BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

INTERNATIONAL ALLIANCE OF THEATRICAL AND STAGE EMPLOYEES, LOCAL NO. 18, AFL-CIO

and

WISCONSIN CENTER DISTRICT

Case 9
No. 57650
MA-10709

(Pre-Bucks Party Grievance)

Appearances:

Shneidman, Myers, Dowling, Blumenfield, Ehlke, Hawks & Domer, by **Mr. Mark A. Sweet**, on behalf of the Union.

Michael, Best & Friedrich, LLP, by **Mr. Robert W. Mulcahy**, on behalf of the Employer.

ARBITRATION AWARD

The above-captioned parties, herein "Union" and "Employer", are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Milwaukee, Wisconsin, on August 12, 1999, and October 7, 1999. The hearing was transcribed and the parties there agreed I should retain my jurisdiction if the grievance is sustained. The parties subsequently filed briefs and reply briefs that were received by January 3, 2000.

Based upon the entire record and the arguments of the parties, I issue the following Award.

ISSUES

Since the parties were unable to jointly agree on the issues, I have framed them as follows:

1. Is the grievance arbitrable?

2. If so, did the Employer violate Article III of the contract when non-bargaining unit employes set up and operated temporary sound equipment for the February 11, 1999, Pre-Bucks Party, and, if so, what is the appropriate remedy?

BACKGROUND

The Employer – previously known as the Milwaukee Exposition and Convention Center Arena ("MECCA") - operates a convention center in Milwaukee, Wisconsin, which hosts conventions, trade shows, and entertainment events. Prior to 1998, the Center – which was then owned by the City of Milwaukee - was housed in an older building which had great difficulty in competing with other Milwaukee entertainment venues. In July, 1998, a new building – the Midwest Express Center - was opened up, one which has brought a great deal of additional business.

Because of its past difficulties in attracting business, the Employer insisted on certain concessionary items in the last round of contract negotiations with the Union.

Mark Robert Powell, the President of Audio-Visual of Milwaukee, testified on behalf of the Union. He testified that his firm from the late 1980's until June, 1998, had served as the "preferred provider" of audio-visual services for the Milwaukee Auditorium (otherwise known as Bruce Hall); that his company was never called to install temporary sound systems because that work was only performed by the Union members; and that setting up a sound system for a band is not audio-visual work.

On cross-examination, he said that his company had provided audio-visual services such as screens, data projectors, cameras, easels, slide projectors, overhead projectors, copy machines, fax machines, computers and "other little sundry things". He added "Occasionally we did sound work for small meetings when there were overflow rooms"; that MECCA electricians (represented by the IBEW) would set up the in-house sound equipment; that his company's contract with the Employer terminated in June, 1998, when the Employer selected United Visual, another vendor, as its preferred provider; that his company's unsuccessful bid

provided for certain audio and AV equipment such as speakers, amplifiers, microphones, and sound mixing boards; and that under the prior contract, "Whenever there was only a band and no AV equipment involved, we were not involved in the set up."

Stagehand Richard W. Kinney, a union officer, was called in to work on February 11, 1999 (unless otherwise stated, all dates herein refer to 1999), to work on the Pre-Bucks Party which was held in Bruce Hall and which was more or less a pep rally for the Milwaukee Bucks basketball team. He testified that he worked on the lighting, staging, and light board for that event; that about 2,000-4,000 people were in attendance; that the band - called Five Guys With Day Jobs - did not bring its own sound equipment; that the equipment came in a bobtail truck; that he offered to help with setting up the sound equipment, but was told his services were not needed; that no audio-visual equipment was used by the band; that the sound company set up and removed the equipment; and that "a minimum of four, maximum of five" stagehands were needed to set up the equipment. He also said that he had worked at the Auditorium for about 15 years; that throughout that time, Local 18 members always set up temporary sound systems like the one used at the Pre-Bucks Party; and that the only exceptions were when in-house electricians set up the sound equipment.

