

IN THE MATTER OF THE ARBITRATION BETWEEN

HONEYWELL INTERNATIONAL, INC)	
)	
“EMPLOYER”)	FMCS NO. 090227-54252-3
)	
And)	
)	
TEAMSTERS LOCAL 1145)	RICHARD R. ANDERSON
)	ARBITRATOR
“UNION”)	FEBRUARY 28, 2011
)	

APPEARANCES

EMPLOYER

Pamela R. Galanter, Attorney
Susan K. Hansen, Attorney
Ed Merriam, Labor & Employee Relations Vice President
Chuck Bengtson, Labor Relations Manager
Curtiss LaClaire, Human Resource Director
David Hanson, Human Resource General Manager
Gloria LaMere, Former Lead Facilities Supervisor-Stinson Facility
Eric Newton, Facilities Supervisor & Engineer-Plymouth Facility
Cara Eickholt, Human Resource Generalist
Dan Howard, Facilitator
Leon Trout, Maintenance Supervisor

UNION

Patrick J. Kelly, Attorney
Kevin M. Beck, Attorney
Milt Nordmeyer, Former Secretary/Treasurer Local 1145
Nancy Sims, President Teamsters Local 1145
Harlan George, Former President Teamsters Local 1145
Joseph Witzmann, Vice- President Teamsters Local 1145 & Sheet Metal Department
Steward-Plymouth Facility
Robert J. Killeen, Grievant & Millwright-Golden Valley Facility

Dan Darwitz, Millwright Group Leader-Stinson Facility
Arden Koosmann, Millwright Group Leader-Coon Rapids Facility
Gary Dahlheimer, Plant Steward & Refrigeration Mechanic-Stinson & Coon Rapids
Facilities
David R. Kirkham, Steward Coon Rapids & Stinson Facilities

JURISDICTION

The hearing in above matter was conducted before Arbitrator Richard R. Anderson on November 18, 2010 and January 6, 2011 at the Federal Mediation & Conciliation Service (FMCS) facilities in Minneapolis, Minnesota. Both parties were afforded a full and fair opportunity to present its case. Witness testimony was sworn and subject to cross-examination. Exhibits were introduced and received into the record. The hearing closed on January 6, 2011. Post-Hearing Briefs were timely received from both parties on February 19, 2011. The record was then closed and the matter was taken under advisement.

This matter is submitted to the undersigned pursuant to the terms of the parties' collective bargaining agreement that was effective from February 1, 2007 through January 31, 2010, hereinafter the 2007 Agreement. (Joint Exhibit 1) The language in Article 18 [GRIEVANCES] of the 2007 Agreement provided for the filing, processing and arbitration of grievances. Step 4 of this Article defines the jurisdiction of the Arbitrator and establishes the Arbitrator's sole decision-making authority. The parties stipulated that there were no substantive or procedural issues with respect to the timely processing of the grievance; and that the matter was properly before the undersigned Arbitrator for final and binding resolution.

THE ISSUE

The parties stipulated that the issue was, "*Whether the Employer violated the collective bargaining agreement on January 9, 2009 when it subcontracted millwright bargaining unit work at its facilities, and if so, what is an appropriate remedy?*"

BACKGROUND

Honeywell International, Inc., hereinafter the Employer, is a diversified technology and manufacturing leader, serving customers worldwide with aerospace products and services; control technologies for buildings, homes and industry; automotive products; turbochargers; and specialty materials. It includes different strategic business groups some of which are located in the Minneapolis Operations area. The strategic business groups are separate and distinct businesses with their own budgets and management structure. The facilities involved herein are the Golden Valley, Coon Rapids, and Plymouth facilities located in those respective cities; and the Stinson Facility located in Minneapolis.

The Stinson Facility, operated by the Aerospace strategic business group (commonly called Aero) is headquartered in Phoenix, Arizona. It makes guidance and navigation systems such as ring laser gyros for military and commercial application. The Golden Valley facility is the headquarters of and is operated by Automation and Control Systems (referred to as ACS). The Golden Valley facility produces thermostats and air cleaners for commercial and residential use. The Plymouth facility, operated by Aero, produces computer chips and other electronics. The Coon Rapids facility also operated by Aero produces navigation systems for commercial aviation use.

Teamsters Local 1145, hereinafter the Union, currently represents approximately 1,200 to 1,400 production and maintenance employees in 26 departments at the

Employer's Minneapolis/St. Paul facilities, and has done so since the early 1940's. This includes the classification of Millwright.¹ The bargaining unit is set forth in Article I [RECOGNITION].

The Employer laid off Stinson Millwrights Robert Killeen and John Datko on January 9, 2009 and continued to subcontract certain work that had been historically performed by the Millwright classification. As a result of the layoffs, they filed a grievance on January 9, 2009. The grievance alleged a "Violation Article 1 Section 1, Article 3 Section 4 and Memorandum of the Agreement". (Joint Exhibit 2)

A Step 2 meeting was held on January 20, 2009, which resulted in the Employer denying the grievance. Human Resource Manager Hanson's January 26, 2009 written response stated: (Joint Exhibit 4)

In regard to the claimed violation of Article 1, Section 1, the Union claimed that the language prohibits Honeywell from having other Unions on site. The Company has not violated this language. At no time has the Company hired employees who are members of a different Union. All Honeywell employees hired under the terms of the CBA become Local 1145 members. The Union's assertion that this clause applies to all contracted labor hired by the Company in the form of subcontracted vendors and temporary manpower contracts is not true. The clear and unambiguous language in Article 1, Section 1 states, "The Company recognizes the Union as the duly authorized and sole collective bargaining agency for all its hourly paid employees...." Subcontractors, Vendors and others who are not Honeywell employees are not party to this contract or language, thus it does not apply.

Furthermore, in the past, this Union has asked the Company to only use subcontractors who use union labor. While it is the Company's sole right to select subcontractors, it is strange that Local 1145 would ask for union subcontractors and now turn the argument around in this grievance and try to use it against the Company.

Furthermore, the Union presented no evidence of any violation in regards to Article 3, Section 4.

In regards to the claimed violation of a, "Memorandum of Agreement." The Union presented no "Memorandum of Agreement" that was supposedly violated for review, the Union provided no date of such supposed "Memorandum of

¹ Whenever millwright is capitalized it is referring to an Employer millwright.

Agreement”, and there was no discussion around such agreement.

Human Resource Manager Hanson also acknowledged in this Step 2 response letter that the *“Union’s basic allegation was that the Company could not subcontract work while two Millwrights were on lay off”*.

Prior to the issuance of this letter, the Union filed a written request for a Step 3 meeting on January 23, 2009. (Joint Exhibit 5) A Step 3 meeting was conducted on February 24, 2009 which resulted in the Employer formally denying the grievance at Step 3. Human Resource Manager Hanson’s February 26, 2009 written response stated: (Joint Exhibit 6)

The Union’s claim that the Company has committed a jurisdictional violation is false. A jurisdictional violation would be between two or more Unions that represent different groups of Honeywell employees or between the Honeywell Local 1145 Union and other non-unionized Honeywell employees. In the case of this grievance, Honeywell currently does not have any unionized employees in the Minneapolis area other than the Local 1145 employees. Additionally, Honeywell did not have any of their non-unionized employees perform the work in question. Thus there is no jurisdictional violation.

Human Resource Manager Hanson reiterated the Employer’s Step 2 position on the alleged violation of Article 3 (Union Business and Activity) Section 4 and the Memorandum of Agreement. Human Resource Manager Hanson also informed the Union that the 2007 Agreement allows the company, *“to contract with vendors or others for goods and services”*.

Prior to the issuance of this letter, the Union formally notified the Employer that it was requesting arbitration. (Joint Exhibit 7) Thereafter, the Union filed for arbitration (exact date unknown) with the FMCS which subsequently notified the parties on February 27, 2009 of said filing and forwarded a list of potential arbitrators to the parties. On April 27, 2009, the undersigned was notified by the FMCS that I had been selected as the neutral Arbitrator in this matter.

