

THE MATTER OF ARBITRATION BETWEEN

Advanced Shoring Company)	FMCS Case No. 050830-58724-7
)	
“Company”)	Issue: Bargaining Unit Work
)	
and)	Hearing Date: 02-01-06
)	
)	Brief Date: 03-03-06
)	
Teamsters, Local No. 120)	Award Date: 05-03-06
)	
“Union”)	Mario F. Bognanno,
)	Arbitrator
)	

JURISDICTION

The hearing in this matter was held on February 1, 2006, in St. Paul, Minnesota. The parties appeared through their designated representatives. Both parties were afforded a full and fair opportunity to present their case. Witness testimony was sworn and subject to cross-examination. Exhibits were introduced into the record. Post-hearing briefs were submitted on or about March 3, 2006, and thereafter the matter was taken under advisement.

APPEARANCES

For the Company:

Gregory L. Peters, Attorney

Tom Martin, Manager

Terry Haug, President

Karen Haug, Vice-President/Attorney

For the Union:

Martin J. Costello, Attorney

Bryan Rademacher, Teamsters Local #120, Business Agent

Ed Barnum, Teamsters Local #120, Business Agent

Ken Holmes, Driver, AMPRO Services

Harold Yates, Teamsters Local #120, Retired President (Testifying telephonically)

Tom Wintz, President, AMPRO Services

I. BACKGROUND AND FACTS

On March 15, 1972, the Company, represented by President J. D. Beagan, and the Union, represented by Business Agent Bernie Montero, executed a collective bargaining agreement covering Truck Drivers and Tractor-Trailer Drivers, who service construction sites, as well as Yard Workers at the Company's main office and yard. Drivers performed the Company's local cartage work. That is, they delivered the Company's leased construction equipment, such as scaffolding and elevators, making hauls between the Company's yard and construction sites. (Union Exhibits 3A, 3B, 3C and 3D). In addition, this agreement allowed the Company to subcontract work at construction sites, provided the Company require the subcontractor to sign an agreement that includes numerous provisions as spelled out in the collective bargaining agreement. (Joint Exhibit 1H). Successor collective bargaining agreements were negotiated in 1981, 1984 and 1987, covering these same job classifications and the identical subcontractor language. (Joint Exhibits 1G, 1F and 1E, respectively).

Sometime prior to September 21, 1990, the execution date of the parties' 1990 – 1993 collective bargaining agreement, Mr. Beagan's successor, O.A. ("Dean") Haug contacted Mr. Montero, observing that the Company's trucks and trailers were old and needed to be replaced, and that because equipment replacement costs were so high, the Company wanted to exit the cartage business. In an affidavit filed by Mr. Montero, he indicates that the two men discussed various options, such as renting or leasing transportation equipment, or adopting a "house accounts" strategy. Under the latter option, Mr. Montero apparently explained that the Company's "2 or 3" drivers would essentially go to work for some other locally based, Teamsters Local #120 or #544 unionized cartage employer who, in turn, would assigned them to perform the Company's hauling services, as they had previously. (Union Exhibit 4B).

Ultimately, on August 31, 1990, Mr. Haug and the Wintz Companies, a Teamsters Local #120-represented cartage firm, entered into a trucking agreement with the Wintz Companies delivering the Company's equipment and materials to and from construction sites. This agreement also contemplated that the Wintz Companies would hire the Company's former drivers and assign them to service the Company's cartage needs.¹ Mr. Montero's affidavit does not mention by name the then Teamsters Local #120 President, Harold Yates, but he does mention holding a meeting with Mr. Haug, Mr. George Wintz, and the Company's assembled bargaining unit

¹ The Wintz Companies agreed to accept the Company's drivers who carried their seniority with respect to benefits but not layoffs.

members to explain the “house account” setup. (Union Exhibits 4B and 5). Mr. Yates’ affidavit and telephonic testimony indicates that Mr. Montero kept him abreast of these developments. (Joint Exhibit 9).

The above-mentioned Advance Shoring Company and Wintz Companies trucking agreement was a term agreement, ending on September 3, 1992. The record indicates that while the “house account” understanding that was codified in the agreement continued after that date, there is no evidence that the Company and Wintz Companies and its successor businesses entered into any other formal trucking agreements. Tim Wintz testified that his father’s business, the Wintz Companies, went bankrupt in late 1995. Thus, he started a new company, Dedicated Logistics, Inc. (DLI), using some of the bankrupt company’s assets that he had purchased. DLI is a trucking service that also brokers driving services. However, DLI’s union-side hauling services is brokered to Ampro Services, Inc. (ASI), another company Mr. Tim Wintz set up in 1996. Between 1995 and 2005, Mr. Tim Wintz and the Company had an on-going business relationship.

