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<p style="text-align: center;"><b>In the Matter of Grievance Arbitration</b></p> <p style="text-align: center;">Between</p> <p style="text-align: center;"><b>KANSAS CITY AREA TRANSPORTATION AUTHORITY("Authority")</b></p> <p style="text-align: center;">and</p> <p style="text-align: center;"><b>AMALGAMATED TRANSIT UNION, LOCAL DIVISION 1287 ("Union")</b></p>	<p style="text-align: right;">*</p> <p style="text-align: right;">*</p> <p style="text-align: right;">*</p> <p style="text-align: right;">*</p> <p style="text-align: right;">*</p> <p style="text-align: right;">*</p> <p style="text-align: right;">*</p> <p style="text-align: right;">*</p> <p style="text-align: right;">*</p> <p style="text-align: right;">*</p>	<p>FMCS No. 070201-01722-A</p> <p>Issue: Schedule Delivery</p> <p style="text-align: center;"><b><u>Arbitration Board:</u></b></p> <p>Fern M. Kohler (Authority Member)</p> <p>William L. Wilson (Union Member)</p> <p>Lon Moeller (Neutral Chair)</p>
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**Preliminary Statement**

A grievance arbitration hearing was held on March 16, 2007 at the Howard C. Broom Building, located at Forest and 18<sup>th</sup> Streets in Kansas City, Missouri. The Authority and Union appeared through their designated representatives and offered evidence through exhibits and the testimony of witnesses, who were subject to cross-examination. The record was closed upon the Arbitrator's receipt (on June 9, 2007) of the parties' post-hearing briefs.

**Appearances**

**For the Union:**

Scott A. Raisher, Attorney and Spokesperson  
 Sharon L. Bradford, Union Executive Board  
 Robbie Smith, Information Serviceworker

**For the Authority:**

Jeffrey M. Place, Attorney and Spokesperson  
 Anita Cobbins, Marketing Manager  
 Cindy Baker, Director of Marketing

**I. Background and Facts**

At issue in this matter, is the Authority's decision to subcontract certain work involving the Information Serviceworker job classification. The Union's grievance was filed on December 21, 2006 and reads in relevant part as follows:

*On 12-21-06 an outside company came in to sort schedules and deliver schedules. This is a violation of section 1.45 of our current contract and any other relevant*

*sections of our contract. The remedy I seek is to have this practice immediately stopped and for the appropriate people to be made whole (Joint Exhibit 2).*

The grievance was denied by the Authority. Director of Marketing Cindy Baker's answer to the grievance states in relevant part:

*This grievance is denied for the following reasons:*

- *As you know, markup is a critical time for the KCATA, and most of all for our customers. It is imperative that schedules changing Jan. 7 get out on the street as soon as they arrive from the printer. Robbie Smith cannot get to all of the affected areas before the changes go into effect. Therefore, we have supplemented the Information Serviceworker with some outside assistance. It by no means takes anything away from the Information Serviceworker.*
- *Having Quicksilver come in to supplement Robbie Smith's work delivering new schedules is not in violation of Section 1.45 because it did not "eliminate work performed by the bargaining unit" (Joint Exhibit 3).*

The Union appealed the grievance to arbitration. There are no issues concerning the timeliness or procedural arbitrability of the grievance. The grievance is now before the Arbitration Board for a final and binding decision on the merits.

## **II. Statement of the Issues**

Whether the Authority violated the Agreement in December 2006 when it subcontracted relief work for the Information Serviceworker and other work generally performed by the Information Serviceworker to a local courier service (Quicksilver)? If so, what should the remedy be?

## **III. Position of the Union**

The Union initially recognizes that the Authority has used local courier services to perform job duties assigned to the Information Serviceworker. It maintains, however, that "the nature and extent of the work contracted out has varied over the years" and it "was unaware of the nature and extent of the Authority's having done so" (Union Brief, p. 31).

