

IN THE MATTER OF ARBITRATION BETWEEN

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TEAMSTERS LOCAL NO. 1145,)	ARBITRATION
)	AWARD
Union,)	
)	
and)	LANGEN
)	SUBCONTRACTING
)	GRIEVANCE
)	
HONEYWELL INTERNATIONAL,)	
INC.,)	
)	FMCS Case No. 080529-56242-3
Employer.)	
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Arbitrator: Stephen F. Befort

Hearing Date: April 24, 2009

Post-hearing briefs received: May 22, 2009

Date of decision: June 15, 2009

APPEARANCES

For the Union: Amanda R. Cefalu

For the Employer: Pamela R. Galanter

INTRODUCTION

Teamsters Local 1145 (Union) is the exclusive representative of a unit of production and maintenance workers employed by Honeywell International, Inc. in its Minneapolis Operations area (Employer). The Union brings this grievance claiming that the Employer violated the parties' collective bargaining agreement by failing to recall subcontracted metal finishing work on gyro covers while laying off grievant Mark

Langen from his position as a metal finishing technician. The grievance proceeded to an arbitration hearing at which the parties were afforded the opportunity to present evidence through the testimony of witnesses and the introduction of exhibits.

ISSUES

1. Is the grievance arbitrable?
2. Did the Employer violate the parties' collective bargaining agreement by failing to recall subcontracted gyro cover work for the Metal Finishing Department when it placed the grievant on layoff status? If so, what is the appropriate remedy?

RELEVANT CONTRACT LANGUAGE

ARTICLE 4 – MANAGEMENT RIGHTS

Section 1. The Company retains the full and unrestricted right to assign, direct, operate and manage all manpower, facilities and equipment; to direct, plan and control Company operations and services; to establish functions and programs; to make and enforce rules and regulations; to establish work schedules and assign overtime; to contract with vendors or others for goods and services; to hire, recall, transfer, promote, demote, employees for just cause; to lay off employees because of lack of work or for other legitimate reasons; to introduce new and improved operation or production methods

ARTICLE 18 – GRIEVANCES

Section 1. A grievance is any controversy between the Company and the Union as to the interpretation of this Agreement, a charge of violation of this Agreement, or a charge of discrimination involving wages, hours, or working conditions resulting in undue hardships.

Section 3. It is agreed that the following shall not constitute issues for arbitration: (a) supervision and direction of the working force, (b) schedules of production, methods and processes of manufacturing, (c) the terms of a new agreement.

ARTICLE 31 – EMPLOYMENT SECURITY

Employees hired on or before August 1, 1988 are protected against layoff as a result of productivity increases resulting from the implementation of the single bargaining unit wide seniority system. It is further understood that in accordance with the letter of January 29, 1988 that to avoid the layoff of employees hired on or before August 1, 1988 the Company will return work from vendors. It is understood that such work may be sent back to vendors once work loads return to normal. (Effective 8-1-88).

FACTUAL BACKGROUND

Honeywell International is a residential and avionics electronics systems manufacturing company. The company has several facilities in the Minneapolis, Minnesota area, including the Golden Valley facility at which the grievant worked at the time this grievance arose.

Local 1145 is a local union affiliated with the International Brotherhood of Teamsters. The Teamsters local has represented employees at Honeywell for more than 40 years. Approximately 1200 of the company's current workforce in the Minneapolis Operations area are represented by the Union.

For a number of years, the parties' collective bargaining agreement utilized a system of seniority based upon job classification. In 1988, the parties agreed to a "one seniority" system by which layoffs and job bidding are determined by means of a unit-wide seniority list with employees having the right to bump into different job classifications for which they are qualified. In conjunction with this change, the parties agreed to the following language that currently exists as Article 31 of the parties' agreement:

Employees hired on or before August 1, 1988 are protected against layoff as a result of productivity increases resulting from the implementation of the single bargaining unit wide seniority system. It is

further understood that in accordance with the letter of January 29, 1988 that to avoid the layoff of employees hired on or before August 1, 1988 the Company will return work from vendors. It is understood that such work may be sent back to vendors once work loads return to normal.

The Letter of Agreement referenced in this Article provides that the Employer will take immediate steps to call back any subcontracted work that previously was performed by bargaining unit employees, subject to certain constraints such as the Employer's capacity to perform the work on an in-house basis.

One of the products produced by the Employer is a "gyro" that is used in guidance systems marketed to defense contractors. Prior to 2002, bargaining unit employees machined and chromated the covers for the gyro assembly on an in-house basis. Because of the heightened demand for defense products following the events of September 11, 2001, the Employer decided that it no longer had the capacity to produce both the covers and the bases for the gyro assembly. As a result, the Employer made the decision to outsource the production of the gyro covers beginning in 2002.

