

ARBITRATION DECISION

IN RE

3M Company
St. Paul, Minnesota

and

FMCS # 08-52530-3

USW Local 11-75

DISPUTE:

USW claim for subcontracted work

Arbitrator:
Daniel G. Jacobowski, Esq.
June 19, 2008

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JURISDICTION

APPEARANCES: Company: Mike Sanford, Plant HR Manager, St. Paul
Union: Paul Lindgren, District 11 Staff Rep, Minneapolis

HEARING: Conducted on March 28, 2008 at the Wildwood Lodge in Lake Elmo, Minnesota, on this contract grievance, pursuant to the provisions and stipulations of the parties under their collective bargaining agreement. Briefs were received April 28, 2008.

DISPUTE

ISSUE:

Does the union have a valid claim to the weekly safety shower inspection work at the 3M center which was subcontracted out by the company? Did the company violate the contract by such assignment of the work to an outside contractor? If so, what is the remedy?

CASE SYNOPSIS: This dispute involves the union claim to the work of weekly inspections of safety showers at the 3M CENTER which the company subcontracted to an outside contractor. The union contract covers maintenance employees at both the company EAST side plant in St. Paul and the 3M CENTER in Maplewood. In July 2007, the company closed the EAST side plant resulting in a layoff of 10 USW employees. In August 2007, it started weekly inspections of the showers at the CENTER by subcontract with an outside contractor. The union grieved claiming that the employees on layoff were entitled to the work instead of the subcontractor. The company denied the grievance, claiming that the inspection work at the CENTER was within the jurisdiction of the OPERATING ENGINEERS (OE) with whom the company also had a contract, and by the past practice of many years, OE had the work at the CENTER and USW had the work only at the EAST side plant. The union disagreed noting the past practice had only applied to annual inspections, and not to weekly inspections which USW employees had been doing since 2002 at the EAST side plant. The company claims this is jurisdictional issue of the two unions. The union claims it is a subcontracting issue under its contract.

CONTRACT PROVISIONS NOTED:

Article IV. Management

"4.01 The UNION and its members recognize that the successful and efficient operation of the business is the responsibility of Management and that Management of the plant and the direction of the working force is the responsibility of 3M provided, in carrying out these Management functions, 3M does not violate the terms of the Agreement."

Article XI. Grievance Procedure

"11.01 ... Should differences arise as to the intent and application of the provisions of this Agreement ... the controversy shall be settled in accordance with the following grievance procedure."

The arbitrator has also noted other related provisions in the contract on purpose, recognition, classifications, reductions and layoff, and maintenance of benefits clause.

BACKGROUND-FACTS

The parties have had a collective bargaining relationship for over 30 years, covering both the EAST side plant in St. Paul and the 3M Center in Maplewood. The USW contract covered the maintenance employees at both sites, including such classifications as machinists, mechanics, steam fitters, and utility workers, among others. The company has also had a separate contract covering employees who work on the boilers and fire protection systems at the 3M CENTER; that contract is with another union, the OPERATING ENGINEERS (OE). For many years the practice has existed that the annual inspections of preventative maintenance (PM) on the safety showers had been split between the two units – USW employees performing the work at the EAST side plant and OE boiler employees doing the work at the 3M CENTER. Both the union and the company witnesses confirm this past practice. However, in 2002, the company added the work of weekly inspections at the EAST side plant to USW employees mainly utility workers. It was in 2007 when this dispute arose that the company also started weekly inspections at the CENTER by assignment to the subcontractor.

On July 30, 2007, the company closed the EAST side plant, resulting in the layoff 10 USW utility workers. In August, the company added weekly inspections of the showers at the CENTER by assignment to the subcontractor. On October 2, 2007 the union filed this grievance protesting the subcontract while the bargaining unit employees were on layoff and requesting the recall of the work.

The Union Case: The union presented its case with four USW maintenance employees with seniority from 26 to more than 30 years seniority. Two were mechanics, and two were utility workers. They described the work typically done by employees of the two bargaining units and the difference. They confirmed that the annual safety shower

inspection work was historically done by USW employees at the EAST side plant and OE employees at the CENTER. They confirmed that weekly inspections were started at the EAST side plant in 2002 usually with USW utility workers. They explained the difference between the work of annual inspections and weekly inspections on the showers. Since 2002 weekly inspections were only performed at the EAST side by USW employees and never at the CENTER until this subcontract assignment in August 2007 after the plant closing and layoff. They verified the union claim for the weekly inspection work commenced and subcontracted at the CENTER.

Employee Nason explained the union's agreements and cooperation with the company on certain work when subcontractors were used, typically when the company faced the need for more employees on deadlines or for special skills and equipment which were needed. He estimated that 5 of the subcontract employees at the CENTER were doing the weekly inspection work. Remmen explained the shower inspection work he has done on the EAST side outlining the distinction between weekly and annual inspections. Warwra did utility work at both sites, and was given the assignment of locating and listing the safety showers at the CENTER for the subcontract employees. Benzer estimated the subcontractor inspections represented about 5 full time jobs. He acknowledged the union had earlier submitted an August 17, 2007 grievance on the subcontracting, but had later withdrawn it.

