BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), LOCAL 627

and

INTERMET CORPORATION

Case 1
No. 59956
A-5937

(Tool Room Outsourcing Grievances)

Appearances:

Ms. Lula Smith, International Representative, Region 4, UAW, on behalf of the Union.

Reinhart, Boerner, Van Deuren, S.C., by **Mr. John G. Pawley**, on behalf of the Company.

ARBITRATION AWARD

The above-captioned parties, herein "Union" and "Company", are signatories to a collective bargaining agreement providing for final and binding arbitration. Pursuant thereto, hearing was held in Racine, Wisconsin, on September 6, 2001. The hearing was transcribed and the parties there agreed that I should retain my jurisdiction if the grievances are sustained. Both parties filed briefs and the Company filed a reply brief that was received by November 30, 2001. The Union stated on December 13, 2001, that it would not be filing a reply brief.

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

ISSUE

Since the parties did not jointly agree on the issue, I have framed it as follows:

Did the Company violate Article 15, Section 8, of the contract when it outsourced tool room work from its Racine, Wisconsin, facility and, if so, what is the appropriate remedy?

BACKGROUND

The Company operates a tool room at its Racine, Wisconsin, facility where it mainly builds and repairs dies that are used in the automotive industry. The Company also operates a number of other plants, including one in Pulaski, Tennessee. Intermet Corporation in December, 1999, purchased Ganton Technologies, Inc., the predecessor company which operated the Racine and Pulaski plants.

The Union in the latter part of 1999 and the beginning of 2000 was engaged in collective bargaining negotiations for a successor contract. The prior contract with Ganton Technologies, Inc., provided in Article 15, Section 8: "PLANT WORK TRANSFER: The Company agrees that they will not move any production from its Racine facilities to any other Company owned facility, if such transfer of work results in any job losses in Racine."

The parties in November, 1999, exchanged various contract proposals dealing with outsourcing, the chronology of which is uncertain, with Union witnesses claiming, and Company witnesses denying, that the Company made the first such proposal which read:

> "Prior to a final decision being made to outsource work currently being performed by bargaining unit personnel, which would directly result in layoffs, the company will agree to conduct a meeting with bargaining committee representatives. The purpose of this meeting will be to allow bargaining committee representatives the opportunity to present competitive economic proposals to potentially justify continuing to perform the work. After considering the information presented by the union, the final decision on where the work will be performed will continue to be the exclusive right of management." (Company Exhibit 2).

This proviso was included in the proposed contract that the Union presented to its members at the Company's insistence (Union Exhibit 1). Union members on or about February 6, 2000, rejected that proposed contract by about a 99-1 margin. Union President Jeffrey S. Fitzgerald told Company representatives after that vote that the Union membership would never vote for such outsourcing language. The Company then dropped this proviso and the Union subsequently ratified the contract on February 13, 2000. The current contract thus

leaves unchanged the outsourcing language contained in Article 15, Section 8, above.

The parties in negotiations also agreed to the following Letter of Understanding on Outsourcing (Company Exhibit 1):

> During these negotiations, the Union raised numerous concerns regarding the company's sourcing actions and their impact on employment opportunities for it's members. To that end, the Company agrees to notify the union of any anticipated outsourcing of work that will affect bargain [sic] unit members. The company further pledges to meet and work with union representatives in an attempt to preserve jobs, replace jobs which may be lost through outsourcing action, and to create jobs for laid off employees. It is the Company's goal to grow the business and to continue to rely upon its employees and facilities as the source of its products.

The parties also agreed to expand the skills trade apprenticeship program (Joint Exhibit 6).

There is a sharp testimonial clash between the various witnesses who testified about the 1999-2000 contract negotiations.

Union President Fitzgerald testified that the Company proposed its above-quoted language on November 15, 1999, to replace the language of Article 15, Section 8; that the Union presented its own counterproposal relating to a guaranteed employment level on the next day; and that both parties eventually agreed to drop their proposed changes and to keep the language of Article 15, Section 8, contained in the predecessor contract. He said that the outsourcing language "was crucial to the job security of our members. . .", and that: "The whole purpose of getting a labor agreement is job security." He also explained how the Company on April 19, 2000, at a "town hall meeting" announced that there would be reductions in the toolroom; that all new tooling would be outsourced; that "we would not be building new tools any longer. . ."; and that certain tool room employees would be laid off.

