BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between	:	
TEAMSTERS LOCAL NO. 75	:	Case 62 No. 48218
and	:	MA-4994
MANITOWOC ENGINEERING COMPANY, F/K/A MANITOWOC SHIPBUILDING, INC.	:	

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller and Brueggeman, S.C., by Mr. John J. Brennan, appearing on behalf of the Union.

Davis and Kuelthau, S.C., by Mr. Clifford B. Buelow, appearing on behalf of the Company.

ARBITRATION AWARD

The Company and Union above are parties to a 1990-94 collective bargaining agreement which provides for final and binding arbitration of certain disputes. The parties requested the Wisconsin Employment Relations Commission to appoint an arbitrator to resolve two grievances, relating to the Company's decision to allow clerks to drive forklifts.

The undersigned was appointed and held a hearing on March 24, 1993 in Manitowoc, Wisconsin, at which time the parties were given full opportunity to present their evidence and arguments. A transcript was made, both parties filed briefs, and the record was closed on April 28, 1993.

ISSUES:

The Union proposes the following:

1. Has the Employer violated the labor agreement by its reassignment of work to the clerks?

2. If so, what is the appropriate remedy?

The Employer proposes the following:

1. Has the Company violated Article IV, Section 11 given the facts of this case?

RELEVANT CONTRACTUAL PROVISIONS:

SCOPE AND RECOGNITION

Article 1.

Section 1. The Company recognizes the Union as the sole bargaining agent for all employees covered by this Agreement, concerning all matters pertaining to wages, hours and other conditions of employment.

Section 2. This Agreement shall apply to all employees:

1. Engaged in manufacturing, repair and maintenance work or other work incidental to such work, as contained in the seniority classification and wage schedules of this Agreement in the Manitowoc city yards and plants operated by the Company and in areas other than that where the Union has jurisdiction.

2. Engaged in field work, in the manner hereinafter provided.

. . .

MANAGEMENT

Article III.

Section 1. The Company shall have the right to exercise its functions of management, among which shall be the right to hire, promote or transfer employes and to direct the working force, to suspend or discharge for cause, to lay off employees because of lack of work, require employees to observe reasonable Company rules and regulations, to decide the products to be manufactured, the schedules of production, including the means and processes of manufacturing. The Company shall be deemed

to possess all the prerogatives, rights and discretions of ownership and management, except insofar and to the extent that the rights defined on behalf of the employees and the duties imposed upon the Company by the terms of this Agreement represent restrictions on such prerogative. Any claim that the Company has exercised such rights and prerogatives contrary to the provisions of this Agreement may be subject to the grievance procedure.

The Company and the Union agree that those subcontracting practices normally used in the past and those that presently exist at Manitowoc Shipbuilding Co., the Company may continue for the life of this Agreement. However, the Company and the Union further agree that the Company intends to continue its practice of utilizing Manitowoc Shipbuilding Co. personnel whenever the necessary employees and/or facilities are available to perform the work. The Company will inform the Union of its decision to subcontract. Notwithstand-ing the above, the Company may subcontract as long as its decision is not arbitrary or capricious.

WAGES AND PAY PERIOD

Article IV.

. . .

Section 11. When employees of a given classification are not available, other employees of the same union shall temporarily perform such work when requested to do so, providing this shall not cause employees in that classification to be laid off.

SENIORITY

Article X.

Section 1.

A. Seniority shall be established for all employees in the following classifications:

TEAMSTERS

1. Teamster "A"
2. Teamster "B"

DISCUSSION:

The facts are largely undisputed and can be summarized quite briefly. For many years, the Company has been engaged in the manufacture and sale of a shifting variety of products, beginning with ships and gradually introducing refrigeration equipment and cranes. Some years ago the ship repair and building business had been entirely moved to a subsidiary, Bay Shipbuilding, and the Company was engaged in the manufacture of cranes and refrigeration equipment in two locations in Manitowoc. The Company continued to have contractual relationships with a number of labor organizations, and a complex management and corporate structure, as a result of the complex history of diverse products the Company had made. By the mid-1980's, the Company was experiencing heavy competition in the crane business, in which it was the only surviving domestic manufacturer. Losses in that business caused the Company to start to re-examine its corporate structure and to make, over a period of years, successive waves of cuts and massive changes in management and production methods in an effort to remain competitive.

