



National Postal Mail Handlers Union

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August 23, 2022

TO: All Local Presidents/Regional Directors and National Executive Board

FROM: Paul Hogrogian, National President *PH*
Teresa Harmon, Manager, CAD *TH*

RE: National Arbitration Decision: Article 32 and the Subcontracting of the Kansas City STC

We are extremely pleased to announce that the NPMHU has prevailed in National arbitration concerning the Postal Service's decision to subcontract Mail Handler work at the Kansas City Surface Transportation Center or STC. A copy of the decision is attached. The award also should apply to several other STCs that have been subcontracted, and favorably interprets several prior National awards under Article 32 and related contract provisions.

This case began in August 2019, when the Postal Service first notified the NPMHU at the National level that the Postal Service had decided to subcontract all mail handler work at the Kansas City STC, scheduled for opening and staffing in September 2019. The National Union initiated a grievance at the Step 4 or National level, followed by additional grievances during subsequent months arising from similar situations in Chicago, Orlando, Atlanta, Washington DC, New Jersey, Massachusetts, Southern California, and Northern California.

Six days of hearings were held ending in October 2021, during which the NPMHU argued that the USPS action was a blatant violation of Article 32 of the parties' National Agreement, as well as a violation of the Memorandum of Understanding Re Article 32 that has appeared in all National Agreements since 2013. Specifically, the Union argued that both Article 32.1B of the National Agreement and the MOU re Article 32 provide for advance notice and discussions with the Union while the Postal Service is "developing the initial Comparative Analysis Report."

We also argued that the Postal Service is required, among other things, to consider the views of the Union before making its subcontracting decision, to respond to the Union's views in its decisional document, and to not make any final decisions on contracting out work prior to discussing the matter with the Union. Serving as witnesses for the NPMHU were Chris Bentley, President of Local 297 covering Kansas and Western Missouri; Teresa Harmon, Manager of the National CAD; and Paul Hogrogian, National President.

Attempting to excuse these violations of Article 32, the Postal Service claimed that "[n]o significant impact to the bargaining unit is anticipated," and that therefore Article 32's procedural and substantive rules did not apply to any decision to subcontract one or more STCs. In the alternative, USPS also claimed that its decisions in Kansas City and elsewhere were eminently reasonable.

Each of the USPS management arguments were soundly rejected by National Arbitrator Daniel Brent. As a summary of his award, Arbitrator Brent stated as follows:

The Postal Service violated the National Agreement by the manner in which the Postal Service implemented the subcontracting of the Kansas City, Kansas STC. The Union's grievance is sustained.

The Employer failed to provide the Union with an opportunity, as required by the Article 32 Memorandum of Understanding, to propose different percentages of, or hourly rates for, MHA's to ensure competitiveness with outside services before the Employer decided to subcontract the Kansas City STC. The Employer also neglected to consider the potential impact of future expansion of the STC network when determining that subcontracting of the Kansas City STC would have no significant impact on the NPMHU bargaining unit.

To reach these conclusions, the National Arbitrator issued a series of interpretations that will prove helpful to Mail Handler representatives and advocates in future subcontracting disputes. Below are some excerpts, although all NPMHU representatives are encouraged to read the entire decision.

Here are some key paragraphs from the Brent Award on the issue of "significant impact" under Article 32 of the National Agreement:

The Employer's argument that there was no significant impact on the bargaining unit because no current bargaining unit

employees lost their jobs or suffered diminished work opportunity due to the Kansas City STC outsourcing ignores the plain language in the Article 32 MOU affording the Union the right to prior notice of impending outsourcing and the right to submit certain proposals before a subcontracting decision is finalized. Simply declaring that the opening of the Kansas City STC would not significantly impact the NPMHU bargaining unit did not change the fact that outsourcing was being considered without giving the Union the opportunity to be heard as explicitly required by the Article 32 MOU.

The Employer's analysis concluding that no significant impact would be caused by subcontracting the Kansas City STC was based exclusively on the relative percentage paradigm that was used in previous precedential awards issued before the Article 32 MOU appeared in the 2011-2016 contract. The Union asserted that the Employer improperly ignored clear evidence, available when the decision to create the Kansas City STC was made in 2019, that the USPS was continuing its on-going process of building a nationwide network of Surface Transportation Centers in order to cut costs by shifting mail volume away from more expensive air transportation and by consolidating regional loads of mail and packages to maximize trailer efficiency for long distance hauling of mail. The impact of subcontracting much, if not all, of the mail processed by this STC network would be significant for this bargaining unit. Ignoring the possibility of future expansion of the STC network materially impaired the Employer's Article 32.1B determination of no significant impact.