On cross-examination, Fitzgerald stated that certain rack and pinion work was transferred from Racine to the Pulaski plant, and that the Company in contract negotiations proposed to delete Article 15, Section 8, above.

Chief Union Steward Eugene E. Meier sat in on the 1999-2000 bargaining negotiations. He testified that a Shipping Request and a Die Location Master List prepared by the Company (Union Exhibits 2-3) document the dies that were shipped to Pulaski and other places; that most of those dies were moved within about four weeks of "a massive layoff" in the Racine toolroom; and that because of those transfers, about 12 of the 24 tool room employees were eventually laid off. He also said that the toolroom is no longer working overtime.

On cross-examination, Meier identified the dies that were moved elsewhere according to Union Exhibit 3 and said that some of those dies could have been put in production and that Article 8, Section 15, prohibits the Company from putting dies into production somewhere else. He also said that the Company can outsource tooling to some non-Intermet facilities; that Company Exhibit 5 does not list any Intermet facilities; and that the loss of tool room work cannot be attributed only to a loss of business or the transfer of work to non-Intermet facilities. He also said that before the transfers, "we were going strong building tools"; that, "We're a very competitive toolroom"; and that is why the layoffs cannot be attributed only to a loss of business.

He added that Union Exhibit 3 does not show where each piece came from; that he does not know for certain whether all that equipment came from the Racine plant; that Union Exhibit 3 does not show whether the tooling was active or inactive; and that he does not know for certain whether the inactive parts have caused a job loss at the Racine plant.

Meier also said that the 2000 layoffs are the biggest layoffs he has seen in the last eight years and he identified each piece of work on Union Exhibit 3, the Die Location Master List, he believes was improperly transferred from the Racine plant to another Company-owned facility, i.e., items 1775, A2323, 2361, possibly B1876, B2323, 1998, 1177, 1244, 1349, 1414, 1602, 1644, 1679, 1712, 1717, 1718, 1783, 1854, 1870, 1898, 1922, 1951, 1978, 1991, 2100, 2143, 2144, 2145, 2172, 2173, 2174, 2175, 2181, 2192, 2228, 2229, 2230, 2231, 2232, 2233, 2241, 2251, 2262, 2263, 2265, 2266, 2273, 2274, 2276, 2277, 2280, 2282, 2283, 2285, 2287, 2310, 2311, 2312, 2315, 2318, 2319, 2330, 2347, 2348, 2349, 2353, 2360, 2364, 2366, 2369, 2373, 2397, 2407, 2409, 2410, 2411, 2412, 2413, 2416, 2431, 2433, 2434, 2435, 2436, 2438, 2439, 2440, 2442, 2448, 2452, 2460, 2467, 2471, 2476, 2493, 2494, 2501, 2529, 2531, 2532, 2535, 2558, 2559, 95-020 and 95-005.

He added that almost all of these transfers occurred when toolroom employees were laid off. On further cross-examination, he acknowledged that he did not have first-hand knowledge where all of the above-mentioned items came from; that he was "80 percent sure" they all came from the Racine plant; and that Company Exhibit 3 does not show whether the items are active or inactive, i.e. whether they still can be used or whether they have been retired from service.

Fitzgerald was recalled as a witness and testified about a June 20, 2000 e-mail (Union Exhibit 4) from Roger Conrad relating to the transfer of tooling, and about how that tooling was eventually moved. He also testified about a meeting and a July 17, 2000 memo (Union Exhibit 6) that addressed moving other assets from the Racine plant – i.e. pieces 2085, 0849, 0637 and 2038 – which in turn led to layoffs. He also said that all of the equipment listed in Union Exhibits 4 and 6 were shipped to other Intermet-owned facilities, i.e. to Minneapolis or Monroe City. Asked about Union Exhibit 3 and Meier's prior testimony, Fitzgerald replied:

"There's never been this much toolroom movement on the same dates that coincide with these large layoffs."

