BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

MANUFACTURING TECHNOLOGY, INC.

and

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNIONS 953 AND 1070

Case 1
No. 64430
A-6155

Appearances:

Kimberly P. Wallin, Project Manager, MTI, P.O. Box 44, Clam Lake, Wisconsin 54517, appearing on behalf of the Company.

James Dahlberg, International Representative, Sixth District, IBEW, 8174 Cass Avenue, Darien, Illinois 60561 and **Dave Loechler**, Assistant Business Manager, IBEW Local 953, P.O. Box 3005, Eau Claire, Wisconsin 54702-3005.

ARBITRATION AWARD

Manufacturing Technology, Inc., hereafter Company or Employer, and International Brotherhood of Electrical Workers Local Unions 953 and 1070, hereafter Union, are parties to a collective bargaining agreement that provides for final and binding arbitration of grievances. The Union, with the concurrence of the Company, requested the Wisconsin Employment Relations Commission to appoint a member of its staff as Arbitrator to hear and decide the instant grievance. Coleen A. Burns was so appointed on March 3, 2005. Hearing was held in Eau Claire, Wisconsin on April 6, 2005. The hearing was not transcribed and the record was closed on April 13, 2005, following receipt of post-hearing oral argument and the submission of delayed exhibits.

ISSUES

The parties stipulated to the following statement of the issues:

Did the Employer violate the collective bargaining agreement when it failed to provide severance payments to bargaining unit members laid off effective December 31, 2004?

If the answer is yes, what remedy is proper?

RELEVANT CONTRACT PROVISIONS

ARTICLE XVIII

SEVERANCE PAY

SECTION 1

Employees with more than one (1) year of continuous service in accordance with the Project Location who have established seniority shall be entitled to severance pay when they are involuntarily laid off because of lack of work for a period in excess of thirty (30) days; however, no employee shall be entitled to severance pay in cases where such layoff is due to an act of God, causing damage at locations where work is performed under the Collective Bargaining Agreement or from strike or work stoppages occurring at the facility use by the Company's employees resulting in the inability to maintain normal operations.

For employees on the Company payroll in a job classification covered by the labor agreement, the following severance pay schedules shall be used:

1 year to less than 5 years	1 week
5 years to less than 7 years	2 weeks
7 years and over	3 weeks

Such severance pay shall be paid at the end of a waiting period of thirty (30) days from the date of such layoff. An employee who is recalled to employment with the Company during the waiting period shall not be eligible for severance pay.

Employees will not be eligible for severance payment under this policy in the event the Company's contract with the Navy is terminated in full or in part. This policy will remain "as is" unless the Government provides severance pay reimbursement due to contract termination in full or in part.

RELEVANT BACKGROUND

Effective October 1, 2003, the Company received a one year contract from the US Navy to operate and maintain certain ELF transmitter sites. The contract stipulated that there would be 4 subsequent ***option*** years, based upon the Navy's needs or desires.

Generally, around the first week of September, the Navy submits a Contract Modification (Mod) that stipulates the exercising of the next option year, which is based upon a fiscal year starting in October. The Contract Modification for FY05 Option Year (P00007), which was received late, restructured the FY05 Option Year into Option Quarters. The government chose to exercise the first option quarter with a full staff under Contract Modification P00008, under CLIN 0005AA, 0005AB, 0005AC and 0005AD, even though ELF operations had ceased.

In December of 2004, the Company notified the Union that, effective December 31, 2004, the Company would lay off members of the Union's bargaining unit. Thereafter, the Union filed a grievance stating the following:

. . .

> Employees being laid off have been verbally told that they would not be receiving a severance pay. In accordance with Article XVIII, Severance Pay, Section 1, the Union disagrees with the Company. The Union is requesting at this time that all MTI employees covered under this agreement that are being laid off December 31, 2004, be paid at the end of a waiting period of thirty (30) days from the date of such layoff, the applicable severance pay due to them in accordance to their years of service.
>
> In Article XVIII, Severance Pay, the Union understands that the Company's contract with the Navy is being partially terminated, but as stated in MTI's December 7, 2004, letter from Clifton Gilmore, he states that "the new SOW is currently under review by the MTI Management Staff, which will be providing a response to the government in the near future. Our response will entail a reduction of staff comparable to the reduction in tasking." With this statement the Union views the reduction in staff as MTI's decision, not the Navy requiring fourteen (14) Technicians to be laid off.

. . .

The Company's response to this grievance includes the following:

. . .

As previously reported to you, MTI had received Contract Mod P00007 which restructured the ELF FY05 Option Year into **Option Quarters**. This arrangement allowed the Navy the opportunity to exercise each option quarter (or not) as time went on. The Navy followed this up shortly thereafter with Contract Mod P00008 that exercised the first option quarter with full staffing during the period of October 1 through December 31, 2004, even though ELF operations had ceased on September 30th.

In early December, MTI received a revised and de-scoped Statement of Work (SOW) from the government, with a request to revise manning to meet the lesser requirements, presumably for the next option quarter and thereafter. The revised SOW terminated the part of the contract regarding Control Room activities and most electronic maintenance. The Navy's expressed intent was to cut back on staff to save money, while still moving forward with the dismantling process. MTI was asked to reduce staffing commensurate with the reduced tasking in the revised SOW. After careful consideration, MTI acquiesced to the Navy's request and kept only the number of staff that could reasonably be justified by the remaining tasks.

