

American Postal Workers Union, AFL-CIO

GRIEVANCE STATUS LETTER (CENTRAL REGION)

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

APWU-USPS NAT. GRIEVANCE

WORK LOCATION CITY AND ZIP CODE FROM LINE 10

DES MOINES, IA.

USPS REGIONAL GRIEVANCE

194T-11-C96075846

CONTRACT ISSUE

ARTICLE 32 -- SUBCONTRACT

CRAFT

MAINTENANCE

APWU REGIONAL GRIEVANCE

14690

DATE

May 1, 2000

APWU LOCAL GRIEVANCE

779611371

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

D/A: 4/3/00 REG
SUSTAINED
ADVOCATE:
Donald Foley

WITHDRAW FROM STEP 4 OR ARBITRATION

SETTLEMENT

ARBITRATION AWARD

NATL. CERTIFICATION

LOCAL CERTIFICATION

Arbitrator's Statement -- George Lamey

\$1,332.90 -- D/H: March 30, 2000

ATTACHED IS DOCUMENTATION IN SUPPORT OF ACTION INDICATED

The Arbitrator stated, "The disputed work in question of cleaning exterior glass is found to have been wrongly contracted-out in March of 1996 in violation of applicable cited provisions of the National Agreement (Jt. Ex. 1) as well as cited provisions of applicable handbooks and manuals."

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

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

LFP:Inf

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION

BETWEEN

EMPLOYER

UNITED STATES POSTAL SERVICE

AND

UNION

AMERICAN POSTAL WORKERS UNION,
AFL-CIO

GRIEVANT: CLASS ACTION

POST OFFICE:

DES MOINES, IOWA, P&DC

CASE NO: I94T-1I-C 96075846

BEFORE: GEORGE EDWARD LARNEY

APPEARANCES:

FOR THE POSTAL SERVICE:

JANET S. ADES
Labor Relations Specialist

FOR THE UNION:

DONALD L. FOLEY
National Business Agent
Maintenance Division

PLACE OF HEARING:

1165 Second Avenue
Des Moines, IA 50318

DATE OF HEARING:

MARCH 30, 2000

DATE OF AWARD:

APRIL 3, 2000

CONTRACT YEAR:

1994-1998

TYPE OF GRIEVANCE:

Contract

AWARD SUMMARY

The disputed work in question of cleaning exterior glass is found to have been wrongly contracted-out in March of 1996 in violation of applicable cited provisions of the National Agreement (Jt. Ex. 1) as well as cited provisions of applicable handbooks and manuals.

GRIEVANCE SUSTAINED.


GEORGE EDWARD LARNEY
Arbitrator

WITNESSES: (in order of respective appearance)FOR THE EMPLOYER

LESLIE NATION
 Laborer Custodian
 Level 3

DAVID MALLET
 Manager, Maintenance

FOR THE UNION

JERRY SIMMONS, JR.
 Laborer Custodian
 Level 3

BOBBY LEE CROOK
 Laborer Custodian
 Level 3

BRIAN HERRON
 Labor Custodian
 Level 3

OTHERS PRESENT AT THE HEARING:FOR THE EMPLOYER

NONE

FOR THE UNION

DAN LABLANC
 Maintenance Craft Director
 Des Moines, IA - APWU

ISSUE

Absent a joint stipulation by the Parties as to the issue properly before the Arbitrator for resolution on the merits, the Arbitrator, upon consideration of the Parties' respective statements of the issue, frames the issue before him to be as follows:

Did the Employer violate applicable provisions of the 1994-98 National Collective Bargaining Agreement (Jt. Ex. 1), but in particular Article 32 and the associated Memorandum of Understanding regarding subcontracting of cleaning services and, provisions of applicable handbooks or manuals, as well, when, on March 6, 1996, Management at the Des Moines Processing and Distribution Center (P&DC) contracted with Larry's Window Service, Inc., a private sector window cleaning business, to wash all the exterior windows and glass plates above the first floor (top three floors) on the west side of the Des Moines P&DC, notwithstanding the fact that, the work is reserved to Custodial Maintenance (Jt. Ex. 5) and budgeted at approximately thirty-one and a half (31.5) hours?

