

# American Postal Workers Union, AFL-CIO

**GRIEVANCE  
STATUS LETTER  
(CENTRAL REGION)**  
APWU-USPS NAT. GRIEVANCE

GRIEVANT-PERSON OR UNION FROM LINE 8 (LASTNAMEFIRST)  
CLASS ACTION

WORK LOCATION CITY AND ZIP CODE FROM LINE 10  
DES MOINES, IA.

USPS REGIONAL GRIEVANCE

190T-11-C95066372

CONTRACT ISSUE

ARTICLE 38

CRAFT

MAINTENANCE

APWU REGIONAL GRIEVANCE

12823

DATE

February 12, 1999

APWU LOCAL GRIEVANCE

779510521

TO: DIRECTOR, INDUSTRIAL RELATIONS  
AMERICAN POSTAL WORKERS UNION, AFL-CIO  
1300 L STREET, N.W.  
WASHINGTON, D.C. 20005

D/A: 2/8/99 REG  
DENIED  
ADVOCATE:  
Jon Arnold

WITHDRAW FROM STEP 4 OR ARBITRATION

SETTLEMENT

ARBITRATION AWARD

NATL. CERTIFICATION

LOCAL CERTIFICATION

PYMT. # 505841

Arbitrator's Statement -- Lamont Stallworth

\$1,554.89 -- D/H: November 6, 1998

**ATTACHED IS DOCUMENTATION IN SUPPORT OF ACTION INDICATED**

The Arbitrator stated, "The instant grievance is untimely. The grievance is not arbitrable and is therefore dismissed."

cc: NBA, Gary Kloepfer Maintenance Craft, APWU  
President, Des Moines Area Local# (0044), APWU

LFP:Inf

LEO F. PERSAILS, COORDINATOR  
CENTRAL REGION  
AMERICAN POSTAL WORKERS UNION,  
AFL-CIO

REGULAR ARBITRATION PANEL  
\*\*\*\*\*

In the Matter of Arbitration )

between: )

UNITED STATES POSTAL SERVICE )

and )

AMERICAN POSTAL WORKERS UNION )  
\*\*\*\*\*

BEFORE: Lamont E. Stallworth

GRIEVANT: Class Action

POST OFFICE: Des Moines, Iowa

CASE NO. I90T-11-C95066372

ARBITRATOR

APPEARANCES:

For the U.S. Postal Service:

Stephen J. Thalken  
Labor Relations Specialist  
Hawkeye District

For the Union:

Jon Arnold  
APWU Advocate

Place of Hearing:

Des Moines, Iowa

Date of Hearing:

November 6, 1998

AWARD:

The instant grievance is untimely. The grievance is not arbitrable and is therefore dismissed.

Date of Award: February 8, 1999



Lamont E. Stallworth  
Arbitrator

**THE ISSUE(S) :**

The Parties each submitted the following issue(s) to the Arbitrator:

The Union presented the issue(s) as follows:

1. Did management violate the National Agreement and past practice when the elevator maintenance was awarded to Montgomery Elevator?
2. If so, what shall the remedy be?

The Service presented the issue(s) as follows:

1. Is the grievance timely and properly before the arbitrator ?
2. Was the sub-contracting of elevator maintenance done in accordance with Article 32, ASM Part 535.112 & 535.25 and any past practice?
3. If so, what shall the remedy be?

**RELEVANT CONTRACT PROVISIONS:**

**ARTICLE 15  
GRIEVANCE-ARBITRATION PROCEDURE**

**Section 1. Definition**

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

**Section 2. Grievance Procedure Steps**

**Step 1:**

(a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative. The Union also may initiate a grievance at Step 1 within 14 days of

the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. In such case the participation of an individual grievant is not required. A Step 1 Union grievance may involve a complaint affecting more than one employee in the office.

(b) In any such discussion the supervisor shall have authority to settle the grievance. The steward or other Union representative likewise shall have authority to settle or withdraw the grievance in whole or in part. No resolution reached as a result of such discussion shall be a precedent for any purpose.

