 2011 regarding the manner in which this grievance would be processed, (b) a document entitled "Frequently asked Questions" relating to the manner in which the Diebold

subcontract would be administered, (c) a letter agreement dated May 10, 1985 between the parties relating to settlement of a grievance in case number H4C-NA-C 5, (d) a document reflecting recent fuel prices which were not factored in to the Article 32 Review, (e) a document entitled “Security Clearance Requirements” addressing issues which the Union had raised in connection with the Diebold subcontract, (f) an email distinguishing between “minor” and “major” NDCBU replacement/repairs as contemplated by the Diebold contact, (g) a Maintenance Bulletin dated March 6, 1987 outlining maintenance procedures for NDCBUs, and (h) Section 632.627 of the POM outlining guidelines for maintenance and repair of mail receptacles. The witness also referred to Joint Exhibit 11 outlining the steps he had undertaken in addressing the Union’s requests for information and the documentation supplied in response to those requests. On cross examination, Mr. Ball stated that he was “comfortable” with the applicability of the Postal Service’s version of ASM 535.111 because he had been instructed “by Washington” that this was the Postal Service position. He also agreed that changes to the ASM provisions of the ASM are subject to the provisions of Article 19 of the National Agreement. (Tr. p. 652)

Leonard “Andy” Henderson has been Manager of Area Maintenance for the Postal Service since 2006 and has held bargaining unit and management maintenance positions since 1993. Mr. Henderson testified that the number of NDCBU’s owned by the Postal Service is approximately 20-40 percent, with the balance privately owned. (Tr. pp. 681-82). He stated that he prepared Joint Exhibit 3, the Article 32 Review, with assistance from Labor Relations. He related the history of the decision to subcontract NDCBU lock replacement/repairs to Diebold. Regarding comparative cost, he testified that his review of the eMARS data led him to believe that the Postal Service might have NDCBU lock changes/repairs performed more economically by subcontracting it. He testified that a Solicitation of Work (SOW) was made and he was told who the winning vendor was, after which he held conversations with Diebold, the successful bidder. The witness was not satisfied with Diebold’s initial bid for NDCBU lock replacement/repair. (Tr. p. 691) Through additional negotiation, Mr. Henderson was successful in having Diebold agree to a cost of $38.17 per lock change/repair. (Tr. p.

695) He stated that this charge was all inclusive; i.e., that it would cover the technician's travel time, labor and all gas associated with vehicle costs, unless mileage to and from the repair location exceeded 96 miles. Mr. Henderson then explained the color code scheme of Joint Exhibit 6, Diebold's training document, which outlined repairs covered by the $38.17 charge. The witness explained the process he employed to obtain the necessary data for the Article 32 review. Ten months of data during the fiscal year 2009 were extracted from the individual eMARS reports, which were then entered by Management personnel. This resulted in the data reflected in Joint Exhibit 8, consisting of approximately 1,000 pages. Mr. Henderson determined that the Article 32 factors of equipment availability and employee qualification were not at issue, as both were readily available in-house. With respect to public interest, he discussed the time required by the Districts to accomplish lock changes and repairs. He found that this factor weighed favorably toward the subcontracting. He also testified that efficiency was enhanced by subcontracting because it would permit maintenance employees to be more efficiently utilized for other purposes. (Tr. pp. 701-05) Mr. Henderson addressed the cost data contained in Joint Exhibit 8, stating that each line represented a separate work order. He noted that approximately 75,000 work orders had been tabulated during the 10 month period included in the eMARS reports. He testified that even using the data from the most efficient District within the Western Area, Colorado/Wyoming at 1.42 hours per work order for NDCBU lock repairs/changes, the Diebold bid was less than half the in-house labor cost required to perform the work.
On cross examination, Mr. Henderson reconfirmed that the eMARS data would reflect only one NDCBU work order per address. He admitted that one address might have more than one lock to change or repair but stated that this would be an exception and that this circumstance, since infrequent, would not have affected the overall result of the Article 32 review.

IV ANALYSIS AND AWARD

The Procedural (Notice) Issue

Articles 32.1.B and C of the National Agreement, relating to subcontracting, provide:

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....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.

The parties agree that Management did not provide the Union with notice as specified in either Article 32.1.B or C. Instead, Management by letter dated July 14, 2011 advised the Union NBAs representing the Districts in the Western Area that it had determined to contract out lock changes and repairs to NDCBUs.

