INL-00770
12B.1.a
Inland Steel Award No. 770
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RECOGNITION AND BARGAINING UNIT
SUMMARY: The 1986 Agreement provides that maintenance and repair work within the plant that bargaining unit employees are capable of performing may not be contracted out for performance inside or outside the plant unless the Company proves (1) that it has been the "consistent practice" to contract out "such work" and (2) that it is more reasonable to contract out "such work" than to have it done by bargaining unit employees. Where the kind of work in question (routine electrical repair and maintenance work) had almost always been done by bargaining unit employees and only rarely by contractors, contracting out of such work was a violation of the Contract because the Company had not demonstrated a consistent practice of contracting out "such work" as the routine electrical repair and maintenance work involved. The Company could not rely on an alleged "consistent practice" of contracting out virtually all kinds of work, including electrical repair and maintenance work, when bargaining unit employees or supervision, or both, were unavailable to do it within the time limits set because they were fully occupied on other necessary work. What the Agreement requires is a "consistent practice" of contracting out the particular type of work, not a Award No. 770
COMPANY: INLAND STEEL CO.
PLANT: INDIANA HARBOR
DISTRICT: 31
ARBITRATOR: CLARE B. MC DERMOTT
DATE OF DECISION: JANUARY 20, 1987
BACKGROUND
These four Notifications are the first contracting-out disputes to be decided under the new language on the subject in the parties' August 1, 1986 Agreement.
The four projects deal with electrical repair and maintenance work performed in the plant by several outside contractors.
In general, Notification No. 226 told the Union on September 22, 1986 that repair or replacement of lighting, switches, and conduit safety systems throughout #2 Coke Plant would be contracted out. The Notification said the work was expected to begin October 1 and to be finished by February 1, 1987.
Notification No. 347 informed the Union on or after October 6, 1986 that outside contractor forces would be used to supplement existing electrical maintenance forces in maintaining all 4 BOF and #1 Slab Caster cranes. The supplementary work was said to be temporary and would last until the Mobile Maintenance Electrical Force could replace in plant manpower. The work was to begin October 1 and to end December 31, 1986.
Notification No. 470 stated to the Union just after October 29 that outside contractors would install a new fiberglass tray on top of 11 Battery, replace deteriorated conduit there, install new wire and related conduit, install eight 1000-watt lights, new wire, conduit, and switches on the coke-side shed. The work was to begin November 19 and to be finished on December 10, 1986, and it was estimated that it would require 2000 contractor manhours.
Notification No. 709 said on December 2 that outside contractor electricians would be used to supplement existing electrical maintenance forces in maintaining various 12" Bar Mill production equipment, until plant forces could replace them. The work was to begin November 30, 1986 and end February 28, 1987. It was stated that the work would require 2600 contractor manhours.
In each case the outside occupations said to be involved were electricians, and in the last two Notifications the in-plant crafts affected were said to be Electricians and Motor Inspectors.
The parties stipulated several significant elements that are basic to these disputes. They agreed, that is, that all this work is maintenance and repair work capable of being done by in-plant employees, by Field Services Wiremen, department Motor Inspectors, or both; that all Field Service Wiremen and department Motor Inspectors were fully utilized and working substantial amounts of overtime in this period; that no Field Services Wiremen or department Motor Inspectors were on layoff then; and that supervisory forces for Field Services Wiremen and department Motor Inspectors were fully utilized and thus otherwise unavailable.
Possibly pertinent provisions of the 1986 Agreement, which replaced all of the prior contracting-out language of past agreements, read as follows:

"ARTICLE 2-SECTION 3-CONTRACTING OUT. "The provisions of Article 2, Section 3 which appeared in the March 1983 Collective Bargaining Agreement have been wholly eliminated from the August 1, 1986 Agreement and replaced in their entirety by the following new language.

"CONTRACTING OUT. "The parties recognize the seriousness of the problems associated with contracting out of work both inside and outside the plant and have accordingly agreed as follows:

"The parties have existing rights and contractual understandings with respect to contracting out. In addition, the following provisions shall be applicable to all contracting out issues subject to, and arising on or after the effective date of this Agreement.