RELEVANT CONTRACT PROVISIONS

ARTICLE I - RECOGNITION

Section 1. *The Company recognizes the Union as the duly authorized and sole collective bargaining agency for all its hourly paid employees in Minneapolis and St. Paul and their suburbs including among others employees in:*

3. *Maintenance*

Section 2. *It is the Company's policy that under normal circumstances non-bargaining unit employees shall not perform the normal work of bargaining unit employees.*

ARTICLE 3— UNION BUSINESS AND ACTIVITY

Section 4. *The Company shall not discriminate against any employee on the basis of arbitrary or capricious action or by reason of age (except by agreement of the parties as permitted by law), sex, race, religion, color, national origin, gender, sexual orientation or on the basis of disability in violation of applicable statutes, membership in the Union or Union activities authorized by the terms of this Agreement. The Company or its employees shall not engage in anti-Union activities which in themselves create discord or lack of harmony.*

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 good and sufficient reason; to discipline or discharge 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; to set and amend budgets; to determine the utilization of technology; to establish and modify the organizational structure; to select, direct and determine the number of personnel and to perform any inherent managerial function not specifically limited by this Agreement.*

Section 2. *Any term and condition of employment not explicitly established by this Agreement shall remain with the Company to establish, modify, or eliminate.*

ARTICLE 18. — GRIEVANCES

Section 1. *A grievance is any controversy between Company and the Union (or between the Company and an employee covered by this Agreement) 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 2.

The authority of the Arbitrator shall be limited solely to the determination of the written issue(s) as submitted by the parties, provided that the Arbitrator shall refer back to the parties without decision any matter not a grievance under Section 1 of this Article or which is excluded from arbitration by the terms of Section 3 herein. The Arbitrator shall have no power to add to, or subtract from, or modify, any of the terms of this Agreement, or any agreement made supplementary hereto.

The Company and the Union shall set the time and place of hearing. Hearing dates will be subject to the approval of the Arbitrator. The Arbitrator shall render the decision on a grievance submitted to arbitration within thirty (30) days after the close of the hearing. The Arbitrator's decision shall be final and binding upon the Company, the Union and employees within the bargaining unit. The expense and fees of the Arbitrator shall be borne jointly by the Company and the Union.

ARTICLE 22— LAYOFF, TRANSFER AND DISCHARGE

Section 1. *The Company shall have the exclusive right, except as otherwise provided in this Agreement, to lay off and transfer employees for lack of work or other legitimate reason and to discharge employees for just cause.*

Section 4. *When additional employees are required, employees on layoff shall be recalled in seniority order with the employee having the most seniority recalled first; provided the employee has the necessary qualifications. If there are no qualifications, the employee will be recalled if he/she has sufficient ability to satisfactorily perform the job within a reasonable period of time.*

Section 6. *If the Company fails to issue a recall notice to an employee who was entitled to such notice, such employee shall receive pay for time lost by reason of the failure to notify; provided the employee was ready, able and willing to return to work when work was available.*

ARTICLE 31. — GRIEVANCES

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

RELEVANT FACTS

The following are facts that this Arbitrator deems relevant to the determination of the instant issue. The classification of Millwright is included in the 2007 Agreement. The

primary duties of a Millwright in the Millwright Job Description last reissued by the Employer on January 6, 1989 are: (Joint Exhibit 3)

Move and install complicated machine tools such as: heavy presses precision machine, boring mills, planers, lathes, etc. which require care in aligning and balancing. Select or specify motors, shafts, pulleys and belts. Install complicated group counter and line shafts. Perform a wide variety of construction and repair work on equipment such as: compressors, conveyors, line shafts, parts bins, etc. Use care and judgment planning, moving, rigging, handling equipment with minimum interference to production. Diagnose trouble quickly to avoid shut-downs. Order supplies as required.

The Union also provided a three page document entitled “*Millwright Jurisdiction Write-Up*” that listed the various types of work that Millwrights performed under the job categories entitled “*Moves*”, “*Fabrication*”, “*Installation*”, “*Service*” and “*Repairs*”. (Union Exhibit 1) According to the testimony of Union witnesses Millwright Group Leaders Dan Darwitz and Arden Koosmann, this document had been used for years to resolve potential jurisdictional disputes among the various “skilled trades” employed by the Employer. There was no evidence that the Employer formulated this document.²

As stated earlier Grievants Killeen and Datko, who were hired respectively in March and April 2008, were laid-off on January 9, 2009 although they continued working through the next day. Grievant Datko was the least senior Millwright. He was bumped by more senior Millwright Bob Isaacson after Isaacson was surplused from the Golden Valley Facility. Grievant Killeen was the next least senior Millwright. He was bumped by more senior Millwright Jim Wint who had also been surplused from the Golden Valley Facility. Grievant Datko was never recalled as of the date of the close of the hearing (January 6, 2011). Grievant Killeen was recalled on April 9, 2009 and worked at the Coon Rapids Facility as a Millwright until he was laid-off on May 8, 2009. He was recalled effective

² This document had little evidentiary value since the Employer acknowledged later herein that the subcontracted work in issue was work that Millwrights performed.

June 14, 2010 as a Millwright at the Plymouth Facility where he continued to be employed as of the date of the close of the hearing.

Lead Facilities Supervisor at the Stinson Facility Gloria LaMere, who retired in 2010, testified that she was a 32+ year employee. She was in this position for the last 12 years of her employment. Among her responsibilities was the supervision of all employees involved in maintenance at the Stinson Facility. She managed a department that included approximately 15 skilled trade employees in eleven classifications—Millwright, Electrician, Plumber, Sheet Metal, Painter, Machine Repair, Boilerman AC, Oiler, Welder and Carpenter. Her Department is responsible for all maintenance functions at the facility including preventative maintenance, fulfilling service requests from various production and laboratory operations and maintaining the building.

Supervisor LaMere further testified that there was millwright work and work that Stinson Millwrights had the expertise to perform involved in all of the subcontracted Stinson Jobs that will be discussed in detail later herein. Supervisor LaMere testified that the primary reason for the decision to subcontract was that she did not have enough Millwrights to work on the jobs in question. She added that the Employer had initiated an across-the-board 25% reduction in staffing levels in 2009 resulting in manpower shortages. This reduction also affected management wherein she had to lay off two Facilities Supervisors during August 2009. During the time frame relevant herein, she only had four Millwrights at the Stinson Facility and could not release them to perform the millwright work that was subcontracted without sacrificing other jobs that the Millwrights were currently working on or were scheduled to work. She also could not recall employees, hire new or temporary employees nor transfer Millwrights from other facilities

because she had to abide by the Employer's staffing levels commonly known as "census constraints".

The census constraints were set by high ranking corporate officers and involved all staffing levels—both Union and O & T personnel.³ Human Resource General Manager David Hanson testified that in 2008 "Corporate" became very aggressive in establishing census constraints. The census constraint established at each Employer facility was reviewed each month and became so tight that new employees could not be hired without approval of the Employer's CEO even if there was turnover.

Supervisor LaMere and Plymouth Facilities Engineer Eric Newton both testified that they had no authority to go beyond established census constraints; and if they did, they could face serious discipline including termination.⁴ According to Supervisor LaMere if they were to employ more Millwrights on a particular job, personnel from other skilled trades would have to be laid off in order to adhere to the census constraints in her department. This was not practical without affecting production. A full complement of the other skilled trades, especially the Plumbers, Electricians Oilers and AC employees, that are involved in daily production maintenance and repair are necessary in order to maintain established production levels. These skilled trade groups are vital in maintaining production while all other maintenance is secondary.