[T]he Postal Service cannot look myopically at a single facility or solely at a particular point in time when assessing the significant impact of subcontracting work to non-bargaining unit workers without also considering the implications if the disputed program were to be expanded significantly. The facts adduced during six arbitration hearings held in the instant case mandate a conclusion that the planners who were evaluating the Kansas City STC in 2019 were aware of a continuing effort by the Postal Service to shift mail volume from air transportation to surface transportation to reduce both costs and environmental impact. Nothing in the record established that the Employer's executives and consultants who participated in the outsourcing decision regarding the Kansas City STC in 2019 had a reasonable basis to believe that this long-term initiative would end with the Kansas City STC, as using airplanes would likely remain more expensive than ground transportation and nation-wide consolidation of mail and packages into fewer truck loads would remain economically

and environmentally desirable. These evaluators were also aware that expiring outsourced contracts of four previously outsourced STC's had been renewed in 2018, rather than reassigning the work to NPMHU bargaining unit members.

Although no one can predict the future, the ongoing evolution in 2019 and likely future expansion of this national Surface Transportation Network as an integral component of mail distribution across the United States should have been considered in assessing whether significant impact would occur under an Article 32.1 B analysis.

Other sections of Arbitrator Brent's decision discuss the separate and independent impact of the MOU Re Article 32 that appears in the NPMHU National Agreement. Here are some key paragraphs from the Brent Award about the Article 32 MOU:

By [also] ignoring the clear language of the Article 32 MOU, the Employer eroded the propriety of its finding of no significant impact.

The Article 32 MOU explicitly creates an independent obligation to consider all relevant factors regarding using MHA's "whenever contracting-out or in-sourcing is under consideration". Such obligation expressly provides the Union the opportunity, at its sole discretion, to "propose different hourly rates for such MHAs to ensure competitiveness with outside services." The Article 32 MOU necessarily mandates prior notice to the Union whenever outsourcing is considered in order to provide the Union the opportunity to propose MHA related modifications. The Employer did not provide such notice.

Whenever outsourcing or in-sourcing is contemplated by the Employer, the Article 32 MOU guarantees the Union the opportunity to propose using more MHA's or implementing different MHA hourly rates in order to increase the competitiveness of NPMHU bargaining unit employees before the Employer conducts its analysis of the five Article 32.1A factors that must be considered in all subcontracting decisions.

These sophisticated parties have a long bargaining relationship. By incorporating the Article 32 MOU into the collective bargaining agreement, the parties augmented Article 32 and created a changed circumstance that cannot be disregarded. To hold otherwise would negate the bargain reached by the parties through the process under which the Article 32 MOU

became an integral component of the parties' collectively negotiated agreements.

In short, this Brent Award should help to restrict or even end the USPS practice of subcontracting Mail Handler work to private employers without first considering the views of the Union on all issues properly presented.

The Brent Award remanded the issue of remedy to the National parties, meaning that the remedial portion of this Award and its impact on subcontracting at the STC in Kansas City, and in other locations, is still to be determined.

Please do not hesitate to contact the National Office should you have any questions.

Cc: Michael Hora, National Secretary-Treasurer
National Executive Board
National/Regional CAD

BEFORE: Daniel F. Brent, National Arbitrator

Appearances:

United States Postal Service:

**Terence E. Flynn, Senior Litigation Counsel,
Lucy C. Trout, Attorney
Erin E. Lynch, Chief Counsel, Labor**

National Postal Mail Handlers Union:

**Bruce R. Lerner, NPMHU General Counsel,
Bredhoff and Kaiser, Esqs.
Joshua A Segal, of Bredhoff and Kaiser, Esqs.**

Place of Hearing: The hearings were held by videoconference.

Dates of Hearings: July 8, 2021; August 12, 13, and 19, 2021;
and October 7, and 8, 2021

Date of Award: August 15, 2022

Relevant Contract Provisions: Article 32.1 - Subcontracting
Memorandum of Understanding - Article 32

Contract Year: 2016 -2019

Type of Grievance: Contract Interpretation

Award Summary:

The Postal Service violated the National Agreement by the manner in which the Postal Service implemented the subcontracting of the Kansas City, Kansas STC. The Union's grievance is sustained.

The Employer failed to provide the Union with an opportunity, as required by the Article 32 Memorandum of Understanding, to propose different percentages of, or hourly rates for, MHA's to ensure competitiveness with outside services before the Employer decided to subcontract the Kansas City STC. The Employer also neglected to consider the potential impact of future expansion of the STC network when determining that subcontracting of the Kansas City STC would have no significant impact on the NPMHU bargaining unit.