"A. Basic Prohibition

In determining whether work should be contracted out or accomplished by the bargaining unit, the guiding principle is that work capable of being performed by bargaining unit employees shall be performed by such employees. Accordingly, the Company will not contract out any work for performance inside or outside the plant unless it demonstrates that such work meets one of the following exceptions.

"B. Exceptions

"1. Work in the Plant

"a. Production, service, all maintenance and repair work, all installation, replacement and reconstruction of equipment and productive facilities, other than that listed in Sub-paragraph B-1-b below, all within the plant, may be contracted out if (a) the consistent practice has been to have such work performed by employees of contractors and (b) it is more reasonable (within the meaning of paragraph C below) for the Company to contract out such work than to use its own employees.

"b. Major new construction including major installation, major replacement and major reconstruction of equipment and productive facilities, at the plant may be contracted out subject to any rights and obligations of the parties which as of the beginning of the period commencing August 1, 1963, are applicable at the plant.

As regards the term `new construction' above, except for work done on equipment or systems pursuant to a manufacturer's warranty, work that is of a peripheral nature to major new construction, including major installation, major replacement and major reconstruction of equipment and production facilities and which does not concern the main body of work shall be assigned to employees within the bargaining unit when it is more reasonable to do so taking into consideration the factors set forth in paragraph C or it is otherwise mutually agreed.

"2. Work Outside the Plant

"a. Should the Company contend that maintenance or repair work to be performed outside the plant or work associated with the fabricating of goods, materials, or equipment purchased or leased from a vendor or supplier should be excepted from the prohibitions of this Section, the Company must demonstrate that it is more reasonable (within the meaning of paragraph C below) for the Company to contract for such work (including the purchase or lease of the item) than to use its own employees to perform the work or to fabricate the item.

Notwithstanding the above, the Company may purchase standard components or parts or supply items mass produced for sale generally ("shelf items"). No items shall be deemed a standard component or part or supply item if its fabrication requires the use of prints, sketches, or manufacturing instructions supplied by the Company or at its behest or it is otherwise made according to Company specifications.

"b. Production work may be performed outside the plant only where the Company demonstrates that it is unable because of lack of capital to invest in necessary equipment or facilities, and that it has a continuing commitment to the steel-making business. In determining whether there is capital to invest in particular equipment or facilities, the Company is entitled to make reasonable judgments about the allocation of scarce capital resources at its plant represented by the Union and its supporting facilities.

"3. Mutual Agreement

Work contracted out by mutual agreement of the parties pursuant to paragraph F below.

"C. Reasonableness.

In determining whether it is more reasonable for the Company to contract out work than use its own employees, the following factors shall be considered.

"1. Whether the bargaining unit will be adversely impacted.

"2. The necessity for hiring new employees shall not be deemed a negative factor except for work of a temporary nature.

"3. Desirability of recalling employees on layoff.