If so, what shall be the appropriate remedy?

RELEVANT DOCUMENTATIONI. APPLICABLE CONTRACT PROVISIONS (Jt. Ex. 1)

- §§ 19, 32

II. APPLICABLE HANDBOOK AND MANUAL PROVISIONS

- A. Administrative Support Manual (Jt. Ex. 3)
 Section 535 Maintenance Service Contracts
 Sub-sections: 535.11; 535.112; 535.21; 535.22; 535.23;
 535.24; 535.261;
- B. Maintenance Series Handbook - MS-47 (Jt. Ex. 4)
 Chapter 1 - Introduction
 Sections 112; 116; 131; 142; 143;
- Chapter 2 - Determining Staffing Requirements
 Sections 211; 221.9c&l);
- Chapter 4 - Performance Standards
 Section 430c&d
 Exhibit C

MOTION

The Postal Service moved to sequester witnesses and, absent any objection by the Union, the Arbitrator granted the motion.

STIPULATIONS

At the hearing, the Parties entered into the following stipulations:

- All Grievants affected by the issue in dispute are Level 3 Laborer Custodians but, had they been utilized by Management to perform the window cleaning work in question, they would have been compensated at higher level 4 pay.*/

*/ The Arbitrator notes the record evidence reflects that at the time the grievance was filed, the 1995 hourly rate of pay for Level 4 rated employees was \$25.29 (Jt. Ex. 10).

- If the lift piece of equipment known as the Simon Boxer 120 is situated on the sidewalk located on the west side of the Des Moines P&DC, the extension from its center, in order to be positioned at the windows, has to be thirteen (13) feet.

Once extended, the Simon Boxer 120's boom is operable meaning, it can be raised, lowered, and rotated.

- All of the exterior windows and glass panels located on the west side of the Des Moines P&DC equal the square footage of 5,253 that is referenced on line 42 of the Maintenance Workload Analysis and Summary, Form 4852 (Jt. Ex. 5).

BACKGROUND

Bobby Lee Crook, who commenced his employment at the Postal Service as a Laborer Custodian Level 3 in February of 1980 and remained in that position until sometime in 1986, testified that during the time he was a Laborer Custodian assigned to work at the Des Moines, Iowa P&DC, he and other Laborer Custodians, Level 3 washed all the windows and glass panels on the west side of the building, all five (5) levels, on both the interior and exterior sides. Crook noted that washing both sides of the windows was done from inside the building explaining that, at the time, the windows were on pivots and could be completely turned around. Crook further related that window washing was work that was scheduled to be performed as part of one's custodial route assigned duties on a quarterly basis. Crook testified that sometime in the mid-1980s, all the windows and glass plates (panels) were sealed in an effort to reduce and/or eliminate wind drafts and, as a result, it was no longer possible to wash the exterior of the windows and glass plates from inside the building.¹ After the windows and glass plates were sealed, Maintenance Management contracted out the work of washing the exterior side of all the windows and glass plates to a private

¹ Crook also explained that as part of the effort to eliminate wind drafts, plexiglass was also put over the interior side of the windows. Thus, in order to wash the interior side of the windows, it is now necessary to remove the plexiglass first and wash the plexiglass, then wash the interior side of the window and remount the plexiglass.

sector firm. Crook explained that between the mid-1980s when the windows were sealed and up until 1996, the Union did not file a grievance contesting the contracting-out of this work that was reserved to Level 3 Custodians because the P&DC did not have any equipment to reach the highest three (3) levels of windows and glass plates. However, according to David Mallett, the Maintenance Manager, the Des Moines P&DC acquired a lift piece of equipment known as the Simon Boxer 120 sometime in and around October of 1993 at a purchase price of approximately fifty-five thousand (\$55,000.00) dollars. According to the manufacturer's specifications, the Simon Boxer 120 has a maximum working height of 38.7 feet (11.8 meters) and a maximum outreach (extension) of 22.96 feet (7.0 meters).² Mallett maintained in his testimony that the Simon Boxer 120 was purchased primarily for the specific purpose of changing lights inside the P&DC plant above the workroom floor.³ Mallett noted that at the time the P&DC acquired the Simon Boxer 120, there was a ramp that was used to drive this lift piece of equipment inside the plant but, subsequently, due to making the plant handicap accessible, that ramp no longer exists. As a result, it is now tricky to maneuver the Simon Boxer 120 inside the plant but, with some degree of difficulty, it can be accomplished.