In the Matter of the National Arbitration Between the
UNITED STATES POSTAL SERVICE
and
NATIONAL POSTAL MAIL HANDLERS UNION

Case No. Q16M-6Q-C 19403051
(Kansas City, Kansas STC Subcontracting Grievance)

Hearings in the above-entitled matter were held by videoconference on July 8, 2021; August 12, 13, and 19, 2021; and October 7, and 8, 2021 before Daniel F. Brent, duly designated as Arbitrator. Both parties attended these hearings, were represented by counsel, and were afforded full and equal opportunity to offer testimony under oath, to cross-examine witnesses, and to present evidence and arguments. A verbatim transcript was made of the proceeding, and both parties submitted post-hearing briefs.

APPEARANCES

FOR THE EMPLOYER:

Terence E. Flynn, Esq. Senior Litigation Counsel, Law Department

Lucy C. Trout, Esq., Attorney, Law Department

Erin E. Lynch, Esq., Chief Counsel, Labor

Patrick M. Devine, Manager of Contract Administration, NPMHU National Agreement

David Mills, Director of Labor Relations Policies and Programs

Leigh S. Hsu, Labor Relations Specialist

Curtis Whiteman, Senior Director of Budget

Brent Raney, Director of Surface Transportation

Jason Carlin, Lead Consultant for IBM

FOR THE UNION:

Bruce R. Lerner, Esq., NPMHU General Counsel, of Bredhoff and Kaiser, Esqs.

Joshua A Segal, Esq., of Bredhoff and Kaiser, Esqs.

Theresa Harmon, Manage, Contract Administration Department

Chris Bentley, President of NPMHU Local 297

Thomas Ruther, Contract Administration Representative

Neal Ryan, Contract Administration Representative

ISSUE SUBMITTED

Did the Postal Service violate the National Agreement by the manner in which the Postal Service implemented the subcontracting of the Kansas City, Kansas STC?

If so , what shall be the remedy?

NATURE OF THE CASE

As of early 2019, the U.S. Postal Service had created eleven Surface Transportation Centers, known interchangeably as Surface Transfer Centers (hereafter, STC's) to facilitate consolidation of mail into fewer, more fully loaded tractor trailers in order to reduce reliance on more costly air transportation of mail and to move mail more economically and ecologically using surface transportation vehicles. The instant grievance was submitted by the National Postal Mail Handlers Union (hereafter, NPMHU or the Union) contending that the United States Postal Service (hereafter, USPS or the Employer) violated Article 32 of the parties' collective bargaining agreement and a related Memorandum of Understanding (hereafter, the Article 32 MOU) in 2019 by failing timely to advise the Union in advance of the Employer's final decision to subcontract or outsource approximately 150 jobs for staffing a new Surface Transportation Center to be opened near Kansas City, Kansas.

Article 32.1 B, which was first negotiated in 1973, was supplemented by the Article 32 MOU. The Article 32 MOU was incorporated into the 2011-2016 collective bargaining agreement in connection with an interest arbitration Award issued by Arbitrator Herbert Fishgold in 2013 and was included in the parties' 2016-2019 collective bargaining agreement and the current agreement effective from September 21, 2019 through September 20, 2022.

The Union contended that because the decision to outsource the operation and staffing of the Kansas City STC could create a significant impact on the NPMHU bargaining unit, particularly in the context of a foreseeable expansion and outsourcing of the network of eleven STC's already in existence when the instant grievance arose, the Employer was obligated pursuant to Article 32.1 B and the Article 32 MOU to notify the Union of the Employer's intention to subcontract the new Kansas City STC before a determination of "no significant impact" on the NPMHU bargaining unit and the decision to outsource were made.

According to the NPMHU, the Employer had to provide a reasonable opportunity to discuss the impending subcontracting before the Employer completed its due consideration analysis of whether or not to outsource the new Kansas City STC facility. The Union asserted that the Article 32 MOU guaranteed the NPMHU an opportunity to discuss the percentage of Mail Handler Assistants ((hereafter, MHA's) and modification of their contractual wage rates whenever outsourcing was considered by the Employer.

The Employer denied the grievance, contending that the Article 32.1 B criterion of "significant impact" had not been met because the number of jobs to be created at the Kansas City STC as a percentage of all NPMHU bargaining unit positions was below the threshold established by precedential arbitration

awards issued by previous National Arbitrators. Therefore, according to the Employer, subcontracting the 150 Kansas City STC jobs that could have been staffed by members of the NPMHU bargaining unit did not create a significant impact on the national NPMHU bargaining unit or the NPMHU local union with geographical jurisdiction over the new facility. Moreover, no NPMHU bargaining unit employee was laid off or excessed. Consequently, the Employer asserted, no contractual obligation arose under Article 32 to include the Union in the deliberative process regarding outsourcing before the Employer communicated to the Union on August 2, 2019 the Employer's finding that no significant impact on the bargaining unit would be caused by the decision to subcontract the Kansas City area STC.