Robbie Smith has held the position of Information Serviceworker since January 1, 1995. She is the only employee in the Information Serviceworker job classification. Although the Information Serviceworker position is supervised by the Authority's Marketing Department, it is included in the Office-Clerical seniority unit. The following job duties are assigned to the Information Serviceworker position:

*Distribute KCATA bus schedules and replenish bus schedules in approximately 200 schedule racks throughout the metropolitan area; sort and redistribute schedules from bus barn; and stock promotional literature and pocket schedules*

*in the racks in the Trainman's Room daily for operators to take to buses (Joint Exhibit 4).*

When Ms. Smith (or the Information Serviceworkers before her) was sick or on vacation, Information Agents (approximately 8 to 10 in number) in the Authority's call center were – based on their job descriptions – to provide coverage. Director of Marketing Cindy Baker testified that the “peak hours” in the call center are from 6:00 A.M. – 8:00 A.M. and 3:30 P.M. – 5:30 P.M.; work shifts and breaks in the call center are staggered. Ms. Smith's scheduled work hours are 8:00 A.M. – 4:45 P.M. Union Executive Board member Sharon Bradford testified that call center employees provided relief for the Information Serviceworkers (Kenny Renfro and Victor Bush) before Ms. Smith. Ms. Bradford recalled that relief for the Information Serviceworker was added to the job description for the Information Agents in the “early 1980s.” During her time in the call center (October 1986 – December 1987), Ms. Smith filled in when the Information Serviceworker (Victor Bush) was absent from work. Ms. Smith testified that “some time after 1995” she trained call center employees (Nicole Smith and Chris Wolf) on relief work. The qualifications for the Information Agent/PBX Operator and Information Agent/PBX Operator – Relief include the following relief responsibilities for the Information Serviceworker:

*Provide KCATA route, schedule and special program information to customers via telephone, mail and in person. Distribute and/or recycle Authority's pocket schedules to pocket schedule racks throughout the KCATA metropolitan area and other duties related to Job #11 [the Information Serviceworker position] when it is unstaffed for any reason (Joint Exhibits 5 and 6).*

Marketing Manager Anita Cobbins' testimony reflects the understanding that “the call center agents were the established and agreed upon individuals who were to provide ‘relief’ when the Information Serviceworker was/is not available” (Union Brief, p. 10). Ms. Cobbins, the Union points out, also testified that when requests were made to the call center, the call center manager (Ollie Robinson) generally would “refuse to send someone over to provide the requested relief” (*Id.*). Rather than address this problem, or talk to the Union, “the Authority simply decided to call a courier service” (Union Brief, p. 11).

In December 2006, the Authority used Quicksilver – a courier service – to distribute and sort bus schedules on days when Ms. Smith was scheduled to work (December 20<sup>th</sup> and 21<sup>st</sup>) and on days when Ms. Smith was scheduled to be on vacation (December 22<sup>nd</sup> – 29<sup>th</sup>) (Joint Exhibit 7). The Authority did not use the Information Agents from the call center to assist or to cover for Ms. Smith.

The Union argues that the Authority's actions in December 2006 violated the clear and unambiguous language of Section 1.45 – **Sub-Contracting**. The work subcontracted to Quicksilver was work that had been “historically performed by members of the Bargaining Unit” (Joint Exhibit 1, p. 58) and “eliminated” bargaining unit work or “extra work” reserved to the Information Agents under Section 4.2 – **Overtime** (Joint Exhibit 1, pp. 121-122).<sup>1</sup> The job

<sup>1</sup> Section 4.2 also requires the creation of a “rotating work list in seniority order” (Joint Exhibit 1, p. 121). According to the Union, “it is undisputed that such a list has not been created for the Office-Clerical Seniority Unit” (Union Brief, p. 18).

descriptions for the Information Agent and Information Serviceworker positions (as well as all other "job classifications in the Office-Clerical Seniority Unit") are, by virtue of Section 8.7 – **New Job Classifications or Positions**, "part of" the Agreement (Joint Exhibit 1, p. 148). There is no evidence that the Information Serviceworker and Information Agent job descriptions are "comprehensively inaccurate." It is also undisputed that the Authority has not proposed any changes to these job descriptions.