(c) If no resolution is reached as a result of such discussion, the supervisor shall render a decision orally stating the reasons for the decision. The supervisor's decision should be stated during the discussion, if possible, but in no event shall it be given to the Union representative (or the grievant, if no Union representative was requested) later than five (5) days thereafter unless the parties agree to extend the five (5) day period. Within five (5) days after the supervisor's decision, the supervisor shall, at the request of the Union representative, initial the standard grievance form that is used at Step 2 confirming the date upon which the decision was rendered.

(d) The Union shall be entitled to appeal an adverse decision to Step 2 of the grievance procedure within ten (10) days after receipt of the supervisor's decision. Such appeal shall be made by completing a standard grievance form developed by agreement of the parties, which shall include appropriate space for at least the following:

1. Detailed statement of facts;
2. Contentions of the grievant;
3. Particular contractual provisions involved; and
4. Remedy sought.

#### Step 2:

(a) The standard grievance form appealing to Step 2 shall be filed with the installation head or designee. In any associate post office of twenty (20) or less employees, the Employer shall designate an official outside of the installation as the Step 2 official, and shall so notify the Union Step 1 representative.

(b) Any grievance initiated at Step 2, pursuant to Article 2 or 14 of this Agreement, must be filed within 14 days of the date on which the Union or the employee first learned or may reasonably have been expected to have learned of its cause.

(c) The installation head or designee will meet with the steward or a Union representative as expeditiously as possible, but no later than seven (7) days following receipt of the Step 2 appeal

unless the parties agree upon a later date. In all grievances appealed from Step 1 or filed at Step 2, the grievant shall be represented in Step 2 for all purposes by a steward or a Union representative who shall have authority to settle or withdraw the grievance as a result of discussions or compromise in this Step. The installation head or designee in Step 2 also shall have authority to grant or settle the grievance in whole or in part.

(d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Article 31. The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. In addition, in cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above.

(e) Any settlement or withdrawal of a grievance in Step 2 shall be in writing or shall be noted on the standard grievance form, but shall not be a precedent for any purpose, unless the parties specifically so agree or develop an agreement to dispose of future similar or related problems.

(f) Where agreement is not reached the Employer's decision shall be furnished to the Union representative in writing, within ten (10) days after the Step 2 meeting unless the parties agree to extend the ten (10) day period. The decision shall include a full statement of the Employer's understanding of (1) all relevant facts, (2) the contractual provisions involved, and (3) the detailed reasons for denial of the grievance.

(g) If the Union representative believes that the facts or contentions set forth in the decision are incomplete or inaccurate, such representative should, within ten (10) days of receipt of the Step 2 decision, transmit to the Employer's representative a written statement setting forth corrections or additions deemed necessary by the Union. Any such statement must be included in the file as part of the grievance record in the case. The filing of such corrections or additions shall not affect the time limits for appeal to Step 3.

(h) The Union may appeal an adverse Step 2 decision to Step 3. Any such appeal must be made within fifteen (15) days after receipt of the Employer's decision unless the parties' representatives agree to extend the time for appeal. Any appeal must include copies of (1) the standard grievance form, (2) the Employer's written Step 2 decision, and, if filed, (3) the Union corrections or additions to the Step 2 decision.

**Step 3:**

(a) Any appeal from an adverse decision in Step 2 shall be in writing to the **appropriate management official at the Grievance/Arbitration Processing Center**, with a copy to the Employer's Step 2 representative, and shall specify the reasons for the appeal.

(b) The grievant shall be represented at the Employer's Step 3 Level by a Union's Regional representative, or designee. The Step 3 meeting of the parties' representatives to discuss the grievance shall be held within fifteen (15) days after it has been appealed to Step 3. Each party's representative shall be responsible for making certain that all relevant facts and contentions have been developed and considered. The Union representative shall have authority to settle or withdraw the grievance in whole or in part. The Employer's representative likewise shall have authority to grant the grievance in whole or in part. In any case where the parties' representatives mutually conclude that relevant facts or contentions were not developed adequately in Step 2, they shall have authority to return the grievance to the Step 2 level for full development of all facts and further consideration at that level. In such event, the parties' representatives at Step 2 shall meet within seven (7) days after the grievance is returned to Step 2. Thereafter, the time limits and procedures applicable to Step 2 grievances shall apply.

