**Dunsford #2**

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

**1. Issue and Background**

The issue before the System Board of Adjustment is whether the Employer violated Article II, Paragraph C of the 1989-1994 Mechanics' Agreement when it contracted out the janitorial work at the Employer's Executive Office facility? If so, what is the remedy?

In 1993, responding to net losses of over a billion dollars in the prior two years, the Employer instituted a plan to reduce capital spending and cut operational expenditures by $400 million dollars that year. As part of the plan, operating adjustments included reduction of 2800 employees, elimination of 1,900 open positions, a 5 percent reduction in salaries of officers and certain management employees, the contracting out of all skycap services, and the contracting out of the Managed Care function forvmedical insurance claims involving psychiatric and substance abuse treatment.

A decision was also made to contract out the janitorial work at the Employer's corporate headquarters. That is the decision which led to the present arbitration. There were 58 Utility Man employees at corporate headquarters performing janitorial and grounds keeper work. The 58 employees were reassigned to Airport 1 field where they were given an opportunity to claim jobs on the basis of their seniority and ability. This created a surplus of 58 jobs at Airport 1, and

employees sent there were given options outside the City 1 area if jobs were available. Some 15 employees elected to move from City 1, but 43 others were laid off.

Since 1961 Utility Workers have performed the vast majority of the janitorial duties at the Employer's facility. Witnesses Person 1 and Person 2 testified that no one but Utility Workers has performed janitorial work since the facility was opened. However, Person 3, Manager of Executive Office Facilities, pointed out that some janitorial work has been contracted out from time to time: the shampooing of carpeting, interior window washing, and the moving of furniture. While conceding that such instances of contracting out were the exception, he added that they did occur if the Employer lacked the necessary equipment or manpower, or if the Employer needed additional help to get the work done on time.

Article II-C of the contract reads as follows:

> C. All work performed directly by the Employer involving the making, assembling, erecting, dismantling and repairing of machinery of all description including aircraft and component parts thereof, and including installation and maintenance of ground communication equipment, servicing of aircraft and ground equipment with fuel and lubricant, cleaning and polishing of aircraft (interior and exterior), the cleaning of aircraft parts, all cleaning and janitorial work, the operation of heating plants, keeping of grounds, and other utility work, is recognized as coming within the jurisdiction of the Union and is covered by the Agreement. It is understood that employees in the mechanical classifications covered by this Agreement may be assigned to perform any maintenance or service work including electrical maintenance and repair work that employees are able to perform. It is further understood that at locations where no employees covered by this Agreement are assigned, any employee may be used to perform occasional utility, maintenance and repair work not involving Mechanic's work on aircraft. When Mechanics are assigned to Class III stations primarily for ground equipment and building maintenance, the employees assigned shall perform all ground equipment and building maintenance work they are qualified, equipped, and reasonably available to perform, and may be assigned to perform minor routine checks and/or minor non-routine aircraft repairs. Employees in the Mechanic classification at such stations who are awarded vacancies which specify an FAA Mechanics' certificate with an Airframe and Power Plant rating as a qualification shall be entitled to license pay although they do not work primarily on aircraft or aircraft components. Further, at Class III stations any other employee may be used for receiving and dispatching of aircraft, fueling, oiling and related servicing of aircraft and occasional supplementary

> maintenance or service work not involving mechanical work on ground equipment, facilities or aircraft, but the Employer shall not reclassify any station presently staffed with Mechanics to a Class III station for the purpose of allowing other employees to perform these duties. It is further understood that the Employer reserves the right to contract for the construction or installation of new facilities, equipment or machinery; or building maintenance or repair work when the Employer's personnel or facilities are not sufficient or available; or to continue to contract out the types of work heretofore customarily contracted out; or to return equipment parts or assemblies to the manufacturer for repair or replacement; or to purchase necessary parts, equipment or facilities; or to contract out work when its facilities or personnel are not sufficient or available. The Employer reserves the right to contract out other work but if such work comes within the scope of this Agreement, notice will be served on the Union before such contracting takes place. After receipt of notice by the Union of intent to contract out such work, if such contracting indicates that any employee covered by this Agreement will be reduced, laid off or transferred as a result, either party to this Agreement may serve notice of a desire to negotiate for the procedure to be followed and the protection to be afforded employees involved. Actual negotiations under this provision will be initiated within ten (10) days from receipt of a notice of desire to negotiate the matter and no employee affected will be reduced, laid off or transferred in less than forty (40) days after receipt of such notice.
> (Italics added)

For purposes of this case, the crucial language of Article II-C is as follows:

> It is further understood that the Employer reserves the right ... to continue to contract out the types of work heretofore customarily contracted out....