The Union emphasizes that under Section 2.18(c), "Bus operators may volunteer to perform relief work in the telephone information center after all existing Office-Clerical overtime lists have been exhausted" (Joint Exhibit 1, p. 87), meaning that Bus Operators, Information Agents and part-time Office-Clerical employees all could provide relief or "supplemental work" for the Information Serviceworker.<sup>2</sup> The Union further emphasizes that Section 1.4 – **Past Practice** states "No past practices may be established after the execution of this contract unless reduced to writing at the time of the establishment of the practice" (Joint Exhibit 1, p. 5). To the extent that there was a recognized practice of having courier services perform Information Serviceworker job duties, that practice is not binding since it has never been "reduced to writing."

Anticipating an argument from the Authority, the Union lastly contends that the "mutually agreed upon" job descriptions for the Information Serviceworker and Information Agents established under Section 8.7 limit the Authority's ability to subcontract work. Not only must job descriptions be "mutually agreed upon," but the Union maintains that any changes to the same must also be negotiated and, at a minimum, reviewed by the Union. It points to Arbitrator Hart's 2006 award in the *Hunt/Williams Transfer of Job Duties Arbitration* (FMCS No. 050718-04690-7) to support this argument.

Because the Authority violated the Agreement, the Union concludes that the grievance must be sustained. For a remedy, the Union asks for a "cease and desist" order on the contracting out of work performed by the Information Serviceworker and that any bargaining unit employees "who have been denied work opportunities as a result of the Authority's conduct" (Union Brief, p. 7) be made whole. It further asks that the Arbitrator retain jurisdiction over the remedy aspect of this case.

#### **IV. Position of the Authority**

The Authority first points out that while the Information Agent job postings speak of relief coverage for the Information Serviceworker, many of the Authority's job descriptions were written "decades ago," are "comprehensively inaccurate" and generally have not been updated. It also maintains out that it has a long history of using courier services to supplement and provide relief to the Information Serviceworker job and that this history "has been well-known to the Union" (Authority Brief, p. 8).

<sup>2</sup> Ms. Bradford, the Union notes, testified that she recalled Bus Operators filling in for Information Serviceworkers Kenny Renfro and Victor Bush. The Authority can hire part-time employees under Section 4.8 – **Part-Time Office-Clerical Employees**.

From 1989 to 1996, the Authority used courier services to help with the distribution of bus schedules when the Information Serviceworker was on “planned absences.” When the Information Serviceworker called in sick, the Authority would try to find coverage from the Information Agents in the call center; however, Director of Marketing Cindy Baker testified that 90% of the time the call center could not spare anyone to help. The other 10% of the time, Information Agents would only be able to spend two or three hours covering for the Information Serviceworker, leaving much of the work undone. Marketing Manager Anita Cobbins testified that from 1990 to 1995 she was only able to get relief help from the call center for the Information Serviceworker “once or twice a year.” Ms. Cobbins added “we just accepted what we could get.” According to Ms. Baker, the call center manager (Ollie Robinson) had “huge absentee issues.” Information Agents never performed the “outside work” associated with the Information Serviceworker position – stocking the some 250 bus schedule racks located at different locations throughout the metropolitan area.

Ms. Baker testified that in 1996 or 1997, management decided to stop using Information Agents to cover for the Information Serviceworker and exclusively used a local courier service to fill-in when the Information Serviceworker was out sick or on vacation. She commented on the Authority’s “major service changes” at the time. Information Serviceworker Robbie Smith admitted during her testimony that she trained courier service employees how to perform her assigned job duties. Ms. Cobbins testified that some time around 1999/2000,<sup>3</sup> the Authority started using the courier service to help Ms. Smith with the stocking and delivery of bus schedules during the quarterly markup period.

Joint Exhibit 8 provides a summary of all of the invoiced “schedule rack work” performed by the Authority’s courier services since December 1996.<sup>4</sup> Even before 1996, the Marketing Department budgeted for “schedule rack work” and other general courier services in 1994 (Joint Exhibit 10) and in 1995 (Joint Exhibit 11). The Authority’s 1999-2004 contract with Consolidated Delivery & Logistics shows that the courier was “to provide an individual (permanently assigned to this contract) to periodically relieve the KCATA’s Information Serviceworker in providing schedule rack services, normally for a one-to-two-week period...[and] occasionally...for single days” (Joint Exhibit 12, p. 16). This same type of work was contracted in 2004 (until 2009) to Quicksilver (Joint Exhibit 13).