(c) The Employer's written Step 3 decision on the grievance shall be provided to the Union's Step 3 representative within fifteen (15) days after the parties have met in Step 3, unless the parties agree to extend the fifteen (15) day period. Such decision shall state the reasons for the decision in detail and shall include a statement of any additional facts and contentions not previously set forth in the record of the grievance as appealed from Step 2. Such decision also shall state whether the Employer's Step 3 representative believes that no interpretive issue under the National Agreement or some supplement thereto which may be of general application is involved in the case.

(d) The Union may appeal an adverse decision directly to arbitration at the **appropriate Grievance/Arbitration Processing Center** within twenty-one (21) days after the receipt of the Employer's Step 3 decision in accordance with the procedure hereinafter set forth; provided the Employer's Step 3 decision states that no interpretive issue under the National Agreement or some supplement thereto which may be of general application is involved in the case.

(e) If either party's representative maintains that the grievance involves an interpretive issue under the National Agreement, or some supplement thereto which may be of general application, the Union representative shall be entitled to appeal an adverse decision to Step 4 (National level) of the grievance procedure. Any such appeal must be made within twenty-one (21) days after receipt of the Employer's decision and include copies of the standard

grievance form, the Step 2 and Step 3 decision and, if filed, any Union corrections and additions filed at Step 2 or 3. The Union shall furnish a copy of the Union appeal to the appropriate management official at the Grievance/Arbitration Processing Center.

(f) Where grievances appealed to Step 3 involve the same, or substantially similar issues or facts, one such grievance to be selected by the Union representative shall be designated the "representative" grievance. If not resolved at Step 3, the "representative" grievance may be appealed to Step 4 of the grievance procedure or to arbitration in accordance with the above. All other grievances which have been mutually agreed to as involving the same, or substantially similar issues or facts as those involved in the "representative" grievance shall be held at Step 3 pending resolution of the "representative" grievance, provided they were timely filed at Step 1 and properly appealed to Steps 2 and 3 in accordance with the grievance procedure.

Following resolution of the "representative" grievance, the parties involved in that grievance shall meet at Step 3 to apply the resolution to the other pending grievances involving the same, or substantially similar issues or facts. Disputes over the applicability of the resolution of the "representative" grievance shall be resolved through the grievance-arbitration procedures contained in this Article; in the event it is decided that the resolution of the "representative" grievance is not applicable to a particular grievance, the merits of that grievance shall also be considered.

(g) 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. The grievance may be filed within fourteen (14) days of the date on which such union representative first learned or may reasonably have been expected to have learned of the implementation of such policy, instructions, or guidelines. Timely local grievances, which had already been filed concerning such policy, instructions, or guidelines, 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. Thereafter, local grievances will be finally adjudicated in accordance with the resolution of the grievance filed directly at Step 3.

#### Step 4:

(a) In any case properly appealed to this Step the parties shall meet at the National level promptly, but in no event later than thirty (30) days after filing such appeal in an attempt to resolve the grievance. The Union representative shall have authority to settle or withdraw the grievance in whole or in part. The Employer's representative shall have authority to grant or settle the grievance in whole or in part. The parties' Step 4 representatives may, by mutual agreement, return any grievance to

Step 3 where (a) the parties agree that no national interpretive issue is fairly presented or (b) it appears that all relevant facts have not been developed adequately. In such event, the parties shall meet at Step 3 within fifteen (15) days after the grievance is returned to Step 3. Thereafter the procedures and time limits applicable to Step 3 grievances shall apply. Following their meeting in any case not returned to Step 3, a written decision by the Employer will be rendered within fifteen (15) days after the Step 4 meeting unless the parties agree to extend the fifteen (15) day period. The decision shall include an adequate explanation of the reasons therefor. In any instance where the parties have been unable to dispose of a grievance by settlement or withdrawal, the National President of the Union shall be entitled to appeal it to arbitration at the National level within thirty (30) days after receipt of the Employer's Step 4 decision.

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**Section 4. Grievance Procedure - General**

A. The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in settlement or withdrawal of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end.