With respect to the 1990 trucking agreement, paragraph 10.5 makes clear that Wintz Companies would be the Company’s exclusive trucking service during the agreement’s term. Further, paragraph 10.8 provides:

[The Company] currently employs two (2) truck drivers to perform the services outlined herein. Subject to each driver qualifying under Wintz’s or Wintz’s affiliate’s current hiring practices, Wintz or Wintz’s affiliate shall hire said drivers who will be given an opportunity to bid on the [Company’s] work.

(Union Exhibit 5). Still further, paragraph 4 provides:

In the event this Agreement is terminated by either party, with or without cause, prior to the expiration date, [the Company] agrees that it will hire any drivers used by Wintz and dedicated to the account of [the Company] at the time of such termination, at the wage scale applicable to such drivers at the time of such termination.

(Union Exhibit 5). The record suggests that the two Company truck drivers who transferred to the Wintz Companies were Russ Richards and Peter Marsh. Thereafter, both men were removed from the Company's seniority list and they ultimately left ASI's employment sometime prior to April 22, 1996. (Joint Exhibit 8B).

On July 22, 2005, a grievance adjustment meeting pertaining to this matter was held between the parties. At that meeting, Mr. Yates referenced a signed "letter of agreement" between the Company and Union. Then and at the hearing, he stated in the late 1980s or early 1990s, the Company and Teamsters Local #120 entered into an agreement of their own: one in which the Company promised that it would always contract its driving service needs to Teamsters Local #120 or #544 companies. In addition, he testified that the "letter of agreement" was one page in length, notarized by his secretary, and a copy was given to Mr. O. A. Haug, Mr. George Wintz and to himself.

However, neither Mr. Yates, the Teamsters Local #120 Business Agents assigned to the Company, namely, Messrs. Ed Barnum (1991 – 1999) nor Bryan Rademacker (2000 – present), Mr. Tom Wintz, nor Company Vice President, Karen Haug, could produce a copy of the "letter

of agreement” to which Mr. Yates testified. Mr. Yates, explained that he has been retired since the early 2000s and that the Union’s ability to locate dated office files is hampered somewhat by local union mergers and office moves. Ms. Haug testified that whereas the Company’s files are in good shape, she too could not locate the referenced “letter of agreement” and that she first heard about the letter at the July 22, 2005, grievance adjustment meeting.

On September 21, 1990, Mr. O. A. Haug and Mr. Montero executed the 1990-1993 collective bargaining agreement, approximately three weeks after the Company entered into the trucking agreement with the Wintz Companies. This collective bargaining agreement provided, in relevant part, that the Truck Drivers and Tractor-Trailer Drivers classifications were “Inoperable, if Company retains classification, open for negotiations”, and wages scales were negotiated for only the Yard Work-Warehouse and Fork Lift Operators classifications. (Joint Exhibit 1D). The agreement’s subcontractor language remained as before. The next agreement, 1993-1996, lists four job classifications², none of which are driver classifications, and the subcontractor language is totally revised, as follows:

Article 3: Subcontractor

The Employer agrees not to subcontract work to be performed at its place of business that would normally fall under the classification of work which the Union normally performs.

² The classifications are as follows: casual employees; yard work-warehouse; fork lift operators; and warehouse lead man.

(Joint Exhibit 1C). With respect to subcontracting and job classifications the 1996-2000 and 2000-2008 collective bargaining agreements continue to use the above-quoted language and they make no reference to driver classifications. (Joint Exhibits 1A and 1B). Except, however, the 1993-1996 and 1996-2000 collective bargaining agreements note that “All new work, jobs and classifications, including all driving positions shall become part of the bargaining agreement”; and the 2000-2008 collective bargaining agreement states: “All new driving positions shall become part of the bargaining agreement”. (Joint Exhibits 1C, 1B and 1A, respectively).