Supervisor LaMere also testified that in the past she had borrowed employees from other facilities if a job was too big for her Stinson Millwrights to handle, but only if they were not needed at their respective facilities or would not violate census constraints. Adding there were no Millwrights available at the other facilities for all the jobs

³ O & T refers to all the non-Union positions in the Company and includes office personnel, managerial, supervisors and technical employees.

⁴ This was confirmed by Labor & Employee Relations Vice President Ed Merriam and Human Resource General Manager Hanson.

subcontracted; and even if there were, she would have violated the Stinson Facility census constraints if they were brought in.

Supervisor LaMere further testified that many of the tasks that Millwrights perform involve moving equipment. Equipment moving is necessary if production areas are restructured or remodeled, equipment is removed for repair, old equipment is replaced with new or when new equipment is installed. Many of these “moves” have to be synchronized with ongoing production and in coordination with other skilled trade groups as well as in coordination with other departments such as Production, Labs and Material Handling. If there are not enough personnel to accomplish the “move” without jeopardizing production or other jobs the Millwrights or other skilled trade groups are working on, the job has to be subcontracted because of the aforementioned census constraints.

Supervisor LaMere and Engineer Newton both testified that no Millwrights were ever laid-off because of subcontracting at their respective facilities. This was also true at other facilities where Millwright work was subcontracted. Labor & Employee Relations Vice President Merriam testified that it would be impractical to recall Millwrights on layoff status to perform short-term jobs. The Employer is required to give five days notice before it lays off an employee resulting in the Employer having to retain a Millwright past the time period required to perform a short-term job. In addition, this would be totally unfair to those Millwrights who had taken other employment since they could not refuse a recall. A failure to accept recall results in termination. Thus, a laid-off Millwright would have to give up interim employment in order to return to work for the Employer even if it was for a short time period.

The Employer historically subcontracts both production and maintenance work to outside contractors. One of the outside mechanical contractors is Adolfson & Peterson Construction (A&P) which maintains an “office” at the Stinson Facility that utilizes other contractors to do its millwright work.⁵

Employer representatives have a meeting with various Union representatives to discuss the proposed subcontracting prior to subcontracting the job. This meeting is usually attended by the facility Millwright Foreman and can include other Employer representatives, including Human Resource Department personnel along with the Lead Millwright at the facility involved and various Union representatives. A “Subcontract Communication Log”, hereinafter the Log, is generated from this meeting by the Employer that lists inter alia a heading entitled “Location and Description of Work”. This category describes the work to be performed and the facility involved.

The Log also lists a heading entitled “Reason for Outside Contractor” with a box to be checked whether it was for “Purchased Services”. It also includes sub-categories listing the types of services to be subcontracted that are to be checked if any are appropriate. These include (1) “Work where particular skills/licenses/permits are involved”, (2) “Work which a vendor must perform to prove out equipment”, (3) “Work requiring the purchase of new or replacement equipment” and (4) “Work where specialized equipment/tooling is required”.

The Log also lists a heading entitled “Resource Constraint” with a box to be checked if there are not enough resources to do the job; together with a sub-heading

⁵ Depending on the size and duration of the subcontracting, the office could be as small as a table in the construction area.

entitled "Explanation" with a box to be checked if it is appropriate. If there are any resource constraints they should be listed under explanation.

The Log also contains a heading entitled "HSE" together with a box to be checked if there are any HSE issues. HSE refers to listed sub-categories "Health (Asbestos, PCB)", "Safety (High Voltage, Demolition)" and "Environmental (Remediation Work)" with a box beside each category to be checked if any are appropriate.

There is also a heading on the Log entitled "Union Response" with a box for sub-headings of "Favorable" or "Unfavorable" to be checked, whichever is appropriate. The Log also contains a heading entitled "Review Board Meeting" that includes a sub-category entitled "Outcome" with a box to be checked whether the job will be a "Subcontract" or "In-House".

Finally, there is a heading entitled "Signatures of those in Attendance" that lists each person attending the meeting. By their initials or signature, attendees acknowledge their attendance.

When the Grievants were laid off the Employer had millwright subcontractors on the premises. After the Grievants were laid off, the Employer entered into multiple subcontracts for work that fell within the Millwrights' job description. Killeen testified that as he was being laid off, he observed millwright subcontractors walking into the facility to remove old equipment from a lab and install new equipment.

The Union introduced 15 Logs dated between January 9, 2009 through October 8, 2010 covering subcontracted millwright work through Millwright Group Leaders Darwitz and Arden Koosmann and Sheet Metal Steward Joe Witzmann.⁶ Darwitz is a 33-year employee with 24 years of Millwright experience. Millwright Group Leader Koosmann has

⁶Witzman is also a Union Committeeman and was the Union Vice President prior to January 1, 2011.

been employed as a Millwright for over 30 years while Sheet Metal Steward Witzmann has been employed as a Sheet Metal worker for 31 years.

- **JOB (1)** Log dated January 22, 2009 prepared by Millwright Supervisor Jim Buhill disclosed the following work to be performed; *“Stinson Facility Addendum to subcontract #929 extend from 2/01/09 to 7/01/09. Subcontracting in it’s (sic) entirety the 2009 RLG Expansion. Phase’s include- Polish phase I through 10. Substrate Machining phase I through 5 and Driver area. Support by Honeywell trades to maintain the integrity of the building systems if and when needed. To be completed 7/01/09.”* (Union Exhibit 2)

There were only two Log headings checked. “Purchased Services” under “Reason for Outside Contractor” was one; however, no sub-heading item was checked. “Unfavorable” under “Union Response” was the other sub-heading checked along with the following handwritten notations by Union Committeeman Cliff Jarson, *“Union contends that the Co. is violating Art 22 Sec.1 Millwrights been laid off. We do not agree with this subcontracting. If a surplus is necessary in the maintenance skilled trades this request will be readdressed in a subcontract meeting. Is this a turnkey or time and material?”*

Millwright Group Leader Darwitz testified that this job entailed moving and setting up equipment after it was moved from one area to another at the Facility. Millwright Group Leader Darwitz further testified that this was a planned or scheduled job, was millwright work and would take four Millwrights approximately six months to finish. Grievant Killeen corroborated Millwright Group Leader Darwitz’s testimony that this was millwright work.

Supervisor LaMere testified that this job involved a continuation of work resulting from a substantial remodeling project in the production area on the first floor of the Stinson Facility. This subcontract was an addendum to the original subcontract that was discussed at Union/Management subcontract meetings in 2008 as reflected in the Log dated April 25, September 17, September 19, and November 4.⁷ The Log disclosed that the original decision to subcontract the work for the project discussed in Job 1 was made “*Due to working in parallel on RLG (Blue & Green) areas and TGP we do not have the manpower to do all the work our customers need by year end.*”⁸ According to Supervisor LaMere, they were not able to get the work accomplished so they had to extend the subcontract in work described in the Log for Job 1. The subcontract was extended because there was not sufficient in-house manpower to do the work since the four Millwrights she supervised were unavailable.

Supervisor LaMere further testified that if she would have recalled a Millwright on layoff status to work on this or any of the other jobs subcontracted at the Stinson Facility, she would have to lay off another skilled trade employee in order to comply with the facility census constraints.

- **JOB (2)** Log dated February 9, 2009 prepared by Millwright Supervisor J. Betzler disclosed the following work to be performed; “*Stinson-South wall of east basement – vendor to repair water leak to south wall. Repair will require making an opening in the poured concrete wall, installing a membrane, and closing wall up again.*” (Union Exhibit 3)

⁷ Employer Exhibits 9 and 10.

⁸ This was the reason listed in “Explanation” under “Resource Constraint”. The “Blue & Green” refers to specific areas of the first floor being renovated. The Union objected to this subcontracting, however, there is no evidence that a grievance was ever filed when this job was initially subcontracted.