The Union filed a grievance in 2002 contending that the Employer had violated Section 31 and the Letter of Agreement by failing to recall the subcontracted metal finishing work while unit employees were on lay-off. Arbitrator Howard Bellman, in a 2003 award, ruled that the Employer violated the Letter of Agreement by failing to notify the Union of the subcontract and by failing to recall the subcontracted work while unit employees were on layoff status. In addition to a monetary remedy for affected employees, Arbitrator Bellman "invited the Union to engage in good faith negotiations of possible recalls of work or other remedies." It does not appear that such negotiations ever took place.

Mark Langen, the grievant in this case, has worked for Honeywell since 1985. At the time of the events giving rise to this grievance, he worked in the Metal Finish Department in the Employer's Golden Valley facility. Employees in this department clean parts with chemical solutions, plate parts, and chemically treat parts prior to final assembly.

In February 2007, Langen received notice that his seniority date was subject to potential layoff and his position was posted. A more senior employee in another department who was "surplused" bid on the position and was found to be qualified. Pursuant to the seniority provisions of the labor agreement, an employee in a position with a surplus of workers can exercise seniority rights to bump more junior employees in other positions. The Employer's Human Resources Department informed Langen that he had the option of bumping a less senior employee or accepting a layoff from employment. Langen chose the former option and bumped into an assistant cook position in the company cafeteria.

On April 4, 2007, the Employer issued a letter to Langen stating that his "name is being carried on the Honeywell seniority lists as an employee on layoff," and that he was being recalled to fill an available opening. On April 23, Langen transferred from the cafeteria to the Assembly Department. On December 15 of that year, he transferred back to the Metal Finish Department. The Union claims that Langen suffered a wage loss of \$1,600 due to the temporary reduction in position.

The Union filed a grievance alleging that the Employer violated Article 31 of the parties' agreement by laying off Mr. Langen while unit work was being subcontracted. The grievance requests a recall of subcontracted work and an award of back pay. The

Employer denied the grievance at each step of the grievance procedure, and the dispute proceeded to arbitration.

POSITIONS OF THE PARTIES

Union:

The Union initially contends that this grievance is arbitrable because it asserts an arguable “controversy” or “violation” of Article 31 of the parties’ collective bargaining agreement. According to the Union, the grievance concerns the issue of subcontracting and is unrelated to the excluded topic of “methods and processes of manufacturing.” In addition, the Union maintains that the subcontracting language contained in the contract’s management rights clause is relevant only to the substance of this grievance but not to the issue of arbitral jurisdiction.

In terms of the merits, the Union argues that the Employer violated Article 31 when it laid off the grievant without recalling bargaining unit work that had been subcontracted. More specifically, the Union maintains that the Employer’s decision to subcontract work on gyro covers has had a deleterious impact on the bargaining unit and contributed to the layoff of Mr. Langen. The Union views this grievance as presenting the same factual context as that at issue in the grievance resolved by Arbitrator Bellman in 2003, and that this earlier ruling in favor of the Union should operate as *res judicata*.

Finally, the Union takes issue with the various defenses asserted by the Employer. In particular, the Union asserts that the force of Article 31 is not limited in scope to the implementation of the “one seniority” system in 1988, and that the Employer has sufficient capacity to machine and chromate gyro covers on an in-house basis.

Employer:

The Employer claims that this grievance is not arbitrable because Article 18 of the labor agreement expressly excludes issues concerning “methods and processes of manufacturing” from arbitration. According to the Employer, its decision as to the source of production - whether internal or external - necessarily implicates the methods and processes of manufacturing gyro assemblies. The Employer further argues that the grievance is not substantively arbitrable because it involves a “contract with vendors . . . for goods and services” which is a management right reserved for the Employer pursuant to Article 4 of the agreement.

Turning to the merits, the Employer asserts four defenses to the Union’s Article 31 claim. First, the provisions of Article 31 come into play only in the event of an employee layoff. In this instance, Mr. Langen, although temporarily bumped to a lower position, was never laid off from employment. Second, Article 31 only applies to subcontracted work that “has previously been performed by bargaining unit employees.” While unit employees did make older model gyro covers prior to 2002, they have never worked on the technically advanced HG 1700 gyro assembly covers that are currently processed by an outside vendor. Third, the Employer contends that Article 31 is limited in purpose and scope to the outsourcing of jobs related to “the implementation of the single bargaining unit wide seniority system.” That event occurred more than twenty years ago and had no causal relationship to the Employer’s decision to outsource gyro cover production in 2002. Finally, the Employer claims that it lacks the capacity to perform the machining and chromating work on an in-house basis.

DISCUSSION AND OPINION

A. Arbitrability

The issue of arbitrability is a matter governed by the parties' contractual agreement. While the Supreme Court has counseled that a finding of arbitrability generally is favored, United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960), the parties are free to withhold matters from arbitration by the terms of their contractual arrangement.