The Union argues that the failure to notify as specified in Article 32.1.C should be strictly enforced and that the Grievance should be granted on this basis. According to the Union:

The primary function of a Regional Arbitrator is to serve as "contract reader". It is [the arbitrator's] role to determine and apply the parties' contractual intent and not to impose on them a meaning different from their agreement. [The arbitrator's] function is not to interpret Article 32 or determine whether it's (sic) clear and unambiguous language can be manipulated, rather [his] authority is limited to applying the agreed upon provisions of Article 32 Section 1 of the Collective Bargaining Agreement. Article 32 Section 1's intent, for lack of a better term, was codified through binding collective bargaining negations (sic) by negotiators with more than sufficient experience to craft the language in the terms that satisfied both parties' interests. ...If the headquarters parties wanted the Union's National Business Agents, rather than the union at the Local level, to receive notification of Field level subcontracting decisions, then they would have written the language in that manner. (Union Brief, p. 17)

The Union also cites in support of its position a letter dated May 29, 2008 from John Dockins, Manager of Contract Administration, to Greg Bell, Industrial Relations Director

for the APWU. That letter sets forth the Postal Service's position that area subcontracting does not require notification to the Union pursuant to Article 32.1.C, but also states:

As a courtesy, and after considerable discussion between the parties, it was agreed that local union offices should be given notification where area subcontracting takes place to avoid undue conflict between the parties. It was intended that providing notice to the local union would avert any confusion at the time any area subcontracting is actually implemented at an individual facility. (Union Exhibit 2)

The Postal Service argues that Article 32.1.C does not contemplate what type of notice should be given in circumstances where the subcontracting is "area" as opposed to "national" or "local". Management claims that there is a "gap" in the specified notice procedures making the notice to the NBAs employed by the Postal Service the appropriate and logical method in the circumstances of this case. It points to Article 15.2Step3.(f) of the National Agreement as referring to "Area-wide" policy and its provision that a grievance may be filed at Step 3 "in order to discourage the filing of multiple local grievances" and that "local grievances, which had already been filed concerning such policy...will be held at or returned to Step 2 of the grievance procedure, as applicable, pending the resolution of the grievance filed directly at Step 3." Management asserts that this Article, impliedly if not expressly, obviates the need to notify the Union at the local level where area wide subcontracting is involved, and that the notice method selected by it in this case was appropriate. The Postal Service also argues that execution of the November 10 MOU constituted an after-the-fact ratification of Management's notification to the NBAs in lieu of notice to the Locals. It asserts that had Management notified each of the Locals in the Western Area, estimated to exceed 1,000, the result would have been the opposite of what the MOU accomplishes; i.e., that local grievances be held in abeyance pending outcome of this grievance. Since the harm suggested by the Union was tied to the inability of the Locals to resolve their grievances at that level, Management argues that it is disingenuous for the Union to now argue that it is harmed by an action it acknowledges in the November 10 MOU to be in the parties' best interests. (Management Brief at p. 30)

The Union also argues that Management violated the notice provisions of Article 32.1.B of the National Agreement. As noted above, Article 32.1.B requires advance notice to the Union at the national level when subcontracting is being considered that will have a significant impact on bargaining unit work. In support of its contention, the Union cites a national award by Arbitrator Stephen Goldberg in Case Q10V-4Q-C 12324573 in which that arbitrator found that the term "significant impact" contained in Article 32.1.B does not require that a subcontract be national in scope. As this finding was made in a national award, this Arbitrator is bound by Arbitrator Goldberg's interpretation. However, in the Goldberg award, it apparently was undisputed that in excess of 800 bargaining unit employees would be displaced as a result of the Postal Service's proposed subcontracting. The only evidence of "significant impact" in this case were vague assertions of grievances "in the system" and the Union's testimony that the Postal Service's Mr. Sutton told the Union that the Diebold subcontract resulted in excessing of employees at the Fort Collins, Colorado, facility. Mr. Sutton's testimony was that he had not made that statement and that any excessing that occurred at Fort Collins would have occurred in the absence of the subcontract. In any event, even had there been excessing at one post office, Fort Collins, due to the Diebold contract, such would not constitute "significant impact" within the contemplation of Article 32.1.B. Within the confines of the facts of record in this grievance, the Arbitrator finds that no "significant impact" was proved and therefore that Article 32.1.B was not violated.