B. The failure of the employee or the Union in Step 1, or the Union thereafter to meet the prescribed time limits of the Steps of this procedure, including arbitration, shall be considered as a waiver of the grievance. However, if the Employer fails to raise the issue of timeliness at Step 2, or at the step at which the employee or Union failed to meet the prescribed time limits, whichever is later, such objection to the processing of the grievance is waived.

C. Failure by the Employer to schedule a meeting or render a decision in any of the Steps of this procedure within the time herein provided (including mutually agreed to extension periods) shall be deemed to move the grievance to the next Step of the grievance-arbitration procedure.

D. It is agreed that in the event of a dispute between the Union and the Employer as to the interpretation of this Agreement, such dispute may be initiated as a grievance at the Step 4 level by the President of the Union. Such a grievance shall be initiated in writing and must specify in detail the facts giving rise to the dispute, the precise interpretive issues to be decided and the contention of the Union. Thereafter the parties shall meet in Step 4 within thirty (30) days in an effort to define the precise issues involved, develop all necessary facts, and reach agreement. Should they fail to agree, then, within fifteen (15) days of such meeting, each party shall provide the other with a statement in writing of its understanding of the issues involved, and the facts giving rise to such issues. In the event the parties have failed to reach agreement within sixty (60) days of the initiation of the grievance

in Step 4, the Union then may appeal it to arbitration, within thirty (30) days thereafter.

## Section 5. Arbitration

### A. General Provisions

1. A request for arbitration shall be submitted within the specified time limit for appeal.
2. No grievance may be arbitrated at the National level except when timely notice of appeal is given the Employer in writing by the National President of the Union. No grievance may be appealed to arbitration at the Area level except when timely notice of appeal is given in writing to the appropriate management official at the Grievance/Arbitration Processing Center by the certified representative of the Union in the Area. Such representative shall be certified to appeal grievances by the National President of the Union to the Employer at the National level.
3. All grievances appealed to arbitration will be placed on the appropriate pending arbitration list in the order in which appealed. The Employer, in consultation with the Union, will be responsible for maintaining appropriate dockets of grievances, as appealed, and for administrative functions necessary to assure efficient scheduling and hearing of cases by arbitrators at all levels.
4. In order to avoid loss of available hearing time, except in National level cases, a minimum of six (6) expedited or three (3) regular cases, when available, are to be scheduled for each hearing date. Back-up cases should be scheduled when available to be heard in the event of late settlement or withdrawal of grievances before the hearing. In the event that either party withdraws all cases less than five (5) days prior to the scheduled arbitration date, and the parties are unable to agree on scheduling other cases on that date, the party withdrawing the cases shall pay the full costs of the arbitrator for that date. In the event that the parties settle and/or withdraw all cases five (5) or more days prior to the scheduled arbitration date, back-up cases on the appropriate arbitration list shall be scheduled. If the parties settle cases less than five (5) days prior to the scheduled arbitration date and are unable to agree to schedule another case, the parties shall share the costs of the arbitrator for that date. This paragraph shall not apply to National level arbitration cases.

5. Arbitration hearings normally will be held during working hours where practical. Employees whose attendance as witnesses is required at hearings during their regular working hours shall be on Employer time when appearing at the hearing, provided the time spent as a witness is part of the employee's regular working hours. Absent a more permissive local past practice and at no cost to the Employer, the Employer will permit one (1) change of work schedule per case scheduled for arbitration for either the grievant or a witness, provided notice is given to his or her immediate supervisor at least two (2) days prior to the scheduled arbitration hearing.
  6. All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. Unless otherwise provided in this Article, all costs, fees, and expenses charged by an arbitrator will be shared equally by the parties.
  7. All arbitrators on the Regular Area Panels and the Expedited Panels and on the National Panel shall serve for the term of this Agreement and shall continue to serve for six (6) months thereafter, unless the parties otherwise mutually agree.
  8. Arbitrators on the national and on the Regular and Expedited Area Panels shall be selected by the method agreed upon by the parties at the National Level.
  9. In any arbitration proceeding in which a Union feels that its interests may be affected, it shall be entitled to intervene and participate in such arbitration proceeding, but it shall be required to share the cost of such arbitration equally with any or all other Union parties to such proceeding. Any dispute as to arbitrability may be submitted to the arbitrator and be determined by such arbitrator. The arbitrator's determination shall be final and binding.
- B. Area Level Arbitration - Regular
1. At the appropriate Grievance/Arbitration Processing Center three (3) separate lists of cases to be heard in arbitration shall be maintained for the Union: (a) one for all removal cases and cases involving suspensions for more than 14 days, (b) one for all cases referred to Expedited