The present case arose when, about April, 1992, the Company made one of the changes referred to above. This involved discontinuing using members of the Teamsters bargaining unit to move material in and out of the fabricating shop, instead assigning that work to the clerks employed within the shop, a bargaining unit represented by the Office and Professional Employees International Union, Local 9. These employes were known as the fab shop clerks or MSI clerks, MSI standing for Manitowoc Shipbuilding, Inc. (The parties stipulated that Manitowoc Shipbuilding no longer existed by that time, and that the name assigned to this case should be changed to reflect the current corporate structure, thus resulting in renaming the matter Manitowoc Engineering). Manitowoc Engineering Company, however, was the traditional name for a different group of clerks, also represented by OPEIU Local 9, but under a different collective bargaining agreement. The MEC clerks, unlike the MSI clerks, had for many years operated forklift trucks and other equipment in accordance with their daily functions. They are not involved in this matter.

The Company presented undisputed testimony from several

witnesses to the effect that economic conditions in the crane industry required substantial changes and economies in its operations, and that a large number of employes, including management and professional employes, had been laid off in recent years. The Company also presented undisputed testimony to the effect that existing operations in the fab shop were inefficient. In particular Pete Burish, supervisor of material handling for the past two years, testified that the fab shop's method of moving material resulted in numerous instances in which two employes were doing the work of one, including large amounts of time when one of the employes was waiting for the other to appear before the work could continue. Thus, in the fab shop, the clerks were responsible for determining what materials are needed where in order to keep production orders moving efficiently, and seeing to it that the material is obtained from stores, moved to the proper location, and dropped off. Until April, 1992 this would involve the clerk getting a copy of the work order, calling for a forklift driver by radio, waiting for the driver to arrive, identifying to the driver where the material needed was located, and then following the driver on foot to the appropriate storage rack. After the driver obtained the material, the clerk would then return with the driver to the place where the material was to be moved, direct the driver as to where to put it, dismiss the driver, and then proceed to fill out the requisite paperwork. Burish testified without contradiction that the average wait for a forklift driver was ten minutes, because the drivers were needed in various parts of the facility and were not immediately available. Based on an analysis of the work flow, the Company determined that it was inefficient in a considerable degree to assign the work in this manner, and began to try to make the process more efficient.

It is significant to the analysis which follows to note that the Company did not arrive at a knee-jerk reaction to remove the work involved from the Teamster bargaining unit. While the provenance of some of the documents presented in this matter is not beyond question, there is essentially no dispute that the Company engaged in a series of discussions with both unions involved and with the employes generally in attempts to work the matter out to everyone's mutual satisfaction. While the details are somewhat involved, the Union does not dispute that the Company attempted to persuade the clerks and teamsters to join in the same bargaining unit, and that no-raiding agreements and other legal difficulties prevented this from happening.

Burish and two other Company witnesses testified to the effect that it was easier for the Company to train the clerks to drive forklift trucks, which required four to six hours training, than to attempt to make Teamsters drivers into clerks. This was, in the Company witnesses' view, because the clerking function

required a continuous knowledge and understanding of what material was most likely to be needed first in what location in order to keep production moving, a level of understanding integral to the plant's efficient operation and difficult to achieve by an employe who was at any given moment likely to be required in another part of the plant entirely. While the Union successfully elicited testimony that the Teamster forklift drivers could have been trained to perform this work, the Union did not introduce testimony to demonstrate that this would have been as efficient as the Company's eventual choice. Burish testified that the result of changing the assignment of this work was that four employes' worth of unnecessary time was eliminated.