The same Log categories checked in Job 1 were also checked here along with the following handwritten notations by Union Committeeman William Green under "Union Response", "*This should have been accomplished by the original contractor. Why do we have to pay someone else to do this? We ask before any outside contractors come in and do any work please bring MWs back that are layed (sic) off.*"

Millwright Group Leader Darwitz testified that this job had to be preplanned or scheduled, that it was millwright work and would take two men one week to finish it. Grievant Killeen corroborated Millwright Group Leader Darwitz's testimony that this was millwright work.

Supervisor LaMere testified that this was work that the Employer had already paid for so it was returned to the original vendor.

- **JOB (3)** Log dated June 5, 2009 prepared by Supervisor Buhill disclosed the following work to be performed; "*Stinson Facility: Send out bench to be retrofitted with two (2) ultra sonic tanks and one (1) sink. Honeywell trades to disconnect existing bench and install retrofitted bench to utilities roughed in by contractor.*" (Union Exhibit 4)

The same two categories listed above in Jobs 1 and 2 were the only ones checked together with the following handwritten notations by Union Committeeman Jarson under "Union Response"; "*Millwrights (2) are out on layoff. Sub-contractors still in building. Overtime has been out. Two Millwrights are available for Sat June 6th '09.*"

Millwright Group Leader Darwitz testified that this was a scheduled job, was millwright work and would take two men one day to finish it. Grievant Killeen

corroborated Millwright Group Leader Darwitz's testimony that this was millwright work.

Supervisor LaMere testified that the Millwrights performed the disconnecting and installation of the bench; however, the bench was justifiably sent to the original manufacturer for retrofitting. She added that the retrofitting of the bench was not the work traditionally performed by Millwrights plus the work involved installing software, something Millwrights could not do.

- **JOB (4)** Log dated September 9, 2009 prepared by Supervisor Betzler disclosed the following work to be performed; "*Stinson – MAET – Completion of exhaust installation – Work included is the completion of installation of 3 damper actuators with control wiring. May require chipping of concrete to make room for one actuator. This job was previously subcontracted and paid for.*" (Union Exhibit 5)

The same two categories that were checked in Jobs 1-3 were also checked along with a new heading entitled "Other" with the presumably Employer notation, "*Work Honeywell has paid for and is owed by the vendor.*" Under "Union Response", there were the following handwritten notations by Jarson, "*Contractor should issue refund for work not done. Honeywell trades should and could do this job. This job is way past original completion date for #839. 1145 still has Millwright on layoff.*"

Millwright Group Leader Darwitz testified that this was a scheduled job, was millwright work and would take two Millwrights two days to finish the job. Grievant Killeen corroborated Millwright Group Leader Darwitz's testimony that this was millwright work.

Supervisor LaMere testified that this was work that the Employer had already paid for so it was returned to the original vendor.

- **JOB (5)** Log dated October 15, 2009 prepared by Supervisor Betzler disclosed the following work to be performed; *“Stinson – Installation of guarding on all polishers not presently guarded at this time in both RLG & TGP factories. This amounts to approximately 62 machines – 4 small coarse polishers, 12 curve super polishers, 23 flat super polishers, 7 steel taps, 3 pad polishers, and 13 annulus polishers are included. Working around Production’s schedule the anticipated completion date is the end of February, 2010.”* (Union Exhibit 6)

As with the above jobs, the same two categories were checked together with the following notations by Union Committeeman Karl Olson under “Union Response”, *“This project was started by the trades and stopped by Facilities Mgmt. Prototypes were built in house. This is a maintenance work situation. We have been told we are here for maintenance. This is a Mgmt scheduling issue. 1145 should be doing this work. Company again subcontracted after laying off.”*

Millwright Group Leader Darwitz testified that this was a major project and two Millwrights initially did this work before it was subcontracted. He added that the millwright work would last approximately four months. Grievant Killeen corroborated Millwright Group Leader Darwitz’s testimony that this was millwright work.

Supervisor LaMere acknowledged that Millwrights previously performed some of the guarding work, but due the unavailability of the Millwrights, the work had to be subcontracted. She testified that it was determined at the October 15, 2009 subcontracting meeting that the entire job of installing the guards would be

subcontracted; however, at a subsequent subcontract meeting on October 30, 2009, the Employer agreed to keep the electrical work in-house. (Employer Exhibit 11) In order to accomplish the work, personnel had to work around existing production.

- **.JOB (6)** Log (undated)⁹ prepared by Supervisor Betzler disclosed the following work to be performed; “*Stinson – LSO Closed Lab – Work to be completed by the end of November 2009. Work to include the moving out of equipment and reinstallation of a few pieces outside of area, demotion of area, construction/remodel of area, and move in. Honeywell Trades, Custodians, and Stores shall support project as necessary to insure the integrity of bldg. systems (i.e. Electrical, water, fire sprinklers, alarms, air handling etc.)*.” (Union Exhibit 7)

The only two categories checked in the previous jobs were also checked here. The sub-heading “Health (Asbestos, PCB)” under heading “HSE” was also checked with no explanation. There were also these handwritten notations by Committeeman Olson under “Union Response” that stated, “*This type of work has been done traditionally by In-House 1145 personnel. This type of work can and still should be performed by In-House 1145 personnel.*”

Millwright Group Leader Darwitz testified that this was a scheduled job, was millwright work and would amount to one month of work for one Millwright. Grievant Killeen corroborated Millwright Group Leader Darwitz’s testimony that this was millwright work.

Supervisor LaMere testified asbestos removal, something Millwrights could not do, was a part of this job. Some of the skilled trades supported this job which

⁹ This date was established to be September 28, 2009 through the introduction of the Employer’s copy introduced as Employer Exhibit 12.

involved moving out old equipment, revamping the whole area and installing new equipment; however, there were no Millwrights available to do the millwright work involved.

- **JOB (7)** Log dated September 9, 2010 prepared by Supervisor Betzler disclosed the following work to be performed; “*Stinson – 1A28 – Emergency door and stair reconstruction – Work to include demo of existing stairs and platform, form and pour new stairs, install new handrail, form and pour wall extension, and demo and install new door. Honeywell trades will support as required; modify and remount existing railings and paint.*” (Union Exhibit 8)

The same categories checked in Jobs 1-6 were also checked for this job together with the following handwritten notations by Jarson under “Union Response”, “*Return all laid-off Millwrights. Think of adding a drain system & Roof over.*”

Millwright Group Leader Darwitz testified that this was millwright work and would take two Millwrights one week to complete. Grievant Killeen corroborated Millwright Group Leader Darwitz’s testimony that this was millwright work.

Other than Supervisor LaMere’s broad statement that all the jobs were subcontracted because of census constraints, she did not specifically testify why this job was subcontracted.

- **JOB (8)** Log dated September 9, 2010 prepared by Supervisor Betzler disclosed the following work to be performed; “*Stinson – Boiler Room – Boiler #3 – Remove old burner and gas train from boiler, move burner up from existing location and install new access to fire box, make new refractory front plate to mount burner to, patch old hole burner was mounted to, fill fire box with sand, mount new burner, pipe new*

NFP85 gas train, install burner modulating operating and high limit control, wire new burner, and perform start up. Honeywell Trades will support this work as required.

(Union Exhibit 9)

The only categories checked here were the same as those checked in Jobs 1-5 and 7. There were also handwritten notations by Commiteeman Olson under Union Response that stated, *"Bring Millwrights back off layoff status. Would like all this work kept in house. All these tasks are within the standard working skills of the In-House personel."*(sic)

Millwright Group Leader Darwitz testified that this was a planned move, was millwright work and would be enough work for one Millwright for 3-4 days. Grievant Killeen corroborated Millwright Group Leader Darwitz's testimony that this was millwright work.

Other than Supervisor LaMere's broad statement that all the jobs were subcontracted because of census constraints, she did not specifically testify why this job was subcontracted.