The Employer argues that two provisions of the parties' contract exclude the instant grievance from arbitral jurisdiction. The Employer first points to Section 3 of Article 18 which provides:

It is agreed that the following shall not constitute issues for arbitration: (a) supervision and direction of the working force, (b) schedules of production, methods and processes of manufacturing, (c) the terms of a new agreement.

The Employer contends that its decision to subcontract the production of gyro covers necessarily concerns the "methods and processes of manufacturing" the gyro assembly. The Employer also relies on Article 4 in which the Employer "retains the full and unrestricted right to . . . to contract with vendors or others for goods and services." As the Employer asserts in its post-hearing brief, "the clear language of the Management Rights Article places the decision to contract with vendors squarely within the control of the Company, and excludes it from interference by the Union."

Neither of these assertions is sufficient to overcome the usual presumption of arbitrability. Article 18 appears to exempt a number of non-mandatory bargaining topics from arbitration such as the supervision of the workforce and interest arbitration for new contract terms. As such, it is likely that the "methods and processes of manufacturing"

excluded from arbitration refer to entrepreneurial decisions concerning how to structure the manufacture process as opposed to the topic of subcontracting to save labor costs which is a well-recognized mandatory topic of bargaining. *See Fibreboard Paper Products Corp v. NLRB*, 379 U.S. 203 (1964). Thus, while the issue of “how” to manufacture a product is excluded from arbitration, the issue of “who” is to perform the work is not.

Similarly, the fact that Article 4 gives the Employer wide latitude to contract with outside vendors has no real bearing on the issue of arbitrability. As the Supreme Court has admonished, the question of arbitrability should not be confused with a defense on the merits. *See United Steelworkers v. American Mfg. Co.*, 363 U.S. 564 (1960). While the Employer’s management right to subcontract arguably may relate to the merits of the Union’s Article 31 claim, it does not inhibit the arbitrator’s exercise of jurisdiction to consider the Union’s alleged violation of that provision.

For these reasons, the first issue in this matter is answered in the Union’s favor. The dispute is arbitrable.

B. The Merits

The Union contends that the Employer violated Article 31 of the parties’ collective bargaining agreement by laying off Mr. Langen while unit work was being performed by an outside vendor. In support of this claim, the Union submitted evidence that unit employees had machined and chromated gyro covers in-house until 2002, and that this type of work currently is subcontracted to an outside vendor. The Union also established that Mr. Langen was bumped from his position as a metal finishing technician into a lower-rated assistant cook position in 2007.

The Employer denies the alleged violation and asserts the following four defenses:

- 1) The Employer never laid off Mr. Langen;
- 2) Unit employees have never produced the types of gyro covers currently used in the HG 1700 gyro assembly;
- 3) Mr. Langen's removal from the Metal Finishing Department was not caused by the implementation of the single bargaining unit wide seniority system; and
- 4) The Employer lacks the capacity to perform the outsourced work on an in-house basis.

As to the layoff issue, the Union principally relies on two pieces of evidence. First, the Union elicited testimony indicating that Mr. Langen was bumped from his metal finishing technician position to a lower-ranked assistant cook position and that he suffered a loss of income as a result. Second, the Union points to an April 4, 2007 letter from the Employer's Human Resources department identifying Mr. Langen as "an employee on layoff," and recalling him to fill an available opening in a higher-rated position.

Carolyn Tracy, Senior HR Process Administrator, testified that in accordance with Honeywell's human resource policies, a layoff occurs only once an employee has no seniority to hold an employment position anywhere within the Honeywell organization. According to this definition, Ms. Tracy expressed the opinion that Mr. Langen was not laid off because, even though bumped, he retained employment with Honeywell during all of time in question. Ms. Tracy also testified that Mr. Langen was sent the wrong form letter while she was on vacation and that the correct form would have identified Mr.

Langen as “an employee currently working part-time in the cafeteria with recall rights to full time.”

The Employer’s position on the layoff issue has authoritative support. BLACK’S LAW DICTIONARY (8th ed. 2004) defines a “layoff” as “the termination of employment at the employer’s instigation.” Similarly, the leading treatise on labor arbitration describes a layoff as the “suspension” or “severance” of employment. ELKOURI & ELKOURI, HOW ARBITRATION WORKS 782-83 (6th ed. 2003). In this vein, Article 31 appears to serve the purpose of protecting employees from a *loss of employment* during a period when the Employer was affirmatively sending unit work to an outside contractor.

In this instance, however, Mr. Langen never experienced a loss of employment. Although he was temporarily bumped from the Metal Finishing Department, he continued to work for the Employer in various capacities throughout the period in question and he currently works, once again, in the Metal Finishing Department.

Since the Employer did not lay off Mr. Langen, no violation of Article 31 can be established. Because the record supports the Employer’s claim that Mr. Langen was never laid off from employment, the other three defenses asserted by the Employer need not be reached in making this decision.

AWARD

The grievance is denied.

Dated: June 15, 2009

Stephen F. Befort
Arbitrator