On August 13, 2013, Arbitrator Shyam Das issued his award in a National Arbitration, Case No. Q06C-4Q-C 08228294. That award dealt with an interpretation of the meaning of "Field" level as contained in Article 32.1.C of the National Agreement, and thus the circumstances when subcontracting in which the Postal Service must provide notice to the Union at the Local level. Arbitrator Das determined that a "Field" level decision includes any made at the Area, District or Local levels, excluding only Headquarter's or National decisions. As stated in his award:

....it must be concluded that the term “Field level” as used in (Article 32.1.C) 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. (p 18)

Facially, it appears that the Das award means that the Postal Service was required to provide notice to the Union Locals of its decision to subcontract NDCBU lock repairs and changes to Diebold. This even though such would have required notice to, as the record reflects, in excess of 1,000 Locals in the Western Area, with the likely result of myriad grievances being filed by the various Locals.

Regardless of whether the Das decision mandates retroactive application resulting in a finding that the Postal Service should have provided notice to the Locals, it is unnecessary for the Arbitrator to make this determination. The November 10 MOU executed by the parties provided that the two existing local grievances protesting the Diebold contract be consolidated into this case, that all information requests would be handled between the Postal Service’s Western Area and the Union’s National Business Agents, that all pending local grievances would be held in abeyance pending outcome of this case, and that it was in the parties‘ best interests to process this single grievance at the Area level. The Union’s primary argument for application of Article 32.1.C was that the Locals were deprived of an opportunity to show why the Diebold subcontract should not cover their respective territories. Yet, by agreeing that all local grievances be held in abeyance and that no new ones be filed by the Locals, the Union effectively removed this argument. The Arbitrator finds that this agreement by the Union served to waive, from that point forward, its right to protest the notice method used by the Postal Service. Had it been intended otherwise, it would have been a simple matter to include within the MOU a statement that the Union’s execution of the agreement did not waive its right to continue its objection to the notice method employed.

The Substantive Issue

In determining whether the Postal Service was entitled to enter into the Diebold contract, certain threshold questions arise. The first is whether NDCBU lock changes and repairs constitute Maintenance Division bargaining unit work. At hearing, the parties stipulated that such work has been "historically and primarily" bargaining unit work. (Tr. p. 306). The Union claims that this work was exclusive to the Maintenance Bargaining Unit. (Union Brief, p. 36) Management asserts that the Union has not established that the work in question "is in any way 'owned' by the Maintenance Craft, or even the bargaining unit in general." It further argues that inclusion of this work in the various Maintenance Craft job descriptions submitted by the Union does not determine that such duties constitute bargaining unit work, and that no past practice was established reflecting exclusivity of these duties in the Maintenance Craft. (Management Brief, p. 31). There are a number of factors which the Arbitrator finds relevant to this issue:

1. The Postal Service's Article 32 review, its *raison detre* for the subcontracting, used NDCBU lock repair and maintenance data derived exclusively from work orders performed by Maintenance Division employees. Had there been a meaningful number of instances where such work was performed by other employees, it is reasonable to assume that data derived from such work would have been incorporated into the Article 32 review, or otherwise addressed.

2. The subcontract notification issued by Management was directed only to the Maintenance Division NBAs. The record does not reflect that any other crafts were notified. Had Management believed that this work belonged to another craft, it is reasonable to assume the Postal Service would have also notified that craft. Moreover, if the Postal Service believed that this work did not belong exclusively to the Union, or to any other craft, a question arises as to why it deemed it necessary to provide notice at all.

3. The Maintenance Craft job descriptions contained in the record, while not dispositive of "exclusivity," clearly reflect that NDCBU lock changes and repairs are performed by Maintenance Craft employees.

4. The statement of work submitted to potential contractors recites that “Maintenance on any collection boxes [including NDCBUs per the statement of work] is the primary function of Postal maintenance personnel. If Postal maintenance personnel are unable to do the work, the contractor will be assigned the work.” (Joint Exhibit 12)
5. The Step 3 decision by Management does not assert nor claim that NDCBU lock repairs and changes is work which belongs other than to the Union.