- **JOB (9)** Log dated September 15, 2010 prepared by Supervisor Betzler disclosed the following work to be performed; *"Stinson – Replace cannon ball on flag pole"* with the handwritten notation *"(Job Description Sentence #3)."* (Union Exhibit 10)

The only categories checked here were the same as those checked in Jobs 1-5 and 7-8. There were also the following handwritten notations by Jarson under "Union Response", *"Have a Millwright on layoff. Please Bring Back. Company has hard time listening to our concerns."*

Millwright Group Leader Darwitz testified that this was not an emergency situation, was millwright work and would take two men four hours to complete.

Grievant Killeen corroborated Millwright Group Leader Darwitz's testimony that this was millwright work.

Supervisor LaMere did not specifically testify about this job; however, the evidence disclosed that a subcontractor with a cherry picker was in the area and did the work.

- **JOB (10)** Log dated October 8, 2010 prepared by Betzler disclosed the following work to be performed; *“Stinson – installation of the new electrode cleaning bench will be subcontracted in its entirety including area prep, equipment rearrangement, and removal of old equipment. Honeywell Trades will support as necessary to insure bldg. systems integrity. Honeywell Trades, Production Engineering, and Facilities Engineering will do the start up with the bench manufacturer”*, with the handwritten notation *“(Job Description, Sentence #1).”* (Union Exhibit 11)

“Resource Constraint” and “Unfavorable” under “Union Response” were checked under the same conditions as set forth in Jobs 1-5 and 7-9. There was also the unchecked heading added to this Log entitled “Other” with the following presumably Employer handwritten notation, *“If schedules of workloads allow we will look at bringing removal of old equip back in house.”* There were also handwritten notations by Committeewoman Nancy Sims under “Union Response” that stated, *“This work has been done here before. Workload is always Honeywell’s standard answer. Unacceptable.”*

Millwright Group Leader Darwitz testified that this was millwright work and it took 6-8 men, which included other skilled trades one day to install the equipment. Grievant Killeen corroborated Millwright Group Leader Darwitz's testimony that this was millwright work.

Other than Supervisor LaMere's broad statement that all the jobs were subcontracted because of census constraints, she did not specifically testify why this job was subcontracted.

- **JOB (11)** Log dated July 27, 2010 prepared by Coon Rapids Facilities Supervisor Jim VanLokeren disclosed the following work to be performed; "*Aerospace Coon Rapids – Building Consolidation & Demising of space – attached drawing to overview. Consolidation of the Honeywell operations in the Coon Rapids Facility to free up and return to the building owner 80,000 SF. Demising of the space is the responsibility of the building owner. Scope includes the physical separation of the space, utilities and building systems. Timeframe – estimated completion date of 11/30/10.*" (Union Exhibit 12)

The heading "Resource Constraint" was checked with the explanation, "*Large project requiring multiple resources.*" "Unfavorable" under "Union Response" was also checked. In this heading there were unsigned presumably Union notations that stated, "*Return all trades personel (sic) on layoff to active employment (Believed to be 1 Millwright) Utilize existing Honeywell trades when possible.*" There was also a notation about air conditioning units that are not relevant to this matter.

Millwright Group Leader Koosmann testified that this was a scheduled large relocation project lasting approximately four months that involved interalia millwright work, work that Millwrights had done in the past. Further, the subcontractor used the Company millwright tools on this project. Grievant Killeen corroborated Millwright Group Leader Koosmann's testimony that this was millwright work.

Other than Supervisor LaMere broad statement that all the jobs were subcontracted because of census constraints, no Employer witness specifically testified why this job was subcontracted.

- **JOB (12)** Log dated March 3, 2009 prepared by Plymouth Facilities Supervisor Jim Cashin disclosed the following work to be performed; “*Subcontract out Chair repair for HTC for twenty chairs.*” There was also this presumably Employer notation, “*Honeywell will check other building to see if Millwrights are available. No one available.*” (Union Exhibit 13)

“Purchased Services” and its sub-heading “Warranty Work” were checked. Also, “Subcontract” under the heading “Outcome” was checked.¹⁰ There are also some unsigned faded out handwritten presumably Union notations that were difficult to read. From what I was able to decipher, it appears the Union was objecting that the work in question was millwright work and the Employer was violating the 2007 Agreement by not recalling two laid-off Millwrights.

Sheet Metal Steward Witzmann testified that this was millwright work that would last approximately one week; that it had been delayed for three months because there were no Millwrights available to do the work and that it was finally subcontracted. Grievant Killeen corroborated Sheet Metal Steward Witzmann’s testimony that this was millwright work.

Facilities Engineer Eric Newton testified that the in-house customer wanted this job done right away. This was not something that the trades would do. They neither had the parts nor the tools to do the work. Further, Newton testified that if he had recalled a Millwright on lay off to perform this job or the subsequent jobs he will

¹⁰ This was the first time that category was checked on the Logs.

testify on, he would have had to lay off another skilled trade employee in order to comply with the Plymouth Facility census count.

- **JOB (13)** Log dated April 2, 2009 prepared by Engineer Eric Newton disclosed the following work to be performed; “*Construct wall systems, Install Utilities, Install duct work, Electrical work, Install mechanical*”. (Union Exhibit 14)

“Resource Constraint” and its sub-heading “Explanation” were both checked. The Explanation” listed the following, “*The following are being subcontracted - carpenter, plumbing, electrical except for power for controls. The power to moves and lighting will be done by H.W. Electricians, Millwrights, sheet metal welding and painter will be also subcontracted out.*”

The sub-heading “Subcontract” under “Review Board Meeting” was also checked. There was neither a “Union Response” category nor any concurrent Union comments on the Log.

Sheet Metal Steward Witzmann testified that this was a huge job involving remodeling and moving equipment over a two to three month period that required the use of millwrights. He further testified that during his tenure outside (subcontractor) millwrights would be brought in to assist bargaining unit Millwrights when there were not enough Millwrights to do a project. Adding that they would also transfer Millwrights from one facility to another to help out on projects when there were not enough bargaining unit Millwrights at the facility involved; however, he was told by various unnamed department supervisors that the Employer was not obligated to do so. Grievant Killeen corroborated Sheet Metal Steward Witzmann’s testimony that this was millwright work.

Engineer Eric Newton testified that this was a big job involving remodeling 2,400 square feet that included adding 12 new burning ovens. Millwright work on this job only involved one millwright working for two days. During this same time period, Millwrights were working overtime.

- **JOB (14)** Log dated August 26, 2009 prepared by Engineer Dean Schwarz disclosed the following work to be performed; *“The production group needs a large electromagnet installed. This requires 460 V 90 amp current. It is also very heavy. They are in a big hurry to get it installed.”* (Union Exhibit 15)

The sub-heading “Explanation under Resource Constraint” is checked along with these presumably Employer handwritten notations, *“Electrical – Manpower & Time constraint by customer. Millwright - Manpower & Priority.”* There are further notations under a new heading entitled “Explanation” in handwritten notes that stated, *“Plumber in, Electrical out, Carpenter in, HVAC in, Sheet metal in, Custodian in, Millwright out.”* As in the Log for Job 13, there is neither a “Union Response” heading nor Union comments.

Sheet Metal Steward Witzmann testified that this was scheduled millwright work that would involve two Millwrights working for one day. Grievant Killeen corroborated Sheet Metal Steward Witzmann’s testimony that this was millwright work.

Facilities Engineer Eric Newton testified that this Job had to be completed immediately, involved moving a 6,000 lb. tool down a narrow hallway with one day of millwright work.

- **JOB (15)** Log dated April 27, 2010 prepared by Engineer Mike Medved disclosed the following work to be performed; *“Perimeter fencing. Installing new guarding &*

clearing of area behind fence/repairs to fence and barbwire gates and perimeter fencing.” (Union Exhibit 16)

The only box on the Log checked is the sub-heading “Subcontract” under the heading “Review Board Meeting”. There is a presumably Employer notation on the Log that states, “*Make repairs to perimeter fence in multiple spots per cooperate security requests see drawings*” followed by this unsigned presumably Union notation that states, “*Union disagrees with subcontracting the fencing work.*”

Sheet Metal Steward Witzmann testified that this was millwright work that Millwrights had done before and would amount to 2-3 Millwrights working one week. Grievant Killeen corroborated Sheet Metal Steward Witzmann’s testimony that this was millwright work.