Jerry Simmons, initially employed at the Postal Service in the Mail Handler Craft in May of 1991, transferred into the Laborer Custodian position at the Des Moines P&DC sometime in March of 1992. Between 1992 and 1997, Simmons was assigned to the Des Moines P&DC and then in September of 1997, he transferred to the Pleasantville Station. During his approximately 5 1/2 year tenure at the P&DC, Simmons assumed the position of a Union Steward for a period of about a year to a year and a half. Crook testified that after Postal Management had utilized the services of the private sector firm, Larry's Window Service, Inc., on a contracting-out basis to wash the top three (3) levels of windows and glass plates on the west side of the building in March of 1996, Simmons came to him and raised the issue of this contracting-out of custodial work. Crook related he explained to Simmons the reason why the work had been contracted-out after the windows and glass plates were sealed, to wit: the P&DC did not have the equipment to reach the windows

² The Arbitrator notes that the listed specifications for the Simon Boxer 120 for height, width, length, and extension are all expressed in metric measure, specifically in meters (Jt. Ex. 8). Thus, the Union submitted as part of Joint Exhibit 8 a translation excerpted from an American dictionary showing that the equivalent measure of one (1) meter expressed in feet and inches is 39.37 inches which is greater than a yard.

³ Mallett noted that given the fact of its extension and height capabilities, the Simon Boxer 120 is able to be maneuvered around all the automation equipment on the plant floor, primarily, the OCRs and the VCSs.

from the outside. Simmons testified he approached Maintenance Manager Mallett about outside contractors being utilized to perform the custodial work of washing the exterior side of the windows and glass plates (Jt. Ex. 5) and that Mallett told him the P&DC did not have the proper equipment to accomplish the work nor, anyone with the expertise to operate such equipment. Simmons testified he disputed what Mallett told him advising Mallett that the P&DC had the Simon Boxer 120 in the garage, that it could be used to wash the top three levels of windows and glass plates on the exterior side and, that he knew how to operate the Simon Boxer 120. According to Simmons, Mallett took issue with his contention, asserting that the Simon Boxer 120 could not reach the top windows. Simmons, intent on proving whether his or Mallett's position regarding the capability of the Simon Boxer 120 was correct, testified he fashioned an experiment whereby, he dropped a rope with a bolt at the end of it from the top of the P&DC plant building to the ground as a way of measuring the height of the top row (5th row) of windows/glass plates.⁴ Simmons explained he then drove the Simon Boxer 120 out of the garage, raised the boom to its maximum height, extended the boom out a few feet and then dropped the same length of rope from the Simon Boxer 120 he had dropped from the top of the P&DC plant building. Simmons asserted in his testimony that the rope with the bolt at the end of it hit the ground, thereby establishing that when raised to its maximum height, someone standing in the cage of the Simon Boxer 120 using an eight (8) foot extension squeegee, could, in fact reach the top row of windows/glass plates to wash their exterior side.⁵ Simmons

⁴ According to a copy of a blueprint of the west exterior of the Post Office, the lowest or first row are glass panels (plates), the next higher or second row are windows, the third row are glass panels, the fourth row are windows and the highest or fifth row are glass panels (Jt. Ex. 9).