On cross-examination, he said that he reported for work about 1:00-1:15 p.m.; that the band members arrived by 2:30 p.m.; that the sound company arrived at about 2:00 p.m.; and that he left work that day at about 9:30-10:00 p.m.

Recalled as a witness on the second day of hearing, Kinney testified about the heavy audio equipment used at the Pre-Bucks party and that it would have been impossible to set it up by himself.

Acting Stage Technician Paul F. Stenzel worked for the Employer between 1972-1998, and as its only full-time stagehand for the last five years. He testified that about 50 events a year required temporary sound systems on the Bruce Hall stage; that Local 18 stagehands historically performed that work except for when in-house electricians sometimes worked on the in-house sound system; that no one else did this work; that whenever he worked on a temporary sound system, he was never paid the audio-visual rate under the former contract; that he was unaware of any instance in 26 years of where a private company set up a temporary sound system for a band on the stage; and that Local 18 members always removed sound equipment at the end of an event.

On cross-examination, he said that he did not work every single temporary sound system event at Bruce Hall during his employment; that he took about 4-5 weeks of vacation every year; and that he had worked with temporary sound companies to set up a temporary sound system at the Bruce Hall stage.

Event Services Manager Paul Setzer was responsible for running the Pre-Bucks party. He testified that the Milwaukee Bucks selected the band for the Pre-Bucks party; that they were "very cost-sensitive to the whole event" and that they told him the band would bring its own sound system; that $246 was charged for Stagehand Kinney's services on February 11; that Stagehands, Inc., assigned Kinney to that job pursuant to the Employer's contract with the Union; and that the Milwaukee Bucks were responsible for paying Kinney, the special service workers, and the house electrician (about $400).

Setzer added that the Milwaukee Bucks contracted with GO Audio to provide the temporary sound system (Employer Exhibit 2), which included such items as a house console, microphones, speaker boxes, and smaller speakers ("wedges"); that two people would take about 2½ hours to set up the sound system after it was unloaded from the truck; that they would need about 30-35 minutes to take it down; that about 2,500 people attended the Pre-Bucks party; and that the sound company arrived at about 2:00-2:30 p.m. He also said that the Employer charges a percentage whenever Local 18 members are used and that it thus makes more money whenever more Local 18 members are used.

On cross-examination, he said that he never told Kinney to help install or operate the sound system on February 11 and that he never told the Milwaukee Bucks that such work constituted stagehand's work.

Recalled as a witness at the second day of the hearing, Setzer testified that he receives bills from Stagehands, Inc., which handles some of Local 18's business affairs; that stagehands performing audio-visual work are paid $14.50 an hour because they perform "a multitude of tasks"; and that audio is part of audio-visual work. On cross-examination, he said that prior to the instant grievance, the setting up of the sound for a concert was not considered audio-visual work.

Director of Event Services David F. Anderson testified that the Employer sometimes directly hires and pays stagehands; that outside vendors at other times hire and pay the stagehands; that the stagehand's bill impacts on whether the Employer's facilities are used because high costs can drive away prospective users; that stagehand costs can constitute 50-60 percent of a bill; and that "We're extremely high" for stagehand costs. He also discussed the various events that used subcontracted sound equipment since the present collective bargaining agreement has been in effect (Employer Exhibits 5 and 6); that Employer Exhibit 7 is a letter sent by Powell's brother describing the audio-visual equipment Audio-Visual uses; that Employer Exhibit 8 is a United Visual brochure that describes the audio and video equipment it uses; that Stenzel was the only stagehand hired for a Milwaukee Bucks Ticket Party on April 15, 1997; that no stagehands were hired for a Bucks Fan Appreciation Day on April 14, 1998 (which had a band); and that because "Business is good", the use of Local 18 stagehands increased dramatically in 1999 (Employer Exhibit 10).

