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REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	Grievant: Class Action
between	)	
UNITED STATES POSTAL SERVICE	)	Post Office: Des Moines, IA
and	)	USPS Case #:E94T-1E-C 96084919
AMERICAN POSTAL WORKERS UNION, AFL-CIO	)	APWU Case #: 779611681

BEFORE: James P. Martin, Arbitrator

APPEARANCES:

For the USPS: Ann L. Olson

For the APWU: Donald L. Foley

Place of Hearing: Des Moines, IA

Date of Hearing: 9-22-05;11-22-05; 1-5-06

Date of Award: 2-3-06

Relevant Contract Provisions: Article 32; ASM 535.112

Contract Year: 1994

Type of Grievance: Contract

Award Summary

The subcontracting was improper, and a violation of the agreement. The appropriate employees will be made whole, at the overtime rate and at the rate paid in 1996, on an hour for hour basis for all time worked by the subcontractor in the installation of the fire alarm system.

James P. Martin

ISSUE

Was Management in violation of the agreement when it subcontracted the installation of a replacement fire alarm system in the Des Moines P. & D. C.? If so, what is a remedy?

NATURE OF CASE

In June, 1996, management informed the union that it intended to contract out the installation of a replacement fire alarm system. There was design work, installation of conduit, wiring, and devices, installation of and connection to a new control panel, and the maintenance of the existing fire alarm system while the replacement was installed.

The management witness testified that he gave no consideration to a cost comparison, to determine whether the subcontracting was "economically advantageous", because there were no bargaining unit employees qualified to do the work. He also testified that he considered the union was only claiming the work of running conduit and pulling wires, and if that work were assigned in-house, it would piecemeal the work, have bargaining unit employees working for the contractor, and create such scheduling nightmares that a contractor would not be interested in bidding on a the project. Further, he claimed that the bargaining unit was not capable of doing the design work, and qualified and experienced (in fire alarm system work) installers were

required to put the system together safely. He also acknowledged that bargaining unit employees did the maintenance on the then-existing system, do it today on the new system, and are qualified to make connections to system devices, frequently doing that during maintenance work.

The union witness testified that it never claimed the design work, and agreed it should be subcontracted. However, the union claimed all of the installation work from the beginning, which would obviate the problems of piecemeal performance. The requirements for a contractor to bid on the work are quite different from the competence necessary for bargaining unit employees to actually perform the work. For example, licenses are not required for maintenance employees to do work which, if done by outsiders, would require a license. A fair reading of the qualifications set out in the job descriptions of the maintenance employees show that the competence to do the subcontracted work existed within the in-house work force, excluding the design work, and maintenance employees were available at the time to perform the work.

CONTENTIONS

According to the union, before management can subcontract work which could be done by the bargaining unit, it must justify its actions under Article 32 and ASM 535.111 or 112. While this grievance was filed under ASM 535.111, management answered right up to arbitration as if that were the applicable section, where in reality the subcontracting in this case fell under ASM 535.112. Management offered no justification for its subcontracting under either section, nor under Article 32. Management's claim that the union asked only for the running of the

conduit and the pulling of wires is false, and the union asked for the complete work, less the design, from the beginning. The claim that giving part of the work to the union would piecemeal the job is a red herring, and the claim that the union could not do the work of design is another. Management has managed to turn the requirement to prove "economically advantageous" on its head, by claiming that the union must prove it would be economically advantageous to do the work in-house. The union has no requirement to prove anything concerning the economics of the work; management, to justify its subcontracting. must make that proof, and it has utterly failed to do so in this case, even admitting that it made absolutely no cost comparison of subcontracting vice doing the work in-house. The admission was in direct contradiction to its claim in the grievance processing, that it gave due consideration to the five elements of Article 32. All of management's claims of lack of qualification in the maintenance employees was based upon the requirements for a subcontractor, such as licenses and years of experience. While management admitted that maintenance employees could run conduit and pull wire, its claim that those employees could not hook up the devices is patently false, because those employees did and do that regularly in day to day maintenance and upgrading. The claim that there were not enough employees is also patently false, since there were 18 employees capable of performing all or part of the work which was improperly subcontracted. Arbitrator Block stated that no final determination may be made unless you do what you must do to reach the decision. Management acknowledged it did not take any steps to determine

whether the subcontracting was economically advantageous, and thereby failed to establish a necessary element to justify its subcontracting of the fire alarm system. Management must be found to have violated the agreement, and as a remedy, the appropriate employees should be paid at the overtime rate for all hours worked by the subcontractor's employees in the installation of the new fire alarm system.