Human Resources Manager Tom Musial testified that the Company's layoffs, during the period immediately surrounding the decision to change this particular assignment up to the date of the hearing, involved a number of clerks, but that no Teamsters unit members were laid off. The Company also presented exhibits demonstrating that a large number of layoffs were endured in many trades as well as in non-union occupations; meanwhile one employe from the Teamster unit retired and one quit during the applicable period, but both had been replaced by new hires by the date of the hearing.

Teamsters Steward Ron Gadzinski testified that one whole classification of Teamster under this collective bargaining agreement, known as Teamster B, refers to employes who drive only forklifts as their work. Gadzinski also testified that on one prior occasion when the Company wished to assign a Boilermaker to driving a forklift instead of a Teamster, Burish asked for and received the Teamsters' agreement to that assignment in advance. Gadzinski testified that in that instance the Union was willing to agree because the work in question was in a remote location and the Boilermaker involved had become "a pest" by his constant requests for a forklift driver. But Gadzinski did not dispute Company evidence that a number of other employes have driven forklifts for many years, including the MEC clerks, Machinists assigned to the maintenance shop, mobile maintenance employes, saw shop Machinists, paint and blast area Machinists and test area Machinists. The Company also introduced evidence, without rebuttal from the Union, to the effect that Machinists and other trades also operate a number of pieces of equipment historically associated in the industry with Teamsters, including diesel and electric sideloaders, tractor-trailers, electric pallet movers and stake trucks.

The Union contends that the operation of a forklift constitutes the day-to-day work jurisdiction of an entire classification. The Union argues that while there may have been some inefficiency in the operation of the fab shop, the Company

should not be allowed to remove duties unilaterally from the Teamster bargaining unit without bargaining such a change, because the seniority and recognition clauses create a presumptive right to the work and because a number of arbitration cases in many industries demonstrate that job security rights are established by such clauses. The Union argues that if the Company is allowed to remove this work from this bargaining unit, there may be nothing to prevent the elimination of the unit entirely by reassignment of its work to other crafts. The Union notes another line of reasoning by arbitrators to the effect that there may be certain circumstances allowing management to remove work from a given bargaining unit, but argues that these circumstances 1/ do not exist here. In particular, the Union argues that the amount of work was not de minimus, the work was not supervisory or managerial in nature, the Teamsters had always performed the operation of forklifts in the past, and in this shop only rarely and in emergency circumstances would a clerk operate a forklift. The work assignment was not temporary, the work was clearly covered by the contract, was not experimental, and there was no change in the character of the work or of the technology involved. The Union argues that for these reasons the cost savings involved in making the change should wait until the outcome of collective bargaining. The Union requests an Award ordering that the job duty of driving forklift be returned to the Teamster unit and that unit be made whole for all losses associated with its removal.

The Company argues that under this Agreement it has the inherent management right to change work assignments, noting a broad management rights clause and contending that this demonstrates plenary rights to change job assignments unless there is specific contractual language to the contrary. The Company cites a number of arbitration awards to the effect. The Company further argues that it acted responsibly and only following extended discussions with both Unions involved, and in an environment in which competitive conditions required the utmost in efficiency. The Company cites a number of arbitration awards to the effect that the economic conditions justify making such changes. The Company argues also that in prior cases involving one or another business unit of this Company, arbitrators have found that work reassignments from bargaining unit to bargaining unit were justified and not prohibited by the collective bargaining agreements involved. The Company requests that the grievance be denied.

I accept the Union's definition of the issue, because of the long-standing principle that a grievance should not be considered

---

1/ Citing Elkouri and Elkouri, How Arbitration Works, 4th Ed. (BNA 1985) at pp. 548-549.

limited only to the explanation, argument or contract language expressed at the lowest level of the grievance procedure.