Since 1947 the Mechanic's Contract has contained the language in Article II-C dealing with the reservation of various rights to contract out under certain circumstances, as reproduced above. During the years since 1947 the Union has made various proposals to limit the freedom of the Employer under Article II-C. While the parties have placed in the record a detailed accounting of these various proposals offered throughout the intervening years, there is no necessity to burden this opinion with an exact account of that negotiation history.

A common provision submitted by the Union from time to time read as follows:

> Amend Article II, Paragraph C, of the Mechanics' Agreement and corresponding provisions of the Ramp and Stores, Food Services, Dispatchers, and Communication Employees Agreements to provide:
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> (1) All work performed involving the work of classes and grades of employees as described in the "Classifications of Work" provisions of the above referenced Agreements shall be performed by the respective classifications of employees wherever the Employer maintains operations affecting the classification of employees and is work recognized as coming within the jurisdiction of the International Association of Machinists and is covered by these Agreements.

Union witnesses testified that the general intent of such proposals was to claim all the work at any station that came within the jurisdiction of the Union. On a number of occasions, these Union proposals led to side letters with the Employer accommodating some concern or interest of the Union in that regard.

There were other proposals for change, however, which represented direct efforts to limit the Employer's freedom to contract out. For example, a portion of a Union contract proposal might state (Employer Exhibit No. 31):

> .... Provide further that the Employer agrees that any farm out of work covered by the terms of this agreement that result in a layoff of personnel would be deemed a violation of said agreement. Provide further that the Employer agrees that it shall not farm out work in any station while any employee is on layoff and said employee could perform the work in question.
> Despite these proposals, the basic statement of the Employer's right to contract out in certain circumstances was not changed in Article II-C.

**2. Positions of the Parties**

Only a brief summary of the arguments of the parties is presented here. In the opinion of the System Board of Adjustment, the case centers on these arguments.

**A. The Union**

The Union maintains that the Employer violated the contract by contracting out the janitorial work at the Executive Office facility.

There are two basic reasons for this conclusion. In the first place, the type of work in dispute is not of a type which is customarily contracted out, since the Executive Office facility is unique. Evidence that the Executive Office facility is separate and different is found in the special treatment accorded it as a seniority location at the City 1 point in Article 10-A-2 of the contract, and the different treatment accorded employees who work at the facility in regard to the observance of holidays. Since the janitorial work in dispute is unique, it cannot be compared with similar work throughout the system. In terms of the contract, it is not the type of work "heretofore customarily contracted out" since bargaining unit employees have exclusively performed it for over 30 years.

The second ground on which the Union relies is the negotiating history through the years in which the Employer has regularly given assurances that it did not intend to interfere with Machinists' work. At different times in the past the Employer has stated that management didn't like to contract out work, and that it did not plan to go outside for work that could be performed in-house. The theme of the Employer has been that it intended to have bargaining unit employees perform the work if manpower and facilities were available. At times various Employer representatives have admitted that they could not contract out work due to the limitations imposed on them by the contract. All of these assurances of management through the years indicate that the contract has been broken by the contracting out of the janitorial work at the facility.

The Union asks that the work be returned to the Utility Workers, and that affected employees be recalled to work and made whole.

**B. The Employer**

The Employer contends that the contract clearly gives management the right to contract out the work in dispute. Article II-C states that the Employer may "continue to contract out the types of work customarily contracted out," and janitorial work comes within that language. Hence, there is no violation of the contract.

There are seven different kinds of contracting out mentioned in Article II-C, and only one of them is implicated in this case.