On cross-examination, he said that he did not know where the items from Union Exhibit 3 came from; that he was unsure whether tooling work was shipped to Minneapolis; and that the contract does not cover the Company's Tennessee facilities – or any of its other facilities.

Former Vice-President of Human Services Louis Stevens was the chief spokesperson in the 1999-2000 collective bargaining negotiations. He testified that he specifically told Union Representative Lula Smith in January, 2000, that the contract only covered the Racine plant and "to a limited extent, the Company-owned facility in Pulaski." He said that the Company in the past has outsourced other tooling work; that the Company has not changed the way it outsources such tooling; and that he told the Union "new business, the new tool and die work was going to go to outside suppliers." He also said that the toolroom layoffs were caused by the "economic decision that the Company made in terms of where to build new dies", and because of the national economic slowdown in manufacturing.

Stevens also said that the Company explained at an April, 2000, plant meeting:

> "that a decision had been made, an economic decision, that new dies would not be built in --- at the Racine plant. And that after the jobs were completed, the new work would be --- would go to other facilities, not built there. That the toolroom would be there but they would be more of a repair and maintenance type operation rather than building new tools."

He added: "We didn't transfer that work. We just decided to do it somewhere else."

He also said that the Company in contract negotiations never proposed "any reduction in language that was currently in the contract" regarding outsourcing; that the Company never proposed removing Article 15, Section 8, of the contract; that the Union first brought up the subject of outsourcing; that there was a question in contract negotiations as to whether "this contract would apply to the list of other Intermet facilities"; and that he expressly told Smith that Article 15, Section 8, would not cover any other Intermet facilities.

On cross-examination, Stevens reiterated that Company representatives told employees that "no new dies, new tooling dies were going to be kicked off in the Racine plant. So once those were finished up, there wouldn't be new work coming in." He also said that he did not know whether some incomplete die work was ever transferred out of the Racine plant.

Asked whether machines were transferred from Racine because of cost-cutting or cost efficiencies - i.e., that the work could be done at a cheaper rate - he replied: "No doubt. No doubt." He explained:

> "there was certainly a push to do what we did best in terms of a core competency, and that was machining and diecasting and not tool and die work. There was a recognition that we needed to maintain some type of maintenance and repair to keep the production going. But in terms of building new tools, it could be done better outside."

He added that the dies shipped from Racine to the Pulaski plant in April and June of 2000, "were completed and then was used to run production." He also said that he did not know how many die machines remained at the Racine plant.

Plant Manager Vilas Coombs testified that "these losses of the jobs are a direct result of a reduction in builds total" and that the reduction was caused by the "automotive recession that we're in right now", because dies last much longer, and because of better technology. He also said that production dies in the past were transferred between the Racine and Pulaski plants; that there has been a steady decline in the number of dies produced; that the Shipping Request prepared by the Company (Union Exhibit 2), is not relevant because not all the dies listed there were produced in Racine; and that the Company in the past has never "built 100 percent of the tools here." Moreover, said he, the final decision on where a tool is built is based upon "capacity, timing, price." He also stated that the Die Location Master List prepared by the Company (Union Exhibit 3) does not identify where a tool came from; that the Pulaski plant is running at less than 50 percent capacity; that none of the tool room reductions were caused by outsourcing; and that dies 2373 and 2461 are active at the Pulaski plant.

On cross-examination, Coombs said that some dies were moved to Pulaski; that he told the Union after the first ratification vote failed in January, 2000, that the Company would leave Article 15, Section 8, in the contract; that the transfer of dies and the toolroom layoffs were just "a matter of coincidence"; that the building of dies has fallen from 60 in 1999 to 20 in 2001; and that the Company has retained the same number of outside dies to inside dies.