Rather than addressing at tedious length arguments which have been rehearsed many times as to the meaning of contracts much like this one in similar circumstances, I will note that I am on record as subscribing to the common (but not universal) arbitral view that management's rights clauses and seniority and recognition clauses, as well as lists of employe classifications, similar to those in the contract at issue, raise a potential ambiguity when the employer involved wishes to subcontract work or assign it outside the bargaining unit. 2/ I still hold to the view I expressed at that time that arbitration awards determining the propriety of management actions in this context are, or should be, fact-driven, and are generally determined based on these standards: past practice, justification of the present instance, effect on the union or bargaining unit, effect on individual employes, the type of work involved and its relation to employes' usual work, whether suitable employes or equipment are available within the unit, whether the work removal will be regular or long-lasting, and special circumstances such as an emergency. I noted also that one of the reasons why these standards have survived for many years is that the use of all of them tends to secure a "moderate" answer -- one which seeks to achieve a balance between the legitimate interests of the parties, expressed in the inherent ambiguity referred to above, and which takes account of differing circumstances.

In this case, it is clear that the removal of work is permanent and is not based on an emergency, at least in the short-term sense. Also favoring the Union's view is that the employes traditionally assigned the work continue to be available, it is customary work for these employes, and the past practice at least within the fabricating shop clearly identifies that work as historically Teamster work.

Several other factors, however, favor the Company's view. There is no adverse effect on the bargaining unit or on individual employes, and this is underlined by the fact that in a period in which heavy layoffs were being endured by employes in other units, no Teamster employe was laid off. But most significant, and in my view the decisive factor overall, is the justification established by the Company for the particular decision it made. There is really nothing in the record to dispute the Company witnesses' explanation that it was far easier and more efficient to train a clerk to drive a forklift than to try to bring the Teamster

---

2/ See Honeyman, C., "In Defense of Ambiguity", 3 Negotiation Journal 1:81-86 (1987).

forklift drivers "up to speed" on workflow issues by having them assume clerk duties. It is clear that a large amount of idle time and unnecessary expense was being created by continuation of the operation as it was. Conditions in the industry at large were such that only one domestic supplier of cranes was left, and this one was enduring substantial amounts of red ink. Outside consultants had recommended that the Company get out of the business entirely. And --significantly undercutting the Union's argument of jurisdiction over this work --- the past practice of assignment of this work to Teamsters exclusively was consistent only if viewed within the narrow context of the fab shop. Overall, the past practice includes assignment of forklift truck driving to Machinists, in a number of locations, as well as the MEC clerks (who had historically been employed in a different division of the overall corporation). In view of this longstanding series of assignments, particularly those involving the Machinists, I accept Burish's testimony to the effect that the reason he requested the Teamsters' agreement to assignment of forklift driving to the sandblast area Boilermaker was in order to avoid arguments, rather

than because he was contractually obligated to secure such agreement before making any such assignment.

I believe the Union's concern for future assignments is adequately addressed: by noting that the balance between the factors referred to above here favor the Company, in the ambiguity which arises from the clauses also referred to above, a case-by-case approach must be used. The fact that the Union has not demonstrated that the Company is out to dismantle its bargaining unit in this instance does not guarantee the Company the "carte blanche" the Union fears. The Company has also argued, however, that the right specified in Article III, Section 1 to "subcontract" as long as its decision is not "arbitrary or capricious" should also control in this intra-Company reassignment of work. While I agree that where a contract is silent as to both subcontracting and reassignment of work outside a given bargaining unit the criteria used in determining the propriety of a given management action are similar, it is irrelevant to the outcome of the present case whether the specific language cited by the Company applies here. I will therefore not address that question.

For the foregoing reasons, and based on the record as a whole, it is my decision and

AWARD

1. That the Company did not violate the collective bargaining agreement by assigning fab shop clerks to drive forklift trucks.

2. That the grievance is denied.

Dated at Madison, Wisconsin this 23rd day of July, 1993.

By Christopher Honeyman /s/
Christopher Honeyman, Arbitrator