As previously noted, between 1995 and 2005, DLI provided the power units and trailers and ASI provided union drivers that the Company needed to handle its driving services. Until May 2004, Tim Nelson was the ASI driver assigned to the Company “house account”. Ken Holmes, as Mr. Nelson’s back-up driver, succeeded the latter upon his resignation from ASI. On May 3, 2005, Mr. Holmes was involved in an accident, while hauling Company equipment. Thereafter, apparently Mr. Tom Wintz and the Company’s current president, Terry Haug, could not agree on liability, fault and damages relating to said accident. Because of this unresolved matter and for other reasons, the two companies have ceased doing business. Mr. Holmes lost his status as the full-time driver since ASI lost the Company’s “home account”. In May 2005, the Company began using Radant Trucking, Inc., a non-Teamsters Local #120 company, as its truck supplier. (Union Exhibit 6). On June 2, 2005, the Union filed a grievance, alleging violations

of articles 3, 8 and 10 in the collective bargaining agreement. (Joint Exhibit 1A). Thereafter, the parties exchanged correspondence and ultimately met on July 22, 2005. (Company Exhibits 1, 2, 3 and 4). On July 27, 2005, the matter was advanced to the parties' Joint Committee for discussion, but the case deadlocked. (Joint Exhibit 3). In the end, the matter was appealed to the instant arbitration for binding resolution. (Joint Exhibits 4 and 5).

II. THE ISSUE

Whether the Company violated the Collective Bargaining Agreement and specifically, articles 3, 8 and 10, the alleged Company-Union "letter of agreement", and past practices when it contracted its cartage work to a non-unionized provider? If so, what is an appropriate remedy?

III. RELEVANT CONTRACT PROVISIONS

ARTICLE 3: SUBCONTRACTOR [2000-2008; 1996-2000; and 1993-1996 Collective Bargaining Agreements]

The Employer agrees not to subcontract work to be performed at its place of business that would normally fall under the classification of which the Union normally performs.

ARTICLE 7: SUBCONTRACTOR [1990-1993; 1987-1990; 1984-1987; 1981-1984; and 1972-1973 Collective Bargaining Agreements]

If an Employer subcontracts work to be performed at the job site, the Employer shall require the subcontractor to sign a subcontract agreement containing the following provisions:

The subcontractor agrees to comply with the provisions relating to wages, health and welfare and premium pay of the collective bargaining agreements entered into between the unions for the duration of such prime contractor or employer's projects:

The agreement of the subcontractor to so comply, shall apply:

1. Only to those collective bargaining agreements which cover classification of working which the subcontractor has employees working on the project; and
2. Only to work performed on the project.

The Employer shall require the subcontractor to sign a subcontract agreement containing the foregoing provision only:

1. With respect to jobs bid by the General Contractor on or after July 1, 1960.
2. With respect to work located in territorial areas covered by the terms and the respective union agreements; and
3. Where the subcontractor does not represent to the Employer that he has an established building trades collective bargaining relationship covering affected classification of work.

ARTICLE 8: SPECIAL CONDITIONS [2000-2008 Collective Bargaining Agreement]

All new driving positions shall become part of the bargaining agreement. The Company agrees to negotiate all working conditions, provisions and wages with the local union in the event that the Company created any driving positions.

ARTICLE 8: SPECIAL CONDITIONS [1996-2000 and 1993-1996 Collective Bargaining Agreements]

All new work, jobs and classifications, including all driving positions shall become part of the bargaining agreement. The Company agrees to negotiate all working conditions, provisions and wages with the local union in the event of any and all job changes and additions.

ARTICLE 10: MAINTENANCE OF STANDARDS [2000-2008 Collective Bargaining Agreement]

The Employer agrees that all conditions of employment relating to wages, hours of work, overtime differentials, including vacations now granted shall be maintained at not less than the highest minimum stands in effect at the time of signing this Agreement, and the conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement.

ARTICLE 20: WAGE RATES [2000-2008 Collective Bargaining Agreement]

The employees covered under this agreement and the hourly wage scale therefore is as follows:

Casual Labor, Yard & Warehouse Labor, and Yard Leadman

ARTICLE 20: WAGES RATES [1996-2000 and 1993-1996 Collective Bargaining Agreement]

The employees covered under this agreement and the wage scales therefore is as follows:

Casual Employees, Yard-Warehouse and Fork Lift Operators, and Warehouse Lead Man

ARTICLE 15: WAGE RATES [1990-1993, 1987-1990 and 1984-1987 Collective Bargaining Agreements]

The employees covered under this agreement and the wage scales therefore is as follows:

Truck DriversInoperable, if Company retains classifications, open for negotiations.

Tractor-Trailer DriversInoperable, if Company retains classifications, open for negotiations.