"4. Availability of qualified employees (whether active or on layoff) for a duration long enough to complete the work.
"5. Availability of adequate qualified supervision.
"6. Availability of required equipment either on hand or by lease or purchase, provided that either the capital outlay for the purchase of such equipment, or the expense of leasing such equipment, is not an unreasonable expenditure in all the circumstances at the time the proposed decision is made.
"7. The expected duration of the work and the time constraints associated with the work.
"8. Whether the decision to contract out the work is made to avoid any obligation under the Collective Bargaining Agreement or benefits agreements associated therewith.
"9. Whether the work is covered by a warranty necessary to protect the Company's investment. For purposes of this subparagraph, warranties are intended to include work performed for the limited time necessary to make effective the following seller guarantees:
a. Manufacturer guarantees that new or rehabilitated equipment or systems are free of errors in quality, workmanship, or design.
b. Manufacturer guarantees that new or rehabilitated equipment or systems will perform at stated levels of performance and/or efficiency subsequent to installation.
Warranties are commitments associated with a particular product or service in order to assure that seller representations will be honored at no additional cost to the Company. Long-term service contracts are not warranties for the purposes of this subparagraph.
"10. In the case of work associated with leased equipment, whether such equipment is available without a commitment to use the employees of outside contractors or lessors for its operation and maintenance.
"11. Whether, in connection with the subject work or generally, the Local Union is willing to waive or has waived restrictive working conditions, practices, or jurisdictional rules (all within the meaning of `local working conditions' and the authority provided by this Agreement).
"D. Contracting Out Committee
"1. A regularly constituted committee consisting of not more than four persons (except that the committee may be enlarged to six persons by local agreement), half of whom shall be members of the bargaining unit and designated by the Union in writing to be the plant management and the other half designated in writing to the Union by the plant management, shall attempt to resolve problems in connection with the operation, application, and administration of the foregoing provisions.
"2. In addition to the requirements of Paragraph F below, such committee may discuss any other current problems with respect to contracting out brought to the attention of the committee.
"3. Such committee shall meet at least one time each month.
"E. Notice and Information
"Before the Company finally decides to contract out an item of work as to which it claims the right to contract out, the Union committee members will be notified. Except as provided in Paragraph I [H] below (Shelf Item Procedure), such notice will be given in sufficient time to permit the Union to invoke the expedited procedure described in Paragraph H [G] below, unless emergency situations prevent it. Such notice shall be in writing and shall be sufficient to advise the Union members of the committee of the location, type, scope, duration, and timetable of the work to be performed so that the Union members of the committee can adequately form an opinion as to the reasons for such contracting out. Such notice shall generally contain the information set forth below:
1. Location of work.
2. Type of work:
a. Service
b. Maintenance
c. Major Rebuilds
d. New Construction
3. Detailed description of the work.
4. Crafts or occupations involved.
5. Estimated duration of work.
6. Anticipated utilization of bargaining unit forces during the period.
7. Effect on operations if work not completed in timely fashion.
"Within ninety (90) days following the effective date of this Agreement, headquarters representatives of the parties shall develop a form notice for the submission of the information described above.

"Either the Union members of the committee or the Company members of the committee may convene a prompt meeting of the committee. Should the Union committee members believe discussion to be necessary, they shall so request the Company members in writing within five (5) days (excluding Saturdays, Sundays, and holidays) after receipt of such notice and such a discussion shall be held within three (3) days (excluding Saturdays, Sundays and holidays) thereafter. The Union members of the committee may include in the meeting the Union representative from the area in which the problem arises. At such meeting, the parties should review in detail the plans for the work to be performed and the reasons for contracting out such work. Upon their request, the Union members of the committee will be provided any and all information in the Company's possession relating to the reasonableness factors set forth in Paragraph C above. Included among the information to be made available to the committee shall be the opportunity to review copies of any relevant proposed contracts with the outside contractor. This information will be kept confidential. The management members of the committee shall give full consideration to any comments or suggestions by the Union members of the committee and to any alternate plans proposed by Union members for the performance of the work by bargaining union personnel. Except in emergency situations, such discussions, if requested shall take pace before any final decision is made as to whether or not such work will be contracted out.

"Should the Company committee members fail to give notice as provided above then not later than thirty (30) days from the date of the commencement of the work a grievance relating to such matter may be filed under the grievance and arbitration procedure. Should it be found in the arbitration of a grievance alleging a failure of the Company to provide the notice or information required under this Paragraph E that such notice or information was not provided, that the failure was not due to an emergency requirement, and that such failure deprived the Union of a reasonable opportunity to suggest and discuss practicable alternatives to contracting out, the arbitrator shall have the authority to fashion a remedy, at his discretion, that he deems appropriate to the circumstances of the particular case. Such remedy, if afforded, may include earnings and benefits to grievants who would have performed the work, if they can be reasonably identified.

"F. Mutual Agreement and Disputes

"The committee may resolve the matter by mutually agreeing that the work in question either shall or shall not be contracted out. Any such resolution shall be final and binding but only as to the matter under consideration and shall not affect future determinations under this section.

"If the matter is not resolved, or if no discussion is held, the dispute may be processed further in accordance with either of the following:

"1. By filing a grievance relating to such matter under the grievance and arbitration procedure described in Articles 6 and 7; or

"2. By submitting the matter to the Expedited Procedure set out in Paragraph G below.

"G. Expedited Procedure

"In the event that either the Union or the Company members of the committee request an expedited resolution of any dispute arising under this Section, except Paragraph H (Shelf Item Procedure), it shall be submitted to the expedited procedure in accordance with the following:

"1. In all cases except those involving day-to-day maintenance and repair work and service, the expedited procedure shall be implemented prior to letting a binding contract.