Arbitration, and (c) one for all other cases appealed to arbitration at the appropriate **Grievance/Arbitration Processing Center**. Separate panels will be established for scheduling (a) removal cases and cases involving suspensions for more than 14 days, (b) for all cases referred to Expedited Arbitration, and (c) for all other cases appealed to arbitration at the appropriate **Grievance/Arbitration Processing Center**.

2. Cases will be scheduled for arbitration in the order in which appealed, unless the Union and Employer otherwise agree.
3. Only discipline cases involving suspensions of 14 days or less and those other disputes as may be mutually determined by the parties shall be referred to Expedited Arbitration in accordance with Section C hereof.

[see Memo, page 333]

4. Cases referred to arbitration, which involve removals or suspensions for more than 14 days, shall be scheduled for hearing at the **Grievance/Arbitration Processing Center** at the earliest possible date in the order in which appealed by the Union.
5. If either party concludes that a case referred to **Area** Arbitration involves an interpretative issue under the National Agreement or some supplement thereto which may be of general application, that party may withdraw the case from arbitration and refer the case to Step 4 of the grievance procedure.

[see Memo, page 331]

6. The arbitrators on each Regular **Area** Panel shall be scheduled to hear cases on a rotating system basis, unless otherwise agreed by the parties. The hearing time available for arbitration will be distributed among offices and crafts.
7. Normally, there will be no transcripts of arbitration hearings or filing of post-hearing briefs in cases heard in Regular **Area** level arbitration, except either party at the National level may request a transcript. Either party at the hearing may request to file a post-hearing brief in contract arbitrations. In Regular **Area** level discipline/discharge arbitrations, post-hearing briefs will be permitted only by mutual agreement of the parties or by direction of

the arbitrator. However, each party may file a written statement setting forth its understanding of the facts and issues and its argument at the beginning of the hearing and also shall be given an adequate opportunity to present argument at the conclusion of the hearing.

8. The arbitrator in any given case should render an award therein within thirty (30) days of the close of the record in the case.

C. **Area Level Arbitration - Expedited**

1. The parties agree to continue the utilization of an expedited arbitration system for disciplinary cases of 14 days suspension or less which do not involve interpretation of the Agreement and for such other cases as the parties may mutually determine. This system may be utilized by agreement of the Union through the National President or designee and the **Vice-President, Labor Relations** or designee. In any such case, the FMCS or AAA shall immediately notify the designated arbitrator. The designated arbitrator is that member of the Expedited Panel who, pursuant to a rotation system, is scheduled for the next arbitration. Immediately upon such notification the designated arbitrator shall arrange a place and date for the hearing promptly but within a period of not more than ten (10) working days. If the designated arbitrator is not available to conduct a hearing within the ten (10) working days, the next panel member in rotation shall be notified until an available arbitrator is obtained.

[see Memo, page 333]

2. If either party concludes that the issues involved are of such complexity or significance as to warrant reference to the Regular **Area** Arbitration Panel, that party shall notify the other party of such reference at least twenty-four (24) hours prior to the scheduled time for the expedited arbitration.
3. The hearing shall be conducted in accordance with the following:
  - a. the hearing shall be informal;
  - b. no briefs shall be filed or transcripts made;
  - c. there shall be no formal rules of evidence;

- d. the hearing shall normally be completed within one day;
  - e. if the arbitrator or the parties mutually conclude at the hearing that the issues involved are of such complexity or significance as to warrant reference to the Regular **Area** Arbitration Panel, the case shall be referred to that panel; and
  - f. the arbitrator may issue a bench decision at the hearing but in any event shall render a decision within forty-eight (48) hours after conclusion of the hearing. Such decision shall be based on the record before the arbitrator and may include a brief written explanation of the basis for such conclusion. These decisions will not be cited as a precedent. The arbitrator's decision shall be final and binding. An arbitrator who issues a bench decision shall furnish a written copy of the award to the parties within forty-eight (48) hours of the close of the hearing.
- 4. No decision by a member of the Expedited Panel in such a case shall be regarded as a precedent or be cited in any future proceeding, but otherwise will be a final and binding decision.
  - 5. The Expedited Arbitration Panel shall be developed by the National parties, on an area basis, with the aid of the American Arbitration Association and the Federal Mediation and Conciliation Service.