Yard Work-Warehouse and Fork Lift Operations..... [cited wage scale]

IV. POSITION OF THE UNION

Essentially the Union alleges that the Company violated binding agreements and past practices in May 2005, when it contracted with Radant Trucking, Inc. to handle its trucking needs. The Union points out that Radant Trucking, Inc. is an independent owner-operator company that is not Teamsters Local #120 represented and, for that matter, is not unionized at all. This action, the Union argues, violates the 1990 Haug-Yates "letter of

agreement”; violates article 3, Subcontractor, and article 8, Special Conditions of the collective bargaining agreement and, in particular, article 10, Maintenance of Standards; and violates an enforceable past practice.

The Union asserts that in late 1989 or early 1990 the Company approached the Union. At that time, the Company essentially wanted to eliminate the negotiated driver classifications in the collective bargaining agreement and get out of the trucking business, subcontracting its former trucking needs to an outside trucking service. Continuing, the Union argued that it acquiesced to the Company’s request, as reflected in the 1990-1993 collective bargaining agreement. In addition, the Union argues, Mr. O. A. Hoag and Mr. Yates memorialized the terms of this contractual change in a signed, but misplaced, “letter of agreement”. Said letter, the Union urges, requires that any company with whom the Company contracts to handle its deliveries always needs to be a unionized, Teamsters Local #120 or #544, company.

Next, the Union posits that the misplaced “letter of agreement” is, nevertheless, manifest in 15-years of practice, which has never been uprooted over the course of four subsequent rounds of collective bargaining negotiations. Over this period, the Company’s delivery needs were contracted out to the Wintz Companies and its successor trucking businesses that have been and are Teamsters Local #120 unionized. Further, the Union argues that the referenced practice is reinforced by the parties’ article 10, Maintenance of Standards, language, and was never

weakened as a consequence of having negotiated a “zipper” or kindred clause during the intervening years.

Finally, as remedy, the Union urges that the Company should be ordered to cease and desist from contracting driving services with a non-union, non-Teamsters company, and should be ordered to reimburse the Union for lost dues and to “make whole” Mr. Holmes.

V. POSITION OF THE COMPANY

The Company initially argues that it did not violate the collective bargaining agreement’s explicit or implicit terms. Acknowledging that the parties’ negotiated the changes that were subsequently incorporated into the Wintz trucking agreement and the 1990-1993 collective bargaining agreement, the Company observes that the trucking agreement expired in 1992; the driver positions have not been bargaining unit classifications since 1990; and the parties’ post-1993 negotiated Subcontractor’s language, article 3, does not apply to the contracting of trucking services because the latter does not “...normally fall under the classification of work which the Union normally performs.” Clearly, the Company avers, the Union did not prove that the Company’s Radant Trucking, Inc. contract is a violation of article 3.

Further, the Company argues that article 8, Special Conditions, in the collective bargaining agreement is not applicable in this instance because the Company is not re-hiring drivers and re-entering the trucking business and, in relevant part, article 8 provides: “[a]ll new driving positions shall

become a part of the bargaining agreement.” (Emphasis added.) In this case, it argues, the Company is merely changing its primary trucking supplier and that Mr. Holmes was never one of its employees, implying that the Company was never obligated to nor has it ever deducted Union dues from his paychecks. Still further, the Company argues that it did not violate article 10, Maintenance of Standards, in this case because no member of the Company’s bargaining unit is involved in this matter.

Next, the Company asserts that, for several reasons, the Union failed to prove the either the “existence” of the “letter of agreement” or that it is currently “effective”, if it ever existed. In essence, the Company argues that the alleged letter is self-serving, does not exist and is not in evidence; that Mr. Yates reflections regarding this letter are in some instances incorrect and in others inconsistent; and that nobody but Mr. Yates have ever seen the alleged document, which cannot be found among the Company’s well-preserved and organized files.

Finally, with respect to past practices, the Company urges that any practice that may have existed was between the Company and the Wintz Companies and its successors, and not between the Company, Union and its unionized employees. Moreover, as testified by Ms. Haug, the Company has used approximately 30-40 other cartage firms over the past several years, some non-union, and without Union objection or grievances having been filed. Indeed, Ms. Haug testified that when she contracts with delivery businesses, she does not inquire whether the cartage firm is unionized,

rather her decisional analysis goes to factors like distance, insurance, reliability and price. Further, she testified that until the instant matter unfolded she was unaware of the fact that ASI was the unionized-side of Tom Wintz's trucking service. For these reasons, the Company asks that the grievance be denied.