Management has submitted a number of arbitral awards, including a national award, concluding that employee job descriptions, without more, are not dispositive of whether work belongs to a particular craft. The Arbitrator accepts the rationale of these awards. However, there is no dispute here, and the parties have stipulated, that NDCBU lock repairs and replacements have been historically and primarily performed by Maintenance Craft personnel. Management alleges that this work has been performed by employees outside the Maintenance Craft. In support, the Postal Service alluded to instances in which this work has been completed by other crafts and by Management personnel, and referred at hearing to either a grievance settlement or award in which such work was performed by employees not within the Maintenance Craft. However, the Arbitrator was not furnished with a copy of that settlement or award. The Arbitrator finds compelling the fact that during the grievance process, and particularly in the Step 3 decision, Management did not claim that this work did not belong to the Union. While the Arbitrator might therefore find that Management’s argument is “new” argument that should not be considered at hearing, such a determination is unnecessary. The totality of the evidence, as noted above, reflects the understanding and long standing practice of the parties that NDCBU repairs belong to the Maintenance Division Craft. That there have been instances where Management has used other employees to perform this work does not negate this fact.

In Case No. K94T-1K-C 99050334 (2003) Arbitrator David Vaughn found:

Moreover, as indicated LBMs, who are Maintenance Craft employees, are specifically assigned to install, repair and remove NDCBUs and other collection box equipment.

Such assignment of duties indicates that Management regards such duties as maintenance.
I also take note of a series of Headquarters Settlements (Un. Exhs. 4-7) which pertain to installation and replacement of postal equipment, including NDCBUs....In each, it was "agreed that if there are not time constraints and sufficient manpower is available, maintenance craft employees will be used to perform the work." (pp. 15-16)

As Arbitrator Vaughn states in his award, *supra*, even if it were decided that NDCBU lock changes and repairs are not the exclusive work of Maintenance Division employees, subcontracting by the Postal Service of that work must still comply with the criteria and procedures of Article 32 of the National Agreement and ASM 535.111, discussed below. The fact that the work has historically and primarily been performed by those employees clearly gives the Union standing to allege a violation of either Article 32 or ASM 535.111.

Article 32.1.A of the National Agreement provides:

The Employer will give due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees when evaluating the need to subcontract.

Section 535.111 of the ASM further circumscribes the circumstances in which postal equipment maintenance may be subcontracted to non Postal Service personnel. As discussed in detail, *infra*, each party has submitted different versions of ASM 535.111 which it believes contain the operative provisions of that Section. (Union Exhibit 31 and Management Exhibit 1) Regardless of the operative version of ASM 535.111, application of either requires a determination that NDCBUs are Postal Equipment within the meaning of ASM 535.111. Section 531.212 of the ASM defines Postal Equipment as:

Postal Equipment. Includes a broad range of equipment used either directly or indirectly in moving the mail and for providing customer services (includes scales, stamp vending machines, collection boxes, letter and flat sorting and canceling machines, containers).

Maintenance Handbook Series MS-55 (Union Exhibit 37) categorizes NDCBUs as follows:

I INTRODUCTION

A. Equipment Description
The neighborhood delivery and collection box consists of the mailbox unit, mounting pedestal and loose details or hardware for installation. The mailbox unit contains 18 individually locked compartments for delivery of mail....Two of the individual boxes may be eliminated to provide sixteen individually locked compartments for delivery of mail and one compartment for deposit and collection of outgoing mail. Four boxes may be eliminated to provide fourteen individually locked mail compartments and two compartments for deposit and collection of outgoing mail.
C. Functional Description
1. The neighborhood delivery and collection box is a pedestal-mounted unit *for delivery and collection of mail.* (emphasis added)

A reading of Section 531.212 of the ASM and MS-55 leads the Arbitrator to conclude that NDCBUs constitute Postal Equipment used directly or indirectly in moving mail. ASM 531.212 specifically enumerates "collection boxes" as equipment falling within the definition of Postal Equipment. The Arbitrator finds that the term "collection boxes" as used in ASM 531.212, particularly when combined with the Postal Service's categorization of NDCBUs as "equipment" for "delivery and collection of mail" in MS-55, encompasses the NDCBU.[4] The NDCBU serves the end function of mail delivery or movement; i.e., delivery of mail to the customer. It is also used for origination and collection of the mail. Both of these functions are part and parcel of moving the mail at the end and commencement of its journey.[5] In Case No. K94T-1K-C 99050334 (2003), Arbitrator David Vaughn supported this conclusion when he stated "NDCBUs and other collection box type equipment are postal equipment....." (p. 15)