The Authority emphasizes that the only express contract language that limits its broad management right to subcontract work is set forth in Section 1.45 – **Sub-Contracting**. It contends that the contracting of “overflow” and relief work to Quicksilver in December 2006 did not result in the elimination of any bargaining unit work that has been “historically performed” by the Information Agents or by the Information Serviceworker. The Information Agents have never performed any “supplemental” work for the Information Serviceworker job and had not done any relief work for the Information Serviceworker for more than 10 years. Ms. Smith’s full-time work hours have been unaffected by the use of courier services. No employee has been laid off as a result of the subcontracting to Quicksilver.

<sup>3</sup> Ms. Baker thought this supplemental coverage started “closer to 1997.”

<sup>4</sup> According to the Authority, since December 1996, “KCATA’s average annual use of outside courier services to perform schedule distribution work has been approximately twenty-five partial or full days per year” (Authority Brief, pp. 9–10).

Lastly, the Authority claims that the “Office-Clerical job descriptions do not prevent subcontracting” (Authority Brief, p. 17). It submits that the Union’s reliance on Section 8.7 – **New Job Classifications or Positions** is misplaced. The Authority notes that past arbitration decisions have held that the purpose of job descriptions in the Office-Clerical seniority unit “is to allow bargaining unit members to understand what type of work they may be called upon to perform, if they decide to bid on an open position” (Authority Brief, p. 18) and that the Authority is not required by Section 8.7 “to negotiate over proposed changes in the mutually agreed upon job descriptions of the office-clerical seniority list.”<sup>5</sup>

In conclusion, the Authority asks that the grievance be denied.

## V. Discussion and Analysis

Section 1.12 – **Management-Discipline** states in part:

*The Union recognizes that the management of the business, including the right to direct the working forces, to prescribe, effectuate and change service and work schedules consistent with and not contrary to any specific provisions contained in this Agreement, to plan and control corporate operations, to introduce new or improved facilities or operating methods, to relieve employees from duty because of lack of available work or for other legitimate reasons... is vested exclusively in the Authority (Joint Exhibit 1, p. 10) (Emphasis added).*

The Authority’s right to subcontract work is established and limited to the extent provided in Section 1.45:

*The Kansas City Area Transportation Authority shall not contract out work historically performed by members of the Bargaining Unit if contracting of such work would eliminate work performed by the Bargaining Unit. Contracting of such work will not result in layoff of members of the Bargaining Unit while such contracting is in effect (Joint Exhibit 1, pp. 58-59).*

Section 1.45 balances the Authority’s interests in efficiency and flexibility with the Union’s interest in protecting the job security of bargaining unit employees. It gives the Authority the right to subcontract work “historically performed” by the bargaining unit provided that the subcontracting does not “eliminate” bargaining unit work or cause bargaining unit employees to be laid off.

The operative phrases of Section 1.45 – “work historically performed by members of the Bargaining Unit” and “eliminate work performed by the Bargaining Unit” – are not defined in the Agreement. No bargaining history evidence was offered to illuminate the parties’ intent behind Section 1.45. Instead, the Union and Authority base their respective arguments on what both consider to be Section 1.45’s “clear and unambiguous” language.

<sup>5</sup> *Bradford Job Duties Arbitration*, FMCS No. 06-02321-2614 (O’Grady 2006), pp. 20-21.

Here, the question is whether the December 2006 subcontracting of “supplemental” and relief work for the Information Serviceworker involved “work historically performed by members of the Bargaining Unit” and resulted in the elimination of “work performed by the Bargaining Unit.” That question, based upon a review of the record evidence, is addressed below.