The System Board simply has to decide if janitorial work is of a type which is customarily contracted out. The evidence overwhelmingly shows that it is. At the 23 locations where Utility Workers are assigned in the system, janitorial work is contracted out at the great majority of them.

Moreover, prior Board decisions have established that the basis for determining if work has been customarily contracted out is system wide, and not by individual location.

In past negotiations the Union has repeatedly attempted to expand the scope of the agreement, and limit the Employer's right to contract out. Although the Union has on occasion worked out understandings with the Employer regarding some of its concerns, the contractual right of the Employer to contract out in certain situations (as set forth in the contract) has not been altered.

Since the grievance is without merit, it should be denied.

**3. Discussion and Award**

Two critical questions have emerged in the presentation of this case:

1) Is the janitorial work at the facility one of "the types of work heretofore customarily contracted out"?

2) Did the Employer in past negotiations give the Union cause to believe that it would not contract out work if the result was that employees went on layoff?

After examining the evidence pertaining to these two questions, a majority of the System Board of Adjustment is compelled to conclude that the Employer did not violate the contract when it contracted out the janitorial work at the Executive Office facility.

Article II-C of the contract expressly reserves to the Employer the right to contract out "types of work heretofore customarily contracted out." The record leaves little doubt that janitorial work across the system has been customarily contracted out in the past. In that regard, the Employer points out that in the vast majority of its 120 domestic locations the janitorial work is not even assigned to Utility Workers, but is either contracted out or assigned to other employee classifications. Moreover, it appears that of the 23 locations where Utility Workers are assigned, some of the janitorial work is contracted out by the Employer. The Union is unable to cite any instance in which it has successfully challenged the contracting out of janitorial work in the grievance procedure. Thus, a majority of the System Board concludes that the work in arbitration is one of the "types of work heretofore customarily contracted out."

It is true, as the Union argues, that if the janitorial work at EXO were examined in isolation from similar work in other locations, a strong case could be made that it has not been customarily

contracted out in the past. Utility Workers have almost exclusively performed the janitorial work at EXO for many years.

However, past decisions of the System Board of Adjustment have determined that the proper basis for applying the relevant words of Article II-C is one which is system-wide rather than by individual station. Thus in another case, Arbitrator Gootnick concluded:

> It is not necessary to dispose of the Union claim that the type of work grieved in this case has always been performed by B and M mechanics at the flight kitchen. Nor it is necessary to discuss the Union argument that the decision should be based on the work performed. The Company is correct in its claim that the customarily contracted out language has been interpreted by other System Board cases and "requires a system wide rather than a station by station analysis".

While the Union emphasizes the uniqueness of the facility as far as such things as seniority and holiday scheduling are concerned, there is no indication that on the-subject of contracting out the applicable language of Article II-C ("customarily contracted out") was intended to have a different application depending on the location of the work.

Despite the clarity of the contract language, the Union argues that in past negotiations the Employer has given it oral assurances that it would not contract out where the consequences could be the layoff of bargaining unit employees. An examination of the record, however, fails to reveal any instance in which an authorized representative of the Employer made any formal commitment to rescind or qualify the language of Article II-C concerning the Employer's right to contract out. To be sure, the Employer did on occasion counter Union proposals to change the terms of Article II-C by urging that management be judged on the basis of its actions (that is, that the Union should leave the contract language alone and depend upon the ability of the parties to work out problems in an. equitable way). If anything, however, this history of negotiations merely underscores the fact that the Employer resolutely refused to agree to proposals which

would require it to give up any of its rights to contract out in the specific circumstances described in Article II-C. At the same time, management sought to give the Union assurances that it would do its best to keep work in the unit.

It is unfortunate that, due to the severe financial pressures on the Employer, the good faith efforts of the parties to resolve their differences through mutual agreement have not been successful in the present instance. The System Board, however, is limited in function to the interpretation and application of the contract between the parties. For the reasons stated above, that contract clearly gives the Employer the right to take the action that it did in this case. Accordingly, the System Board must find that the grievance is without merit and must be denied.

An interim decision was issued by the System Board of Adjustment on May 19, 1993, which is now made final.

**AWARD**

The grievance is denied. The work in question is the type of work heretofore customarily contracted out under Article II-C.