⁵ Simmons related that Les Nation, another Laborer Custodian, assisted him in performing this experiment when dropping the length of rope which equalled the height of the top of the P&DC plant building to ground, from the maximum height of the Simon Boxer 120. According to Simmons, Nation stood on the ground when he dropped the rope from the maximum height of the Simon Boxer 120's boom for the sole purpose of verifying that the rope hit the ground. However, Nation, who was called to testify in this arbitral proceeding by the Employer, opined that, in his judgment, he does not believe the Simon Boxer 120 has the capability of reaching the very top or fifth row of glass panels on the west side of the P&DC plant building. However, Nation conceded in his testimony he does not actually know for a certainty that the Simon Boxer 120 would not reach the very top row of glass panels because he never has tried to do that with the 120 lift machine. Nation noted that he is assigned exclusively to work in the garage and he

(continued...)

testified that after he verified his position regarding the use of the Simon Boxer 120 to wash the exterior windows on the west side of the Post Office building was correct and Mallett's position was not, he informed Mallett of his finding and that, in response, Mallett said to him that, in all honesty he preferred to utilize professional window cleaners to wash the exterior side of the windows because they left no streaks in cleaning the windows. Mallett asserted in his testimony that he has no recollection of any conversation he had with Simmons regarding the experiment Simmons claims he conducted with the Simon Boxer 120 vis-a-vis the windows and glass panels on the west side of the P&DC plant building.

The record evidence reflects that on March 28, 1996, three (3) weeks after Larry's Window Service, Inc. performed the window washing work here in dispute, Simmons, a then incumbent Union Steward, filed the grievance that is the subject of this arbitration. Simmons alleged in the Step 2 written grievance appeal that the Maintenance Custodians at the P&DC were staffed to perform the disputed work at higher level pay, meaning Level 4, and contended that the P&DC had the equipment to accomplish the work in question. Simmons opined that had Management abided by the applicable provisions of the Agreement (Jt. Ex. 1), three (3), possibly four (4) custodians would have been utilized to perform the disputed work that had been contracted-out, and been paid Level 4 pay for eight (8) hours each. The remedy requested by the Union was, that Management cease and desist contracting-out custodial work in violation of the Agreement (Jt. Ex. 1), and that the next three (3) people in rotation be paid immediately eight (8) hours each at 150% of basic hourly rate.⁶ A perusal of the Step 2 denial

⁵(...continued)

has used the Simon Boxer 120 to dust the garage ceiling and change lights inside the garage and to wash the outside walls of the garage. It is noted by the Arbitrator that there was general agreement in discussion that occurred during the field trip, that the height of the garage building is about half the height of the P&DC plant building.

⁶ Although no specific monetary sum was identified, a calculation of what was then being requested equals nine hundred ten dollars and forty-four cents (\$910.44). This figure is derived from the following calculation: a total of 24 hours multiplied by the Level 4 pay rate at the time the grievance arose which was \$25.29. This calculation (24) (\$25.29) yields a total in dollars and cents of \$606.96. As the Union was requesting that a penalty of fifty percent (50%) be applied to compensate for the violation, this calculation yielded an additional \$303.48 in pay (\$606.96 (50%). The grand total of \$910.44 was derived by adding the two monetary sums of \$606.96 + \$303.48 (Jt. Ex. 10). However, the
(continued...)

of the grievance by Management authored by Maintenance Manager, Mallett contended the Postal Service had not violated the National Agreement (Jt. Ex. 1) in contracting-out the work and too, that it followed the procedures set forth in Section 535 of the Administrative Support Manual (Jt. Ex. 3). With respect to the former, but more specifically Article 32 of the Agreement (Jt. Ex. 1), Mallett stated that pursuant to Article 32, the Postal Service was obligated to give due consideration to public interest, cost, efficiency, availability of equipment and qualification of employees when evaluating the need to subcontract. Mallett asserted that consideration was given these factors and that the equipment at the P&DC would not reach all of the windows that were washed by the outside contractor and, as proof in support of this determination, Mallett attached the specifications listed for the Simon Boxer 120 lift and the height of the plant building. With respect to the cost considerations, Mallett noted that according to his calculations, it would have cost the Postal Service a total of \$606.96 had it used custodians to wash the windows whereas, in utilizing the outside contractor, Larry's Window Service, Inc., it only cost the Postal Service a total of \$375.00 (Jt. Ex. 7) [see fn. 6, supra for the cost calculations supporting the monetary sum of \$606.96]. Mallett contended that by contracting-out the disputed work, the Postal Service saved \$231.96, a figure arrived at by subtracting the \$375.00 paid to Larry's Window Service, Inc. from the total of \$606.96 that would have been paid to custodians.