Recalled as a witness on the second day of hearing, Anderson testified that he erred in originally stating that the audio and visual bids are normally separated. In fact, said he, they are normally combined. He also stated that no earlier grievances were filed when non-bargaining unit employes installed free-standing sound equipment; that clients are free to use Local 18 stagehands if they wish to do so; that clients usually prefer to install their own equipment; and that stagehands performing multiple tasks are paid the stagehand rate and not the audio-visual rate.

On cross-examination, he testified that Local 18 stagehands now are paid $16.50 an hour to perform stagehand work; that the rate before January 1, 1999, was $16.00 an hour; that stagehands installing a sound system for an upcoming Creed concert will not be paid the contractual audio-visual rate; that Local 18 stagehands performing audio work are paid at the stagehands' rate, rather than at the audio-visual rate; and that he is unaware of any stagehands being paid the audio-visual rate when they helped erect sound systems.

Human Resources Manager Donald J. Sleaper testified that stagehand costs are a major factor in trying to get business in such a competitive environment and that the Union recently has filed numerous grievances (Employer Exhibit 21). He also said that the Employer has been very successful in attracting events to its new venue in part because of its lower labor costs. He also testified about the timeliness of the instant grievance by stating that there are seven working days per week; that Step 2 of the grievance was filed February 18 by Union Business Agent Terry Little; and that no employe filed the grievance.

He also testified extensively about the three-year negotiations leading up to the current contract. He said that the Employer initially proposed to do away with all past practices because it was a "new entity" that was "operating under different financial constraints" which required "trying to reduce our costs" (Employer Exhibit 22); that the Employer abrogated all permissive subjects of bargaining and all past practices at the termination of the prior contract (Employer Exhibits 23-25); that the prior contract (Joint Exhibit 6) provided for minimum manning; and that it retained the right to subcontract "any and all stagehand services" under the former contract.

Sleaper also stated that the parties in negotiations discussed the large image magnification screens and setting up and striking the scaffolding for video projectors and camera operations; that no such work was performed at the Pre-Bucks party; that the Union knew in negotiations that the Employer intended to subcontract audio-visual work to United Audio-Visual; and that the Employer told the Union in negotiations what had happened when a Local 18 stagehand did not know how to operate the audio-video equipment used by Northwest Mutual Life Insurance Company when it met at the Center. Sleaper added that the Employer under the contract is free to subcontract all audio-visual work that is not expressly reserved to the Union.

On cross-examination, he said that the Employer under the prior contract could subcontract out work only if it maintained the contract's minimum manning requirements; that the Union since Stenzel's retirement no longer has a full-time employe on the scene; that the Union in negotiations never agreed to Employer Exhibit 26; that the Union in negotiations gave up its jurisdiction over loading and unloading; and that the parties then agreed that stagehands would have jurisdiction after the delivery to the stage was complete. He also stated that he failed to meet the deadline for responding to the grievance, and that he was unaware of any instances of where stagehands setting up audio equipment were paid the audio-visual rate in the contract.

Union Business Agent Terry M. Little, Sr., testified that the Union does not consider Saturdays and Sundays to constitute "working days" under the contractual grievance procedure. He added that he orally spoke to Anderson about the grievance on either the Friday or Monday following the Pre-Bucks Party (i.e. February 12 or 15); that Anderson then claimed the disputed work is audio-visual and that was the first time anyone from the Employer ever claimed such sound installation work was audio-visual because, in Little's words: "Audio-visual always involves projection"; and that he subsequently filed a written grievance on February 18 (Joint Exhibit 3). He also testified that he has worked at the Center since about 1975 and that: "Never ever have we been paid or have we considered sound installation as audio-visual. Audio-visual always involved projection."

On cross-examination, he said that audio-video is a hyphenated word that has a "new meaning" other than the word "audio" when it's used alone, and that stagehands are required to sign in when they work for the Employer.

