Holden #1

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

Preliminary Statement

An arbitration hearing involving the above-captioned matter was held on November 20, 1992 before a System Board of Adjustment. No stenographic notes of the hearing were taken; both parties argued orally upon the conclusion of the hearing. An executive session of the System Board was held by telephone on December 23, 1992.

Issues

The parties did not agree upon the issues to be submitted for decision. In essence, this case presents the question of whether the Employer violated the collective bargaining agreement when it subcontracted the job of transporting a CF-6 engine from City 1 to City 2, State 1 on May 30, 1991.

Background

In this case the Union has protested the Employer's use of a subcontractor to transport a CF-6 engine from City 1 to City 2, State 1 on May 30, 1991; the Union asserts that the Employer should have used a bargaining unit member, namely, a stock clerk/driver, for this job.

In particular, the circumstances surrounding this case were as follows. In August 1989, the Employer acquired Airline 1. Airline 1, which had CF-6 engines on its AOG aircraft, used tractor trailers for ground transportation of these engines. Before the acquisition, the tractors were put up for sale and were sold after the acquisition; the Employer retained some of the trailers.

From the date of the acquisition until May 1991, the Employer apparently had no need to transport CF-6 engines. When the Employer had a need on May 30, 1991 to transport a CF-6 engine, it employed a subcontractor to perform the job; it was then that the Union grieved. While the Employer still possessed a trailer for engine transport at its City 1 site, the evidence was that such trailer was not in roadworthy condition on May 30, 1991, and that the Employer possessed no tractor to haul the trailer.

The record further showed that in 1990, the Union and the Employer created a stock/clerk driver job classification. A stock clerk/driver is required to obtain a class B license but not a class A license. A class A license is required in order to drive a tractor trailer. Despite the fact that a class A license is not required of an employee in the stock clerk/driver classification, some stock clerk/drivers have nevertheless obtained class A licenses on their own initiative.

A grievance was filed over the fact that the Employer subcontracted out the job of transporting the CF-6 engine from City 1 to City 2, and inasmuch as this grievance has remained unresolved, the Union has elected to bring the matter on to arbitration for resolution.

Position of the Parties

A. Position of the Union

The Union contends that the transporting of CF-6 engines from one location to another is bargaining unit work, and that the Employer violated the contract by subcontracting such work

on May 30, 1991. In particular, the Union cites Art. 1(G) of the collective bargaining agreement and says that the ground transportation of AOG engines is bargaining unit work. The Union further says that the Employer had on premises a trailer to transport a CF-6 engine and could have either bought or leased a tractor to do the hauling, and the tractor could have been driven by a stock clerk/driver. The Union points out that tractors can be leased on a daily, weekly or monthly basis.

The Union further says that the stock clerk/driver classification was formed so that there would be drivers available to transport CF-6 engines. The Union says that there are drivers in the stock clerk/driver classification with class A licenses.

The Union further contends that the Employer violated the contract when it sold the tractors after the Airline 1 acquisition. The Employer must have known that some day it would be required to transport CF-6 engines. It is, therefore, incumbent upon the Employer now to either buy or lease a tractor so that stock clerk/drivers can perform this engine transport work.

In sum, the Union asks that the work of transporting CF-6 engines be accomplished by stock clerk/drivers.

B. Position of the Employer

The Employer contends that it did not violate the collective bargaining agreement when it subcontracted the job of transporting a CF-6 engine from City 1 to City 2 on May 30, 1991. In particular, the Employer argues that the contract grants it the right to subcontract work of this sort when it does not have the necessary equipment in-house to do the task itself. The Employer cites in support of this point several arbitration decisions involving these very same parties.

The Employer further points out that this particular type of work arises very seldom; it has occurred once since the 1989 acquisition of Airline 1.

