STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

IAMAW DISTRICT 10 & LODGE 78, Complainant, vs. GENERAL ELECTRIC CORP., Respondent.	Case 1 No. 52860 Ce-2167 Decision No. 28599-A

Appearances:

Mr. Joe Cooper, Grand Lodge Representative, and Mr. Jerrold L. Heidenreich, Assistant Director, District 10, IAMAW, 50 West Oakton Street, Des Plaines, Illinois 60018, appearing on behalf of IAMAW District 10 and Lodge 78.

Quarles & Brady, Attorneys at Law, by Mr. David B. Kern, 411 East Wisconsin Avenue, Milwaukee, Wisconsin 53202-4497, appearing on behalf of General Electric Corporation.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

IAMAW District 10 and Lodge 78 filed a complaint with the Wisconsin Employment Relations Commission on July 11, 1995, alleging that General Electric Corp. had committed unfair labor practices in violation of Sec. 111.06(1)(f), Stats., by assigning bargaining unit work to non-bargaining unit personnel in violation of the parties' collective bargaining agreement. On December 6, 1995, the Commission appointed Lionel L. Crowley, a member of its staff, to act as Examiner and to make and issue Findings of Fact, Conclusions of Law and order as provided in Sec. 111.07(5), Stats. Hearing on the complaint was held on March 19, 1996, in Milwaukee, Wisconsin. The Employer filed a brief in this matter but the Union elected not to do so and the record was closed on June 4, 1996. The Examiner having considered the evidence and arguments of counsel, makes and issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. IAMAW District 10 and Lodge 78, hereinafter referred to as the Union, is the exclusive collective bargaining representative for all tool and die makers, machinists, machine repair A - vacuum systems specialists, machine mechanics and apprentices of the Employer. The Union maintains its offices at 1650 South 38th Street, Milwaukee, Wisconsin 53215.

2. General Electric Corporation, hereinafter referred to as the Employer, operates G.E. Medical Systems which manufactures medical diagnostic equipment at plants in Milwaukee and New Berlin, Wisconsin. Its main offices are located at 3000 North Grandview Boulevard, Waukesha, Wisconsin 53188.

3. At all times material herein, the Union and the Employer have been parties to a collective bargaining agreement with respect to employes in the classifications set forth in Finding of Fact 1. The collective bargaining agreement includes a grievance procedure for the resolution of disputes arising thereunder but does not provide for arbitration or any other means of binding resolution of such disputes. The collective bargaining agreement provides, in pertinent part, as follows:

ARTICLE XVIII
Responsibility of the Parties

. . .

199 b. Subject only to any limitations stated in this Agreement, or in any other signed Agreement between the Company and the Union, the Union recognizes that the Company retains the exclusive right to manage its business, including (but not limited to) the right to determine methods and means by which its operations are to be carried on, to direct the work force and to conduct its operations in a safe and effective manner.

4. The Company manufactures CT (computed tomography) systems at its Electric Avenue Plant. Part of the manufacturing process requires the use of a laser beam which cuts gold mylar tape very precisely which is then wrapped on a crystal bar. The laser beam is produced by an Excimer laser unit manufactured by a company called Resonetics. The laser beam is produced by a laser device and the beam is delivered to the cutting surface by a system of mirrors, or optics. The mirrors require adjustment so that the cut will be precise and clean with no burrs. When the machine was first installed in 1991, the vendor serviced the machine, including alignment of the mirrors. Later on, the Company began to use its own employes to perform these functions.

5. The Company also has a collective bargaining relationship with the International Brotherhood of Electrical Workers, Local 663, hereinafter IBEW. The members of IBEW also performed work on the Excimer laser unit.

6. As soon as the Company's employes began working on the Excimer laser unit, a dispute arose over who would align the mirrors. The alignment is critical to the proper functioning of the unit; however, it takes only one hour per week to perform it. Both the Union and IBEW employes performed this work.

7. On July 25, 1991, Union Committeeman Phil Bauza discussed the work with Dennis Dennee, Senior Engineer, and asked why the work was being done by IBEW. Dennee admitted he was not familiar with the equipment but after looking at the machine, Dennee signed a letter that the preventative maintenance would be done by the Union. The IBEW filed a grievance over the work claiming it was electric in nature. On January 28, 1992, the IBEW filed another grievance which was answered by Dan Weide, Labor Relations Specialist, assigning the work to IBEW. On July 14, 1992, the Union filed a grievance asserting jurisdiction over the work. On May 3, 1993, the Company issued a Jurisdictional Dispute Closure letter but the letter failed to expressly address the alignment of the optics on the Excimer unit. On June 17, 1993, the Company and the Union met and as a result of this meeting, the work was assigned back to the Union. Both the Union and IBEW continued to do the work of alignment of the mirrors and on August 31, 1993, Dennis Dennee met with both groups to attempt to resolve the jurisdictional issue but the meeting left the issue unresolved. In March, 1994, Dennee issued an E-mail stating that it had been decided that the Union would perform the laser alignment, not the IBEW. The IBEW issued an E-mail to Labor Relations asserting that in the grievance answer in C-10-43, in 1992, the work had been given to the IBEW.