The parties were unable to resolve their dispute within the grievance procedure and the matter was brought to arbitration. Because the subject matter of the grievance potentially has nationwide implications or applicability, this dispute was submitted to the undersigned as the parties' National Arbitrator. The parties stipulated that they would attempt to determine a suitable remedy if the Arbitrator declared that a violation of the collective bargaining agreement or the Article 32 Memorandum of Understanding had occurred. If they could not agree on a remedy, the matter would be referred back to the Arbitrator to fashion an appropriate remedy.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 32 SUBCONTRACTING

Section 32.1 General Principles

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

B The Employer will give advance notification to the Union at the national level when subcontracting which will have a significant impact on bargaining unit work is being considered and will meet with the Union while developing the initial Comparative Analysis Report. The Employer will consider the Union's views on costs and other factors, together with proposals to avoid subcontracting and proposals to minimize the impact of any subcontracting. A statement of the Union's views and proposals will be included in the initial Comparative Analysis and in any Decision Analysis Report relating to the subcontracting under consideration. No final decision on whether or not such work will be contracted out will be made until the matter is discussed with the Union.

Memorandum of Understanding -Article 32

In addition to the cap on MHAs set forth in paragraph 7.1C3, the parties may agree on the use of additional MHAs in other circumstances when new or contracted work is brought in-house. In addition, whenever contracting-out or in-sourcing is under consideration, the Union may propose different hourly rates for such MHAs to ensure competitiveness with outside services.

Under the 2016 National Agreement, the parties commit to re-establishing their Subcontracting Committee and continuing their discussions about the possibility of returning mail handler work from Surface Transportation Centers (STC), Mail Transport Equipment Service Centers (MTEC), and the bedloading project. The Committee will consider all relevant factors when discussing the issue outlined above, to include cost, operational efficiency, availability of equipment, and qualification of employees. In addition, any MHA employees utilized as referenced in paragraph 1 will not count against existing non-career caps.

DISCUSSION AND ANALYSIS

At issue in the instant case is whether or not the Employer ignored or misconstrued the applicable language in Article 32.1 B imposing “significant impact on bargaining unit work” as the criterion to require discussions with the Union before the Employer approved outsourcing the new Kansas City, Kansas area STC in 2019. Article 32.1 of the 2016-2019 collective bargaining agreement between the parties (Joint Exhibit 2), subtitled Subcontracting, provides in Section A-General Principles that:

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

Article 32.1B provides that:

The Employer will give advance notification to the Union at the national level when subcontracting which will have a significant impact on bargaining unit work is being considered and will meet with the Union while developing the initial Comparative Analysis Report. The Employer will consider the Union's views on costs and other factors, together with proposals to avoid subcontracting and proposals to minimize the impact of any subcontracting. A statement of the Union's views and proposals will be included in the initial Comparative Analysis and in any Decision Analysis Report relating to the subcontracting under consideration. No final decision on whether or not such work will be contracted out will be made until the matter is discussed with the Union.

The instant grievance alleges that the Employer improperly failed to notify the Union before deciding to establish a Surface Transportation Center in the Kansas City area using a contractor, rather than operating the new STC as a unionized facility whose employees were represented by the NPMHU, and also that the Employer failed to engage in discussions with the Union before outsourcing the new Kansas City STC. There were no relevant discussions with the Union specifically regarding outsourcing the new Kansas City STC before the Employer's conclusion that such outsourcing would have no "significant impact on bargaining unit work" was communicated to the Union in a letter dated August 2, 2019.

Also at issue is whether the Employer violated the parties' Article 32 Subcontracting Memorandum of Understanding (Joint Exhibit 2). The Article 32 MOU provides, in relevant part, that:

In addition to the cap on MHAs set forth in paragraph 7.1C3 above, the parties may agree on the use of additional MHAs in other circumstances when new or contracted work is brought in-house. **In addition, whenever contracting-out or in-sourcing is under consideration, the Union may propose different hourly rates for such MHAs to ensure competitiveness with outside services.**
[emphasis added]

The Article 32 MOU arose from the 2013 Fishgold Interest Arbitration proceedings and was incorporated into the parties' 2011-2016 and 2016-19 National USPS-NPMHU collective bargaining agreements well before the Kansas City STC outsourcing decision in 2019.

The Article 32 MOU explicitly creates an independent obligation to consider all relevant factors regarding using MHA's "whenever contracting-out or in-sourcing is under consideration". Such obligation expressly provides the Union the opportunity, at its sole discretion, to "propose different hourly rates for such MHAs to ensure competitiveness with outside services." The Article 32 MOU necessarily mandates prior notice to the Union whenever outsourcing is considered in order to provide the Union the opportunity to propose MHA-related modifications. The Employer did not provide such notice.