Controller Dawn Keller testified that 36% of the tools in 1999 were built internally (Company Exhibit 8); that 83% of trim work in 1999 was completed internally; that the number of tools had dropped down; and that the ratio between internal and external "is relatively consistent." She said that the economic downturn "has definitely had an impact" on the lowered production, along with no "new programs" and the extension of the tools' lives. She also said that the Delphi tooling had been run in the Pulaski facility since at least 1993.

On cross-examination, Keller testified that die repair and design work are not reflected on Company Exhibit 8; that the Pulaski plant fixes tools, but it does not build new tooling; that Pulaski does run production; and that engineering changes could be made in Racine or in non-Company owned tool shops.

POSITIONS OF THE PARTIES

The Union asserts that the Company violated Article 15, Section 8, of the contract when it laid off tool room employees because some of their work was outsourced to other Intermet facilities as evidenced by the Company's own Shipping Request and Die Location Master List (Union Exhibits 2 and 3). The Union maintains that the Company had "a fully manned tool room with the capability of performing tool and die work" and that the Company's outsourcing "proves unequivocally that the movement of those dies to Giles and other Intermet-owned facilities did indeed result in job loss." As remedy, the Union asks that the Company for the "duration of the contract" return the tool room work to the Racine Intermet facilities and that all toolroom employees be made whole for any losses suffered because of the Company's actions.

The Company contends that "No language in the Agreement limits the Company's right to decide where the new tooling work will occur"; that it did not violate the contract when it laid off tool room employees "because of a substantial decline in incoming work"; and that the Union has failed to show that "the Company moved any tooling that was in process at the Racine plant". The Company also claims that "the Union has failed to show that any tooling work was transferred from the Racine plant", and that the Union also has failed to prove that "the Company violated the apprenticeship provision in the agreement."

DISCUSSION

This case partly turns on Article 6, Section 1, of the contract, entitled "Management Rights". It states:

> "The Company except as otherwise in the agreement expressly provided, shall be the exclusive judge of all matters pertaining to the products to be manufactured, the locations of departments and work in and outside the plant, the schedules of production and the methods, processes, means and materials to be used. Further it is understood, except as otherwise in this agreement expressly provided, the Company has the right to exercise all other regular and customary functions of management not specifically above mentioned." (Emphasis added).

The Company claims this language allows it to outsource equipment and new work because it gives the Company the right to manage its business by determining what products are to be manufactured; by determining the location of work and departments in and outside the plant; and by establishing "the schedules of production and the methods, processes, means and materials to be used".

These rights, however, are subjected to the *caveat* in the underlined language that they can be limited by other express parts of the contract. Here, Article 15, Section 8, constitutes just such a limitation by prohibiting the outsourcing of any production work to other Company-owned facilities if that results in a job loss. That latter proviso therefore supersedes the contractual management rights clause, including the Company's right therein to otherwise deploy its equipment wherever it wants.

This case also turns on the application of Article 15, Section 8, which as noted above states: "PLANT WORK TRANSFER. The Company agrees that they will not move any production from its Racine facilities to any other Company owned facility, if such transfer of work results in any job losses in Racine."

The Company in essence argues that this language should be read as providing that the Company "will not move any new production from its Racine facilities to any other Company-owned facility if such transfer of work results in any job losses in Racine." Article 15, Section 8, however, does not contain the word "new". Hence, it must be read the way it reads, i.e., that it prohibits the outsourcing of "any" production from its Racine facilities, new or otherwise. "Any" such production includes not just the production currently being performed on the day the parties agreed to a new collective bargaining agreement in February, 2000, but also "any" production that the Company in the past has performed at the Racine facility and which can be produced at the Racine facility in the future.

This proviso thus represents a kind of snapshot in time which declares that there will be no job loss if such production work is transferred to other Company facilities. Union President Fitzgerald summed up the importance of this proviso when he testified: "The whole purpose of getting a labor agreement is job security."