The Employer says that it exercised sound business judgment in this case as a comparative financial analysis reveals that it was more economical to subcontract this job than to lease a tractor. The Employer contends that it made a good faith, business decision in this instance with no intent of subverting the Union contract. The Employer cites several arbitration decisions which support subcontracting under the above conditions.

The Employer argues that there was no contractual prohibition preventing it from selling the tractors after the Airline 1 acquisition, and that if there were such a prohibition, the Union surely would have filed a grievance at the time the Employer went to sell the tractors.

In sum, the Employer asks that the grievance be denied.

Analysis

The basic question presented here is whether the Employer violated the collective bargaining agreement when it subcontracted the job of transporting a CF-6 engine from City 1 to City 2, State 1 on May 30, 1991.

Article 2(B) of the collective bargaining agreement describes, in detail, the work that is bargaining unit work. Article 1(G) makes plain that the ground transportation of "AOG parts or material ... from a station where a stock clerk is located on a regular basis" is work that belongs to the stock clerk/driver classification. So, there can be little doubt that the ground transportation of an AOG engine is bargaining unit work.

The contract in subsequent provisions goes on to clarify the Union's work jurisdiction in an Article entitled "Clarification of Article 2(B)". Such Article identifies the conditions under which

certain work may be properly removed from the bargaining unit, and, in particular, Par. G, which speaks to subcontracting, provides that "(w)ork subcontracted out to a vendor will be of the type that cannot be manufactured or repaired in-house by existing skills/equipment or facilities of the Employer".

In this case, the record plainly revealed that at the time in question, May 30, 1991, the Employer did not possess the necessary equipment, i.e., a tractor, for transporting a CF-6 engine to another Employer facility for repair. Also, since the Employer possessed no tractor, the Employer had not seen to it that the trailer that it did have at its City 1 location on May 30, 1991 was roadworthy. Moreover, the record revealed that prior to May 30, 1991, the Employer had no need to transport a CF-6 engine inasmuch as the need arose only after the Employer's acquisition of Airline 1; it was Airline 1 which flew AOG aircraft with CF-6 engines. Thus, May 30, 1991 was the first occasion on which the Employer had a need to transport a CF-6 engine, and it did not possess the necessary equipment in-house for transporting such an engine. Such circumstance permits the Employer under the terms of Par. G of the Clarification to Article 2(B) to subcontract out the engine transporting work.

The Union nevertheless argues that the Employer acquired the necessary equipment, i.e., tractor trailers, at the time of the Airline 1 acquisition, and that the selling of all the tractors following the Airline 1 acquisition does not excuse the Employer from its obligation to give CF-6 transporting work to bargaining unit members.

With respect to the above contention I note, first, that following the negotiation of the new stock clerk/driver classification in 1990, employees in this classification were required to obtain class B but not class A licenses. A class A license is required to operate a tractor trailer. Thus, since stock clerk/drivers had been required only to obtain Class B licenses, the strong inference is that,

at least as of the time of this case, no one had envisioned that stock clerk/drivers would be called upon to transport CF-6 engines.

Additionally, the record revealed no evidence of any bad faith on the Employer's part with respect to its sale of the tractors. The tractors were put up for sale before the acquisition and were sold following the acquisition. There was no evidence that the Employer was trying to avoid any contractual obligation or was trying to defeat a Union claim to bargaining unit work.

Finally, the record in this case revealed that the need to haul CF-6 engines by tractor trailer seldom arises. The record showed that the need arose once between August 1989 and May 30, 1991. Thus, this case concerns what can, at best, be described as a de minimis circumstance.

Consequently, given the Employer's right to subcontract when it does not possess the necessary equipment in-house, given no evidence of any bad faith on the Employer's part with respect to the sale of the tractors following the 1989 Airline 1 acquisition, and given the de minimis nature of the work at issue, I find that the Employer had the right under Par. G of the Clarification of Article 2(B) to subcontract out the work of transporting a CF-6 engine from City 1 to City 2, State 1 on May 30, 1991.