According to management, the union initially claimed only the running of conduit and the pulling of wire, which would have piecemealed the project, and made it unmanageable for either the subcontractor or management to properly perform the work. The claim that all of the installation work could be done in-house is a new one, and should not be considered at the arbitration level. A fire alarm system which is not properly installed is life threatening, and this is not the type of work which should be assigned to bargaining-unit personnel who "might" be able to do the work properly. Management did give consideration to the five elements of Article 32, but if no bargaining unit employees were available, that is controlling in and of itself. There was neither the special talents available within the bargaining unit, nor were there employees available to do the work in-house without critically hampering the routine work for which the maintenance employees were hired. No involved employee was on layoff, and none lost any time nor money as result of the subcontracting. Finally, it must be noted that under ASM 535.112, subcontracting is encouraged for work such as the fire alarm system when it is economically advantageous. When another factor, such as the

unavailability of qualified employees in the bargaining unit, dominates the question, it is obvious that management did not violate the agreement, and the grievant should be denied

APPLICABLE CONTRACT PROVISIONS

Article 32; AS M 535.112

DISCUSSION

Since this case arose 10 years ago, it is not surprising that the parties once again confused ASM 535.111 with 535.112. This hearing went for three days because management, which should certainly have known that the contract was for facilities, not postal equipment, responded to the union without raising the question of the error. Eventually, the ruling was made that the case proceed as if filed as a violation of ASM 535.112, and this made it difficult for the advocates to present a fully coherent case. However, the facts came out, as they will, and there is sufficient evidence to rule on the grievance.

Initially, management prepared a proposal to bid for the design and installation of a new fire alarm system. The union does not challenge the subcontracting of the design of the system, and acknowledges that there is not competence within the bargaining unit to do that work. The union grieved the installation work, and at that point, management had to decide if that work could properly be subcontracted. There was adequate evidence to show that management could have subcontracted the design work separately from the installation. While the parties disagreed about

the extent of the union's challenge as to what should be done in-house, the evidence showed that maintenance employees have done all of the functions required to complete the installation, as well as running the conduit and pulling the wire. They connected devices on the old system, and have done so as well on the new. The problem arose because management considered the design and the installation to be unitary, and discounted the ability of the maintenance employees to do the entire project, an accurate assessment with which the union agreed. The union claimed that it disputed the installation work, in its entirety, as being improperly subcontracted, and that is believable because all the work involved is work which is routinely done by the maintenance employees. Why would they not claim all of the work which they routinely did? I find that management failed to consider their qualifications, and therefore their claim, because he overlaid the design work, license requirements and experience in the specifics of fire alarm systems, on employees who did not claim, or who did not need, those qualifications. The claim of the union is accepted, and the finding is made that the union effectively claimed the installation work. The defense of management that piecemeal assignment of work would be impossible is therefore discounted.

I concur with the union that the requirements of a contractor bidding the job do not apply to the maintenance employees. A contractor must have licensed employees doing certain bid work, while management does not have that restriction. A contractor might have a need for five years experience, or references from local customers, while management has no such need. The conclusion to be drawn from the above is that management improperly came to the conclusion that its own workforce was incapable of doing the work which was contracted out, because it

added to the qualifications for its own workforce, the design work which was not claimed and not necessary, and the licensing and the experience which was not necessary. Whether without these added requirements he could have considered his workforce unqualified cannot be known, because he did not make that judgment. Since he did not properly find his workforce unqualified, he was obligated to consider the other factors necessary to justify subcontracting. By his own admission, he did not do that. The subcontracting was thus improper, and a violation of the agreement.

The remedy asked for is appropriate, and a very common one. The appropriate employees will be made whole, at the overtime rate and at the rate paid in 1996, on an hour for hour basis for all time worked by the subcontractor in the installation of the fire alarm system.

AWARD

The subcontracting was improper, and a violation of the agreement. The appropriate employees will be made whole, at the overtime rate and at the rate paid in 1996, on an hour for hour basis for all time worked by the subcontractor in the installation of the fire alarm system.