[4] A 1985 settlement agreement between the parties provides that while there is no prohibition against the procurement of services for repair/replacement of customer locks for NDCBUs, such must be in accordance with Part 535.111 of the Administrative Support Manual (Joint Exh. 4 and Union Exh.... 35). As ASM 535.111 applies only to Postal Equipment, this suggests that both parties at that time considered NDCBUs to be Postal Equipment. The Arbitrator was furnished with no evidence that this understanding has changed in the past 28 years.

[5] Also significant is the fact that the Statement of Work to potential contractors here categorizes NDCBUs as "delivery equipment". (Joint Exhibit 12)

The Postal Service also argues that a number of the NDCBUs are privately owned and, as such, fall outside the purview of Postal Equipment. The argument is not persuasive. Within the factual context of this case, ownership of the Postal Equipment is not necessary to its inclusion within that definition. The fact that the Postal Service has undertaken to effect repairs on the equipment, whether owned or not, is the determining factor.

In 2002, Arbitrator Shyam Das issued a National Award in Case HOC-NA-C 19007 (the "Das Award" or "Das arbitration"). That arbitration arose under Article 19 of the National Agreement, which provides in relevant part:

> Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement and shall be continued in effect except the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable....
> Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least sixty (60) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe that proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed changes....

As detailed in the Das Award, in November 1991 the Postal Service furnished notice to the APWU of proposed revisions, outlined below, to Section 535 of the ASM. The parties discussed these proposed revisions on several occasions but no agreement was reached. Nevertheless, the Postal Service officially promulgated its changes and incorporated them into ASM Issue 9 in 1993. The Union submitted these changes to arbitration in accordance with Article 19 of the National Agreement, asserting that they violated the Postal Service's obligation under Article 19 to make changes not inconsistent with the National Agreement and that are "fair, reasonable and equitable". As it applies to this case, at issue in the Das Award was the Postal Service's change to ASM 535.111, shown below in boldface and italics:

535.111 Postal Equipment

Maintenance of postal equipment should be performed by Postal Service Personnel, whenever possible. Exceptions are:

> a. Where capable personnel are not available.
> ***b. When maintenance can be performed by contract and it is economically advantageous.***
> c**.** When a piece of equipment is a prototype or experimental model or unusually complex, so that a commercial firm is the only practical source of required maintenance expertise.

In this case, the Postal Service argues that the operative ASM 535.111 includes the economic advantage exception first published by it in 1993 in Issue 9. The Union argues that the Das Award precludes application of that exception and that Issue 8 of the ASM, lacking the "economic advantage" exception, is controlling.

In the Das arbitration, the Postal Service argued that addition of the "economic advantage" exception to ASM Section 535.111 was part of its strategy for providing cost-effective maintenance in a timely manner and for increasing efficiency by using the economic advantage standard already applicable to facility and plant equipment maintenance under ASM 535.112, providing that:

> Contract service is encouraged for Postal Service-operated facility and plant equipment maintenance, when economically advantageous.

In his award, Arbitrator Das found that the addition of the economic advantage exception to ASM 535.111 directly related to wages, hours or working conditions and thus was subject to the provisions of Article 19 of the National Agreement:

These changes (including the Article 535.111 revision) clearly relate to wages, hours or working conditions. Article 32.1 of the National Agreement sets forth the following general principle:

> The Employer will give due consideration to public interest, cost, efficiency, availability of equipment and qualification of employees when evaluating the need to subcontract.

The provisions of ASM 535 reflect the Postal Service's application of this general principle in various maintenance contexts. Prior to the disputed changes... 535.111...imposed certain conditions on contracting out of maintenance of postal equipment.... These provisions...provided significant protection to the bargaining unit. Under Article 19, the Postal Service had the right to change (the provisions of 535.111) if the changes were not inconsistent with the National Agreement and were fair, reasonable, and equitable. Even assuming that the changes in issue were consistent with Article 32...some justification of the need to eliminate or change the protection that had been included in (ASM 535.111) for many years was required to show that (it was) fair, reasonable and equitable.

