BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

J.W. PETERS & SONS, INC.

And

TEAMSTERS LOCAL UNION NO. 43

Case 15
No. 56599
A-5692

Appearances:

McCloskey and Associates, by **Mr. Steve McCloskey**, 3809 Vandan Road, Minneapolis, Minnesota 55345, appearing on behalf of the Company.

Goldberg, Previant, Uelmen, Gratz, Miller & Brueggeman, S.C., by **Ms. Andrea F. Hoeschen**, 1555 Rivercenter Drive, Suite 203, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of the Union

ARBITRATION AWARD

J.W. Peters & Sons, Inc., hereinafter referred to as the Company, and Teamsters Local Union No. 43, hereinafter referred to as the Union, are parties to a collective bargaining agreement which provides for final and binding arbitration of grievances. Pursuant to a Request for Arbitration the Wisconsin Employment Relations Commission appointed Edmond J. Bielarczyk, Jr., to arbitrate a dispute over the subcontracting of snow plowing. Hearing on the matter was held on October 7, 1998 in Burlington, Wisconsin. Post hearing arguments were received by the undersigned by December 8, 1998. Full consideration has been given to the evidence, testimony and arguments presented in rendering this Award.

ISSUE

During the course of the hearing the parties where unable to agree upon the framing of the issue and agreed to leave framing of the issue to the undersigned. The undersigned frames the issue as follows:

> "Did the Company violate the parties' collective bargaining agreement when it subcontracted snow removal?"

"If yes, what is the appropriate remedy?"

PERTINENT CONTRACTUAL PROVISIONS

. . .

ARTICLE 7
MANAGEMENT RIGHTS

The employer shall have the right to manage the business and direct the work forces, to assign employees to work; to determine the number of employees required; to plan, direct and control operations and production schedules; to control raw materials, semi-manufactured and finished parts which may be incorporated in the products manufactured at the locations determined by the employer; to introduce new or improved methods, tools, equipment or facilities, and to continue to establish, modify and enforce reasonable rules and regulations; and shall have such other normal and inherent rights of management as are not limited by this Agreement.

The Company retains the right to hire, suspend, discharge, demote, discipline for just cause, transfer and the right to relieve employees from duty because of lack of work provided that in the exercise of these rights the Company will not violate any of the terms of this Agreement.

. . .

ARTICLE 26
SUBCONTRACTING

The parties recognize the Employer has contracted work from time to time in the past and this Agreement maintains that standard for the Employer. Work which does not come under this standard will not be contracted if it could be performed by available equipment when there are employees laid off or to be laid off who are qualified to peform this work and where the work would provide such employees with a full work week.

. . .

BACKGROUND

The Company and the Union have for many years been parties to a collective bargaining agreement which covers front end loaders, washer and crusher plant operators, mechanics, truck drivers, and working foreman employed in the Company's sand and gravel pit stripping operations performed in Racine, Kenosha and Walworth Counties. The Company has for a long period of time had a snow removal crew made up of employes to remove snow from its yard. Employes volunteered each winter to be on the crew. They would be used both during regular and outside of normal regular working hours. In 1994 the Union filed and won in arbitration a grievance over how employes were called in on weekends to remove snow. Afterwards the Company stopped calling in employes to do snow removal and stopped having employes perform snow removal on weekends.

Thereafter the Company began having snow removal problems and twice during the winter of 1996-97 the Union filed complaints of icy conditions at the Company's premises. For the 1997-98 winter the Company subcontracted snow removal. On November 17, 1997 the Union filed the instant grievance alleging the Company's actions violated the collective bargaining agreement. Thereafter it was processed to arbitration in accord with the party's grievance procedure.

The record demonstrates the Company did not subcontract all snow removal but only certain passageways and parking areas of approximately twenty per cent (20%) of the areas which the Company needs snow removed from. The record also demonstrates the subcontractor has certain snow removal equipment, which the Company does not have, which allows it to more quickly and efficiently remove snow.

Union's Position

The Union contends the Company has engaged in an attempt to circumvent the 1994 Arbitration decision by failing to implement the award, experimenting with several poorly planned snow removal efforts, culminating in the subcontracting of snow removal. The Union asserts the Company's actions are an attempt to evade an arbitrated matter with a solution that because the Union did not like the way snow removal was assigned it would not assign snow removal at all. The Union points out that for many years before the 1994 snow removal award the Company effectively removed snow using its own employes. The Union argues the Company's subcontracting is arbitrary, unnecessary and retaliatory, and therefore violates the collective bargaining agreement. The Union would have the undersigned sustain the grievance and direct the Company to cease subcontracting snow removal. The Union would also have the undersigned direct the Company to pay employes an amount equal to the man hours spent by the subcontractor multiplied by the collective bargaining agreement's overtime rate.

Company's Position

The Company asserts it has the right to subcontract under the subcontracting and management rights provisions of the collective bargaining agreement. The Company acknowledges there was an arbitration award over the snow removal crew. However, the Company asserts that snow removal was not adequate and left unsafe conditions because it did not have the proper equipment for snow removal. The Company was also aware of liability concerns if it ignored the problem. The Company points out only twenty per cent (20%) of snow removal is done by the subcontractor who has the proper equipment to do the job. The Company also points out employes are not required to work if the temperature goes below a certain level and office and clerical employes may still be required to report to work. The Company concludes that it may subcontract work if certain conditions are met and in this matter those conditions have been met. The Company also points out this was not a cost cutting measure but in fact is a more expensive but safer and efficient solution to a problem.

The Company would have the undersigned deny the grievance.

DISCUSSION

In order for the Union to prevail in the instant matter it would have to demonstrate the Company violated Article 26 of the parties' collective bargaining agreement. This provision, while requiring the Company to meet certain conditions, allows the Company to subcontract work provided no employes are laid off or have a reduced workweek and they are qualified to perform the work. There is no evidence there are employes on lay off status or have a reduced workweek. Thus the Union has failed to demonstrate a violation of Article 26.

The Union has also claimed the Company's actions are merely an attempt to circumvent the October 20, 1994 overtime arbitration award. However, the Union did not dispute the Company testimony that the subcontractor has equipment to more efficiently and quickly do snow removal for certain key areas of the Company's facilities. The record also demonstrates the Company did not subcontract all snow removal. While the Union may view the Company's actions as retaliatory, there is no guarantee of overtime in the collective bargaining agreement. The Company also had the right under the collective bargaining agreement's Management Rights' clause to introduce new or improved methods at the facility. Thus, while the Union may not agree with the Company's actions, the actions do not violate the October 20, 1994 arbitration award and do not violate any provisions of the collective bargaining agreement.

Based upon the above and foregoing, and the arguments, evidence and testimony presented, the undersigned concludes the Company did not violate the parties' collective bargaining agreement when it subcontracted snow removal. The grievance is therefore denied.

AWARD

The Company did not violate the parties' collective bargaining agreement when it determined to subcontract snow removal.

Dated at Madison, Wisconsin, this 5th day of January, 1999.

Edmond J. Bielarczyk, Jr. /s/
Edmond J. Bielarczyk, Jr., Arbitrator

EJB/gjc

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