8. On July 12, 1994, Dan Weide issued the following letter:

> TO: John Chapko, Shop Chairman, Lodge 78 Tool and Die, IAMAW
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> FROM: Daniel E. Weide
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> **SUBJECT: Laser Adjustment**
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> Gentlemen:
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> Per your request, this letter is issued as verification of a discussion held outside formal negotiations. The topic of this discussion was the adjustment of the laser units in the Lumex manufacturing operation located within the Global Tube and Detector Facility at Electric Avenue.
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> This discussion reviewed the recent determination by the management team of GT&D that the adjustments were within the parameters of the electrical bargaining union and therefore would be

> performed by the I.B.E.W. effective July 11, 1994. The overall rationale for this decision may be found below:
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> 1. The adjustment provides for a means to transfer energy
> 2. The adjustment affects the amount of energy.
> 3. It is an integral part of this electrical repair sequence.
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> Again, this decision is effective 7/11/94, and communication of the same is the responsibility of the management team.

The Union filed a grievance over the assignment of this work to the IBEW. The grievance was processed through the grievance procedure and denied on April 12, 1995. Thereafter, the instant complaint was filed.

Upon the basis of the above and foregoing Findings of Fact, the Examiner makes and issues the following

CONCLUSION OF LAW

The alignment of the optics (mirrors) for the Excimer laser unit is not within the exclusive jurisdiction of the Union and thus the Company's assignment of this work to the IBEW did not violate the parties' collective bargaining agreement, and therefore, the Company did not violate Sec. 111.06(1)(f) of the Wisconsin Employment Peace Act.

Upon the basis of the above and foregoing Findings of Fact and Conclusion of Law, the Examiner makes the following

ORDER 1/

IT IS ORDERED that the complaint filed herein be, and the same hereby is, dismissed.

Dated at Madison, Wisconsin, this 11th day of July, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley /s/
Lionel L. Crowley, Examiner

1/ See footnote on Page 5.

1/ Any party may file a petition for review with the Commission by following the procedures set forth in Sec. 111.07(5), Stats.

Section 111.07(5), Stats.

> (5) The commission may authorize a commissioner or examiner to make findings and orders. Any party in interest who is dissatisfied with the findings or order of a commissioner or examiner may file a written petition with the commission as a body to review the findings or order. If no petition is filed within 20 days from the date that a copy of the findings or order of the commissioner or examiner was mailed to the last known address of the parties in interest, such findings or order shall be considered the findings or order of the commission as a body unless set aside, reversed or modified by such commissioner or examiner within such time. If the findings or order are set aside by the commissioner or examiner the status shall be the same as prior to the findings or order set aside. If the findings or order are reversed or modified by the commissioner or examiner the time for filing petition with the commission shall run from the time that notice of such reversal or modification is mailed to the last known address of the parties in interest. Within 45 days after the filing of such petition with the commission, the commission shall either affirm, reverse, set aside or modify such findings or order, in whole or in part, or direct the taking of additional testimony. Such action shall be based on a review of the evidence submitted. If the commission is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of any findings or order it may extend the time another 20 days for filing a petition with the commission.

This decision was placed in the mail on the date of issuance (i.e. the date appearing immediately above the Examiner's signature).

MEMORANDUM ACCOMPANYING FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In its complaint initiating these proceedings, the Union alleged that the Company violated the parties' collective bargaining agreement by assigning bargaining unit work to non-bargaining unit personnel, thereby violating WEPA. The Company denied violating any provision of the parties' collective bargaining agreement and consequently denied any violation of WEPA.

POSITION OF THE PARTIES

The Union elected not to submit a post-hearing brief. The Company chose to do so. The Company contends that the assignment of the work to the IBEW did not breach the collective bargaining agreement between the Union and the Company. It points out there is no provision in the agreement outlining or defining the jurisdiction of the Union. It notes that nothing in the agreement prohibits the Company from assigning work to non-bargaining unit employes; instead the agreement's management rights clause recognizes the Company's right to manage the business and conduct its operations in an effective manner. It insists that there is no basis to conclude that the Company breached the parties' agreement by its decision to assign the work in question to the IBEW. The Company cites a number of cases for the proposition that absent any contractual restrictions, the Employer does not breach a contract by assigning work to other units. 2/

The Company argues that its decision was reasonable because the alignment of the optics relates directly to the laser's delivery of full power to the cutting process, i.e., it is an energy delivery which is electrical work. The Company observes that it has not attempted to undermine or in any way devalue the work of the Union and it actually costs more to have the IBEW do the work. It maintains that the ongoing disputes between the unions forced the Company to make a firm decision regarding the assignment of the work.