POSITIONS OF THE PARTIES

The Union contends that the Employer violated Article III of the contract because the "plain language" of the contract requires the set-up for events such as the Pre-Bucks Party to be performed by Local 18 labor; because Local 18 members have historically performed such work; because the Employer's desire to decrease labor costs does not justify its contractual violation; and because such set-up work clearly falls within the two listed exceptions in the contract. The Union also argues that the Employer's claim "that sound set up work is audio-visual" defies the "parties' usage of the term, common usage of the term and common sense." It also asserts that there is no merit to any claim that sound set-up work constitutes loading and unloading; that the Employer's unilateral termination of permissive subjects of bargaining in negotiations "is factually insignificant and legally flawed." The Union also contends that its grievance was properly filed and that the Employer's counter procedural argument is without merit.

The Employer, in turn, claims that "Local 18 does not have exclusive jurisdiction over the functions performed at the Pre-Bucks Party" because the parties in contract negotiations agreed that such work can be performed by non-Local 18 members; because the "heretofore unchallenged practice" supports its position; because the Union's "interpretation of audio-visual is inconsistent with the bargaining history and the record"; and because the Union is not entitled to get here what it "could not achieve at the bargaining table." The Employer also argued at the hearing that the grievance was untimely filed and hence not arbitrable.

DISCUSSION

As I ruled at the hearing, there is no merit to the Employer's claim that the grievance was not timely filed. Thus, Article IX of the contract, entitled "Grievance Procedure", states in pertinent part:

. . .

C. Step One. An employee who has a grievance shall first present the grievance orally to the employee's immediate WCD supervisor, either alone or accompanied by a Union representative, within five (5) working days of the time an employee knew or should have known of the incident leading to the grievance. The supervisor shall respond within five (5) working days of receipt of the grievance.

D. Step Two. If the grievance is not settled at the first step, it shall be reduced to writing and presented to the immediate WCD supervisor within five (5) working days of the completion of Step One. Within five (5) working days of receiving the grievance, the supervisor shall respond to the employee and the Union with a written answer to the grievance.

E. Step Three. If the grievance is not settled at the second step, the Union or the employee shall have the right to make an appeal, in writing, within ten (10) working days to the WCD President. The President shall confer with the aggrieved and the Union before making a determination. The decision shall be reduced to writing and submitted to the aggrieved employee and the Union within ten (10) working days from the date of receipt of the appeal.

F. Step Four. If the answer of the President upon a matter which may be submitted to final and binding arbitration is unsatisfactory to the Union, the Union may advance the grievance to arbitration.

G. All written grievance appeals shall set forth the provision of the Agreement under which the grievance was filed.

H. Time limit for filing and advancement:

1. If a grievance is not processed within the time limits set forth above, it shall be considered waived. If a grievance is not appealed to the next step within the specified time limit or any agreed extension thereof, it shall be considered settled on the basis of WCD's last answer. If WCD does not answer a grievance or any appeal thereof within the specified time limits or any agreed extension thereof, the Union may treat the grievance as denied at that step and immediately appeal the grievance to the next step.

2. The term "working days", as used in this Article, shall mean the days in which regular WCD business is conducted, exclusive of weekends or observed holidays.

3. The time limits set forth in this Article may be waived by written consent of both parties.

4. By written agreement, the parties may waive any of the steps set forth in the grievance procedure.

. . .

Here, Union Business Agent Little testified without contradiction that he orally discussed the grievance with Director of Events Anderson on either February 12 or 15 before he filed the written grievance on February 18. He therefore complied with Step One of the grievance procedure which states that grievances must be filed within five working days after the event – which in this case was the February 11 Pre-Bucks Party.

He also complied with Step Two, as the written grievance was filed on February 18, which was within five working days after Little spoke to Anderson on either February 12 or 15. While the Employer asserts that the five "working day" requirement encompasses Saturdays and Sundays and that Little filed the grievance too late, Step H. 2 states that the term "working days" does not include weekends or observed holidays. In addition, even if the grievance were untimely, the Employer itself did not respond in a timely fashion to the grievance since Sleaper's March 26, 1999, answer to Little was well past the five-day limit set forth in the contract. Given all this, I find that the grievance was timely filed.