Facilities Engineer Eric Newton testified that this job was a special security project involving the tearing down of old fence; removing brush, trees and weeds; welding work and metal cutting. New fencing was installed and the barbed wire on top of the fence was fixed. Metal bars were installed underneath some of the gates and lock hasps were installed on the gates. He had never used Millwrights on this type of work before. Adding that the Job lasted one week and tree and brush removal comprised 50% of the job.

Labor & Employee Relations Vice President Merriam and Labor Relations Manager Bengtson testified that the Union agreed to a Management Rights clause for the first time during negotiations for the 2007 Agreement that included the unabridged right to subcontract work, to perform any management function not limited by the 2007 Agreement and to retain any right not explicitly established by this Agreement. They testified that prior to the 2007 Agreement there were countless grievance and arbitrations involving the

Employer's right to subcontract. (Employer Exhibit 14) Human Resource Director Curtis LaClaire testified that during these same negotiations, the Union unsuccessfully made a number of proposals that would effectively require the Employer to recall laid-off employees before it could subcontract. (Employer Exhibit 6—Union proposal dated December 20, 2006.)

The Union also unsuccessfully proposed restrictions on the Employer's right to subcontract work during the contract negotiations for the 2011-2013 Agreement. On January 12, 2010 the Union proposed the following language, "*Subcontracting Guidelines: For the purpose of preserving job opportunities for the employees covered by this Agreement, the Company agrees that work currently performed by, or hereafter assigned to the Bargaining Unit shall not be subcontracted if the bargaining unit is not at full capacity or it would result in a reduction of the work force, by rollback or layoff in the job which would normally perform the work being subcontracted.*" (Employer Exhibit 1)

It also unsuccessfully sought further Employer subcontracting restrictions during these negotiations when on January 19, 2010 it proposed, "*When layoff occurs in the bargaining unit we will take immediate steps to call back any subcontract work which is outstanding and which has previously been performed by bargaining unit employees. We will not let out pending subcontract orders for such work.*" (Employer Exhibit 5) This language was similar to the language contained in a subcontract LOA dated January 29, 1988 that was incorporated into the 2002 to 2007 Agreement. (Employer Exhibit 8)

This LOA along with numerous other LOA's were eliminated during the negotiations for the 2007 Agreement. Labor Relations Manager Bengtson testified that during negotiations various subcommittees were organized. He was the Employer spokesman on the subcommittee that reviewed the voluminous letters and supplemental agreements

between the parties. The Union was informed that the practice of following historical side letters and supplemental agreements would be eliminated and of no force or effect in the 2007 Agreement unless the old side letters and supplemental agreements were incorporated into the 2007 Agreement.

This filtering process ultimately resulted in 22 documents being placed in contract proposal format which were presented to the larger negotiation committee. (Employer Exhibit 2) Labor Relations Manager Bengtson testified that the three previous LOA's involving subcontracting were a part of the LOA's not placed in contract proposal format which were presented to the larger negotiation committee resulting in them being eliminated and not subject to further review.¹¹ Six of the 22 documents were incorporated into the 2007 Agreement or addressed with new contract language, and the remaining proposals were left open to be addressed by the parties at a later date.

This action was codified in Memorandum of Agreement (MOA) set forth below that was added to the 2007 Agreement.

WHEREAS:

During the negotiations for the labor agreement, the parties reviewed numerous past letters, communications and memorandums. The parties identified numerous letters of agreement that were placed into contract proposal format. Of these, some were incorporated into this Agreement; some were not. The parties wish to continue the process of reviewing the continued necessity for the remaining proposals.

THEREFORE:

The parties mutually agree to review the remaining letter of agreement proposals to determine if current business needs require that they be continued.

Article 1 Section 2 that states, *"It is the Company's policy that under normal circumstances non-bargaining unit employees shall not perform the normal work of*

¹¹ The two other LOA's were dated January 29, 1982 and required Employer notification and discussion before subcontracting.

bargaining unit employees.” Human Resource Labor & Employee Relations Vice President Merriam and Human Resource General Manager Hanson both testified that Section 2 does not apply to employees of a subcontractor; rather, it applies to the Employer’s supervisors and salaried employees. Arbitrator Howard Bellman agreed with this interpretation when he visited this issue in 2003.¹²

Human Resource Manager Hanson testified that labor costs were not involved in the decision to subcontract any of the jobs in issue herein. Subcontracting may have been cheaper or even more expensive, adding that the Employer does not do a cost analysis to determine whether or not it is cheaper to use subcontractors when making a decision to subcontract work.

POSITION OF THE UNION

It is the Union's position that the Employer violated the 2007 Agreement when it laid off the Grievants while subcontractors were performing millwright bargaining unit work and continued to subcontract millwright work while the Grievants were on layoff. The Union argues the following in support of its position:

- Contrary to the Employer’s assertions, the 2007 Agreement does limit the right of the Employer to subcontract particularly when bargaining unit employees are on layoff. The Management Rights clause allows the Employer to “*lay off employees for “lack of work or other legitimate reasons”*”. The evidence clearly shows that there was not a lack of millwright work from January 9, 2009 through the present.

To the contrary, witnesses from both parties testified that subcontractors were hired

¹² Honeywell International Inc. v. Teamsters Local No. 1145, Award B-20 (2003)(Bellman); and Honeywell International Inc. v. Teamsters Local No. 1145, Award B-21 (2003)(Bellman)

to perform millwright work because there was, in fact, too much work for the Millwrights to perform.

- The Union recognizes the right of the Employer to hire subcontractors in emergency situations or in situations where a special skill set is required; however, using subcontractors to do millwright work while Millwrights are on layoff is unacceptable.. There is a distinction in using subcontractors or hiring new employees to supplement a fully staffed work force and using subcontractors over a two year period to perform work that the laid off Grievants could have performed. This violates the recall provisions in Article 22 (Layoff, Transfer and Discharge) Section 4 which unambiguously states, “[w]hen *additional employees are required, employees on layoff shall be recalled...*”.
- The recall language in Article 22 Section 4 is further supported by the language in Article 1 section 2 that states, “*It is the Company’s policy that under normal circumstances non-bargaining unit employees shall not perform the normal work of bargaining unit employees.*” The Employer’s argument that the subcontractors are not employees is tenuous at best; and at worst, anti-Union animus. The Employer admits that it would violate the 2007 Agreement if it hired new employees off the street or used non-unit employees to perform Millwright work while Millwrights were on layoff; yet, it can hire subcontractors to do this work. This argument is illogical.
- The Employer had millwright subcontractors working on RLG expansion when the Grievants were laid off. Less than two weeks after the Grievants were laid off, the Employer extended the subcontract on the RLG expansion job (Job 1) until a projected completion date of July 1, 2009. This subcontract involved continuous millwright work that the Grievants were capable of performing. Thereafter, the

Employer continued to subcontract additional millwright work while the Grievant(s) were on layoff.