#### D. National Level Arbitration

- 1. Only cases involving interpretive issues under this Agreement or supplements thereto of general application will be arbitrated at the National level.
- 2. A docket of cases appealed to arbitration at the National level shall be maintained for the Union. The arbitrators on the National Panel shall be scheduled to hear cases on a rotating system basis, unless otherwise agreed by the parties. Cases on the docket will be scheduled for arbitration in the order in which appealed, unless the Union and Employer otherwise agree.

**BACKGROUND:**

The Parties agreed to bifurcate the instant arbitration proceedings in light of the procedural arbitrability issue raised by the Service. The background section is therefore mainly limited to the facts related to the procedural issue of whether the instant grievance is timely.

Historically, the Des Moines Post MPO was staffed with Stationary Engineers, Elevator Mechanics, Electricians and other maintenance craft employees. These employees were charge with the daily maintenance of the building and its systems. In 1989, the Parties agreed, after bargaining over staffed positions, that all stationary engineers would be converted to Building Equipment Mechanics. These employees were then trained in Elevator Maintenance and worked with experienced Elevator Mechanics.

According to the Union, in 1993 and 1994 the elevators at the MPO were re-built. At the end of the one year warranty period on the re-built elevators the Service broached the subject of contracting out the maintenance of the elevators. By a letter dated January 23, 1995, the Service notified the Union that it intended to proceed with the contracting out of elevator maintenance. (Joint Exhibit No. 5). APWU representative Jon Arnold received the letter on January 24, 1995. Id.

Also according to the Union, the Parties engaged in verbal discussions about the subcontracting issue and agreed verbally to extend the deadline of fourteen (14) days to file a grievance. However, the Service does not agree that there was any verbal agreement to extend the deadline and no document was presented to establish that both Parties had in fact agreed to extend the

grievance filing deadline. (Service Exhibit No. 2). The Union filed the instant grievance on April 14, 1995, charging that Postal employees should be allowed to perform the elevator maintenance work instead of an outside service.

On June 7, 1995, the Service denied the instant grievance at Step 2 on the grounds that it was untimely and disputed the merits of the grievance. With regard to the issue of timeliness the Postal Service stated at Step 2:

This grievance is also untimely as the letter was given to the APWU on 1/24/95 that the USPS indeed was to contract out the maintenance of the elevators.

(Joint Exhibit No. 2). The instant grievance proceeded through the grievance procedure but the Parties could not resolve the instant dispute. It is within this factual context that the instant grievance arises.

**THE UNION'S POSITION:**

With regard to the procedural issue of arbitrability, it is the Union's position that the Union received notice from the Postal Service of the proposed subcontracting but that the Union was never notified that the grievance was being denied as untimely. The Union acknowledges that Step 2 raises the untimeliness issue but that is the only step level at which the issue of timeliness was raised. (Joint Exhibit No. 2). The Union stresses that only one sentence of the grievance chain states at Step 2 that the grievance is untimely and that the issue was not raised again at the higher steps of the grievance procedure. The Union, therefore, argues that the Service waived the issue of timeliness.

The Union also asserts that the instant grievance involves a continuing violation in that every day the Service employs a subcontractor to perform elevator maintenance, the Service violated the Contract.

The Union further contends that the Parties agreed verbally to extend the filing of the instant grievance. The Union argues that a verbal extension was needed as the Union desired more time to investigate the facts involved in the instant grievance. The Union claims that the Service later withdrew or did not abide by the verbal extension to the filing of the instant grievance.

Based on the foregoing, the Union argues that the instant grievance should move forward and that the merits of the instant grievance should be considered by the Arbitrator.