Mallett testified that although the total of \$375.00 charged by the outside contractor, Larry's Window Service, Inc., covered all five (5) rows of windows and glass panels, he nevertheless, had the contractor wash only the top three (3) rows of windows and glass panels and assigned the bottom two (2) rows to be washed by the custodial staff. Mallett testified that the outside contractor used lift equipment that was twice the size of the Simon Boxer 120 and that it took the contractor between four (4) and six (6) hours to wash all the windows and glass panels on the top three (3) rows of the plant building whereas, it took sixteen (16) man hours of custodial labor to clean all the windows and glass panels on the bottom two (2) rows of the plant building (one custodian over two

⁶(...continued)

Arbitrator notes this initial remedy was modified by the Union at Step 2 through submission of an additions and corrections filing. Accordingly, the modified remedy requested is to take the sum of \$375.00 paid to Larry's Window Service, Inc. and divide this amount equally among the Tour 2 custodians on the Overtime Desired List (OTDL) with the caveat that Management cease and desist the contracting-out of custodial work.

days, eight (8) hours each day).⁷ Mallett justified not using Larry's Window Service, Inc. to wash the bottom two (2) rows of windows on the rationale that Maintenance personnel were deemed by Management to be capable of performing the work and that equipment

⁷ The Arbitrator notes that Mallett's contention he saved the Postal Service \$231.96 by using Larry's Window Service, Inc. to wash the windows as opposed to using in-house custodial staff to perform the work in question is illusory given the fact that he utilized the services of both the outside contractor and in-house custodial staff to wash all the windows and glass plates. Mallett asserted that the sum of \$375.00 charged by Larry's Window Service, Inc. was the charge that covered all five (5) rows of windows and glass plates. Thus, had Mallett actually utilized the outside contractor to perform the disputed work in its entirety, his assertion that he saved the Postal Service \$231.96 could very well be deemed valid. However, in utilizing both the outside contractor and in-house custodial staff to perform the work, the actual cost amounted to the \$375.00 paid to Larry's Window Service, Inc. plus the total of sixteen (16) custodial hours paid at the Level 4 rate of pay of \$25.29 which totals to \$404.64. Thus, the total cost of washing all the windows and glass plates amounted to \$779.64 (\$375.00 + \$404.64). As an aside, the Arbitrator notes that the staffing package for custodians at the P&DC (Jt. Ex. 5) allowed approximately 31 hours and 34 minutes for performing the disputed work of washing exterior glass which translates into a total budgeted cost of \$796.64. The Arbitrator notes however that this cost savings calculation is wholly dependent on the assumption that in-house custodians have the ability to perform all of the work in question in the allotted staffing time of 31 hours and 34 minutes. Ironically, the record evidence suggests this assumption might be incorrect as it was noted in testimony it took one (1) custodian sixteen (16) hours to wash the first two (2) rows of windows and glass plates. Furthermore, from his own observation, the Arbitrator took judicial notice of the fact that the very first row of glass plates (the lowest level) were shorter in dimension than the other four (4) rows on top. Presumably therefore, it would take someone cleaning the lower panel of glass plates less time to complete the job than it would to clean the other levels of windows and glass plates. However, assuming a straight-line progression, if it took eight (8) hours for one (1) custodian to clean each row of windows and glass plates, it would require a total of 40 hours to complete the entire job. Thus, the total cost would amount to \$1,011.60. If the budgeted amount of \$796.64 is subtracted from this total, it would actually cost \$214.96 more to utilize the custodians to complete the job. If, in fact it took custodians 40 hours to complete the work in question then, by Mallett using a combination of Larry's Window Service (\$375.00) and one custodian (\$404.64) instead of using custodians to perform the work in its entirety (\$1,011.60), the cost savings accrued equals the identical amount of \$231.96 (\$1,011.60-\$779.64) Mallett contended he saved.

