

BEFORE THE ARBITRATOR

In the Matter of the Arbitration	:	
of a Dispute Between	:	
	:	
MIDWEST RUBBER PLATE COMPANY, INC.	:	Case 3
	:	No. 48193
and	:	A-4993
	:	
GRAPHIC COMMUNICATIONS INTERNATIONAL	:	
UNION, FOX VALLEY LOCAL 77-P	:	
	:	

Appearances:

Mr. Gerald L. Cartwright, International Representative, on behalf of the Union.
 Godfrey & Kahn, by Mr. James R. Macy, on behalf of the Company.

ARBITRATION AWARD

The above-captioned parties, hereinafter the Company and the Union respectively, are parties to a collective bargaining agreement providing for final and binding arbitration. Pursuant to said Agreement, the parties requested the Wisconsin Employment Relations Commission to appoint a member of its staff to hear the instant dispute. The undersigned was designated by the Commission to hear the matter. Hearing was held on February 23, 1993, in Appleton, Wisconsin. A stenographic transcript was made and delivered on March 9, 1993.

The Union made an oral argument at hearing. The Company submitted its brief on March 31, 1993. Based upon the record herein and the arguments of the parties, the undersigned issues the following Award.

ISSUE

The parties were unable to stipulate to the framing of the issue. The Company proposed the following:

- (1) Is the dispute arbitrable because the allegations of this grievance occurred outside of the United States?
- (2) Did the Company violate Article X, Paragraph 1 of the collective bargaining agreement when, during an installation of a job in Scotland the production manager assisted with the placement of plates on an embossing roll? If so, what is the appropriate remedy?

The Union agreed with the second part of the issue but objected to the first question.

The undersigned will consider the Company's first posed question as a threshold issue prior to proceeding to the merits.

RELEVANT CONTRACT LANGUAGE

ARTICLE X: JURISDICTION

1. It is mutually agreed that all molding of plastics, rubber forms, rubber plates, watermarks, the trimming, grinding, stripping, punching, curving and mounting of rubber plates,

the cutting of rubber, the cutting of cloth, the covering of rolls, the cleaning of rolls, grinding rolls, operating autoclaves, making of urethane molds, trimming and mounting of plates on rolls and proofing rolls, operating the laser engraver, routing patterns, operation of molding press other than maintenance purposes, shall be done by members of Union No. 77-P or management, in any plant operated by Midwest Rubber Plate Co., Inc.. Management will be limited to three (3) people that can perform the production work after all production members in that department have been asked to work overtime.

2. Production people will cut, clean and coat all metal and magnetic materials. The only time that M.S.R. people will be asked to perform this work is after all production people that are working have been asked to work overtime and are not available to do this work. Then the M.S.R. people will be asked to do the work and will have the overtime rights for that day.
3. All work performed by M.S.R. employees will be the same as in the past with the exception of those jobs covered by paragraph 1.
4. The Company will notify Union representatives when work is being sub-contracted.

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ARTICLE XII: LABOR RELATIONS COMMITTEES

. . .

3. The duties of the Grievance Committee shall be to consider and adjust any and all differences, misunderstandings and violations arising out of, or affecting the terms of this Agreement.
4. The terms of resolving grievances shall be as follows:
 - a. An informal meeting shall be held within ten (10) working days after the violation occurs. The Company will have ten (10) working days to answer the grievance.
 - b. A written grievance may be submitted within ten (10) working days of receipt of the answer. The Company will have ten (10) working days to answer the grievance.

. . .

FACTS

The facts underlying the instant dispute are virtually undisputed. The Company is a manufacturer and installer of rubber plates for embossing rolls which are used in the paper manufacturing industry. The Company employees in the bargaining unit are in the plate making or the roll covering department.

While most of the bargaining unit work is performed at the Company's Menasha, Wisconsin plant, it has a history of sending its employees to customers' plants to install rubber plates on the rolls on occasion. It is not uncommon for the Company to send one or two production workers to perform this job.

