BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL NO. 140	Case 1 No. 48514 A-5015
and	
JESCO, INC.	

Appearances:

Mr. Kevin D. Lee, Business Manager, and Mr. Darrel Lee, on behalf of the Union.

Mr. William Hull, on behalf of the Employer.

ARBITRATION AWARD

The above-entitled parties, herein the Union and Employer, are privy to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in LaCrosse, Wisconsin, on April 7, 1993. The hearing was not transcribed and the parties there presented oral argument in lieu of briefs.

Based upon the entire record, I issue the following Award.

ISSUE

The parties have stipulated to the following issue:

> Did the Employer violate the contract by bringing in Jeff Stroup, Robert Schmitz and Gene Pouti who are members of a different local and, if so, what is the appropriate remedy?

DISCUSSION

The Employer - a Minnesota-based construction contractor - in November-December, 1992 worked as a subcontractor in helping build a Sam's Warehouse building in LaCrosse, Wisconsin. It did so on a rush basis so that the building was finished on schedule in order to insure that the general contractor did not pay any liquidated damages. The Employer was awarded the job on a rush basis because it had just finished working on another Sam's Warehouse building in the Minneapolis, Minnesota area.

On November 4, 1992, then-Union Field Manager Kevin D. Lee held a pre-job conference with Employer field superintendent Rick Morris, at which time Morris signed the contract on behalf of the Employer. Lee then agreed to Morris' request that the Employer be allowed to hire one of its own employes, Don Debenetti, to work as foreman on the job.

There is a credibility clash as to whether Morris then also agreed that the Employer would only hire additional laborers through the Union's hiring hall with Lee contending, and Morris denying, that he did. This dispute has arisen because there was not written agreement spelling out what was then agreed to at the pre-job conference.

Thereafter, Jeff Stroup, Robert Schmitz, and Gene Pouti --- all of whom had previously worked for the Employer on other jobs and all of whom were members of a different Laborers' local in the Minneapolis, Minnesota area ---

worked on the LaCrosse job. The Employer also hired about 5-6 employes through the Union's hiring hall. One of them quit working after failing a drug test and another quit after only five hours on the job and right before he was scheduled to take a drug test.

The Employer paid fringe benefits to the Minnesota local to which Stroup, Schmitz, and Pouti belonged. The Employer did not save any money by using them for the LaCrosse job, as their hourly rates and per diem living and travel expenses exceeded what the Employer would have paid had it only hired local help. The Employer was willing to incur these extra costs because it wanted experienced personnel to finish its job on time.

Debenetti was the only company man to sign a check-off authorizing the Employer to forward his union dues to the Union.

In support of its grievance, the Union primarily contends that the Employer is precluded under the contract from hiring laborers who are not members of its local; that the Employer agreed at the November 4, 1992, pre-job conference that but for Debenetti, it would only hire local men; and that the Employer never told the Union that it needed laborers with special expertise to operate some of its equipment. The Union thus argues that, but for Debenetti, none of the Employer's men was ever presented with a check-off card, which is the normal practice followed whenever a laborer reports in from an out-of-town local. As a remedy, the Union seeks back pay for three of its members for about 220 hours each, for a total of about $11,562.

The Employer, in turn, maintains that it did not do anything wrong because all of its employes were union members belonging to another local; because it in fact never agreed at the pre-job conference that Debenetti would be the only employe who could be hired from outside this local; and because Article V, Section 3, of the contract gave it the right to hire the employes it did since it in essence is a management rights clause.

In resolving this dispute, it must first be noted that there was no written agreement of the November 4, 1992, pre-job conference between Lee and Morris. As a result, it is now impossible to determine exactly what was then agreed to and whether the Employer breached the terms of the oral agreement as contended by the Union, since both Lee and Morris testified in a credible manner, thereby now making it impossible to determine which of them is telling the truth.

We are thus left with the Union's claim that the Employer violated the contract. As to that, Article V, Section 3, provides:

> Section 3. The Employer shall notify the Union of the need for workmen and shall not recruit applicants directly or hire persons who have not been referred by the Union except under the conditions stated herein.
>
> (a) Employ directly employees hired by him during the previous year.
> (b) Employ a minimum number of key men who have been previously employed by the Contractor.
> (c) Appoint a labor foreman of his choice.
> (d) Employ men drawing compensation from said employer's account.
> (e) The Union's Office shall be notified weekly of all men so hired, listing the names of the men and the date of hiring.

The Union construes this language to mean that an employer can only

directly hire those laborers who are members of its own local because the Employer has signed the contract with the Union and not the International Union and that, as a result, the reference to employes in Article V, Section 3, means its own members.

But the Employer's contrary interpretation is just as plausible because the face of this language allows it to directly hire workmen under the very conditions found here - i.e., because two (Schmitz and Stroup) previously worked for the Employer within the past year and were under the Employer's unemployment compensation account and because one of them, Pouti, was a "key man" since he had previously worked on the mud mixer.

Given this ambiguity, I find that the Employer did not violate the contract because it was incumbent upon the Union to clear up any misunderstandings which may arise over its application. That is the purpose of a pre-job conference and that is why it is so essential to reduce to writing any understandings reached. Since that did not happen here, there is insufficient evidence to prove that the Employer's good faith actions were improper.

In light of the above, it is my

AWARD

That the Employer did not violate the contract by bringing in Jeff Stroup, Robert Schmitz, and Gene Pouti; the grievance is therefore denied.

Dated at Madison, Wisconsin this 3rd day of May, 1993.

By Amedeo Greco /s/
Amedeo Greco, Arbitrator