"2. Within three (3) days (excluding Saturdays, Sundays and holidays) after either the Union or Company members of the committee determine that the committee cannot resolve the dispute, either party (Chairman of the Grievance Committee in the case of the Local Union and the Manager of Labor Relations in the case of the Company) may advise the other in writing that it is invoking this expedited procedure.

"3. An expedited arbitration must be scheduled with three (3) days (excluding Saturdays, Sundays and holidays) of such notice and heard at a hearing commencing within five (5) days (excluding Saturdays, Sundays and holidays) thereafter. An arbitrator (regular arbitrator if available) shall hear the dispute and, if the arbitrator is not available to hear the dispute within five (5) days, another arbitrator shall be selected by mutual agreement of the Step 4 Representative of the Union and the Step 4 Representative of the Company.

"4. The arbitrator must render a decision within forty-eight (48) hours (excluding Saturdays, Sundays and holidays) of the conclusion of the hearing. Such decision shall not be cited as a precedent by either party in any future contracting out disputes."

The Union notes the parties' stipulation that this is Article 2, Section 3-B-1-a maintenance and repair work in the plant which bargaining union employees were capable of performing and that it is not major work. It

urges that there is no consistent practice to contract it out and notes that it is the Company's burden to prove existence of any such practice.

The Union contends the Company's position here would subordinate the practice arguments of the new language to the "reasonableness" language of 2-3-C, which would make the new language meaningless. It alleges, finally, that Management's contracting out this work violates also the craft pay guarantee.

Company witness Snearley, Maintenance Planner at #2 Coke Plant, said the first task of Notification 226 was the installation of a new signal system at the Coke Screening Station. He said it had to be done because of near accidents of employees and that it already had been deferred for six months. This work was started October 1, 1986 and was finished before the December 18 hearing in this dispute.

Other work entailed repair of safety cables and limit switches on all conveyors and installation and relocation of starters for the pumping system. The starters had deteriorated to the point that the system could not be locked out safely. The purpose was to remove them from the steamy atmosphere to help reduce deterioration. All those tasks were done for safety reasons, and they were being done at hearing time.

Snearly explained that a number of tasks were done for quality reasons. One goal was to get a better sampling system for coal and coke, and one of these chores was to do the electrical work for the new sampling mechanisms. This work was going on at hearing time.

Next were repairs on lighting, required for safety reasons. Fixtures had deteriorated and were falling from their supports, and conduit had deteriorated. This work was being done at hearing time.

Another phase of this Notification was the repair of a system for the salt and sulfate cranes and a monorail crane at the quenching station. The purpose was to install separate feeds to those units so that, should there be an electrical failure, both would not go down at once. This, too, was in process at hearing time.

The specific tasks mentioned above were completed or in process at the time these Notifications were heard in arbitration. Somehow, additional work was thought of by one party or the other as falling within this Notification, although not yet begun at hearing time. These included electrical work associated with installation of a start-up sequence for a mixer, air cannon which would enable coal to flow in bins, amperage recorders on all pusher rams, new starters for sulfate-absorber circulating pumps, rebuilding a travel-control panel on the door machine, and installation of meters on the silicon-control rectifiers on door and pusher machines. The Company said that subsequent contracting-out notifications would be issued to cover some of those chores.

Snearly said these tasks had to be done because of safety and quality reasons. He insisted they could not be deferred any longer, saying they already had been put back for eighteen months.

The Union referred to other work which it said was not within these Notifications.

Snearly explained that up to late December of 1986 about 500 to 800 contractor manhours had been expended, which he estimated would turn out to be approximately 15 percent of the total that would be required for all the work covered by or thought to be covered by Notification 226. The witness said the contractor had about six men in per day on the average. He agreed that, contrary to the Notification, all this work would not be finished by February 1, 1987, but would go on into March or April.

Snearly thought but was not absolutely sure that the work of Notification 226 began on October 1, and that all the tasks on the signal system, lighting, and conduit were finished and that all else was to be done in the future. He was certain that its starting date was not as late as sometime in December.