The Company certainly knew the difference between not transferring "any" work and not transferring work "currently" being performed because, as related above at page 2, it proposed contract language on November 16, 1999, stating that it would not immediately outsource work "currently being performed by bargaining unit personnel. . ." (Company Exhibit 2). Since Article 15, Section 8, does not refer to work "currently being performed by bargaining unit personnel", it must be interpreted to mean that the Company cannot outsource "any" production work, current or otherwise. The Company therefore errs in claiming on page 2 of its reply brief that: "the Union must show that work that was in progress at the

Racine plant was moved to another Company-owned facility, resulting in a loss of jobs at Racine." For the reasons just stated, the Union in fact does not have to show that the work "was in progress".

The record further establishes that the Company in negotiations unsuccessfully tried to delete Article 15, Section 8, from the contract. While the Company asserts that it never proposed such a deletion, Union President Fitzgerald credibly testified to the contrary. His testimony was corroborated by General Manager Coombs who was asked on cross-examination "wasn't it you that committed to leaving Article 15, Section 8, in the contract after the ratification vote failed? You said we'll just leave it in there?", to which Coombs replied: "That was the decision that was mutually reached by the members of the committee for the company."

The Company's unsuccessful effort to delete Article 15, Section 8, in favor of its own proposal to limit outsourcing work "currently" being employed is important because it shows that the parties at that time well understood that the Company could not outsource "any production", regardless of whether it was "currently" being performed.

Coombs also testified that "somewhere along the line there was an attempt [by the Union] to put in outsourcing language that would stop us from doing any kind of interactions with any other Intermet companies that we had recently acquired or had acquired from us." That is why, said he, "We specifically made a stance that the only thing that would appear on that contract was Intermet – Racine." The problem with this testimony is that the Company has never identified any such written proposal submitted by the Union in negotiations, which is something it most certainly would have done if it existed. Moreover, Company Exhibit 2, which represents the Company's own account of the parties' various bargaining proposals, fails to show that any such proposal was ever made.

The absence of such documentation supports Union President Fitzgerald's testimony, which I credit, that the Union in contract negotiations never proposed any language changes to Article 15, Section 8, and that it, instead, unsuccessfully proposed language relating to a guaranteed employment level and that it successfully proposed the Letter of Understanding related above at p. 3 (Company Exhibit 1), which the Company accepted.

Former Vice-President of Human Services Stevens testified that he specifically told Union Representative Smith near the end of negotiations that Article 15, Section 8, only covered "the two Racine facilities, and also to a limited extent the Company-owned facility in Pulaski", because he "had no authority to bind any other part of the Company to our contract." He also said "there was a question as to whether this contract would apply to the list of other Intermet facilities. . ." and that he replied in the negative when Smith "asked the question whether or not this language [i.e. Article 15, Section 8] would apply to other Intermet facilities."

Stevens, though, wrongly claimed that the Company in negotiations never proposed to delete Article 15, Section 8, when in fact the record establishes otherwise. His failure to accurately describe that part of the negotiations, which is one of the most important issues herein, raises a question over the remaining parts of his testimony relating to bargaining history.

In addition, there is a major difference between whether the parties' contract covers the hours, wages and conditions of employment for the Company's non-Racine employees and whether the contract only covers the wages, hours and conditions of employment for the Racine employees and thus prevents the Racine plant from outsourcing work to other Company-owned facilities. The question therefore is not whether Stevens had the authority to bind other Company plants to the parties' contract and whether the Union would become the bargaining agent at those facilities, as Union witnesses acknowledged that he lacked that authority. Rather, the question is whether Stevens could bargain over whether the Racine plant could outsource work traditionally performed there, which is something he could do.

While separate and distinct from each other, these two concepts nevertheless can be easily confused, as seen by the questions and answers given by Fitzgerald at pp. 110-113 of the transcript. Hence, in determining what the parties did and did not agree to in contract negotiations, it is necessary to determine which of these concepts was being discussed at a given point in time.

Stevens first claimed that Smith asked him whether "the contract would apply to the list of other Intermet facilities," which he then changed to whether "the language [i.e. Article 15, Section 8] would apply to other Intermet facilities" which is why, said he, "on the contract, we were very careful to put Intermet-Racine plant and Intermet Racine Machining so that there would be no confusion as to where-what facilities they applied to." Putting that name on the contract, however, is a separate question of whether Article 15, Section 8, prohibits outsourcing to other Company-owned facilities that the Union may not represent.