The parties specifically articulated the possibility that they might mutually agree to modify limits on the negotiated use of MHA's in order to permit the Union to compete more effectively for newly established mail handler jobs or to return previously outsourced jobs to the bargaining unit. The Employer failed to comply with the MOU by not affording the Union an opportunity to offer proposals before or during the Employer's consideration of outsourcing the Kansas City, Kansas STC, such as establishing different hourly rates for non-career bargaining unit Mail Handler Assistants or exceeding the contractual limitations established in Article 7.1C 3 governing the percentage of MHA's at any postal facility or region. As of August 2019, Article 7.1C 3 limited the total number of MHA's within a district to 18.5% of the total number of career mail handlers in that district, but no more than 23.5% in any installation.

The Article 32 MOU memorialized a procedural prerequisite in effect when the Kansas City STC subcontracting was analyzed by the Employer's consultants and by the SIAG Committee that was materially different from similar analyses conducted before the Article 32 MOU became effective. The Arbitrator cannot add to subtract from, amend, alter or improve the explicit contract language negotiated by the parties. Neither, however, may the Arbitrator disregard clear language the parties have negotiated. Whenever outsourcing or in-sourcing is contemplated by the Employer, the Article 32 MOU guarantees the Union the opportunity to propose using more MHA's or implementing different MHA hourly rates in order to increase the competitiveness of NPMHU bargaining unit employees before the Employer conducts its analysis of the five Article 32.1A factors that must be considered in all subcontracting decisions.

These sophisticated parties have a long bargaining relationship. By incorporating the Article 32 MOU into the collective bargaining agreement, the parties augmented Article 32 and created a changed circumstance that cannot be disregarded. To hold otherwise would negate the bargain reached by the parties through the process under which the Article 32 MOU became an integral component of the parties' collectively negotiated agreements.

Nothing in the MOU requires the parties to agree on the use of additional MHA's or on revised MHA wage rates when outsourcing or insourcing is being considered by the Employer, but the language of the MOU mandates that the Union be apprised of an impending decision to subcontract an STC and afforded an opportunity to suggest MHA modifications before the Employer declares that no significant impact will result from the Employer's decision to subcontract. The Union may, if it so chooses, propose accommodations designed to influence the Employer to consider more favorably possible economic advantages of utilizing bargaining unit employees, including higher percentages of MHA's and lower MHA wage rates than might otherwise be paid under the protections the Union had previously negotiated to protect career Mail Handlers from being undercut by less expensive non-career MHA's.

The Employer's argument that there was no significant impact on the bargaining unit because no current bargaining unit employees lost their jobs or suffered diminished work opportunity due to the Kansas City STC outsourcing ignores the plain language in the Article 32 MOU affording the Union the right to prior notice of impending outsourcing and the right to submit certain proposals before a subcontracting decision is finalized. Simply declaring that the opening of the Kansas City STC would not significantly impact the NPMHU bargaining unit did not change the fact that outsourcing was being considered

without giving the Union the opportunity to be heard as explicitly required by the Article 32 MOU.

The Employer's not providing notice and access to information regarding the Kansas City STC deprived the Union and the NPMHU bargaining unit of a material benefit to which they were entitled under the Article 32 MOU. By ignoring the clear language of the Article 32 MOU, the Employer eroded the propriety of its finding of no significant impact.

The Employer's analysis concluding that no significant impact would be caused by subcontracting the Kansas City STC was based exclusively on the relative percentage paradigm that was used in previous precedential awards issued before the Article 32 MOU appeared in the 2011-2016 contract. The Union asserted that the Employer improperly ignored clear evidence, available when the decision to create the Kansas City STC was made in 2019, that the USPS was continuing its on-going process of building a nation-wide network of Surface Transportation Centers in order to cut costs by shifting mail volume away from more expensive air transportation and by consolidating regional loads of mail and packages to maximize trailer efficiency for long distance hauling of mail. The impact of subcontracting much, if not all, of the mail processed by this STC network would be significant for this bargaining unit. Ignoring the possibility of future expansion of the STC network materially impaired the Employer's Article 32.1B determination of no significant impact.

It was undisputed that the Employer failed to advise the Union of outsourcing the Kansas City STC before the Employer completed the due consideration analysis required by Article 32.1A and determined that outsourcing the new facility would not create a significant impact on the NPMHU bargaining unit. Thus, the Employer arbitrarily limited the basis for its finding of no significant impact.

Both parties cited as binding precedent in the instant case national arbitration awards that addressed the significant impact issue. These awards became precedential either because an arbitration award was issued at the national level in a dispute between the United States Postal Service and the National Postal Mail Handlers Union or because the award was issued in a national arbitration dispute under the USPS-APWU contract during the interval when the NPMHU and the American Postal Workers Union bargained jointly with the Postal Service. Such national awards interpreting common contract provisions become binding on both unions.