**THE SERVICE'S POSITION:**

It is the position of the Postal Service that Article 15 of the National Agreement is clear. The Service contends that Article 15.2A unequivocally provides a clear deadline for the filing of grievances. The Service points out that according to Article 15 the Union has fourteen (14) days to file a grievance from the date the Union first became aware of (or reasonably should have become aware of the facts) giving rise to the grievance.

In the instant grievance, the Service argues that the Union was made aware of the intent of the Postal Service to subcontract elevator maintenance at the Des Moines MPO on January 23, 1995. (Joint Exhibit No. 5). The Service submits that Joint Exhibit No. 5 is a letter from the Service to the Union indicating the Service's position to subcontract the maintenance of elevators

effective March 1, 1995. The Service points out that the instant grievance was not filed until April 14, 1995.

The Service states that in its Step 2 denial of the instant grievance, the Service raised the objection that the instant grievance was untimely under Article 15. (Joint Exhibit No. 2). The Service argues that despite a handwritten note from Jon Arnold requesting to extend the filing time for the instant grievance that the Service did not verbally agree to any extension. (Service Exhibit No. 2). The Service asserts that under Article 15 the failure of either the employer or employee to meet the proscribed time limits results in the waiver of the issue. The Service maintains that the Union failed to file the instant grievance within the proscribed time limits and as a consequence the Union waived the subcontracting issue in the instant grievance.

In support of its position regarding the timeliness issue, the Service relies upon the arbitral award in United States Postal Service and American Postal Workers Union, (Nampa, Idaho) (Arb. Levak, January 31, 1985) Case Nos. W8C-5L-C 21536 and W1C-5L-C 2970.

In light of the foregoing, the Service requests that the Arbitrator conclude that the Union failed to file the instant grievance in a timely fashion and that the instant grievance is therefore not arbitrable and should be dismissed.

OPINION:

This is a contractual interpretation dispute involving the subcontracting of elevator maintenance at the Des Moines, Iowa, Main Post Office. As provided below, the Service has raised a procedural arbitrability issue that must be addressed first.

The Parties each submitted the following issue(s) to the Arbitrator:

The Union presented the issue(s) as follows:

1. Did management violate the National Agreement and past practice when the elevator maintenance was awarded to Montgomery Elevator?
2. If so, what shall the remedy be?

The Service presented the issue(s) as follows:

1. Is the grievance timely and properly before the arbitrator ?
2. Was the sub-contracting of elevator maintenance done in accordance with Article 32, ASM Part 535.112 & 535.25 and any past practice?
3. If so, what shall the remedy be?

The Arbitrator has duly considered all the relevant facts, testimony and record evidence. Based on the foregoing, the Arbitrator must conclude that the instant grievance was not filed on a timely basis and is therefore untimely under Article 15 of the National Agreement. (Joint Exhibit No. 1). The Arbitrator must conclude that the instant grievance is not arbitrable and therefore must dismiss the instant grievance as a matter of procedural arbitrability pursuant to the Collective Bargaining Agreement. The Arbitrator's reasoning and conclusions are provided below.

As a threshold matter, the Service has raised the issue of procedural arbitrability in that the Service alleges that the instant grievance was not filed on a timely basis. (Joint Exhibit No. 2). The record evidence demonstrates that the Union received notice of the subcontracting out of elevator maintenance work on

January 24, 1995. The Union does not dispute this fact. The instant grievance was not filed until April 14, 1995. (Joint Exhibit No. 2). It is the Arbitrator's opinion that the Union failed to file the instant grievance in a timely fashion in accordance with the express time limits contained in Article 15.

The Union argues that while it did receive notice from the Postal Service of the subcontracting, the Union was never notified that the instant grievance was being denied as being untimely. The Arbitrator finds this argument to be a bit spurious in that the Union acknowledges that Step 2 raises the untimeliness issue. The Union maintains, however, that the Postal Service only raised the timeliness issue at Step 2, and not at the later stages of the grievance procedure, and therefore waived the issue.