Stevens' claim also runs counter to the clear and unambiguous language in Article 15, Section 8, which prohibits outsourcing of "any production from its Racine facilities to any other Company-owned facility, if such transfer of work results in any job losses in Racine." Contrary to the Company's claim, this language on its face is not limited to the Pulaski plant. It, instead, refers to "any other Company-owned facility. . ." which means all of Intermet's facilities since the Union in February, 2000, ratified the contract after Intermet purchased Granton Technologies, Inc. That is why the front page of the parties' collective bargaining agreement states that it is an agreement between the Union and "Intermet Racine Machining, and Intermet Racine Plant." (Joint Exhibit 1). That also is why the contractual Preamble refers to "The management of Intermet-Racine Plant and Intermet Machining. . ." (Emphasis in original).

The Company therefore in effect argues that Article 15, Section 8, must be read to mean:

> "The Company, i.e. Granton Technologies, Inc., agrees that they will not move any production from its Racine facilities to any other Company, i.e. Granton Technologies, Inc., owned-facility located in Pulaski, Tennessee, if such transfers of work result in any job losses in Racine."

The contract, however, does not read this way, which is why the Company's claim flies in the face of Article 15, Section 8's sweep, which refers to all of the Company's facilities.

In this connection, it is axiomatic that: "If the language of an agreement is clear and unequivocal, an arbitrator generally will not give it a meaning other than that expressed." Elkouri and Elkouri, *How Arbitration Works*, (BNA, 5th Ed., 1997) p. 482.

It therefore was incumbent upon the Company in negotiations to obtain clear and unequivocal language that changed Article 15, Section 8, along the line claimed here by the Company. The record, however, fails to establish that any such mutual agreement was ever reached. Accordingly, I conclude that the Company has failed to prove that the parties in negotiations ever mutually agreed to change it. Absent any such mutual agreement, Article 15, Section 8, must be applied as written, which means that the Company is precluded from outsourcing any production to "any other Company-owned facility. . ." if that results in job losses.

That therefore raises the question of whether the Company outsourced "any" production work to "any other Company-owned facility. . ." and whether such outsourcing resulted in job losses at the Racine plant.

As to that, Stevens in an April 24, 2000, memo to Union President Fitzgerald replied to the Union's grievance by stating, *inter alia*: "The staffing reductions in the tool room are the direct result in both reductions in new die making requirements and a business decision to outsource the new work to tool & die making suppliers." (Company Exhibit 4)

In a memo dated the same day (Company Exhibit 6), Stevens also told Fitzgerald:

. . .

> The company informed the union and tool room employees that a decision had been made not to produce new tooling here in the future. It was further explained that upon the completion of existing jobs that further tool room staff reductions would be necessary. All staff reductions will be handled in accordance with the labor agreement.

. . .

Stevens testified here that he told the Union that "new business, the new tool and die work was going to go to outside suppliers" and:

> "that a decision had been made, an economic decision, that new dies would not be built in --- at the Racine plant. And that after the jobs were completed, the new work would be --- would go to other facilities, not built there. That the toolroom would be there but they would be more of a repair and maintenance type operation rather than building new tools."

He answered, "No doubt. No doubt", when asked whether the transfers also were made because the work could be done cheaper elsewhere. He explained:

> "there was certainly a push to do what we did best in terms of a core competency, and that was machining and diecasting and not tool and die work. There was a recognition that we needed to maintain some type of maintenance and repair to keep the production going. But in terms of building new tools, it could be done better outside."

He added that the dies shipped to the Pulaski plant "were completed and then was used to run production."

These admissions establish that the Company did, indeed, outsource the kind of production work formerly performed by the Racine plant and that the Company did so in part because it wanted that work produced at a lower cost. In addition, I credit Chief Union Steward Meier's testimony that much of that work was transferred at the time of the layoffs and that there was a causal relationship between the transfers and the layoffs. I also credit Union President Fitzgerald's testimony to that same effect.