The Company, in response to a new customer's request, needed to install a test roll in Scotland. Management determined that it would send two individuals to the job site in Scotland. John Schreve, President of the Company, decided to send one production worker to actually install the roll, and one management employee to handle any problems, to answer questions, and to communicate back to the Company at the Menasha plant should the need arise. Ken Van Handel, the most senior bargaining unit employee, and Production Manager. Burt Rosenthal made the trip leaving on Sunday, July 26, 1992. They returned on August 2, 1992. That Tuesday, July 28, Van Handel began to install the plates. In the opinion of Rosenthal, he was having trouble with the cement due to the humidity and temperature in Scotland at that time of year, so Rosenthal stepped in and assisted him for six hours with the installation. The Union alleges that Rosenthal stepped in to do the job because he was bored. Rosenthal disputes this allegation but does not deny performing the work.

The record reveals that the Union has been zealous in protecting its bargaining unit work in the past. In anticipation of the Scotland assignment, two bargaining unit employees engaged in a conversation with Rosenthal about whether the Scotland job would be a two-person or one-person job. Michael Callaway and John Vander Wielen approached Rosenthal about the Company's position regarding management assisting in installation work. They were inquiring about an alleged statement of Schreve's regarding a previous job which they interpreted to mean that management should have assisted on the job rather than sending out another production worker to assist. In the course of this conversation, they asked about the Scotland trip. According to Callaway, he told Rosenthal that they had heard rumors that only one production worker was going. Rosenthal then said, "That is really up to John." (referring to Schreve). "I don't know, I can't say for sure, but my feelings on it is its a two-man job and I'm going to recommend to John that two men go." Callaway testified that he replied, "Well, you're not going to get into this where you're going along to help or do anything." Rosenthal then responded, "No, I'm going to supervise, it's a one-man job, it's only a test roll and we'll play it from there." Rosenthal did confirm having a passing conversation with the two employees. He recalls them questioning him as to whom the Company was sending. He testified that he said, "we are sending two men, myself and another guy." He did not recall saying that two production employees should have gone along.

The record reveals that all of the bargaining unit employees had been asked to work overtime during the week of July 26 except for Sunday July 26 and Sunday August 2. The Union is requesting that the all bargaining unit employees who were not offered overtime on the two Sundays when the senior production employee traveled to and from Scotland be compensated for the time they would have spent on the two Sundays.

POSITIONS OF THE PARTIES

Union

The Union maintains that the collective bargaining agreement is clear and unambiguous. It maintains that Article X, paragraph 1, places an express limitation on the number of management employees who may perform production work and the circumstances under which they will be permitted to perform such work. Until all production members have been asked to work overtime, there is a strict prohibition to management performing bargaining unit work.

According to the Union, in the past, when the prohibition has not been adhered to, all bargaining unit members who were not offered overtime have been

paid for the hours that management worked. There are no written records of this practice because, in the past, management recognized the language and lived up to it. Where management violated the prohibition, it routinely paid the bargaining unit employes who had not been asked to perform the work overtime for the time management spent performing the work.

Because the senior bargaining unit employe was paid for traveling on the two Sundays and the job was really a two-production worker job, the Union believes that the Company should be forced to compensate all other employes who were not offered overtime for the two Sundays spent traveling.

With regard to the jurisdictional argument, the Union contends that the Arbitrator should not consider it because it was never advanced until the date of the arbitration.

Company

The Company maintains that the grievance should be denied in that it is beyond the scope of the collective bargaining agreement because all of the facts pertaining to this case occurred outside of the United States and, therefore, are beyond the scope of the National Labor Relations Act. It is undisputed that the grievance involves a request for pay for work performed in Scotland. According to the Company, the National Labor Relations Act presents authority for collective bargaining and the subsequent collective bargaining agreement between the parties. Because the NLRA does not extend to Scotland, the grievance is without subject matter jurisdiction and should be denied. Inasmuch as this is a matter of substantive arbitrability, the Company argues that jurisdiction extends only to the employes in the territorial United States and not to American employes assigned work abroad.

The Company also argues the Article X, Paragraph 1 is clear and unambiguous in limiting management's rights to do bargaining work only to such work done in any plant operated by Midwest Rubber Plate Company, Inc. It points out that the work performed by the production supervisor did not occur in one of the plants of Midwest Rubber Plate Company, but rather in a customer's plant in Scotland.