VI. OPINION

The Union argues that since May 2005, the Company has been in violation of the binding agreements and enforceable past practices that regulate the parties' labor-management relationship. The Union showed that since May 2005, the Company has been using Radant Trucking, Inc. as its trucking contractor, and that Radant Trucking, Inc., is not a Teamsters-represented company.

Next, the Union contends the Company's actions in this case violates article 10, Maintenance of Standards, of the collective bargaining agreement because in late 1989 or early 1990, the parties agreed that the Company's then newly outsourced driving work would always be performed by a Teamsters Local #120 or #544 contractor, and now this "condition of employment" is being abrogated. In addition, article 3, Subcontractor, when interpreted in light of past practices, is clearly being violated, because the contractor in question is non-union, whereas, during the preceding 15 years a Teamsters Local #120 company was always performing the Company's driving work. This practice, the Union urges, is a direct result of a "letter of agreement" that was entered into between the

Company and Union around 1990. That letter is the genesis of the agreement that the Company will only contract with Teamsters-organized driving businesses. Although misplaced, that letter, along with its 15 years of implementation, is now binding on the Company *via* articles 3 and 10, and other provisions in the collective bargaining agreement.

The Company's reply to the Union's contentions is multifold. First, the Company points out that Truck and Tractor-Trailer Drivers had rights under the parties' pre-1990 collective bargaining agreements. Hence, when the Company decided to outsource its transport business, it was contractually bound to meet and discuss this matter with the Union. Mr. O. A. Haug and Mr. Montero discussed the matter and it was agreed that the Company would follow the "house account" strategy, which was memorialized in the August 31, 1990, trucking agreement between Mr. O. A. Haug and the Wintz Companies and indirectly in the 1990-1993 collective bargaining agreement wherein article 15, Wage Rates, was changed to reflect that the Truck Drivers and Tractor-Trailer Drivers classifications were "inoperable". Thereafter, the Company argues, driving has not been a contractually covered job classification.

Second, because the drivers' job classifications are not covered by the collective bargaining agreement and because the aforementioned 1990 trucking agreement expired on September 3, 1992, articles 3 and 10 in the current collective bargaining agreement are not applicable. With respect to article 3, the Company points out that it may subcontract driving services

because since 1960 driving has ceased being work performed by its bargaining unit employees; and with respect to article 10, the Company argues that since its unit employees are not drivers, their “conditions of employment” are not affected by its contracted relationship with Radant Trucking, Inc.

Finally, the Company rebuts the Union’s claim of a past practice, originating with the misplaced “letter of agreement” by pointing out that as the Union’s “silver bullet”, the letter may not even exist, and that the claim of a uniform past practice is belied by Ms. Haug’s testimony that over the years the Company has contracted with numerous other non-unionized trucking services.

After carefully reviewing the record of evidence in this case, the undersigned concludes that for a number of reasons, the Union did not meet its burden of persuasion. First, consider article 3, section 8, Seniority, in the parties’ 1987-1990 collective bargaining agreement, which reads in relevant part:

... In the event an entire operation or any part thereof is sold, ... transfer, ..., such operation shall continue to be subject to the terms and conditions of this Agreement for the life thereof. Such notice shall be in writing with a copy to the Union not later than the effective day of sale.

It is understood by this section that the parties hereto shall not use any leasing device to a third party to evade this Agreement. The Employer shall give notice of the existence of this Agreement to any purchaser, ..., of the operation covered by this Agreement or any part thereof....In the event the Employer fails to require the purchaser, ..., the Employer, including partners thereof shall be liable to the Local Union, and to the employees covered for all damages sustained as a result of such failures to require assumption

of the terms of this Agreement, but shall not be liable after the purchaser, transferee or lessee has agreed to assume the obligation of this Agreement.

(Joint Exhibit 1E). Since the Company wanted to assign its trucking service to Wintz Companies, including its two single axle tractors and truck drivers, it seems that under this language the assigned trucking service operation would continue to be covered by the terms of the then current collective bargaining agreement and that the Union must be notified of the transaction. From the facts in evidence, it is reasonable to conclude that the Company complied with these terms by meeting with Mr. Montero and ultimately negotiating the 1990-1993 change in article 15, Wage Rates, language, which made “inoperable” the drivers classifications.³ (Union Exhibit 4B and Joint Exhibit 1D).