No detailed Company evidence was introduced on the nature of the 4 BOF and #1 Slab Caster crane work stated in Notification 347. Supervisor Van Auken said the work was not deferrable and was required for safety, quality, and quantity reasons, and he agreed that all maintenance work is done for one or another of those reasons.

Motor Inspector Ross testified for the Union that the electrical work dealt with in Notification 347 covered a new siren system for crane and drag systems, to warn personnel. He said it was not related to quality of production. He said some of the work simply repaired sodium-vapor lighting and installed heaters on a hot-top buggy.

Company witness Sepeiol, 11 Battery Maintenance Section Manager, said that the "detailed description of the work" in Notification 470 was accurate, that it was necessary for safety, quality, and production reasons and, because of safety concerns, could not be postponed. He was certain the work began in December but that more yet had to be done. He hoped it could be finished by January 10, 1987, weather permitting. The Notification had said it would be done by December 10, 1986. Sepeiol said that the 2000-manhour estimate of the Notification was accurate.

The witness said that conduit on top of the battery had been burned and, since a new coke-side shed was being built, an opportunity was afforded then to improve location of the conduit run and to replace it by conduit within a tray.

No testimony was introduced about details of the work contemplated by Notification 709, but Mobile Maintenance Department Manager Kantowski said the work had not begun as of December 18, 1986. The witness was not aware whether or not a final decision yet had been made to contract out the work, but he said such a decision would be made.

The Union commented that some tasks listed above were not mentioned in the various notifications. The Company said that later contracting-out notifications would be issued to cover additional work.

The Union urged that all maintenance work is required to be done for reasons of safety, quality, or quantity of production. Company witness Snearley said that would not be accurate as to removing obsolete electrical systems.

Union Spokesman Mezo testified that the Union was told by Notification 226 on September 22, 1986 that the work would be done by a contractor. He said that in discussions of that Notification on October 9 the Union asked if the work had started and was told that it had not. Then, in the week of December 8, Company Contracting Out Committee members told Union members that they thought the work had begun. The Union contrasted those statements with Company testimony at the December 18 arbitration hearing that some work had begun and had been completed, that other tasks were in process, and yet others had not yet been started. It said that, after being told in the week of December 8 that the work had not started, it was shocked to hear Company testimony on December 18 say that it had commenced on October 1. The witness said the Union had argued that the description of the work in Notification 226 was not detailed enough. Mezo said that the Union had been told by the Company in the week of December 8 that the work of Notification 470 had not yet started.

Mezo said the Union first discovered that the work at 4 BOF (Notification 347) had started and told the Company of that. He testified that the Company had said that, except for Notification 226 work, work of the other notifications had not begun and that some work might not be contracted out.

Mezo agreed that because of the administrative pressure created by necessity to deal with some 800 contracting-out notifications, the Union, as soon as it receives a notification, routinely sends Management a letter saying that the matter is unresolvable. That is done simply to avoid missing an essential step in processing these hundreds of notifications.

Field Services Manager Stallard introduced what became the heart of the Company case. He has had fifteen years in Field Services or its predecessor Field Forces, going back to 1963. He said that, for all his time in those maintenance and repair departments, and as he was told even before that time, the consistent practice had been to contract out any and all work, including small projects, that the regular department had insufficient forces to perform and that former Field Forces or Field Services could not do within the time limits because all of its employees, too, and its supervisors, or both, were fully occupied on other work. Stallard said, that is, that the practice was to use Company employees to the fullest and then to contract out peak work that Company employees were not available to do, and that those circumstances covered this kind of work.

The witness said that the ordinary procedure was that the department that wanted to have certain work done but could not do it because its own maintenance forces were fully occupied elsewhere, would ask Field Services to do it. The latter would assess availability of its craftsmen within the time limit stated and would do the work if it could. If its forces were fully occupied on other work for the period of time available, however, the work would be assigned to an outside contractor. Stallard said those circumstances covered each of the four Notifications in arbitration here and justified their being contracted out because in each case neither the home department nor Field Services had sufficient employees or supervisors to do these tasks within the time they had to be done.