The Company thus errs in claiming on page 2 of its reply brief: "any reduction in the overall number of tools built was due to declining economic conditions and the increased longevity of tooling. . ." This was only partially true, as Stevens himself acknowledged that outsourcing also occurred because the Company could get it done cheaper elsewhere.

It therefore is necessary to determine just what kind of production work and equipment were transferred from the Racine plant and where it ended up.

Not all such transfers were improper. It is only those transfers to "any other Company-owned facility. . ." that result in job losses that are prohibited. Hence, the Company can transfer whatever work it wants to non-Company owned facilities and even to Company-owned facilities if that does not result in job losses.

The Union's brief claims at page 4: "the Union determined through the shipping requests (U. Ex. #2) and Die Location Master List (U. Ex. #3) did result in substantial job losses from the Racine facilities as established by Gene Meier. . ."

It is certainly true, as related at p. 3-4 above, that Meier identified each and every piece of work on the Die Location Master List (Union Exhibit 3) he believed was improperly transferred out of the Racine plant. The Company, though, points out in its reply brief, at page 2: "The master list and shipping request relied upon by the Union shows nothing more than the location of the equipment" and that the "die location master list shows nothing more than the location of dies." The Company also points out that Meier did not know whether the dies located in the Pulaski plant are active or inactive.

These objections are well taken, which is why Meier's testimony does not prove all of the Union's case. But, Meier went on to state on cross-examination that he was "80 percent sure" that the items on Die Location Master List came from the Racine plant. No Company witnesses testified that all of Meier's testimony was incorrect and/or that all of those items came from someplace else, which is something that easily could have been proven through the Company's own documentation.

Moreover, Stevens acknowledged that there had been "a business decision to outsource the new work to tool and die making suppliers"; that "the new work would be – would go to facilities, not built there"; that, when asked whether some of the transfers were made because the work could be done cheaper elsewhere, he replied, "No doubt. No doubt"; and that, "in terms of building new tools, it could be done better outside." These admissions establish that some of the work formerly performed at Racine was transferred elsewhere.

Moreover, the full details of those transfers represent a remedial question going to the scope of any remedy and it does not affect the Company's own admissions that it transferred some work from Racine in part because it could be done cheaper elsewhere. In addition, I credit the combined testimony of Fitzgerald and Meier who both testified that those transfers resulted in layoffs in the toolroom. I thus conclude that the Company did in fact violate Article 15, Section 8, when it transferred such work to its other Company-owned facilities and when those transfers caused some or all of the job losses in the toolroom.

That raises the question of remedy and the need to obtain more information in order to effectuate a proper remedy.

As for more information, the Company by April 15, 2002, is hereby directed to identify for the Union where each and every item on the Die Location Master List (Union Exhibit 3) testified to by Meier came from, along with the date of any transfers, whether each item is active or inactive, and, if so, when they became inactive. The Company will do the

same for items 2085, 0849, 0637 and 2038 identified in Union Exhibit 4 and for item 2461 identified by Coombs. The Company by that date is also directed to identify for the Union all other work and/or equipment it has transferred from Racine to other Company-owned facilities from February 14, 2000, to the present. The Company by April 15, 2002, is also directed to provide the Union with all relevant records showing how much production, if any, was produced by any tools or equipment transferred from Racine to other Company-owned facilities.

Once that information is produced, it will be possible to issue a full make-whole remedy and to restore the economic *status quo ante* that existed before the Company's improper transfer of work.