The Company insists that its decision to assign the work to IBEW did not breach any other signed agreement between the parties. It submits the Union's reliance on the document signed by Dennis Dennee on July 25, 1991, does not support the Union's assertion that Dennee forever bound the Company with respect to assignment of this work. The Company claims that Dennee did not have the authority to and did not intend to bind the Company. It notes that in July, 1991, Dennee was not familiar with the equipment and was not a Company Labor Negotiator and merely agreed that when he assigned this work, he would assign it to the Union. It points out that when the Union challenged the Company's July 12, 1994 letter, it did not mention the July 25, 1991 letter inferring

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2/ Earl Litho Printing, Inc., Dec. No. 7315-A (1966); Gateway Products Corp., Dec. No. 4873 (1958); American Motors Corp., Dec. No. 8902-C (1970).

that neither the Union nor the Company viewed this document as a "signed agreement." The Company observes that it was not given a copy and did not review the document during the processing of the 1994 grievance and the Union did not rely on it and there is no basis to conclude that a breach of the contract has occurred because the July 25, 1991 letter was never viewed as a "signed agreement" between the parties.

The Company further submits that any claim based on the July 25, 1991 letter is untimely. It contends that continuously from 1991 through 1994, this work was performed by both the Union and the IBEW. It argues that the practice of assigning the work to both bargaining units was widely known and existed contemporaneously with the July 25, 1991 letter. It maintains that Dennee hoped both groups could continue to work amicably but this proved erroneous and the Company was compelled to make a final decision.

The Company concludes that the agreement does not define the jurisdiction of the Union and does not limit the Company's right to assign the work to others and the past practice was to assign it to both groups, and when this became unworkable, the Company made a reasonable decision to assign the work to the IBEW. It asks that the complaint be dismissed in its entirety.

DISCUSSION

There is no express language in the parties' collective bargaining agreement that provides the Union with exclusive jurisdiction over the alignment of the optics in the Excimer laser. In fact, the contract is silent as to the Union's jurisdiction over work. Generally, arbitrators have held that where the contract is silent, the employer has the discretionary right to change job content or combine jobs or to assign duties to a different classification or to assign work outside of a bargaining unit. 3/ Therefore, the undersigned concludes that under the management rights clause, the Company has retained the discretionary power to assign the optics alignment to non-bargaining unit employes.

While the Employer has this discretionary power, its exercise is not unlimited. Arbitrators have recognized that the assignment of work outside the bargaining unit means the loss of job opportunities and seniority protection and some have held that the Recognition and Seniority provisions of the contract limit the Employer's right to transfer work out of the unit. 4/ Arbitrators have established certain criteria that must be met for a proper assignment of work outside the bargaining unit. 5/ Some of these are as follows:

3/ Central Soya Co., 68 LA 865 (Cox, 1977); Abbott Northwestern Hospital, 75 LA 1238 (Henneman, 1980); Reynolds Metals Co., 62 LA 695 (Volz, 1974); Allied Chemical Corp., 73 LA 1041 (Yatsko, 1979).

4/ See New Britain Machine Co., 8 LA 720 (Wallen, 1947).

5/ Pabst Brewing Co., 62 LA 808 (Sembauer, 1974).

1. The work is not covered by the contract.

2. The quantity of work or the effect on the bargaining unit is minor or de minimis in nature.

3. Under past practice the work has not been performed exclusively by bargaining unit employees.

4. The assignment must not be arbitrary or for the purpose of discriminating against the union and the employer must act fairly and reasonably.

Application of the above criteria to the instant case results in the following:

As noted above, the contract is silent with respect to the Union's jurisdiction over the work and the management rights clause allows the Company to assign work as it deems appropriate. The work involved is only one hour per week. 6/ Thus, this amount is de minimis. Additionally, the evidence failed to demonstrate that the Union lost jobs by this assignment or suffered any reduction in time, so the effect on the bargaining unit was nil. As to the past practice, the record established that the work was performed by both the Union and IBEW with each filing a grievance every time the other bargaining unit was awarded the work. The Union's reliance on Dennee's grievance settlement letter of July 25, 1991, 7/ is not persuasive because both bargaining units continued to perform this work even after it was signed and the mere fact that the Union performed this work for a short time after installation did not establish its exclusive jurisdiction over it in the future, especially when the IBEW was continuously assigned it also.

The record failed to establish that the work was assigned to the IBEW to discriminate against the Union. There are arguably good reasons that it could be assigned to either unit. It is a mechanical adjustment and the adjustment is required to deliver the optimum laser power. The assignment to the IBEW has a rational basis and cannot be said to be arbitrary. It must be concluded that the Company did not act unfairly or unreasonably.

Based on the above, the undersigned concludes that the Company met the criteria for the

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6/ Tr. 94.

7/ Ex. 12, Section I, page 2.

proper exercise of its discretion in assigning this work to the IBEW and did not violate any

provision of the parties' collective bargaining agreement in doing so. Inasmuch as the Company did not violate the agreement, it did not commit any unfair labor practice in violation of the Wisconsin Employment Peace Act and the complaint has therefore been dismissed.

Dated at Madison, Wisconsin, this 11th day of July, 1996.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Lionel L. Crowley /s/
Lionel L. Crowley, Examiner