Stallard said that there were ninety-two or ninety-three Wiremen currently at work in the Wire Shop and that two years ago there had been ninety-three or ninety-five. Ten Apprentice Wiremen now are on layoff. The witness agreed there had been attrition in the Wire Shop, since some retired employees had not been replaced. Stallard said that the Field Services work load had decreased because of a lower level of overall business, and that the Field Services' Electrical force had been reduced considerably in the past two or three years.

Stallard concluded in general that from about 1963 to mid-1982 there were contractors in the plant constantly. When the "bottom fell out" of business activity in 1982, there were many displaced employees, so that contractors were put off first and then Company employees were laid off. The result was that from

mid-1982 to approximately October of 1986, when these Notifications issued, there were no tasks contracted out in these circumstances.

Field Services Wire Shop Maintenance Planner Childress explained that 2 Coke Plant brought a list of thirty or forty chores that it said had to be done immediately, in order to keep the operation running. The Wire Shop had such a level of existing work for 2 Coke Plant that it could not commit its people to do these tasks within three to six months in the future. Similar facts and conclusions applied to requests for two tasks by 11 Battery. Thus, the work of Notifications 226 and 470 were assigned to contractors.

Mobile Maintenance Department Manager Kantowski said his department was set up in August of 1986 to supplement the assigned mechanical and electrical forces in the departments, as needed. He said he was contacted regarding the work of Notifications 347 and 709. He was told the 4 BOF forces (347) and 12" Mill employees (709) could not do those tasks and, therefore, they requested that his people supplement the necessary electrical manpower to perform them. Kantowski coordinated planning with Field Services forces on the availability of employees and determined that none were available. He thus initiated a request for the contracting out of those projects. The work was not deferrable.

The Assigned Maintenance Agreement of June, 1986, says that the purpose of the Mobile Maintenance Department is to supplement mechanical, electrical, and welding maintenance work associated with scheduled repair downturns in various departments of the plant and to minimize use of outside forces. Kantowski said it was supposed to supplement repair forces also in cases of nonrepetitive and unplanned work. Kantowski said that that agreement contemplated a reduction of assigned maintenance forces and a consequent enlargement of the Mobile Maintenance Department. Retirements (70/80) were anticipated, and the attrition in the assigned maintenance departments would have to be replaced, under that Agreement, on a one for two basis, or by a different, detailed formula.

The witness said it could not be determined until the fall of 1986 which specific craftsmen (Electricians, Mechanics, Welders) would take 70/80 retirements, and that would effect manning of the Mobile Maintenance Department, which thus did not know who its constituents would be until about November 1. In general, as the department forces went down, the Mobile Maintenance Department was to come up, so that there would not be a shortfall in manpower. This was to be done in light of the fact that Management planned to "rationalize" (shut down) some departments permanently. Thus, if nothing were done, with less equipment to maintain and repair, there would be a surplus of employees by 1988 and 1990. Accordingly, the Mobile Maintenance Department was to be staffed so as to deal with a temporary need for maintenance and repair employees, in light of an impending call for many fewer employees.

The Union says that Kantowski's use of Mobile Maintenance Department employees on a "day to day" basis and without a downturn is without support in the Assigned Maintenance Agreement. Kantowski said tasks routinely are done off the downturn that still are "associated" with downturns. The Union argues that 2 Coke Plant, 4 BOF, and 11 Battery had contractors working on a day-to-day basis, which would not have been proper work for the Mobile Maintenance Department forces even if it had thousands of them free. Kantowski agreed that the rate of attrition of employees in the Wire Shop had proceeded faster than had the decrease in electrical work load. The Union stresses the following language of the Assigned Maintenance Agreement in its Section 12:

"Protections for Field Services Department and Shop Services Department Craftsmen

"The purpose of the M.M.D. is to supplement departmental assigned maintenance crews on work associated with scheduled repair downturns. It is not expected that such work will have any impact on Field Services department or Shop Services Department employees. Furthermore, new contracting out language should enhance job security especially for those departments. The following protections are included in the unlikely event displacements will affect these departments." (Emphasis in original.)

Kantowski said the purpose of his department was to free departmental assigned maintenance employees, who then would be able to do the specialized and sophisticated maintenance and repair work on their peculiar equipment, which they were better able to do, and that his Mobile Maintenance Department people would do the more routine work.

