

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)
between)
)
UNITED STATES POSTAL SERVICE)
and)
)
AMERICAN POSTAL WORKERS)
UNION, AFL-CIO)
)
)

Grievant: Class Action
Post Office: Des Moines, IA
USPS Case #: E94T-1E-C 96080972
APWU Case #: 779611538

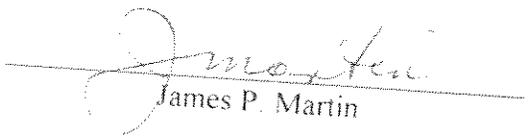
BEFORE: James P. Martin, Arbitrator

APPEARANCES:

For the USPS: Vincent Wolff
For the APWU: Donald Foley
Place of Hearing: Des Moines, IA
Date of Hearing: May 28, 2004
Date of Award: June 16, 2004
Relevant Contract Provisions: Article 19; ASM 535.112
Contract Year: 1994
Type of Grievance: Contract

Award Summary

The grievance is allowed. The carpenter shall be paid, at 1996 straight time rates, for all hours worked by the contractor in doing the contested work.


James P. Martin

ISSUE

Did management violate the National Agreement when it contracted out the work to enclose dock space at two locations in Des Moines in 1996? If so, what is the remedy?

NATURE OF CASE

By February, 1996, management had determined to enclose the open dock areas of two of the Des Moines stations. Internal discussions took place, in which Mr. Mallett was queried as to whether his staff could do any of the work. Mr. Mallett replied, about mid-February, as follows: "Verbal description of work was to frame in and install doors. At this time Carpenter is scheduled to remodel lobby at E 14th and WDM station and does not have time to complete this." Mr. Mallett informed the union by letter of May 14, 1996, that it had been determined that it was in the best interests of the Postal Service to contract out the specified work. He stated that contract cost would be approximately \$30,000, and in-house costs would be approximately \$31,400. He also stated that the lack of qualified and capable employees to perform the work, in addition to the cost savings, prompted the decision to subcontract. The union promptly filed 2 RFI's, the first not answered, the second only partially. It then filed a grievance on May 24, 1996, protesting the decision to subcontract and the claim of lack of availability of in-house employees to perform the work. Both parties referenced ASM 535.111 as applying to the decision to subcontract.

Mr. Mallett made an estimate of the work to be done, and used it to make a cost determination. The basis for the estimates was a freehand sketch, showing rough dimensions for the construction to be done. He also prepared an estimate for each station, again a most cursory outline of the projected work. The union provided management with a fully detailed estimate, grossly different from that of management. Finally, one of the items in the union's RFI was a request for all of the work orders for the first half of 1996. Management stated that all work done by the Carpenter was done by work orders, and no preventive maintenance work was done. The remodeling of the lobby in East 14th Street and West Des Moines stations do not appear on the work order list submitted in response to the RFI.

CONTENTIONS

According to the union, management grossly failed to properly determine costs to compare in-house work with contracted work. Management also claimed that there was a lack of qualified and capable employees to perform the work, and this is patently untrue. Overall, the National Agreement provides that work will be done in-house with certain exceptions, and none of those exceptions applied in this case. Management therefore violated the agreement, and the grievance should be allowed, with the remedy as requested in the grievance.

According to management, the ASM 535.111 encourages the use of postal personnel to maintain postal equipment, but with two exceptions. Those exceptions are where capable personnel are not available, and where the performance of the work by contract is economically advantageous. Both exceptions applied here. There was a single Carpenter available to do the work, in as much as a second Carpenter was on light duty and incapable of performing the work. The estimates done by Mr. Mallett clearly showed that there was an economic advantage from subcontracting. Based upon these two facts, management properly subcontracted the work, and the grievance is without merit. It should be denied

APPLICABLE CONTRACT PROVISIONS

Article 19

ASM 535.112

DISCUSSION

It is intriguing to find that each party, up to arbitration, and even a little bit during the arbitration, relied on the ASM 535.111, which is totally and absolutely inapplicable to this case. 535.111

relates to postal equipment, and this contract is not by any stretch of the imagination postal equipment. The appropriate reference in the ASM is 535.112, facility and plant equipment. The loading dock clearly falls within the "facility". Under 535.111, appears: "Maintenance of postal equipment should be performed by Postal Service personnel, whenever possible." There then follows the two exceptions set out above, absence of capable personnel and economically advantageous contracts. To the contrary, 535.112 provides: "Contract service is encouraged for Postal Service-operated facility and plant equipment maintenance, when economically advantageous." All of the evidence and argument made by the parties relating to 535.111 was ignored, because it has no bearing upon the issue presented in the grievance.

535.112 provides that contract service is encouraged, when economically advantageous. If the contract in this case were economically advantageous, management was not in violation of the agreement. However, a reasonable and rational determination that a contract is economically advantageous is a prerequisite for the application of 535.112. There was no such showing in this case. Arbitrator Roumell, in a hearing only two months prior to this one, had basically the same question presented to him. He found that the same Mr. Mallett involved in this case again was "plainly erroneous" in his cost estimates. To quote from Arbitrator Roumell: "This is not a question of being incorrect. It is a question of using labor costs and parts cost in the cost analysis that were not factually correct. Therefore, arguably, this becomes a question -- again, using the Mittenhal language -- where the facts make it "almost irresistible" that management had not given due consideration." There was no evidence presented that Mr. Mallett did anything but make rough estimates, far rougher than would enable him or anyone to come up with a reasonable cost figure. No reason was shown for not having a contractor provide an estimate to establish the contract costs. A study by the union of in-house costs, using actual numbers instead of off-the-wall estimates, revealed Mr. Mallett's estimates for in-house costs were 50% in excess on one job and 62 % on the other. There is no convincing evidence at all that the contracting of the work was economically advantageous, which finding is all that is required to make management in violation of ASM 535.112.

The unavailability of competent help is equally lacking in any persuasive proof. Management acknowledged that all the Carpenter's work was done on job orders. In Mr. Mallett's response to a request as to the availability of his maintenance people to perform the work, he stated that: " At this Time Carpenter is scheduled to remodel lobby and E 14th Street and WDM stations and does not have time to complete this." This was written early in February, 1996. In response to the union's RFI, all the work orders for December through May, 1996 was provided, and not one of those work orders related to the job for which the Carpenter was "scheduled". If the Carpenter was not scheduled through a work order even three months after Mr. Mallett said he was, then the credibility of Mr. Mallett's statement is nil. The Carpenter testified that he had spent much of the interim time performing "make-work" jobs, and he would therefore have been available to perform the contested work, rather than contracting it out.

To summarize, ASM 535.112 encourages contract service for facility maintenance, when economically advantageous. There is no credible evidence that the contract involved was economically advantageous, and in fact, substantial evidence to the contrary. There is no credible evidence that qualified personnel were not available, and to the contrary, evidence that such personnel were available. Management therefore violated ASM 535.112 and the grievance is allowed. As a remedy, the Carpenter will be paid, at 1996 straight time rates, for all hours worked by the subcontractor in performing the contested work.

AWARD

The grievance is allowed. The carpenter shall be paid, at 1996 straight time rates, for all hours worked by the contractor in doing the contested work.