- The Grievants were well-qualified Millwrights who had the expertise to perform the work on all the jobs subcontracted. In addition, the Employer had the availability of the necessary equipment to perform all of these subcontracted jobs. In fact the evidence disclosed the subcontractor millwrights used the Employer's equipment.
- The Employer is using a unilaterally imposed Corporate policy known as census constraints as a legitimate reason to replace the Employer's Millwrights with subcontractor millwrights.
- The record evidence disclosed that many of the jobs (Job 1, Job 5, Job 6 and Job 11) were for substantial periods of time. None of the jobs were emergency situations; rather, they took months of planning.
- The Employer has never hired subcontractors to do bargaining unit work while bargaining unit employees are on layoff.
- The Employer admits that it is not subcontracting for cost reasons. Rather, the evidence shows that the vast amount of subcontracting was done because of "resource constraints"—specifically a lack of manpower.
- The Employer violated the 2007 Agreement when it ignored the terms of the Agreement—specifically provisions dealing with job security, wages and hours and layoff/recall rights. The use of subcontractors while bargaining unit members are on layoff is a direct attack at the very soul of any collective bargaining agreement—job security. Although the Employer may have the ability to determine staffing levels, when the reduction in Union personnel is unrelated to a corresponding reduction in work, it is little more than a guise to replace bargaining unit positions

with subcontractors. If the Employer's interpretation is allowed to stand, it will continue to replace Union employees with subcontractors even though the work is clearly available.

- The Employer's business justification for subcontracting (census constraints) does not outweigh the Union's interest in job security. By subcontracting work that is at the core of a Millwright's job duties, the Employer has discriminated against the Union and threatened the job security of all bargaining unit employees.
- Hiring subcontractors to perform bargaining unit work while bargaining unit members are on layoff has a detrimental impact on the Union and its membership. Grievant Datko's recall rights will be impacted since they will have expired on January 9, 2011 if the grievance is not sustained.
- With respect to the Union advancing subcontract proposals limiting the right of the Employer to subcontract bargaining unit work while bargaining unit members were on layoff status, the Union has always opposed the Employer's interpretation that the Management Rights clause gives it the unlimited authority to do this. This is evidenced in the Union's consistent objections in the subcontracting meetings as reflected in the Logs (Union Exhibits 2-16). By bringing forth its proposals during negotiations it was attempting to reign in the Employer's overly broad interpretation of the Management Rights clause.

POSITION OF THE EMPLOYER

The Employer's position is that it did not violate the 2007 Agreement when it subcontracted the millwright work in question. In support of this the Employer argues that:

- The Union has the burden to prove its allegations that the Employer violated the 2007 Agreement. Based upon a review of the record, the Union has failed to meet

this burden. A review of the facts, arbitration precedent, bargaining history and contract language establishes that there has been no contract violation.

- The Employer has the unrestricted right to subcontract bargaining unit work based upon the language in Article 4 Management Rights that was negotiated into the 2007 Agreement. When the contract language is clear and unambiguous, as it is here in the Management Rights clause, arbitrators apply its plain language.
- There are no restrictions on the Employer's ability to subcontract bargaining unit work. Prior to the 2007 Agreement, there was no specific contractual language governing subcontracting; rather, subcontracting LOA's formed the basis of the parties' relationship and imposed some restrictions on the Employer's ability to subcontract. These were mainly notice restrictions. All of the subcontracting LOA's attached to the 2002-2007 Agreement were eliminated during contract negotiations for the 2007 Agreement.
- The Employer has the unrestricted right to determine the number of personnel and determine when additional employees are required so as to recall laid-off employees. There is nothing in Article 22, Section 4 that requires the Employer to recall the Grievants from layoff because additional work was available. The recall rights only apply when the Employer determines that it needs additional employees. If the Grievants had been recalled other skilled trade employees would have had to be laid off due to the census constraints.
- Article 22 Section 2 does not limit the ability of the Employer to subcontract when employees are on layoff. This Article addresses temporary layoffs of one week or less.

- Contrary to the Union's assertions, neither the Recognition clause (Article 1) nor the Wage Appendix of the 2007 Agreement prohibits subcontracting.
- Contrary to the Union's assertions, the language in Article 1 Section 2 does not prohibit subcontracting. This provision applies to non-unit employees and not subcontractors. Subcontract employees by definition are not employees of the Employer. This was affirmed in previous arbitration proceedings.
- Article 31 (Employment Security) is the only provision in the 2007 Agreement that mentions returning work from vendors when employees are on layoff. This Article only applies to employees hired before August 1, 1988. Due to Union job security concerns when the Employer implemented the single bargaining unit wide seniority system in 1988, the parties agreed to include the language of Article 31 in the collective bargaining agreement. By its clear terms, the protection afforded to individuals under the Article only applied as a result of "productivity increases" during the "implementation" of the one-seniority system. Twenty years after this language was written, the implementation of the one-seniority system has been completed. This fact and the limited applicability of Article 31 was affirmed in a subcontracting decision involving the parties in September, 2009.¹³ Through this grievance, the Union is seeking to resurrect Article 31 and expand its applicability to all bargaining unit employees.
- The Union made an unsuccessful attempt during the 2007 contract negotiations to include language restricting the right of the Employer to subcontract unit work if the bargaining unit was not up to full complement or if any bargaining unit members were on layoff. The Union again unsuccessfully attempted to restrict the right of the

¹³ Teamsters, Local 1145 v. Honeywell, FMCS Case No. 080116-52733-3 (2009) (Ver Ploeg.)

Employer to subcontract bargaining unit work in a similar manner during the negotiations for the 2011 Agreement. The Union is attempting to gain through arbitration what it could not gain during collective bargaining, something the Arbitrator is prohibited from awarding.

The Employer also states that its actions in subcontracting millwright work were reasonable, legitimate and in good faith. In support of this the Employer argues that:

- The Employer provided advance notice on its intent to subcontract the work, and then met with the Union regarding each subcontract.
- The Employer has not laid off any employees in order to subcontract millwright work. There were 21 Millwrights employed on February 1, 2008 and there are still 21 Millwrights employed as of the first day of this hearing.¹⁴
- The subcontracted work was unrelated to the Employer's core competencies of production. In some instances it was for safety reasons, warranty work or work of a short duration. In other situations the Employer did not have the equipment, resources, time or scheduling capacity to do the work in-house. In each of the subcontract situations it was not possible to obtain supplemental help from another facility or to recall any of the Grievants. Had they done so, other skilled trade employees vital to production would have had to be surplusd.
- There is no record that the Union filed any grievances over the subcontracted work in issue here.

OPINION

The Employer stipulated that there were no procedural or substantive issues with respect to the processing of the grievance. In spite of this it argued in its brief that the

¹⁴ Employer Exhibit 13.

Union never filed individual grievances over the subcontracted work discussed herein. It is clear that the Union was objecting to the Employer subcontracting millwright work while the Grievants were being laid off when the grievance was filed. This was acknowledged in Human Resource Manager Hanson's Step 2 response letter. It is not necessary to file individual grievances each and every time the Employer subcontracts millwright work while the Grievants are on layoff since each new subcontracting action constitutes an alleged continual violation of the contract.

The broad stipulated issue before the undersigned is whether the Employer violated the 2007 Agreement on January 9, 2009 when it subcontracted millwright bargaining unit work at its facilities. The core issue is whether the Employer could subcontract millwright work while its own Millwrights were on layoff. Since this is a contract interpretation issue, the Union bears the burden of proof.

The Employer argues that it has the inherent right pursuant to the Management Rights clause negotiated into the 2007 Agreement to subcontract bargaining unit including millwright work.¹⁵ The Union does not dispute the right of the Employer to subcontract millwright work in emergency situations or where special skill sets are needed so long as no millwrights who could perform the work were on layoff status.

The evidence clearly established that the Employer had subcontractors doing millwright work both before the Grievants were laid off and at the time they were laid off. After the Grievants were laid off, the Employer continued to subcontract millwright work. The evidence is also clear that the Grievants had the job skills to perform the millwright work being subcontracted. The evidence further disclosed that some of the subcontracted millwright work that the Union was objecting to was of a short duration of one week or less

¹⁵ For the purposes of this Decision, I will only focus on the millwright work in dispute hereinafter.