It is not enough for the Postal Service to claim these changes were designed to cut costs and to point out that the economic advantage standard adopted in 535.111 (maintenance of postal equipment) was "borrowed" from 535.112 (maintenance of facility and plant equipment). The Postal Service, as reflected in the ASM, historically took a very different view of maintenance of postal equipment (to be performed by USPS personnel "whenever possible", subject to availability of capable personnel and required expertise) and maintenance of facility and plant equipment (contracting "encouraged" when economically advantageous). Indeed, as changed by the Postal Service, 535.111 is somewhat anomalous in that it begins by continuing to state that maintenance of postal equipment should be performed by USPS personnel "whenever possible", but then includes as a new exception: "When maintenance can be performed by contract and it is economically advantageous."

The Postal Service is entitled to change its policies, subject to its contractual obligations. But if it seeks to change long-standing provisions that on their face afford considerable protection to the bargaining unit, it needs at least to provide a convincing explanation of why it determined such a change to be necessary, if it is to satisfy Article 19's requirement that the change be fair, reasonable, and equitable. In this case, there was little or no evidence on that issue....

Accordingly, I am unable to conclude that the changes to ASM 535.111...are fair, reasonable and equitable. (pp. 19-22)

Arbitrator Das concludes his decision with his award that the Union's challenge to the economic advantage exception in ASM 535.111 be sustained and that it be remanded to the parties for further Article 19 discussions.

The Arbitrator has no evidence before him that Article 19 discussions were or have been resumed by the parties and therefore assumes that none have taken place, or that any discussions have not resulted in agreement between the parties. Even if the Article 32 review justified the subcontracting in this case, the Postal Service must demonstrate that its implementation of the Diebold subcontract was permissible under ASM 535.111. As succinctly stated by Arbitrator Wayne Howard:

A careful examination of both Section 535.111 of the ASM and Article 32 of the Agreement commands the conclusion that these respective provisions place quite different obligations upon the Service. It is clear that under Article 19 of the Agreement, the provisions of Section 535.111 of the ASM are entitled to Agreement status so long as they are not in conflict with the Agreement. Section 535.111 does not necessarily conflict with the provisions of Article 32 of the Agreement, but it does set up additional standards for the subcontracting of the maintenance of postal equipment.
....It is a well-established rule of contract interpretation that specific provisions of a collective bargaining agreement take precedence over general provisions. Thus, Section 535.111 of the ASM which specifically governs the subcontracting of maintenance of postal equipment takes precedence over Article 32 of the Agreement which on its face is to be taken as a general principle. Therefore, the controlling principles found in Section 535.111 are that bargaining unit employees are to perform such repair work with two exceptions, if the Union view is accepted, namely, unavailability of capable employees and complex work, and three exceptions if the service view is accepted, with the addition of the "whenever possible" exception contained in the introductory language of Section 535.111. (Case No. E7T-2N-C21843, Howard, 1990)

Similarly, in Case No. K94T-1K-C 99050334 (2003), Arbitrator Vaughn, found:

Article 19 (Handbooks and Manuals) of the Agreement states that those parts of manuals that directly relate to wages, hours or working conditions "shall contain nothing that conflicts with this Agreement." The Administrative Support Manual and, in particular, Section 535, clearly relates directly to wages, hours or working conditions. The provisions of ASM 535 reflect the Postal Service's application of Article 32's general principle in various maintenance contexts and places limits on subcontracting in addition to the criteria the Postal Service is required to consider under Article 32.
It is a well established rule of contract interpretation that specific provisions of a collective bargaining agreement take precedence over general provisions. Thus, ASM 535.111, which specifically governs the subcontracting of maintenance of postal equipment, provides more specific guidance than Article 32 of the Agreement, which on its face is to be taken as a general principle. Therefore, the controlling direction is found in ASM 535.111: "Maintenance of postal equipment should be performed by Postal Service personnel, whenever possible." This represents a clear expression of the concept that such duties are to be carried out by employees of the Postal Service unless it is not possible for them to do so. ASM 535.111 lists two exceptions: where capable personnel are not available and when a piece of equipment is a prototype or experimental model or unusually complex. Neither exception is applicable here. (p. 13)

The question in this arbitration is whether, as the Postal Service argues, Arbitrator Das' remand of the 535.111 change for further Article 19 discussions left the economic advantage exception intact pending such discussions, or whether, as the Union asserts,

the only two exceptions permitting subcontracting of postal equipment maintenance are those which existed prior to the Postal Service's publication of the economic advantage exception. If the former, the Diebold subcontract was permissible if justified by the Article 32 Review. If the latter, the Diebold subcontract was permissible, assuming the Article 32 review justified it, only if capable USPS personnel were unavailable or the equipment to be maintained was experimental or sufficiently complex as to necessitate outside maintenance expertise.