Moreover, the trucking agreement appears to be in compliance with the article 3, section 8 “terms and conditions” proviso. On its face, the trucking agreement between the Company and Wintz Companies provides, *inter alia*, that in exchange for the trucks and Union drivers, the Wintz Companies would deliver the Company’s “scaffolding” and that the Company would be considered a “house account”. (Union Exhibit 5). Further, under the trucking agreement the Company’s drivers would be hired by the Wintz companies and covered by the terms of its Teamsters Local #120 collective bargaining agreement, provided however, that if the trucking agreement were to be terminated, the Company “...will hire any

³ Mr. O. A. Haug and Mr. Montero are the signatories to the 1990-1993 collective bargaining agreement, executed on September 21, 1990. (Joint Exhibit 1D).

drivers used by Wintz and dedicated to the account of Advance ...” (Union Exhibit 5). Given that the parties’ 1987-1990 collective bargaining agreement had expired on April 30, 1990, the trucking agreement was executed on August 31, 1990, and the 1990-1993 collective bargaining agreement was executed on September 21, 1990, it appears that the Company met its article 3, section 8 obligation to insure that the “... operation shall continue to be subject to the terms and conditions of this Agreement for the life thereof”. In addition, as required, the Company provided the Union with a copy of the trucking agreement, as suggested in Mr. Yates’ affidavit and because there is no evidence that this transaction was ever objected to by the Union. (Joint Exhibit 9).

Accordingly, after these multifaceted agreements were reached, and, further, upon the September 3, 1992, expiration of the trucking agreement, it can only be concluded that the two transferred drivers had forever lost their Company-Teamsters Local #120 contractual rights, including the right to return to work for the Company. In addition, any Wintz Companies’ employees who were subsequently hired and assigned to handle the Company’s delivery needs would have no rights under the Company’s collective bargaining agreement with the Teamsters #120.

Second, in light of the above findings, it does not follow that since Messrs. Richards and Marsh lost any contractual claims that they may have had under articles 3, 8 and 10 in the parties’ current collective bargaining agreement back in the early 1990s that somehow Mr. Holmes may now

raise rights issues under that agreement. In addition, the driving work carried out by Radant Trucking, Inc. neither involves the loading of trucks at the Company's place of business, nor the conduct of work normally performed by the Company's unionized employees. Thus, at this point, it is provisionally concluded that the Company is not in violation of article 3, Subcontractor. Moreover, neither article 8, Special Conditions, nor article 10, Maintenance of Standards, are applicable in this case since the issue neither involves the hiring of new drivers nor the terms and conditions of employment of bargaining unit employees, respectively.

Third, with respect to article 3, Subcontractor, the Union argues that said language must be interpreted in light of the "letter of agreement" wherein the Company allegedly promised to always use subcontractors who are Teamsters Local #120 and #544 organized. Further, the Union urges that even though the "letter of agreement" cannot be located, its terms framed 15 years of practices that ought to attenuate the strict construction of article 3.

The problem with this argument is that a misplaced "letter of agreement" is a poor substitute for best evidence, namely, the physical "letter of agreement". This is particularly the case because: (1) Mr. Montero, the Company's Teamsters Local #120 Business Agent from the early 1970s to August 1991, made no reference to the letter in his 2005 affidavit, Union Exhibit 4B; (2) Messrs. Barnum and Rademacher, who followed Mr. Montero at the Company's Business Agents, testified that they

have never seen the “letter of agreement”; and (3) Ms. Haug testified that before the instant grievance was filed she had never hear of the “letter of agreement” and that following an exhaustive search of Company files, she cannot find such a letter. In addition, the Union did not offer any evidence that might corroborate the existence of such a letter.

Moreover, even though Mr. Yates was a credible witness, the undersigned cannot dismiss the science that events from the distant past may not be accurately called to mind in the present. This explains the undersigned’s nagging concern that the “letter of agreement” might actually be the trucking agreement, Union Exhibit 5.

In light of this analysis, the undersigned cannot interpret article 3, Subcontractor, as if it carried forward an alleged promised that the Company may only subcontract with Teamsters Local #120 or #544 cartage companies per the misplaced “letter of agreement”. The trucking agreement is probative in this matter, not utterances about a misplaced “letter of agreement”, which lacks substantive assurance. And while it is true that for 15 years the Company used a Teamster Local #120 contractor to handle its delivery services, said “practice” was not and is not regulated by article 3 in the collective bargaining agreement. Accordingly, the Company’s choice of subcontractors with respect to this specific matter is not somehow constrained by this or the other terms of the collective bargaining agreement, as written.

VII. AWARD

For the reasons set forth above the grievance is denied.

**Issued and ordered on this 3rd day of May,
2006 from Tucson, Arizona.**

Mario F. Bognanno, Labor Arbitrator