In this connection, it is well-established that a remedial order can include a cease and desist order which prohibits the employer from improperly transferring any more work; which requires the employer to return all equipment and work improperly transferred elsewhere; which orders the reinstatement of all employees affected by the improper transfer; and which provides for a traditional backpay award. See ADDRESS-O-MAT, INC., 36 LA 1074 (Wolff, 1961); SIDELE FASHIONS, INC., 36 LA 1364 (Dash, 1961); JACK MEILMAN, 34 LA 771 (Gray, 1960); SELB MFG. CO., 37 LA 834 (Klamon, 1961), enforced, SELB MFG. CO. V. IAM DISTRICT NO. 9, 305 F.2D. 177 (8th Cir., 1962); CAMPBELL TRUCK CO., 73 LA 1036 (Ross, 1979). Similar remedies can be issued in analogous subcontracting cases. See Elkouri and Elkouri, *How Arbitration Works*, (BNA, 5th Ed., 1997), p. 757.

That is why:

> "When subcontracting violations or improper transfers of operations are found, the remedy ordered will depend upon the facts of each case and, in particular, the specific contractual provisions at issue. Preferred remedies include cease-and-desist orders, mandates to return the improperly subcontracted or transferred work to the bargaining unit, and traditional make-whole relief for employees who were displaced or denied work. Preferential hiring and superseniority for the old employees at the new location may be ordered when restoration is impractical."
>
> See St. Antoine, ed. *The Common Law of the Workplace: The Views of Arbitrators*, (BNA, 1998), p. 352.

In order to help restore the economic *status quo ante* here, the Company thus will immediately cease and desist for the duration of the contract from transferring to any other Company-owned facility any equipment and/or any production work of the kind formerly

performed at the Racine plant if such transfers can result in future job losses or reductions in work. If the Company fails to do so, it will make whole all Racine employees who are adversely affected by the Company's failure.

The Company also will immediately transfer back to its Racine plant all active equipment and/or work previously transferred to other Company-owned facilities from February 14, 2000, to the present.

The Company also will immediately recall all toolroom employees who were laid-off because of the transfer of equipment and/or production work to other Company-owned facilities, and it will make all toolroom employees whole by paying to them a sum of money, including all benefits and seniority, that they would have earned from the time of their layoffs (or other adverse actions such as a reduction in hours) to the time of their recall. That sum is to be reduced by whatever interim earnings they received or could have received during that time. The Company's own records should show just who was laid off and/or whose hours were reduced because of the Company's actions. Moreover, once the Company has produced the information stated above, it then will be possible to resolve any remaining questions arising over this and other remedial issues.

The parties by May 10, 2002, shall submit written submissions to me regarding any unresolved remedial issues. If there are any unresolved issues relating to reinstatement and/or back pay, the Union at that time is to identify each toolroom employee it believes was adversely affected by the Company's outsourcing to other Company-owned facilities, along with: (1), how they were adversely affected; (2), the amount of backpay and benefits to which they are entitled; (3), all interim earnings those employees received; and (4), why they should be recalled and/or have their hours increased. Reply submissions will be due by May 31, 2002. The Company is to then reply to all of the Union's contentions. If a supplementary hearing is needed to resolve any remedial questions, it will be held on June 5, 2002, and, if necessary, June 6, 2002.

In light of the above, it is my

AWARD

1. That the Company violated Article 15, Section 8, of the contract when it outsourced tool room work from its Racine, Wisconsin, facility.

2. That to help rectify that contract violation, the Company by April 15, 2002, will provide the Union with all of the information stated above.

3. That the Company for the duration of the contract will immediately cease and desist from transferring to any other Company-owned facility any equipment and/or production work that its Racine facility has, or is performing, if such transfers otherwise would result in future job losses and/or reduction in hours.

4. That to help restore the economic *status quo ante*, the Company shall immediately transfer back to its Racine facility all of the active equipment and/or production work that was transferred from Racine to other Company-owned facilities from February 14, 2000, to the present.

5. That to further help restore the economic *status quo ante*, the Company will immediately recall all toolroom employees who were laid-off and/or who had their hours reduced because of the Company's transfer of equipment and/or work from Racine to other Company-owned facilities and it will make them whole in the manner described above.

6. That to resolve any remedial questions arising over application of this Award, and pursuant to the agreement of the parties, I shall retain my jurisdiction indefinitely.

Dated at Madison, Wisconsin, this 18th day of March, 2002.

Amedeo Greco, Arbitrator

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