The Arbitrator cannot agree. It is clear that the Postal Service raised the issue of timeliness as part of its Step 2 denial and in accordance with Article 15. (Joint Exhibit No. 2). The Arbitrator is in agreement with Arbitrator Levak that the sole requirement of Article 15 is that the Postal Service raises the issue of timeliness at Step 2. See, e.g., United States Postal Service and American Postal Workers Union, (Nampa, Idaho) (Arb. Levak, January 31, 1985) Case Nos. W8C-5L-C 21536 and W1C-5L-C 2970. As the Postal Service raised the timeliness issue as required, the Arbitrator cannot conclude that the Postal Service waived the issue.

The Union also contends in defense of the timeliness issue that the subcontracting work in the instant grievance involves a continuing violation. Specifically, the Union argues that each

time the Service employs a subcontractor to perform elevator maintenance, the Service violates the Contract. The Arbitrator notes that the Union did not provide any arbitral authority in support of its position on this point.

The Arbitrator is not persuaded that a continuing violation exists in the instant grievance. Rather, it appears that the act of hiring an outside subcontractor to take over elevator maintenance is a completed transaction. See also, United States Postal Service and American Postal Workers Union, (Nampa, Idaho) (Arb. Levak, January 31, 1985) Case Nos. W8C-5L-C 21536 and W1C-5L-C 2970. It is the Arbitrator's opinion that a continuing violation defense is a very limited exception to the issue of the timely filing of a grievance. To hold otherwise would subvert the grievance-arbitration procedure and allow for the filing of grievances whenever the Union felt moved to do so within the context of an alleged "continuing violation."

The Union further asserts that the Parties agreed verbally to extend the filing of the instant grievance because the Union needed further time to investigate the facts. The Union argues that the Service later withdrew or did not abide by the verbal extension to the filing of the instant grievance. The Service does not agree that a verbal agreement to extend the deadline for filing the instant grievance existed. (Service Exhibit No. 2).

The Undersigned Arbitrator must comment that a party to a grievance-arbitration process always retains the right to file a grievance (as long as it is timely) and continue to investigate further the facts involved. Indeed, it often takes quite a bit

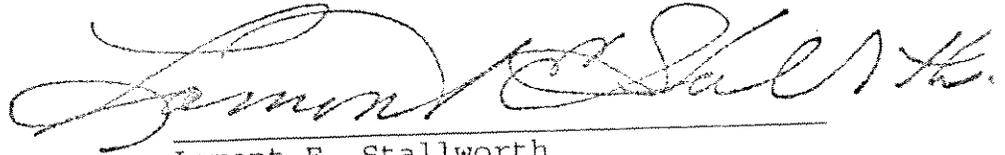
longer than fourteen (14) days to fully investigate a grievance. Nonetheless, both Parties are contractually required to submit a grievance within the proscribed time limits. If the facts that later come to light do not support the grievance, it is understood that the grievance may always be withdrawn. It is therefore the Arbitrator's opinion that the Union need not have waited three months to file the instant grievance, nor allegedly get a verbal extension to do so, while it investigated the facts of the instant grievance.

As there is no substantive proof of any verbal agreement to extend the grievance filing deadline, the Arbitrator cannot uphold the Union's position on this point. The Arbitrator further notes that his authority is limited by the express terms and conditions of the National Agreement and that he is not allowed to deviate from the written contract. The deadline for the filing of grievances is fourteen (14) days as is clearly set forth in Article 15 of the National Agreement. In the instant grievance, the Union waited from January 24 until April 14, 1995 to file the instant grievance. Consequently, the Arbitrator must conclude that the Union failed to abide by the contractual grievance filing deadlines. Accordingly, the instant grievance is untimely and is not arbitrable. The instant grievance must therefore be dismissed.

As the Arbitrator must dismiss the instant grievance based on the procedural arbitrability issue, the Arbitrator need not discuss or reach any conclusions with respect to the merits of the instant grievance.

AWARD

The instant grievance is untimely. The instant grievance is not arbitrable and is therefore dismissed.

A handwritten signature in cursive script, appearing to read "Lamont E. Stallworth", written over a horizontal line.

Lamont E. Stallworth  
Arbitrator

Signed this 8th day of February, 1999

City of Chicago  
County of Cook  
State of Illinois