was available at the P&DC to facilitate the washing of the windows on the lower two (2) levels. The record evidence reflects that pursuant to its right to file an Additions and Corrections section at Step 2 of the Grievance Procedure, the Union modified its requested remedy (see fn. 6, supra) but, at the same time, it seized the opportunity to expound its position that the Simon Boxer 120 the P&DC owned was indeed equipment that would allow custodial staff to perform the disputed work and to do so safely. The Union asserted that based on the specifications for the Simon Boxer 120 submitted to it by Mallett, the Simon lift has an operating envelope of at least eleven (11) meters when extended out (boomed out) at four (4) meters. The Union noted that according to the blueprints of the P&DC building submitted to it by Mallett, the distance from the highest point at which the top level of windows would be from the ground was determined to be less than 44 feet, 7 1/2 inches. The Union asserted that the Simon Boxer 120, with an envelope of eleven (11) meters is equal to a fraction over 36 feet and concluded that with a standard telescoping handle for the squeegee, the eight (8) foot difference (the 44' 7 1/2" minus 36') is not even an issue as Mallett stated in his written Step 2 denial (Jt. Ex. 2, p. 5).⁸ In its Step 3 appeal of the grievance, the

⁸ The Arbitrator notes that at the hearing, the Employer submitted into evidence what it characterized as its written response to the Union's Additions and Corrections filing (Emp. Ex. 2) which brought forward a vehement objection by the Union predicated on the argument that the National Agreement (Jt. Ex. 1), specifically Article 15 does not make provision for the Employer to make such a rebuttal filing. The Union further argued that such opportunity for a rebuttal response by the Employer is provided for at Step 3 of the Grievance Procedure and that here, in the case at bar, the Employer failed to avail itself of this proper opportunity and therefore, any rebuttal response constitutes new argument automatically barring it from consideration by the Arbitrator. The Arbitrator notes that provisions set forth in Article 15.2 Step 3(c) supports the underlying rationale of the Union's objection which language states unambiguously, the following: "[s]uch [Step 3] 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." While procedurally, the Union is one hundred percent correct in its objection on technical grounds, nevertheless, within the context of all the discussion that occurred between the Parties regarding the disputed work in question even prior to the issue being formally grieved, the Employer's rebuttal filing which, admittedly should have been included in its Step 3 response, is found by the Arbitrator **not** to constitute new argument. Mallett's initial response to Simmons when first confronted by him as to why the subject disputed work had been contracted-out was that, the P&DC did not have, at its disposal, the proper equipment to perform

(continued...)

Union took the position that since the hours for cleaning exterior glass was included in the custodial staffing package, this represented, regardless of any estimated cost savings, work guaranteed to the custodial work force. The Union claimed that technically there was no cost savings that accrued to the Postal Service but, in fact, Management incurred an additional cost of \$375.00 by utilizing the services of an outside contractor since monies had already been budgeted and line itemed to pay for the work.⁹ In its Step 3 denial of the grievance, the Postal Service repeated the very same arguments it set forth in its Step 2 denial in support of its decision to contract-out the disputed work in question, to wit: window cleaning can be contracted when economical and it was determined that cleaning the three (3) levels of windows and glass panels above the first floor could be more economically and efficiently cleaned by a contractor service.

⁸(...continued)

the work in question and that Simmons did not agree with Mallett's assessment. Thus, the Union formally challenged this assessment in its Additions and Corrections filing by analyzing the measurements and distance capabilities of the P&DC plant building and the Simon Boxer 120 respectively. In its rebuttal response titled, "Response to Additions and Corrections," the Employer asserted the Union's interpretation of the specifications of the Simon lift with respect to its reach (extension) was incorrect. The Employer asserted in counter-argument that at 11 meters, the operator's cage is extended immediately above the lift and allows for no reach. A reach of at least 12 feet across an opening between the building and sidewalk allows only for a maximum working height of 7.5 meters (24.5 feet) [Emp. Ex. 3]. The Arbitrator is persuaded that the Employer did not surrender this initial argument, though articulated in far less detail in the pre-grievance stage, by failing to relate it in its Step 3 response and incorrectly stating it in a non-contractually provided format of a Step 2 response to the Union's Additions and Corrections filing. The more proper view of the Employer's procedurally incorrect response is that of an attempt to clarify, in greater detail, an argument it explicitly advanced at Step 2 of the Grievance Procedure which it supported by submitting to the Union the specifications of the Simon Boxer 120 and the blueprints of the P&DC plant building.

