Sickles #1

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

STATEMENT OF THE CASE

On January 29, 1991 the Union submitted grievances alleging violations of the agreement when the Employer [1] failed to meet with the Union to discuss possible subcontracting and [2] actually subcontracted work to Company 1.

The Employer determined that the work performed "...did not fall under the responsibility of the Plant Maintenance Department" and the grievance was denied.

On February 18, 1992 the four (4) person System Board of Adjustment "...agreed to deadlock..."

On March 31, 1992, the Union notified the Employer of a desire to submit the case to a Referee.

The Undersigned was designated as Arbitrator by the Employer and the Union and a hearing was conducted at the Employer's offices on September 9, 1992; at which time all parties were represented and were afforded full opportunity to present evidence, testimony and argument.

A verbatim transcript of proceedings was not compiled, nor did the parties submit briefs.

All matters of record have been fully considered by the undersigned.

QUESTION AT ISSUE

Did the Employer act improperly when it failed to hold a meeting with the Union and/or permitted Company 1 to perform work in GSO?

STATEMENT OF FACTS

The Union presented testimony to show that the Employer desired to change the fabric shop to a calibration laboratory in the avionics shop, and it became aware in December 1990 that the work had been subcontracted to Company 1 when employees noted that an outside concern had fourteen (14) employees performing the work on a Monday and Tuesday. The number of employees was then reduced to two (2) a day for approximately two weeks thereafter.

The Union witnesses insist that they were qualified and capable of performing all of the work that was subcontracted and, in fact, they did perform some of the work which is listed on the subcontractor's proposal (Employer Exhibit No. 1).

The witnesses conceded that they were not licensed as electrical contractors in the State 1, however, one bargaining unit employee (Person 1) is a qualified electrician and the bargaining unit employees could have worked under his direction and supervision.

There is no requirement that a bargaining unit employee at City 1, State 1 be a licensed electrician and, although the workforce would not have permitted the use of fourteen (14) bargaining unit individuals on two (2) consecutive days, the Union indicates that the work could have been performed on an overtime basis.

The Employer's industrial engineer testified that he made the decision to contract the work to outside sources since [1] the basic work was not within the scope of the agreement, [2] the electrical work to be performed had to be "hooked up to" the basic power source of the building and [3] under the lease arrangement which controls, it is required to perform improvements and modifications in accordance with the electrical code and the work, must be performed by a licensed electrician with the appropriate permits, etc.

Employer Exhibit No. 1 lists nine separate items which were to be performed by Company 1. Although the industrial engineer conceded that bargaining unit employees had the ability and expertise to perform certain of the jobs, such as work with telephone jacks and conduit, the bulk of the job was an inter-related function and it required a connection to the main power source of the building. Because it was inter-related, it was not felt appropriate to "piecemeal" the work but, rather, to have a licensed electrical contractor perform the required labor.

The Employer is not a licensed electrical contractor in the State 1.

The Plant Manager Foreman at the location testified that he was instructed to obtain bids from contractors and he stated that he had a brief discussion and "walk through" with the union shop steward prior to the work beginning and the shop steward did not request a further meeting.[1]

CONTENTIONS OF THE PARTIES

Union's Contention

The Union argues that it has done the type of work before and since and that its members are fully qualified to perform the work in question and, if necessary, can work under the direction of a bargaining unit employee (Person 1) who is a licensed electrician.

The Union agrees that under the regulations in effect at the time, the bargaining unit employees were not permitted to hook up to the main power source of the building, but, as noted above, the employees have the necessary expertise to perform the work in question.

[1] The identified shop steward denies that there was a discussion or meeting to the extent suggested by the Employer witness.

Moreover, the union contends that the Employer failed to meet with it concerning the work to be performed by Company 1.

Employer's Contention

The Employer notes that it is permitted to contract out work under the language at Page 121 of the collective bargaining agreement if the bargaining unit employees do not have the requisite skills. It is mandatory that the Union demonstrate that such skills exist and a mere assertion that they can perform the work in question is not satisfactory in this type of a proceeding.

The Employer denies that there is any enforceable obligation to meet and confer with the Union prior to subcontracting work but, in any event, it argues that the Employer representative in City 1 did meet with the shop steward.

The Employer is not a licensed electrical contractor in the State 1 and, pursuant to its lease agreement; it must comply with various governmental codes which fall within the umbrella of an electrical contractor.

The work in question is not included within the scope of work reserved to the bargaining unit employees.

Some of the jobs in question were within the expertise of the bargaining unit employees and, in fact, they may have actually performed some of that work; however, the Board is advised that it must recognize that the work in question is an inter-related project which requires access to the main power source of the leased building and under those circumstances, it was mandatory that the work be subcontracted.

DISCUSSION

The Employer does not argue that it need not or should not, in appropriate circumstances, utilize its own employees, rather than engaging outside contractors.

In the Board's experience, each contracting dispute must be viewed upon its own individual facts of record.

In this dispute, the Board questions that the Union has satisfied its burden of showing that the Employer was in violation of the agreement when it used the services of Company 1.

As the testimony shows, there was an inter-related project which required entry into the main power source of the building. The Union has conceded that it does not dispute the requirement that the bargaining unit employees not enter into that main power source.

Under those circumstances, limited to the facts of this particular individual case, the Board is unable to find that the Employer violated the agreement.

Regardless of whether or not there was a meeting between the Employer and the Union concerning the plans to contract the work to Company 1, I find no requirement that the Employer must afford the opportunity for such a meeting although, certainly, this Board emphasizes that the spirit of cooperation in labor-management relations is much better served by conducting such meetings.

The fact that one member of the bargaining unit happens to be an electrical contractor does not alter the outcome of this case. There is no requirement that the bargaining unit employees at City 1, State 1 be certified and licensed electricians and the happenstance that one employee may hold such a license cannot control the outcome of the case.

The Board has reviewed the various documents presented by the Union and its contention that those documents are pertinent to the work to be done in City 1, State 1, however, in this case, we do not agree with the Union's contentions in that regard.

AWARD

The grievance is denied.