The Employer also asserts that the grievance was improperly filed because it was not filed by an "employee", but rather by the Union. While Step One refers to an "employee", there is nothing in this entire Article that states the Union cannot file a grievance on behalf of the employe it represents. Absent any such express limitation, the Union retains the right to grieve and to advance a grievance through the contractual grievance procedure. See *How Arbitration Works*, Elkouri and Elkouri, p. 229-230 (BNA, 5th Ed., 1997). Hence, the instant grievance was properly filed.

Turning now to the merits of the grievance, Article III of the contract, entitled "Exclusivity", states:

> A. Except as otherwise provided herein, the exclusive jurisdiction of the Union in the Midwest Express Center, the Milwaukee Arena and the Milwaukee Auditorium shall include work historically performed by Local 18 members, i.e., the operation of all spotlights for all attractions where spotlights are requested, lightboards, traveler curtains, rigging, audio visual work as specified herein, forklift and other lift operation when in conjunction with an event, but not to be construed as exclusive when considering the building decorator and other WCD departments who are performing their normal work duties; the set up of all stage equipment for whatever is required for events, the hanging up and removal of overhead signage, banners and flags, the set up, and building a production. (Emphasis added).
>
> Work opportunities within the exclusive jurisdiction set forth above, at the above facilities shall first be offered to the pool of in-house part-time employees and thereafter any such work not performed by said employees shall be offered to non-pool employees through Local 18, IATSE before it is subcontracted, transferred or conveyed in whole or in part outside of the bargaining unit.
>
> Notwithstanding the above, the Employer has the right to subcontract, transfer or convey audio-visual work, loading and unloading, as set forth under Article IV – Management Rights. (Emphasis added).
>
> B. The Union agrees, upon request, to furnish competent employees to perform the work required by the Employer under the provisions of this contract. Upon request, the Union shall advise the Employer of the names of employees who are available.

. . .

D. The parties agree that all mandatory subjects of bargaining in effect as of the date of this Agreement and not herein changed, shall remain in effect unless changed by mutual agreement by the parties in writing.

. . .

This language must be considered alongside Article IV, entitled, "Management Rights", which provides in pertinent part:

A. The Union recognizes the right of the Employer to manage and direct the working forces in such a manner as it sees fit, including the right to plan, direct, and control operations. The Employer has the right to subcontract audio-visual work and loading and unloading (as defined herein) to sublet, to maintain discipline, order and efficiency, and to establish working terms of this agreement. (Emphasis added).

B. The Employer shall have the right to make such rules and regulations as may be deemed necessary for the conduct and management of the performances and working conditions. The employees covered by this Agreement shall obey all rules and directions of the Employer not in conflict with this agreement.

C. Loading and Unloading: The WCD may subcontract all vehicle loading and unloading for any such hall/facility.

The right to subcontract all vehicle loading and unloading shall include the movement of all materials to and or from any vehicles and movement of any such vehicle materials onto any stage or to any floor in any hall/facility.

D. Audio-Visual: The Employer shall have the right to subcontract audio-visual work except Local 18 shall have the right of exclusivity over work associated with:

1. Assembly, hanging, set-up and assembly of image magnification screens for concert productions and theatrical presentations (if qualified).

2. Set-up and strike of scaffolding for video projectors and camera operations.

When read altogether, these provisions are not a model of clarity. Thus, Article III, Section A, at first states that the Union has jurisdiction over "audio visual work as specified herein". This supports the Union's position. However, Article III goes on to state: "Notwithstanding the above, the Employer has the right to subcontract, transfer or convey audio visual work. . .as set forth under Article IV, Management Rights." Article IV, in turn, gives the Employer the right "to subcontract audio-visual work. . ." Since these latter two provisions support the Employer's case and thus contradict the first provision, the contract is ambiguous on its face. It therefore is necessary to use parol evidence such as bargaining history to determine what the parties meant when they agreed to this language in the last round of contract negotiations which led to the present contract.