#### **A. The Subcontracting of “Supplemental” Work to Quicksilver**

Ms. Smith’s testimony about her assigned job duties is consistent with the tasks spelled out in the Information Serviceworker job description. It is undisputed that Ms. Smith’s job duties include delivering and stocking bus schedule racks at various Kansas City-area businesses during markup and that she has regularly performed those job duties since being hired as an Information Serviceworker in 1995.

The Information Serviceworker job has been, and continues to be, a “one person” job classification. The work is physically demanding. The Information Serviceworker is the only Authority employee who over the years has been involved with delivering and stocking bus schedule racks during markup. It was Ms. Smith who trained employees from the courier service about the subcontracted “service rack work.” The Authority’s actions in granting Ms. Smith’s November 2006 grievance, a grievance based on the claim that the Authority subcontracted Information Serviceworker job duties to Quicksilver on Veterans Day without first giving Ms. Smith the chance to do the work, shows that this type of work “belongs” to the Information Serviceworker job classification.

Section 1.45’s reference to “work historically performed by members of the Bargaining Unit” means work – using the ordinary meaning of those words – regularly or routinely done over time by bargaining unit employees. Delivering and stocking bus schedules during markup is work that has been “historically performed” by the Information Serviceworker.

Ms. Smith demonstrated at the arbitration hearing that she does her job with great care and dedication. Director of Marketing Cindy Baker testified that the delivery of new schedules during markup has become too much for one person to handle and that the volume of work has increased. Rather than hire another Information Serviceworker, the Authority turned to its courier service for help.

Quicksilver was used in December 2006 to supplement Ms. Smith’s work by helping stock bus schedule racks during markup. Ms. Smith’s work hours were not affected by the use of Quicksilver nor is there evidence that the Authority has used Quicksilver to chip away at Ms. Smith’s assigned job duties, or eliminate work performed by the Information Serviceworker job classification.

## B. The Subcontracting of Relief Work to Quicksilver

Relief coverage for the Information Serviceworker has apparently been handled various ways. Ms. Bradford thought that Bus Operators at times may have filled in for the Information Serviceworker. She testified that relief for the Information Serviceworker was added to the job descriptions for the Information Agent/PBX Operator – Relief and Information Agent/PBX Operator some time in the “early 1980s.”

The Information Agent/PBX Operator and Information Agent/PBX Operator – Relief job descriptions provide that these two call center positions are to “Distribute and/or recycle Authority’s pocket schedules to pocket schedule racks throughout the KCATA metropolitan area and other duties related to Job #11 when it is unstaffed for any reason” (Joint Exhibits 5 and 6). “Job #11” is the Information Serviceworker job (Joint Exhibit #4).

The record shows the following about relief coverage for the Information Serviceworker:

- It is unclear how often Information Agents from the call center performed relief work for the Information Serviceworker in the 1980s and early 1990s.
- Bus Operators have not regularly provided relief for the Information Serviceworkers.
- Ms. Baker estimated that approximately 10% of the time when relief coverage was needed for the Information Serviceworker during the period of 1989 to 1996, it was provided by Information Agents in the call center. Other times, Ms. Baker testified, relief help was provided by a local courier service. Many times, when the Information Serviceworker was absent, his or her work – Ms. Baker recalled – “went undone.”
- While she remembered training two Information Agents (Nicole Smith and Chris Wolf), Ms. Smith she did not think Nicole Smith did any relief work for her.
- Ms. Cobbins could only remember Information Agents covering for the Information Serviceworker “once or twice a year” from 1990 to 1995.
- Ms. Baker and Ms. Cobbins both said that the lack of regular and consistent relief led to Information Serviceworker work not getting done when the position was “unstaffed.”
- Because using Information Agents to provide Information Serviceworker relief was not working, according to Ms. Baker and Ms. Cobbins, the Authority turned to its courier service for help.
- The Authority’s use of its courier service to provide Information Serviceworker relief picked up after 1996.
- Ms. Baker testified that the Authority exclusively used its courier service to provide relief work for the Information Serviceworker as of “1996 or 1997.”