The union also obtained the admission of the OE business agent presented as a witness by the company that he did not file an OE grievance on the company subcontract of the work at issue.

The Company Case:

The company presented its case with two witnesses who had supervision responsibilities at the CENTER in past years from the mid 1980's. Rivers noted that in 1985 the safety shower PM program at the CENTER was assigned to OE employees. The annual inspections since continued to be given to OE employees responsible for fire prevention and security. He never supervised any weekly inspections. Schaal testified likewise and noted that the inspection work of the subcontract employees was assigned to about 4 such employees.

The company also subpoenaed OE business agent Monsour as a witness. He claimed that the safety shower inspection work was in the jurisdiction of the OE contract since about 1979. His claim was that the safety shower inspection work at the CENTER was within the jurisdiction of the OE. He stated that if the weekly inspection work were assigned to USW employees the OE would consider filing a grievance as their claim to the work jurisdiction. He admitted on cross that there was no OE grievance filed on the subcontract work here at issue.

The company also supplied the job description for the USW steam fitters and utility workers, and of the OE fire protection journeyman.

SUMMATION/ARGUMENT

UNION: In brief summary, the union summed up its position with the following main points:

1. The case is not about the OE classification or a jurisdictional issue between the OE and the USW.
2. The case is not about the annual inspections at either site.
3. The case is about the weekly inspections of safety showers at the 3M CENTER. This is USW work which contracted out. It was not given to the OE employees to do.
4. The OE union did not file a grievance on the subcontracting.
5. The two sites are under the same USW collective bargaining agreement.
6. The testimony shows that the weekly inspections of safety shower work are the work of USW utility and fitters. It is a subcontracting issue and not a jurisdictional issue.
7. The union requests that the arbitrator instruct the company to return this work to the USW, recall the USW members from layoff back to the work, and that all persons affected be made whole.

COMPANY: In brief summary, the company noted or argued the following main points in its brief.

1. The union withdrawal of its prior August grievance and its failure to supply a copy its subcontracting agreement with the company are a recognition and failure by the union to support its case.
2. The job descriptions of the work involved do not support the union claim.
3. The USW employees have only performed safety shower inspection at the EAST side plant, and never the 3M CENTER.
4. The clear past practice is that only OE employees have performed safety shower inspections at the 3M CENTER.
5. The management rights clause in the USW contract provides the company responsibility to determine the work needs and frequency. The subcontracting agreement at 3M with the USW does not apply to OE work.

6. Respectfully the union October grievance of Mr. Wawra should be denied entirely.

DISCUSSION-ANAYLSIS

Upon full review of the record, evidence, and submissions, I conclude the union has a valid grievance to be sustained, and the company's position fails. My decision is based upon the following factors and reasons.

1. I regard this as a subcontracting issue under the USW contract with the company, and not a jurisdictional issue between the unions as the company claims.
2. Significantly, the OE did not submit any grievance or claim of jurisdiction when the work was subcontracted to the outside contractor.
3. The company claim of past practice that inspection at the 3M CENTER has only been done by OE employees and never by USW employees, fails and is refuted, since such past practice applies only to the annual inspections and that only USW employees have done weekly inspections since 2002 at the EAST side. This establishes a valid claim and past practice in the face of the layoff conducted.
4. Both sides have recognized and argued the concept of past practice for their respective positions. This is consistent with the maintenance of benefit clause in the contract.
5. A review of the contract as a whole with its related provisions support the conclusion that its essence and spirit confirm the union claim the USW employees on layoff have a higher claim to the subcontracted work in challenge of the subcontracting. The spirit of the contract, and context with the evidence and practice of the parties support the union claim.
6. I have considered all of the arguments and submissions by the company, but find they fail to overcome a more convincing support of the union claim as above noted.
7. I find that the union has proven that the company violated the contract and the rights of employees in its subcontracting of the weekly safety shower inspections at the CENTER while USW employees on layoff were available for the work.

DECISION-AWARD

DECISION: The union grievance is sustained.

AWARD: The company is directed to cease the subcontracting of the disputed work and to assign it to available employees on layoff by recall according to the number needed, and to make the affected employees whole by restoration of their status, benefit rights,

and back pay during the interim according to the number and hours worked by the subcontractor employees during the interim. The union and company are directed cooperate in the specific determinations. Back pay shall be reduced by any unemployment insurance or interim earnings from elsewhere due to the layoff, of any affected employee.

The arbitrator will retain jurisdiction in the event that there is any further question or dispute over the implementation of the award.

Dated: June 19, 2008

Submitted by:

Daniel G. Jacobowski, Esq.
Arbitrator