Even with the Navy's expressed intent of staff reduction, contractual procedure dictated that accomplishments of this goal be achieved through termination of part of the existing contract requirements. Subsequently, the Navy terminated the portion of the contract which required a full technical staff, and reduced the scope of electronic work to minimal equipment support. MTI had no choice but to make changes to the staff accordingly.

In accordance with the IBEW Collective Bargaining Agreement, Article XVIII, Section 1, "Employees will not be eligible for severance payment under this policy in the event the Company's contract with the Navy is **terminated in full or in part**." As previously stated, MTI views the changes in the contract that resulted in the layoff of personnel as a termination "in part" and therefore deny the request for severance pay for those personnel laid off on December 31st.

MTI sincerely regrets the circumstances that led to the lay off of quality personnel, however, we feel that our obligations have been met in accordance with the existing Collective Bargaining Agreement as stated above.

Thereafter, the grievance was submitted to grievance arbitration.

DISCUSSION

At issue is whether or not Article XVIII requires the Company to pay severance pay to the laid off employees represented by the Union. The Company, contrary to the Union, claims that it owes no severance pay because "the Company's contract with the Navy" was terminated "in part."

The Union argues that, inasmuch as the Company proposed Article XVIII, the language should be strictly enforced against the Company. To strictly enforce the language against the Company, is to give effect to the plain language of Article XVIII.

Union Representative Dave Loechler recalls that, when he was initially advised of the layoffs, he telephoned Company Project Manager Wallin and requested a letter on Navy letterhead that stated that the Navy was partially terminating the contract. Union Representative Loechler further recalls that he was never provided with such a letter, but rather, was referred to a media release in which the Navy announced a plan to shut down the ELF Communication System.

The undersigned agrees that the media release does not constitute a termination, in part or in full, of the Company's contract with the Navy. According to Company Representative Wallin, however, the Company's decision to layoff employees was in response to MTI's receipt, in early December of 2004, of a revised Statement of Work (SOW) which, *inter alia*, deleted requirements for 24/7 Control Room operations and various other technical maintenance operations. This testimony is consistent with statements made in the Company's Step Two grievance response. (Jt. Ex. #3)

Company Representative Wallin credibly testified that the number of employees laid off was commensurate with the reduced tasking of the revised SOW. Company Representative Wallin's testimony is consistent with the Company's Step 2 grievance response, *i.e.*, "After careful consideration, MTI acquiesced to the Navy's request and kept only the number of staff that could reasonably be justified by the remaining tasks." (Jt. Ex. #3)

The REVISED IAW Contract Modification P00010, effective January 1, 2005, corroborates Company Representative Wallin's testimony that the Navy deleted certain operational requirements. For example, the original SOW, Paragraphs 5.1.2.1 contained the following language:

> d. Operate and maintain the ELF Control Room located in the Transmitter Building at each of the two ELF NRTF's with a Watch Section shift composed of a minimum of two Electronics Technicians Level II, one of which must remain in the Control Room at all times. . .

Under MOD P00010, this Section d contained the following language:

> d. Due to ELF closure actions no staffing of the control rooms is required other than to support closure activities.

The language of the above modification, as well as the language of other modifications contained in REVISED IAW Contract Modification P00010, reasonably supports the conclusion that the Company's contract with the Navy has been terminated "in part."

As the Union asserts, the letter solicited from the Department of the Navy by Senator Feingold on behalf of the Union includes the following statement: "The contract will remain in force until such time as there is no longer a need for contractor services." This letter does not identify the referenced "contract." Given the date stamp of "February 23, 2005," the most reasonable presumption is that the referenced "contract" is that which was then in effect, *i.e.*, REVISED IAW Contract Modification P00010. Neither the statement relied upon by the Union, nor any other statement in the Naval Department letter, militates against the conclusion that, with the modifications contained in REVISED IAW Contract Modification P00010, the Company's contract with the Navy was terminated "in part."

The parties are in agreement that, in 2003, the Company laid off Union bargaining unit employees and paid Article XVIII severance pay. The Union relies upon the evidence of this layoff to argue that Article XVIII should be construed to require the payment of severance pay.

As Union Representative Loechler credibly testified, the 2003 layoffs, like the 2004 layoffs, occurred at a time in which there had been a change in the scope of the Naval contract. Company Representative Wallin credibly testified that the major impetus for the 2003 layoffs was not the Navy's decision to reduce tasking, but rather, a Company business strategy. Specifically, the Company decided that it could operate safely with fewer staff and submitted a bid that reduced staff accordingly.

The record warrants the conclusion that the 2003 layoff was primarily due to the Company's business decisions and that the 2004 layoff was primarily due to the Navy's contract modifications. Given the factual distinctions, the payment of Article XVIII severance pay to employees laid off in 2003 layoff does not provide a reasonable basis to conclude that the parties have a practice, or agreement, to provide Article XVIII severance pay in the present case.

Conclusion

Under the plain language of Article XVIII, the Union's laid off bargaining unit members are not due any severance pay if the Company's contract with the Navy is terminated in full or in part. Inasmuch as the Company's contract with the Navy has been terminated in part, the Union's laid off bargaining unit members are not eligible for severance pay under Article XVIII.

Based upon the above and foregoing and the record as a whole, the undersigned issues the following

AWARD

1. The Employer did not violate the collective bargaining agreement when it failed to provide severance payments to bargaining unit members laid off effective December 31, 2004.

2. The grievance is denied and dismissed.

Dated at Madison, Wisconsin, this 8th day of July, 2005.

Coleen A. Burns /s/
Coleen A. Burns, Arbitrator

CAB/gjc
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