The Postal Service also claims that since, in its view, the Das Award only remanded the ASM 535.111 issue for further discussions (as opposed to removing the economic advantage exception), its continued republication of the economic advantage exception until current date was solidified the exception's legitimacy.

In Case No. J94T-1J-C 97032674 Arbitrator Fletcher considered the arguments that the Postal Service asserts in this arbitration:

The Union argues that Das rendered (the economic advantage change to ASM 535.111) moot. The Postal Service argues that notwithstanding Das, the changes are still in place *today.* In support of the Postal Service's argument, page 281 of ASM 13, dated July 1999, updated with Postal Bulletin revisions through September 4, 2003, was provided the Arbitrator. Page 281 indicates that challenged revision had not been redacted from 535.111b, ergo, the Service argues, because it was not redacted, the paragraph must be considered as still being in place.
The Arbitrator is unwilling to embrace the Postal Service's position as sound. Das, in no uncertain terms, found that the revisions that the Postal Service placed in 535.111 were not supported by evidence that they were "fair, reasonable, and equitable." Article 19 requires that such changes be "fair, reasonable, and equitable" as a condition of the Employer's right to make the change. If they are not, the Postal Service forfeits its license to make the change. If it has forfeited its license to make the change, the Postal Service is no longer privileged to utilize the change, even when it has been dilatory in redacting the challenged language from its handbooks and manuals. Any other conclusion would negate Das' findings, the Postal Service would be able to ignore a National Award simply through the technique of failing to redact challenged language that after a full and complete hearing was determined to be not "fair, reasonable, and equitable."
Accordingly, for the purpose of this arbitration the earlier version of 535.111 will be used as the appropriate version, applicable to the facts of this case.

Similarly, in Case I90T-41-C 97048695, Arbitrator Edwin Benn addressed the Das Award in the context of Das' determination that the Postal Service had not demonstrated its changes to ASM 535.23 to be fair, reasonable and equitable:

By award dated June 21, 2002, Arbitrator Shaym Das rejected the Service's changes to Section 535.23 of the ASM. HOC-NA-C 19007 at 21:

> There is no evidence to support the need to change the standard in 525.23, under which window cleaning and snow removal could be contracted out when the work cannot be done expediently by the existing maintenance work force....

The result of that National Level award was the version of Section 535.23 of the ASM relied upon by the Union which required that "[contract] service may be authorized only when the work cannot be done expediently by the existing maintenance workforce" remained in effect and the Service's version of Section 535.23 which provided that "[contract] service may be authorized when it is economically advantageous" was rejected. (pp. 3-4)

In Case No. E98T-1E-C 00021750 (2006), Arbitrator Carl Bosland considered the exceptions to the subcontracting of postal equipment maintenance:

Management failed to establish that it subcontracted the maintenance of postal equipment in accordance with ASM 535.111. By its terms, ASM 535.111 expresses a preference that maintenance on postal equipment be performed by Postal employees. There are two exceptions to that preference (1) where capable personnel are not available; and (2) when a piece of equipment is a prototype or experimental model or unusually complex, so that a commercial firm is the only practical source of required maintenance expertise. (footnote 1 reading): The version of ASM 535.111 offered into evidence contained a subsection "b" that permitted subcontracting where it is economically advantageous. As noted by the Union, that subsection was determined to be invalid. USPS and APWU, No. HOC-NA-C 19007 (Das, June 21, 2002).

The Arbitrator believes the Das Award to be clear. The Postal Service in the Das arbitration did not demonstrate that its economic advantage exception to ASM 535.111 was fair, reasonable and equitable. As agreed by other arbitrators interpreting the Das Award, this meant that the economic advantage exception (in ASM 535.111, as well as in ASM 535.23) could not be relied upon by the Postal Service by ignoring Das and republishing its version of ASM 535.111 up to and including the present. The Postal

Service has not provided any arbitral authority to the contrary. Under ASM 535.111, the subcontracting in this case was only permissible if USPS personnel were unavailable or NDCBU lock changes/repairs were determined to be experimental or complex. The Arbitrator finds from the record evidence that neither of these exceptions is present in this case.