Those negotiations were mainly concessionary in nature because that was the price the Union had to pay to help make the Center more competitive and to thereby obtain additional work for its members. (In fact, that is just what has happened, as there has been a dramatic increase in the amount of work Local 18 members have received under the new contract.) The Union in negotiations therefore agreed to lower wages for some of its members and it also agreed to relinquish certain work such as the loading and unloading of equipment. That is why Article III, Section A, gives the Employer the right to load and unload equipment and why Article IV, Section C, reiterates that right by stating:

> "The right to subcontract all vehicle loading and unloading shall include the movement of all materials to and or from any vehicles and movement of any such vehicle materials onto any stage or to any floor in any hall/facility."

This language establishes that while the Union gave up jurisdiction over what happens ***before*** and ***after*** equipment is moved to and from a stage, it nevertheless retains exclusive jurisdiction over what happens to that equipment once it needs to be set up on a stage. This is why Article III, Section A, states that the Union has jurisdiction over "the set up of all stage equipment for whatever is required for events. . ." This language supports the Union's claim that the sound equipment used on stage at the February 11 Pre-Bucks Party fell within its exclusive jurisdiction.

But for that to be so, it must be assumed that the term "audio-visual" referenced in Article III, Section A, and Article IV, Section C – which expressly exempt "audio-visual" work from the Union's exclusive jurisdiction - does not encompass the kind of audio stage equipment used on February 11.

The Employer argues that the dictionary definition of this term means "both hearing and sight". See *Random House Dictionary of the English Language*, Second Ed. (Joint Exhibit 27). Since the sound equipment used on February 11 involved sound that was heard, the Employer maintains that such work did not fall within the Union's exclusive jurisdiction.

The Employer also points out that various vendors use audio equipment as part of their audio-visual services. (Employer Exhibit 7).

The term "audio-visual" is defined somewhat differently in other dictionaries. The *American Heritage Dictionary*, Second College Edition (Houghton-Mifflin Co.) at page 141 defines that term as follows: "1. Both audible and visible; 2. Of pertaining to educational materials, such as sound filmstrips, that present information in audible and visible form." A similar definition is used at page 73 of *Webster's New Collegiate Dictionary* (Merriam-Webster), which states: "1. Of or relating to both hearing and sight. 2. Designed to aid in learning or teaching by making use of both hearing and sight." These later definitions have two different meanings: they can refer to either: (1), the use of electronic equipment relating to hearing and sight; or (2), the use of electronic equipment relating to learning or teaching.

Here, setting up the sound equipment on stage on February 11 for the band certainly had nothing to do with any learning or teaching. If this definition was agreed to in negotiations, the grievance would have to be sustained. Conversely, the grievance would have to be denied if the parties then agreed to the definition advanced by the Employer. This case thus turns on exactly what was said and agreed to in those negotiations.

As to that, there is no evidence showing that the parties then agreed that non-Local 18 employes would be free to install and operate sound equipment once it had been delivered to a stage. To the contrary, Union Business Agent Little testified without contradiction that the Employer at that time only brought up a situation involving Northwest Mutual Insurance Company where a Local 18 stagehand did not know how to operate the audio-visual equipment.

Sleaper did not disagree with Little's testimony, and stated:

> "Well, at one point we discussed an incident or two that had happened previously where people had brought in audio-visual equipment. One of them in particular was the NML (i.e. Northwest Mutual Life Insurance Company) convention. And at that time it was required to have a stagehand sit there an (sic) observe the use and operation of the equipment because the stagehand was not trained in the use and/or operation of that equipment and the people that brought it in wanted to operate their own equipment.
>
> That was one of the reasons that in the wording of the contract we put, "if qualified," specifically to cover that type of incident because the person was not qualified, but there were minimums in the contract. So . . ."

. . .

He added:

. . .