⁹ The Arbitrator notes that, based on the Union's perception of the actual cost incurred in having the disputed work performed by an outside contractor when monies had already been appropriated to have the work performed by in-house custodians, the actual cost amounted to the sum total of this appropriated amount, specifically \$796.64 (see fn. 7, supra), plus the fee paid to Larry's Window Service, Inc. of \$375.00 which equals the grand total of \$1,171.64.

At the hearing, the Parties and the Arbitrator took a field trip to the P&DC garage whereat, Laborer Custodian, Brian Herron, a qualified expert in operating equipment of 56 different sizes and varieties during seventeen (17) years of experience in the military prior to his employment at the Postal Service, drove the Simon Boxer 120 out of the garage to demonstrate its lift capacity both at its maximum height and full extension. After the field trip was conducted, the hearing resumed and during the course of testimony given by Mallett, Mallett again asserted that, in his opinion, a custodian in the cage operating the Simon Boxer 120 would, at the extension necessary to bring the cage in cleaning distance of the windows and glass panels from where it was located on the sidewalk, would only bring the custodian at about eye level to the bottom of the very top level of glass panels. At this point the Arbitrator caucused privately with the Parties' respective advocates and informed them that in order to resolve the very fundamental contention between the Parties as to whether or not the Simon Boxer 120 could, in fact, reach the height and extension necessary to permit a custodian to clean the top level of glass panels, he wanted to have the Simon Boxer 120 brought around from the garage to the west side or front of the building for an ad hoc demonstration. When this plan was announced to all those in attendance at the hearing, Mallett stated it was his belief that, given the newly constructed addition to the P&DC plant building (completed within the last 18 months) and literally, the layout and terrain of the land and pavement the Simon Boxer 120 would have to be driven over to get to the west side of the Post Office building which is its front side, he had great concerns about safety to both the lift and the operator which would be Herron. The Arbitrator notes that the safety issue now expressed by Mallett was, in fact, a concern that had never before been raised by Postal Service Management regarding the possible use of the Simon Boxer 120 by custodians to perform their designated duty of washing exterior glass at the P&DC. However, prior to Mallett's testifying, Labor Custodian, Les Nation called as an Employer witness related that about eighteen (18) months ago, Supervisor Brian Pietig directed him to drive the Simon Boxer 120 to the west or front side of the Post Office building for the purpose of changing out the rope on the flag pole. Nation noted that in order to get the Simon Boxer 120 around the front of the Post Office, he had to, at some point in the short journey from the garage, drive the Simon Boxer 120 on the grass. In so doing, Nation explained, the Simon Boxer 120 sunk in the ground.¹⁰ Simmons interjected that at some earlier time he had requested of Mallett to drive the Simon Boxer 120 around to the front side of the Post Office building in order to conduct an

¹⁰ It was noted in the demonstration of the Simon Boxer 120 during the field trip, that this lift equipment was built to be driven on hard surfaces. It is therefore possible, it was noted, to drive the Simon Boxer 120 on grass, as long as the grass is not wet and soggy.

actual test to either prove or disprove the results of his experiment but, Mallett had refused said request. The Arbitrator assured Mallett that if, at any point in bringing the Simon Boxer 120 around to the front of the Post office he felt it was unsafe to proceed any further, that the test would be stopped. However, the Arbitrator explained, without definitive evidence establishing whether or not the Union's position was correct regarding the capability of the Simon Boxer 120 to be used by custodians to perform the disputed work that was acknowledged to fall within their jurisdiction of job responsibilities, the Arbitrator was prepared to, in effect, make a bench decision favorable to the Union, which meant, sustaining the grievance in its entirety. With that understanding, Herron proceeded to the garage and drove the Simon Boxer 120 around to the front side of the Post Office building along the same route through the parking lot the Parties and the Arbitrator had walked after concluding the field trip. At the point Herron had to drive over a concrete rise to access the sidewalk or a lower concrete rise to access the lawn area to drive over to the sidewalk, Mallett ordered the test to end based on his safety concern that the Simon Boxer 120 would tip over given its center of gravity if driven over either of the concrete rises and the potential of injury to Herron should the Simon Boxer 120 lose its stability. It was noted that on one occasion, as a means of getting the Simon Boxer 120 to the front side of the Post Office building, it was driven on the street, but that too, after it was done, was deemed to be unsafe.