(Jobs 3, 7, 8, 9, 10, 12, 13 ,14 and 15) or involved warranty work (Jobs 2 and 4). Based on the testimony of both Union and Employer witnesses, it appears unlikely that the Union could justify the recall of the Grievants for the two jobs involving warranty work for obvious reasons. It is equally unlikely that the Union could prevail on the short-duration jobs, most of which were a day or two, based on the evidence adduced at the hearing especially since most of the short-term jobs were occurring while the longer-duration jobs were in progress.

The remaining subcontracted millwright jobs were longer in duration. Job 1 had a subcontract period from January 22, 2009 to approximately¹⁶ July 22, 2009, and was an extension of an October, 2008 subcontract. The subcontract in Job 6 ran from September 28, 2009 to approximately November 1, 2009. The subcontract in Job 5 somewhat overlapped Job 6 and ran from October 15, 2009 to approximately February 16, 2010. The Job 11 subcontract job covered the period from July 27, 2010 to approximately November 27, 2010.

It is abundantly clear that the aforementioned jobs required the services of millwrights for extended time periods. Since there was ample long-term millwright work available it would require the Employer to recall any laid-off Grievant, assuming the Union prevailed in this arbitration. One factor that could negate finding a contractual violation would be the ability of the Employer to integrate the Grievants into the subcontract work force. Although evidence was adduced through Union witnesses that Millwrights had in the past worked along side subcontract millwrights, it is not known if this actually meant integrated crews working on the same job since this evidence was never developed. Thus, it is not known if integrated crews would be logistically feasible under the circumstances herein because

¹⁶ The approximate times are based on the un rebutted testimony of Union witnesses.

clearly all of the longer-term jobs required more manpower than just the one or two Grievants.¹⁷

The parties negotiated specific subcontract language into the 2007 Agreement. The Employer correctly argues that the clear and unambiguous management rights language gives it the unrestricted right to subcontract bargaining unit work. However, contrary to the Employer's assertions, this is not an unencumbered right. This all-inclusive right to subcontract could be modified or even negated if it conflicts with other contractual language. Therefore, the entire Agreement must be explored in order to determine if other contract language modifies or restricts the Employer's ability to subcontract millwright work while the Grievants are on layoff.

The Union argues that Article 1 Section 2 prohibits the Employer from subcontracting millwright work while Millwrights are on layoff status. The clear and unambiguous language in this provision states, "*It is the Company's policy that under normal circumstances non-bargaining unit employees shall not perform the normal work of bargaining unit employees.*" The Union maintains that the "*non-bargaining unit employees*" language in this provision applies to employees of subcontractors.

I disagree with the Union's interpretation. Employees of a subcontractor are not employees of the Employer by both definition and practice. Black's Law Dictionary defines an employee as "*...[a] person who works in the service of another person under an express or implied contract of hire, under which the employer has the right to control the details of work performance.*" There is no evidence that the Employer establishes wages,

¹⁷ I see multiple issues namely supervision and job accountability that could justify the Employer in not recalling laid-off Millwrights. Although this is a serious issue, it becomes moot and need not be addressed further because of my subsequent Award.

hours, supervision and direction or other conditions of employment for the subcontract employees.

The uncontroverted testimony of the Employer's witness established that the Employer has never treated the subcontractor employees as its employees under this provision. When Arbitrator Bellman visited this issue in 2003, he found that the term "employee" in this provision did not apply to employees of a subcontractor. If the Union's interpretation is correct, then the Employer could never subcontract any bargaining unit work. This would render the subcontracting provision in the Management Rights clause meaningless. Finally, if the Union wanted the term "employee" to apply to employees of a subcontractor, it should have negotiated this language into the 2007 Agreement.

The Union also argues that Article 22 (Layoff, Transfer and Discharge) Section 4 requires that the Employer recall laid-off Millwrights before it can subcontract millwright work. The language in Paragraph 2 of Section 4 states, *"When additional employees are required, employees on layoff shall be recalled in seniority order with the employee having the most seniority recalled first; provided the employee has the necessary qualifications. If there are no qualifications, the employee will be recalled if he/she has sufficient ability to satisfactorily perform the job within a reasonable period of time."*

According to the Employer, this provision applies to the recall procedure when it creates a job opening and has nothing to do with subcontracting. I agree. There is nothing in this clear and unambiguous language that remotely pertains to recalling employees before subcontracting is permitted. Moreover, it appears as the Employer argues that the Union through arbitration is attempting to modify Article 31 (Employment Security). Again, if the Union wanted Article 22 to apply to the recall of employees before any subcontracting was permitted, it should have negotiated this caveat.

The Union argues that the Employer violated Article 1 (Recognition) because its actions in subcontracting while the Grievants were laid off are inherently destructive of the bargaining unit and the Union's representation rights. I see no merit in this argument especially since the Employer was exercising a contractual right to subcontract. Moreover, this arbitration proceeding involves two bargaining unit members and any actions detrimental to them can hardly be categorized as inherently destructive of the bargaining unit or the Union's representation rights of the 1,200+ employee unit. This is not to say that the Union is preempted from raising this argument in the future. There could be situations where the subcontracting could impact the bargaining unit to such a degree that it could be inherently destructive of employee and Union rights.

The Union also argues that subcontracting while the Grievants were on layoff was discriminatory and violated Article 3. There is no evidence of an unlawful motive—e.g. age, sex, union membership, etc.—when the employer laid off the Grievants or engaged in subcontracting. The Grievant's layoffs were by seniority pursuant to the contract. The subsequent subcontracting can hardly be categorized as arbitrary or capricious since the Employer presented colorable evidence that subcontracting was justified for business reasons.

The Union is alleging that the Employer used its self-imposed census constraints in order to subcontract millwright work instead of recalling the Grievants. There is no doubt that census constraints could be a subterfuge to jeopardize the Union's representation rights and have a huge impact on employee job security; however, I find no evidence of this in this proceeding. All of the long-term subcontracting jobs occurred at the Stinson Facility. There is no evidence that the skilled trade census changed at this facility. Rather, the evidence disclosed that the Millwright census level remained the same (four

Millwrights) after the surplused Millwrights “bumped” into that facility. Further, the Employer presented evidence that the number of employees (21) in the Millwright classification never changed from February 2, 2008 through November 17, 2010. The Employer could have increased the Millwright census level at the Stinson facility; however, even though it has the sole authority to establish staffing levels, it chose not to do so.

When the Employer proposed to incorporate subcontracting language in the Management Rights clause during the negotiations for the 2007 Agreement, the Union unsuccessfully tried to limit this subcontracting right when bargaining unit employees were on layoff. It unsuccessfully tried this again during the negotiations for the 2011 Agreement. The Union claims that it was merely trying to codify a caveat that already existed. I find no merit in this argument. Rather after failed attempts, the Union through this proceeding is now attempting to gain through arbitration what it could not gain during collective bargaining, something that I have no authority to sanction.

Finally, it should be noted that both parties make extensive reference to subcontracting decisions by other arbitrators in their briefs to support their respective position. This is not surprising since it is possible to cite subcontracting decisions that run the entire spectrum of possibilities. Each decision cited was based upon its unique set of circumstances and though offering guidance are not dispositive herein. The facts of this case clearly demonstrate that the Employer had the negotiated right to subcontract bargaining unit work, a right that was not contractually encumbered by the Grievant’s layoff.

In view of the foregoing, I conclude that the Union has failed to establish that the Employer violated the 2007 Agreement as alleged and the grievance will be dismissed. In conclusion, I want to stress that this is a narrow decision based upon the evidence presented to me. I caution the Employer that it may be walking a fine line when

subcontracting while bargaining unit employees are on layoff. The Employer prevailed in this arbitration; however, it may not prevail in the future especially if it engages in wholesale subcontracting under the guise of self-imposed census constraints.

AWARD

It is hereby ordered that the grievance in the above entitled matter be and hereby is dismissed for the reasons set forth in this Decision.

Dated:
February 28, 2011

Richard R. Anderson, Arbitrator