Due deference to such decisions is a cardinal principle governing the arbitration system established by the United States Postal Service and its unions. Under the parties' negotiated arbitration system, such national awards must be considered and applied if relevant and persuasive. Arbitration decisions by National Arbitrators Howard Gamser, Richard Mittenthal, Carleton

Snow, Shyam Das, Dennis Nolan and Stephen Goldberg were cited by the parties as creating binding precedents that supported their positions. The undersigned Arbitrator has incorporated the principles, particularly Arbitrator Dennis Nolan's remarks on the role of precedent in Case No. Q06N-4Q-C 12013405 (Union Exhibit 38), articulated in these decisions in formulating the analysis set forth herein.

In his 1977 decision in United States Postal Service and APWU, AB-NAT-6291, known informally as "the Bank Award", Arbitrator Howard Gamser wrote his opinion partially granting an APWU grievance:

Based on the conclusion that an expanded program would have a significant impact upon bargaining unit work available, the undersigned must find that such a decision to expand the postal machine centers of leasing SSPC space in banks and subcontract service and maintenance duties required the Employer to give the APWU advance notice that such a program was to be implemented and consider the Union's views on minimizing such impact upon bargaining unit work availability and not make a final decision that such a program would be implemented until a good faith discussion of any issues raised by the Union has been concluded with due consideration of the Union's proposals. (Employer Exhibit 6)

Although the APWU did not prevail in achieving the substance of its grievance, Arbitrator Gamser held that the Postal Service improperly failed to consider that the limited program which precipitated the grievance before him could be expanded in the future and that such expansion would create significant impact as contemplated in Article 32. This potential expansion, he

concluded, invoked the provisions of Article 32.1B, which appeared in the USPS-APWU agreement as well as the USPS-NPMHU agreement. Arbitrator Gamser's seminal award, issued almost fifty years ago, has been relied on repeatedly upon by these parties. The principle he articulated remains applicable today: that the Postal Service cannot look myopically at a single facility or solely at a particular point in time when assessing the significant impact of subcontracting work to non-bargaining unit workers without also considering the implications if the disputed program were to be expanded significantly.

The facts adduced during six arbitration hearings held in the instant case mandate a conclusion that the planners who were evaluating the Kansas City STC in 2019 were aware of a continuing effort by the Postal Service to shift mail volume from air transportation to surface transportation to reduce both costs and environmental impact. Nothing in the record established that the Employer's executives and consultants who participated in the outsourcing decision regarding the Kansas City STC in 2019 had a reasonable basis to believe that this long-term initiative would end with the Kansas City STC, as using airplanes would likely remain more expensive than ground transportation and nation-wide consolidation of mail and packages into fewer truck loads would remain economically and environmentally desirable. These evaluators were also aware that expiring outsourced contracts of four

previously outsourced STC's had been renewed in 2018, rather than reassigning the work to NPMHU bargaining unit members.

Accepting as accurate the USPS planners' testimony that they did not have knowledge of the forthcoming creation of any additional STC's, Employer witnesses were nevertheless aware of the evolving trend of using non-union facilities to create a network for consolidation of mail. The transcript records Employer witness testimony expressing such understanding. The Union established persuasively that Postal Service planners and the consultants on whom they relied were aware, or reasonably should have been aware, that the Kansas City STC was probably not the last STC to be added to the existing network.

On February 11, 2020 the Postal Service responded to a formal inquiry from the Chairman of the Postal Regulatory Commission seeking information about the redesign of the STC Network and asking whether such redesign could positively or adversely affect "service performance". The Postal Service wrote:

The STC network is currently being redesigned to align with destination service areas. The current surface transportation network is inconsistent in coverage area and operating profile. The STC network redesign is intended to significantly reduce costs (through reduction in underutilized transportation) and service improvement (through better alignment of processing facilities and simplified routing decisions). Prior to September 2019, the STC network included locations in Orlando, Atlanta, Washington, DC, northern New Jersey, Massachusetts, Indianapolis, Memphis, Dallas, Salt Lake City, and two sites in California. Operating plans and coverage areas for these STCs have been

inconsistent and non-standardized. The redesign will include realignment of transportation for these 11 STCs, as well as the opening of STCs in Kansas City and Chicago. ...

Phase 1 was concluded in September 2019 with the opening of the Kansas City STC. Phase 2 is anticipated to be completed on April 13, 2020 with the opening of the Chicago STC and realignment of transportation for STCs Indianapolis, Memphis, Atlanta, Dallas, and Orlando. Phase 3 is anticipated to be completed in June 2020 with the realignment of transportation for STCs in Salt Lake City, Washington, DC, Northern New Jersey, Massachusetts, and two sites in California....