Upon ending the proposed test, the hearing concluded and was adjourned.

OPINION

As the Arbitrator apprised the advocates at the hearing, without resolving the threshold issue involving the fundamental difference extant between the Parties as to whether, in fact, the Simon Boxer 120 is a piece of equipment capable of being used by custodians to wash all levels of windows and glass panels along the west side of the P&DC plant and Post Office building, by an actual test of the Simon Boxer 120, his judgment would constitute nothing more than a third opinion based, more or less, on conjecture, given the specifications of the Simon Boxer 120 and the measurements of the P&DC plant and Post Office building as delineated by a copy of the blueprint, both submitted into evidence. Without this actual knowledge, the Arbitrator is persuaded it would be unfair to render a ruling predicated solely on the contention, asserted by the Employer, that it utilized the services of the private contractor to perform the disputed work of washing exterior glass of the building because, in its determination, it was more economical than to assign the work to custodians who, in any event, are unable to perform the entire job of cleaning all levels of windows and glass panels due to the fact they do not have the appropriate lift equipment at their disposal. Based on what was discussed in the preceding Background section regarding the economics of utilizing a private contractor to perform the disputed work in question, it is even dubious, at best, to accept the proposition that a savings of two hundred dollars plus (\$200.00 +), if one accepts the Postal Service's view of the savings accrued as a valid one, is significant enough to deprive custodians of performing work that falls within their work jurisdiction, as evidenced by their undisputed staffing requirements (with respect to this point, the Arbitrator refers the Parties to fn. 7 that begins on p. 9 of this Opinion and Award).

The Arbitrator is fully aware that his decision in this case will not be dispositive of this matter when it next arises, as it definitely will, because Management has continued to utilize the services of a private contractor to perform the disputed work in every year following 1996, the year the subject grievance was filed, and has indicated it will do so in future years beginning this year of 2000, since the work in question is now performed annually sometime during the summer months. However, in any subsequent grievance that the Union might elect to file concerning this issue, the Employer will have to demonstrate, without doubt, either or both contentions that one, the Simon Boxer 120 is not capable of being utilized to perform the work in question and, two, that even if the Simon Boxer 120 is determined to have the height and extension capability to enable a custodian to clean all levels of windows and glass panels, that the driveability and actual operation of this piece of lift equipment does not constitute a potential safety risk or problem to either the equipment or the operator or, to both. However this is to be demonstrated lies

strictly within the sphere of the Employer's decision-making and judgment; but it occurs to the Arbitrator that the most straightforward way of accomplishing this objective is by way of conducting an actual test as was attempted during the course of this arbitration. Mallett's reluctance to jeopardize Herron's safety and potential damage to an expensive piece of equipment at the time of the hearing is quite understandable, as he is the one who bears the burden of responsibility for both named potential hazards. However, prospectively, Management now has the opportunity, afforded by a few intervening months of time, to determine how it wants to proceed in this matter and, the Arbitrator trusts, that the Union will play whatever positive role it can play in bringing about closure of this issue.

Based on the foregoing discussion, the Arbitrator, as indicated at the hearing, rules to sustain the subject grievance in its entirety.

A W A R D

Based on the rationale set forth in the preceding Opinion section, the Arbitrator finds the Employer to have been in violation of the applicable provision(s) of the National Agreement (Jt. Ex. 1) and the applicable sections of cited handbooks and manuals when, in March of 1996, it contracted-out the work of cleaning exterior glass reserved to Laborer Custodians, Level 3, thereby depriving custodians of performing said work. Accordingly, the Arbitrator rules to sustain the grievance in its entirety and directs the Employer to implement the amended remedy requested by the Union at Step 2 of the Grievance Procedure as soon as practicably possible.

GRIEVANCE SUSTAINED.



GEORGE EDWARD LARNEY
Arbitrator

Chicago, Illinois
April 3, 2000