The Arbitrator finds that the record does not reflect that excessing of bargaining unit employees occurred as a result of the Diebold subcontract. The evidence presented by the Union in asserting such excessing consisted of Sundgaard's testimony that (i) as NBA he had "grievances in the system right now, that have yet to be adjudicated, that pertain to excessing because the work no longer exists and they're no longer needed" (Tr. p. 202), and (ii) he had been told by Western Area Labor Relations Specialist Sutton that four maintenance employees at Fort Collins, Colorado had been excessed due to the Diebold subcontract. (Tr pp. 532, 541) However, the Union provided no details or evidence concerning "grievances in the system" challenging excessing due to the Diebold subcontract, and Mr. Sutton testified that he had not told any Union representative that the Fort Collins excessing was due to the subcontract. According to Mr. Sutton the excessing at that city did not result from the subcontract but was due to the relocation of mail processing machinery from Fort Collins to Denver. (Tr. 595) When asked whether all of the excessing would have occurred absent the Diebold subcontract, Sutton responded affirmatively. (Tr. p. 603)

A difficult question is whether any Maintenance Craft employees should be awarded overtime compensation due to the subcontract. On the one hand, it can be surmised that employees on the Overtime Desired List (OTDL) would have been called upon to perform NDCBU lock repairs/changes (or other overtime work had their regular work schedules included such repairs/maintenance) absent the subcontract. On the other hand, it is plausible that such work would have been performed by the craft employees during their regular work schedules, albeit perhaps at the expense of other non-critical maintenance being delayed or postponed. The Arbitrator was presented with no evidence to suggest which scenario might have been the case. While it is true that the

Article 32 review reflects that during a 10-month period some 203,000 man hours were expended by Maintenance Craft personnel on lock changes and repairs in the entire Western Area (excluding Arizona and Alaska), there is no evidence of overtime hours expended on this work by maintenance personnel. Moreover, the man hours which the Postal Service asserts were expended were for an historical period used for purposes of the Article 32 Review. No evidence exists reflecting the man hours expended by Diebold performing the lock changes and repairs. Further complicating the issue, the Union at hearing strongly disagreed with the Postal Service's assessment that the average time to complete a work order for an NDCBU lock change/repair was 2.7 hours. According to the testimony of the Union witness the time required would not exceed .3 to .5 hours. Even if it were agreed what the average time to repair or change a lock is, it would not indicate whether the time, had it been performed in-house, would have been expended during regular work hours or whether overtime hours would have been employed by the Postal Service.[6]

The evidence presented by the Union does not provide the Arbitrator with an ability to determine whether a monetary remedy, if any, is warranted. Nevertheless, it is possible that the parties could come to agreement on this issue. The Arbitrator therefore instructs the parties to enter into good faith discussions for purposes of determining the amount of overtime, if any, which would have been paid had the Diebold work been performed in-house by Maintenance Craft employees. If the number of overtime hours is agreed, the Postal Service is instructed to pay to affected employees (or to the Union to be distributed to affected employees as it deems appropriate) an agreed overtime rate multiplied by the number of overtime hours agreed. The Arbitrator retains jurisdiction in this case for a period of 120 days, during which the parties shall engage in the discussions ordered. Failing agreement as contemplated here, and provided a party requests it within said 120-day period, the Arbitrator will consider taking additional

[6] Management is not obligated to assign overtime work to its employees. Under Article 3 of the National Agreement it is within the Postal Service's rights to decide whether work is performed using straight time hours or whether overtime work will be assigned to employees on the OTDL.

evidence and argument, including additional hearing if warranted, for the purpose only of deciding whether the Arbitrator should award a monetary remedy.

AWARD

The grievance is sustained. The Postal Service is directed to promptly terminate the Diebold subcontract which is the subject of this proceeding. The parties shall address the question of a monetary remedy as instructed herein. The Arbitrator retains jurisdiction in this case for a period of 120 days solely for the purpose described in the final paragraph hereof.

Dated October 30, 2013

_____

Arthur T. Voss
Arbitrator