Assuming for the sake of argument that the contract is not clear, the Company asserts that the grievance is without merit because the company acted in this situation in a manner consistent with the performance by the management of work within the plants of the company. It stresses that the work assigned in this case has been traditionally assigned to one unit member and was assigned to the only unit member qualified for the assignment. Because only Van Handel had a passport, he was the only qualified employe for the assignment. Moreover, according to the Company, management persons have assisted with such work while on the road in the past without pay and without incurring grievances from the Union.

The Company also maintains that it has historically paid overtime to the most senior unit member in situations where management performed bargaining unit work only to the extent that the bargaining unit members were not first offered the work or overtime for the time management spent performing the work.

It is evident that compensation has been limited to only those hours actually worked by management. Because each and every bargaining unit member was offered overtime for the particular Tuesday on which management assisted the production worker in Scotland, no additional compensation is warranted.

The Company alleges that the Union's requested remedy of pay for travel time on both Sundays is not part of the contract, has never been historically paid, and is inconsistent with the Union's own testimony in this case. It

notes that the Union's witnesses admit that any past cases where pay was given were premised upon the actual time that management spent performing bargaining unit work. In sum, the Company requests that the grievance be denied and dismissed in its entirety.

DISCUSSION

Because the Company makes no argument that the substantive arbitrability issue is best decided by a court of law, the undersigned will consider this argument as a threshold issue prior to proceeding to the merits of the dispute. Article XII, Section 3 defines the duties of the Grievance Committee being to "consider and adjust any and all differences, misunderstandings and violations arising out of, or affecting the terms of this Agreement." This definition of a grievance pursuant to this agreement is sufficiently broad to include conduct occurring outside of the United States as long as said conduct is a difference, misunderstanding, or violation of the term of the instant collective bargaining agreement. Article X, which defines jurisdiction does not limit the jurisdiction of the agreement to work performed in this country.

Rather, both parties are subject to said agreement which sets forth the terms and conditions of employment with only very express limitations. It is immaterial where the work was performed for purposes of substantive jurisdiction as long as the agreement expressly addresses the type of work to be performed and the circumstances under which the agreement applies.

In this vein, it should be noted that Article X, Section 1, does expressly preserve certain bargaining unit work performed in any plant operated by Midwest Rubber Plate Co., Inc., for members of the Union or management under conditions set forth in Section 1 through Section 4. There is at least an inference that the work jurisdiction provisions extend only to work performed in plants operated by Midwest Rubber Plate Co., Inc.

Assuming, however, for the sake of argument, that Section 1 of the Jurisdiction Clause is ambiguous and that past practice has extended the Union's work jurisdiction to plants not operated by the Company, i.e. customer locations, 1/ it must, nevertheless, be concluded that no violation of Article X, Section 1 occurred. Section 1 lists the express operations which management may not perform until all production workers have been asked to work overtime. The specific language includes the functions of trimming and mounting plates on rolls. The last sentence in Section 1 provides that "management will be limited to three (3) people that can perform the production work after all production member in that department have been asked to work overtime." This section expressly provides for overtime compensation when a member of management performs any of the duties set forth in the first sentence of Section 1. Nowhere in Section 1 is there any provision for employes to receive the equivalent of travel pay for time spent going to or from a work location. The Company's contention that Rosenthal traveled to Scotland primarily to serve as management's representative is accepted by the undersigned. So is its contention that the production work which Rosenthal performed was not necessary to completion of the job at hand, but undertaken rather to impress the customer with the Company's efficiency in installing the test roll. Because all of the production workers in the department had been offered overtime for the day on which Rosenthal actually performed the production work, the Union is not entitled to any remedy under this scenario.

1/ The undersigned declines to rule on whether this provision is limited to plants operated by the Company in light of her ultimate findings in this matter.

Accordingly, it is my decision and

AWARD

The dispute is substantively arbitrable.

The Company did not violate Article X, Section 1 of the collective bargaining agreement when during an installation job in Scotland the production manager assisted with the placement of plates on an embossing roll.

The grievance is denied and dismissed.

Dated at Madison, Wisconsin this 9th day of April, 1993.

By Mary Jo Schiavoni /s/
Mary Jo Schiavoni, Arbitrator