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In the Matter of the Labor Arbitration Between
The Mead Corporation
and
United Paperworkers International Union AFL-CIO
Local No. 1430
FMCS Case No. 80K/11145

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The Undersigned was appointed by the Federal Mediation and Conciliation Service. The Hearing of this case was held at the Ramada Inn, Syracuse, New York, on May 29, 1980. Mr. David Pierrepont, International Representative, represented the Union and Ms. Joan Talley, Employee Relations Representative, represented the Company. Messrs. Kenneth Hall, Chief Steward, Raymond Erlen, President of Local No. 1430, and Richard Reil, Vice President of Local No. 1430, testified for the Union. Mr. Daniel Cree, Night Steward, also attended the Hearing. Messrs. Robert Snell, Plant General Manager, and Terry Mann, Administrative Manager, testified for the Company. Mr. Robert Durrant also attended the Hearing.

The above named Parties had a full and fair opportunity to present and cross-examine witnesses and to introduce all pertinent evidence. The Union filed a post-Hearing Brief on June 28, 1980. The Company filed a post-Hearing Brief on June 12, 1980 and a Reply Brief on July 11, 1980. The Arbitrator received the Company's Reply Brief on July 15, 1980 at which time the Hearing was closed.

ISSUE

The above named Parties submitted the following issue to arbitration:

Did the Company violate the Collective Bargaining Agreement when it subcontracted the janitor's work? If so, how, and what shall the remedy be?

PERTINENT CONTRACT CLAUSE

Article I
Definition

For the purpose of this Agreement the term "Employees," or "Employee" shall include all maintenance and production employees of Company. The term employee does not include, and this Agreement does not apply, to Company's Superintendent, Foremen having the right to hire and fire, office or clerical employees, sample maker-designer, Chief Engineer, guards and supervisory employees as defined in the National Labor Relations Act.

Article XIX
Management Responsibility

Section 1. The Union recognizes that the management of Company's business, including the hiring of employees, and the maintenance or order and efficiency are the sole responsibility of the Company and the Company must be free to exercise these rights. In recognition of these principles the following provisions are agreed to:

A. Company retains the sole right to hire, discipline, discharge, lay off, assign, transfer and promote employees and to determine the starting and quitting time and the number of hours to be worked, subject only to such regulations and restrictions governing the exercise of these rights as are expressly provided in the agreement.

B. Except as limited by Article XII, the rights of the Company to establish, determine, maintain and enforce standards of production is fully recognized.

C. The right of Company is recognized to make such reasonable rules and regulations not in conflict with this agreement as it may from time to time deem best for the purpose of maintaining order, safety, and effective operation of Company's plant, after advance notice thereto to the Union and employees.

Section 2. The Union recognizes other rights and responsibilities belonging solely to the Company, prominent among which but by no means wholly inclusive are the right to decide the kind and quantity of machinery and equipment, the products to be manufactured, methods of manufacture, schedule of production, and processes of manufacturing or assembling.

Exhibit "A"
Wage Scale

REPAIRS AND MAINTENANCE:

Maintenance Lead Man	6.58	7.17
(l) Maintenance Mechanic	6.28	6.85
Maintenance Utility Man	6.07	6.62
Janitor	5.76	6.28

BACKGROUND

The Grievant had worked as a janitor for at least twenty years when, in 1979, the Company eliminated his job and had all janitorial work performed by an outside contractor. The Company gave the Grievant an opportunity to bid into another job in the plant and he worked for a time in the "miscellaneous cutting of scrap." The Grievant then left the Company. Since the Grievant is no longer employed by the Company and is not seeking back pay or reinstatement to his janitor job, the Union seeks a ruling only on the Company's right to subcontract under the circumstances of this case.

Company officials testified that in an effort to cut costs in an inflationary period the Company introduced cost saving programs in trash hauling (Company Exhibit No. 1), communication systems (Company Exhibit No. 2), and cleaning services (Company Exhibit No. 3). The Grievant had performed all janitorial duties in the plant while office cleaning had been handled by a single person on an outside contract basis for at least seven years at the time of the instant grievance.

Company officials testified that during their cost-cutting efforts they were approached by an outside cleaning service. This contractor informed the Company that, although it was not economically feasible to clean just the office area, they could save the Company approximately $1000 per month by cleaning both the office area and the plant area. The Contractor offered to do that cleaning for $680 per month. It was costing the Company $1700 per month in salary and benefits to have those areas cleaned. The Company agreed to contract all of its janitorial work to this outside cleaning service.

Management officials also testified that the Company had subcontracted in the past for snow removal (Company Exhibit No. 4), certain maintenance work such as roof repair (Company Exhibit No. 5), trash and rubbish removal (Company Exhibit No. 6), plant guard service on the weekends (Company Exhibit No. 7), machinery repair (Company Exhibit No. 8), as well as the office cleaning service (Company Exhibit No. 9).

UNION POSITION

The Union contends that the Company does not have the right under the Contract "to unilaterally eliminate a full time job classification and fill the vacancy from the outside." (Union post-Hearing Brief, p. 1.) The Union also points out that none of the past incidents of subcontracting cited by the Company involved unit jobs per se, the elimination of any bargaining unit positions, or the layoff or transfer of any union members as a result of these actions.

The Union maintains, moreover, that "taking [the Company's] argument at face value, conceivably Manpower Inc. could show up at the plant with several skilled mechanics willing to work for dollars less per hour, and then, based on economic considerations, eliminate to all extent and purposes the mechanic classification." (Union post-Hearing Brief, p. 1.)

The Union also contends that the Company took this action without bargaining with the Union.

COMPANY POSITION

The Company contends that, absent any contractual provision expressly prohibiting subcontracting, it has the right to subcontract under the Collective Bargaining Agreement. The Company emphasizes that the Union could not identify any specific provision of the Contract allegedly violated by the Company. The Company asks "If the Company did not have the right to subcontract, why hasn't the Union arbitrated this question before now?" (Company post-Hearing Brief, p. 1.) The Company asserts that it has subcontracted work on several occasions as set forth in the Background Section (above).

The Company also points out that the Grievant did not lose his job as a result of subcontracting but was moved into a Helper classification so that "no member of the bargaining unit lost his job by the Company's action in subcontracting the janitorial work." (Company post-Hearing Brief, p. 2.)

The Company maintains, in addition, that the decision to subcontract was made in good faith and for legitimate economic reasons. According to the Company, "the Company's action clearly did not harm the Union's integrity or size" since only one employee was involved and that cannot be considered an assault on the bargaining unit or the strength of the Union. (Company post-Hearing Brief, pp. 2, 5 and 7.) Along these same lines, the Company stresses that the subcontracted janitorial work was not a basic part of the Company's production processes.

The Company "believes the Union is trying to gain, through arbitration, what they have not sought, pursued, or gained in the collective bargaining process." (Company post-Hearing Brief, p. 6.)