The Postal Service augmented its February 11, 2020 reply to the Chairman's Inquiry Number 10 in its response to Chairman's Inquiry Number 21, issued on March 12, 2020. In its March 19, 2020 reply (Union Exhibit 12), the Postal Service wrote:

The STC network redesign effort will achieve a reduction in underutilized transportation by aligning future surface lanes and routings with current mail volume needs. ... For each identified transportation lane, surface transportation is being modified to fit the future operating profile. This includes removing unneeded transportation and planning future transportation based on modeled routings and necessary capacity.

Although these documents were created after the decision to outsource the Kansas City STC in mid-2019, the multi-phased plans described in these documents were not likely created or first considered after the August 2, 2019 notice to the Union declaring no significant impact arising from the decision to outsource the Kansas City STC. The explanations provided to the Postal Regulatory Commission buttress the Union's contention that Postal Service executives and consultants were aware of the likely expansion of the STC

Network when evaluating the potential significant impact of outsourcing the Kansas City STC.

Although the Arbitrator should not consider, and has not considered, subsequent events in determining the propriety of the Kansas City significant impact determination, the record reflects that a newly created Chicago STC was evaluated for outsourcing only four months after the Kansas City STC decision was communicated to the Union in August 2019. Thus, the likelihood of continuing evolution of the STC network was, more probably than not, evident to the Employer's planners and consultants in mid-2019.

As articulated by the Gamser "Bank" Award, the impact on the NPMHU bargaining unit of the potential expansion of the current STC network should have been considered in evaluating the impact of outsourcing the Kansas City STC. The imputed recognition of these trends by Employer witnesses justifies a conclusion that considering the entire STC network as a partially completed ongoing project was more reasonable than relying exclusively on the tiny percentage of 150 outsourced jobs in the Kansas City STC compared to the national NPMHU bargaining unit to justify a finding of no significant impact. The Employer failed to use Arbitrator Gamser's analysis and ignored the substantial possibility that the STC network would be expanded. Nor did the

Employer justify treating the Kansas City STC as unrelated to the historic pattern of outsourcing existing STC operations.

The Employer cited protracted delay potentially caused by engaging in colloquy with the Union about the Kansas City STC outsourcing decision as an impediment thwarting the STC program. The Employer did not, however, elaborate or demonstrate that undue delay would ensue from permitting the Union to offer a timely proposal regarding outsourcing the Kansas City STC .

Moreover, because due consideration of the five factors in Article 32.1A remains unequivocally within the purview of the Employer, neither timely input from the Union regarding MHA's, as required by the Article 32 MOU, nor well-timed discussions invoking Article 32.1 B would necessarily impede management's decision as to whether or not outsourcing would be implemented after the Employer's due consideration of the five Article 32.1A factors.

The Union disputed the Employer's computation of the percentage of national NPMHU bargaining unit employees who would be affected by the outsourcing of the Kansas City STC as riddled with mathematical inaccuracies that expanded the denominator of the fraction of which the 150 Kansas City jobs were the numerator. Even if the Employer's assertions regarding the

impact of outsourcing 150 jobs on the entire NPMHU bargaining unit were arithmetically accurate and would be more likely to prevail if the Kansas City STC were operated in isolation, the pattern established before 2019 of moving co-located STC operations to stand-alone facilities operated by non-union contractors cannot be disregarded in determining whether or not the Employer's evaluation of no substantial impact regarding the Kansas City STC complied fully with the collective bargaining agreement.

Accepting as entirely accurate the sworn testimony of Employer witnesses who denied any knowledge in 2019 of the STC's that were implemented after the Kansas City subcontracting analysis and decision were made, the ongoing desirability of establishing a workable national STC network was evident to high level Employer officials and USPS consultants. A knowledgeable Postal Service executive or consultant reasonably should have recognized that the Kansas City STC likely would not be the final component of the STC network. This appreciation of the direction of future enhancements to the STC network was recognized by Employer witnesses and reflected in their testimony. Although no one can predict the future, the ongoing evolution in 2019 and likely future expansion of this national Surface Transportation Network as an integral component of mail distribution across the United States should have been considered in assessing whether significant impact would occur under an Article 32.1 B analysis.