To summarize, Information Serviceworker relief was added to the Information Agent job descriptions in the early 1980s. From 1989 to 1996, relief was provided by the Information Agents about 10% of the time when needed; other times a courier service was used to cover for the Information Serviceworker. Since 1996 or 1997, Information Serviceworker relief work has



been exclusively provided by the Authority's contracted courier service. Despite the language of their job descriptions, Information Agents from the call center have not "historically performed" relief work for the Information Serviceworker.

Acknowledging the Authority's rights under Section 1.45, the Union makes an interesting argument about additional limitations on the Authority's right to subcontract relief work arising from Section 8.7. It points out that the Authority's exercise of management rights under Section 1.12, must be done in a way "consistent with and not contrary to any specific provisions contained in this Agreement" (Joint Exhibit 1, p. 10). Section 8.7 reads in relevant part as follows:

*A set of job descriptions, which are mutually agreed upon between the Authority and the Union, describing all job classifications in the Office-Clerical Seniority Unit specified in this Article shall be printed separate from this Agreement and kept up to date. These will be used as the basis for describing jobs in posting notices of positions open for bids and shall be considered part of this Agreement (Joint Exhibit, p. 148).*

The Union argues that the change in the Information Agents' job descriptions, caused by the Authority's subcontracting of Information Serviceworker relief work, should have been negotiated under Section 8.7 since Office-Clerical job descriptions are "mutually agreed upon" and "part" of the Agreement. In its post-hearing brief, the Union referenced two arbitration awards – the *Bradford Job Duties Arbitration* (O'Grady 2006) and the *Hunt/Williams Transfer of Job Duties* (Hart 2006) – that involved the transfer or reassignment of job duties from bargaining unit positions and speak to the Authority's contractual obligation to first "negotiate" over such changes in the bargaining unit employees' job descriptions.

Arbitrator O'Grady's award in the *Bradford Job Duties Arbitration* turned on an application of Section 8.7. In denying the grievance, Arbitrator O'Grady held that the Authority was not "obligated to negotiate over proposed changes in the mutually agreed upon job descriptions of the office-clerical unit" and "is not obligated to assign to every Office-Clerical employee all of the duties listed within his or her job description" (pp. 13-14, 20-21). He added that "If the Authority wishes to assign new tasks to an Office-Clerical employee, not encompassed within the scope of the job description...it must bargain with the Union about the new duties" (p. 18).

The *Hunt/Williams Transfer of Job Duties* involved a different bargaining unit (Share-A-Fare) and operative contract language (Section 8.07) identical to that found in Section 8.7. Arbitrator Hart held that the Union had a "supervisory role" in monitoring changes in job descriptions and the right to review the "resulting job descriptions...so as to obtain mutual agreement by the parties" (p. 17). He did not find, however, that the contract language (Section 8.07) prohibited the Authority from transferring "tasks from a bargaining unit job to a non-union bargaining job" (*Id.*).

The Union's argument might be persuasive if the parties had not specifically negotiated a provision in their Agreement (Section 1.45) that deals with subcontracting. Section 1.45

identifies the Authority's right to subcontract bargaining unit work and the limitations on that right. Section 8.7 did not prevent the Authority from exercising its right under Section 1.45 to subcontract relief work to Quicksilver.

In short, the type of relief work that Quicksilver performed in December 2006 when Ms. Smith was on vacation has not been "historically performed" by the Information Agents or by any other member of the bargaining unit.

**C. Conclusion**

The Arbitration Board has been asked to answer the question of whether the Authority violated the Agreement when it subcontracted relief and supplemental work for the Information Serviceworker job under Section 1.45 to a courier service. Based on the specific facts presented in this grievance, the Authority's use of a courier service (Quicksilver) in December 2006 to perform relief and supplemental work for the Information Serviceworker did not violate the Agreement.

**VI. Award**

For the reasons set forth above, the grievance is denied.

  
Lon Moeller, Neutral Chair

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Fern M. Kohler, Authority Member  
(Concur/Dissent)

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William L. Wilson, Union Member  
(Concur/Dissent)

Dated at Iowa City, Iowa  
this 6<sup>th</sup> day of July 2007