> "They had a bunch of video projection equipment they were using in one room in particular that they had set up and it was computer controlled and operated in a lot of ways I guess and they were concerned about its value and/or making sure that the presentation happened the way they wanted it to happen, so they wanted to operate it themselves."

. . .

This reference in bargaining shows that the parties at that time were using the term "audio-visual" to refer to a learning and/or teaching presentation and not the kind of musical sound equipment used on February 11. As a result, that is the definition that must be used here, which means that Local 18 stagehands have exclusive jurisdiction over all sound equipment that is used onstage by a band, or any other performing group or entity.

This definition, rather than the Employer's definition, makes the most sense when the contract is read as a whole. Hence, by providing in Article III that the Employer retains the right to subcontract audio-visual work as provided in Article IV, and by reiterating that right in Article IV, Sections A and D, it is clear – given the aforementioned bargaining history – that the audio-visual work referenced therein is the kind of audio-visual work mentioned by Sleaper in contract negotiations when he complained that a Local 18 stagehand did not know how to operate the audio-visual equipment used by Northwest Mutual Life Insurance Company. It is that kind of audio-visual equipment and *only* that kind of audio-visual equipment that is outside the Union's exclusive jurisdiction, excluding, of course, any work performed by in-house electricians – a matter not in issue here. However, the Union has not given up all jurisdiction over the latter equipment since Article IV, Section D, (1) and (2) states that Local 18 stagehands still have exclusive jurisdiction over visual magnification screens and scaffolding functions.

In other words, the Union in negotiations retained the exclusive right to perform work "historically performed by Local 18. . ." members except for: (1), loading and unloading; and (2), the kind of teaching and learning audio-video equipment used by Northwest Mutual Life Insurance Company, but excluding those exceptions expressly stated in Article IV, Sections (1) and (2).

The Employer nonetheless argues that the "unchallenged practice" under the present contract supports its position. There are several problems with this claim.

First of all, the Employer relies on about 127 events which arose after the instant grievance was filed on February 12 or 15. Hence, those situations do not shed any light on the past practice that existed before the grievance was filed. Secondly, there is no proof that the Union knew of the 29 or so pre-February, 1999, instances since Stenzel - the only full-time Local 18 stagehand - retired in 1998. Thirdly, it appears that a live band and audio equipment were only used on one or two of those prior occasions. That hardly constitutes a binding past practice.

Lastly, the Employer points out that it faces severe economic competition from other local venues (mainly the Bradley Center), and that sustaining the Union's grievance will only increase the costs for those who want to rent its facilities. While that may be so, it does obviate the fact that the parties in their last contract negotiations expressly agreed on the precise limits of the Union's exclusive jurisdiction, with both parties carefully measuring what they could and could not live with. Hence, that deal must be enforced, irrespective of how costly it may turn out to be in a given instance such as the one presented herein.

For the reasons set forth above, the Employer therefore violated Article III when it allowed non-bargaining unit employes to set up and operate temporary sound equipment for the February 11 Pre-Bucks Party.

To rectify that contractual breach, the Employer shall make whole those Local 18 stagehands who should have been called to perform that work. While it appears that only two other stagehands should have been called in (other than Kinney), the record is not totally clear on this point. Hence, I will retain jurisdiction if the parties are unable to jointly agree on how many stagehands should have been called in to work on the Pre-Bucks Party on February 11.

In light of the above, it is my

AWARD

1. That the grievance is arbitrable;

2. That the Employer violated Article III of the contract when it allowed non-bargaining unit employes to set up and operate temporary sound equipment for the February 11, 1999, Pre-Bucks Party.

3. That the Employer shall take the remedial action stated above.

4. That to resolve any questions that may arise over application of this remedy, I shall retain my jurisdiction for at least sixty (60) days.

Dated at Madison, Wisconsin this 31st day of March, 2000.

Amedeo Greco /s/

Amedeo Greco, Arbitrator

AAG/gjc
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