According to testimony offered by the Employer, outsourcing of individual STC facilities was governed by various factors regarding each facility. Nevertheless, the evolution from 1989 through 2019 of a national parallel mail handling network to achieve the Postal Service's announced goals of increased efficiency, lower cost, and greater environmental sustainability--including many outsourced facilities--created significant potential impact on the status of a major Postal Service bargaining unit. Even if the STC's outsourced after Kansas City were not identifiably in the planning stages when the Kansas City STC outsourcing decision was made, ignoring this multi-decade trend by focusing exclusively on the percentage of total bargaining unit analyses properly utilized by the National Arbitrators cited by the Employer and bypassing the scope of potential significant impact analysis propounded by Arbitrator Gamser, tainted the Employer's finding of no significant impact. The Employer's analysis of percentages applied in precedential national arbitration awards recited the findings in those awards but ignored a crucial premise of Arbitrator Gamser's award that recognized an additional valid standard by which significant impact should be evaluated for purposes of applying Article 32.1B.

Although the ultimate decision whether or not to subcontract the Kansas City STC remains within the managerial authority of the Employer, subject to the analysis of factors mandated by Article 32.1A and potential grievance by the Union, the evidentiary record mandates the conclusion that progress

toward improved postal service and reduced cost in the handling of mail was closely linked by the Employer to the concept of creating a national STC network. There is no reasonable alternative to a conclusion that such a network, if fully developed, could have a significant impact on the mail handlers' bargaining unit.

The 1977 Gamser "Bank Award" obligated the Employer to evaluate the potential impact of future expansion of outsourcing when considering the relevant factors on which the Employer bases its finding of no significant impact. Thus, the Union was entitled by operation of the Article 32 MOU and Article 32.1 B, as interpreted in accordance with the standard articulated by Arbitrator Gamser, to receive relevant information and an opportunity to offer input at a meaningful stage of the Employer's consideration of whether or not to establish the Kansas City STC as an outsourced facility.

The Employer failed to conduct such analysis regarding the Kansas City STC. Therefore, for the reasons set forth above, the issue posed to the undersigned Arbitrator: "Did the Postal Service violate the National Agreement by the manner in which the Postal Service implemented the subcontracting of the Kansas City, Kansas STC?" must be answered in the affirmative.

This Award does not address or decide whether or not the Employer's ultimate decision to subcontract the Kansas City STC was correct under Article 32.1A. The process for reaching that decision omitted two critical material components: The Employer did not advise the Union of the impending outsourcing of the Kansas City STC, and therefore did not give the Union the opportunity to offer proposals under the Article 32 Memorandum of Understanding, and the Employer did not consider the significant impact that the probable expansion of the STC network would have on the NPMHU bargaining unit. Thus, the Employer failed to comply with the parties' established procedures regarding subcontracting decisions.

The parties have agreed to discuss fashioning a remedy for these violations and to preserve the Arbitrator's jurisdiction to create and impose a remedy if the parties cannot agree.

August 15, 2022

Daniel F. Brent, Arbitrator

In the Matter of the National Arbitration Between the
UNITED STATES POSTAL SERVICE
and
NATIONAL POSTAL MAIL HANDLERS UNION

Case No. Q16M-6Q-C 19403051
(Kansas City, Kansas STC Subcontracting Grievance)

AWARD OF ARBITRATOR

Based on the evidence submitted, the United States Postal Service did violate the National Agreement by the manner in which the Postal Service implemented the subcontracting of the Kansas City, Kansas Surface Transportation Center. The Employer did not provide the Union with an opportunity, as required by the Article 32 Memorandum of Understanding, to propose different percentages of, or hourly rates for, Mail Handler Assistants to ensure competitiveness with outside services before the Employer decided to subcontract the Kansas City STC. The Employer also failed to consider the potential impact of future expansion of the STC network when determining that subcontracting the Kansas City Surface Transportation Center would have no significant impact on the NPMHU bargaining unit.

The parties stipulated that they would attempt to determine a suitable remedy if the Arbitrator declared that a violation of the collective bargaining agreement or the Article 32 Memorandum of Understanding occurred. Should the parties be unable to agree on a mutually acceptable remedy within a reasonable interval for discussion, the Arbitrator hereby retains jurisdiction to decide and impose a remedy and to resolve any dispute regarding the subsequent implementation of any such remedy. The parties shall report the progress of their remedy-related discussions to the Arbitrator every thirty days after the issuance of this Award.

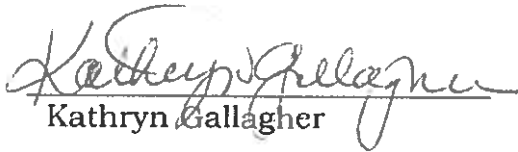


Princeton, New Jersey
August 15, 2022

Daniel F. Brent, National Arbitrator

State of New Jersey
County of Mercer

On this 15th day of August 2022 before me personally came and appeared Daniel F. Brent, to me known and known to me to be the individual described in the foregoing instrument, and he acknowledged to me that he executed the same.


Kathryn Gallagher