Kantowski agreed that the Coke Plant conducts continuous operations, so that, if the whole Coke Plant be looked to, it has no downturns, so there could be no work for the Mobile Maintenance Department associated with downturns, within the language of the Assigned Maintenance Agreement, but he insisted also that separate parts of the Coke Plant are scheduled down for repair work, which he said would be a downturn.

Union Relations Staff Coordinator Oliver said that in the first discussion of the work of Notification 226 on October 9, the Union said only that the work was maintenance and repair work within the plant which the

employees could do and, therefore, that it was an unresolvable dispute and that the Union did not ask for details of the project or whether the work had begun. He said only the same points were raised at an October 13 meeting. Oliver said the work of Notification 347 was discussed on November 3, and the Union asked how long it would last but not for details of the chores.

Oliver agreed that he had told Union Spokesman Mezo on December 12 that the work of Notification 470 had not started, but he testified on December 28 that he had been wrong on that.

Oliver said that the notifications were not supposed to be exhaustive and detailed descriptions of the work to be contracted out. He said the details would come out in the Contracting Out Committee discussions between the parties later.

Former Supervisor of Field Forces Stoddart said there are downturns at the Coke Plant and he knows that because he has assigned Field Forces employees there on downturns to work on certain equipment. A downturn in the Coke Plant is achieved by reducing the pushing schedule and working on only certain equipment there.

Stoddart said the philosophy at the Field Forces Department from its founding in 1952 had been that it would supply additional employees to a department's maintenance and repair work that it could not do with its own maintenance employees. The Company's plan was to do all maintenance and repair work with its own employees but, if not enough of them were available to do a given project in time, it would be contracted out. Company Exhibit 6 shows over 500 contractor employees in the plant on repair and maintenance work every week in the last part of 1979 and over 400 in early 1980.

The Company notes the Preamble to the contracting-out language of the new Agreement, stating that "The parties have existing rights and contractual understandings with respect to contracting out. In addition, the following provisions shall be applicable to all contracting out issues subject to, and arising on or after the effective date of this Agreement."

Management says those rights and understandings have existed for over thirty years and would warrant these instances of contracting out.

The Company stresses it is agreed this is 3-B-1-a work, that is, that it is maintenance and repair work within the plant that bargaining unit employees are capable of performing and, under the new language, "...shall be performed by such employees." The Agreement then continues to say that, accordingly, the Company will not contract out any work for performance inside or outside the plant unless it demonstrates that such work meets one of the following exceptions. Subsection B then sets out the exceptions and, as to this maintenance and repair work within the plant, it may be contracted out only if the Company proves it has been the consistent practice to do so and that it is more reasonable, under Subsection C, to contract out such work then to have it done by employees.

Management then stresses that the uncontradicted testimony of the past and present Field Services Managers said this kind of work had been contracted out since sometime in the 1950s in these circumstances, that is, when neither department nor Field Forces maintenance employees were free from other work to do the task in the required time.

The Company cites statements in Inland Award No. 340 (1961), to the effect that during the hearing in that case the Union had conceded that Management was free to contract out repair and other types of work when Company employees were working forty hours or more, where they lacked some necessary skills, or in an emergency. The Company cites also Inland Award No. 595 (1970) for its definition of a local working condition.

The Company thus insists it has established a consistent practice of contracting out work under these circumstances, that is, when, even though it be maintenance and repair work within the plant which the employees are capable of performing, both department and Field Forces employees are so fully occupied on other work that they cannot be freed to perform the subject work within the time limit stated.

The Company is even more certain that it has shown that it was more reasonable to contract out these tasks than to have them done by employees, under the relevant factors of -3-C.

Considering the factors of reasonableness, the Company notes that no relevant employees were laid off and all were working substantial volumes of overtime. It urges, therefore, that sending the work out had no adverse impact on the bargaining unit.

On the factor of necessity to hire new employees, Management says its current plan to "rationalize" (shut down) certain operations will create a surplus of maintenance employees, as will its "inspection" method of maintenance. Those two items, coupled with the temporary nature of this work, allegedly shows that it would not be a negative factor to hire and train employees for this short-time work.

The next three factors (desirability of recalling employees from layoff, availability of qualified employees (active or on layoff), and availability of adequate, qualified supervision) are not in dispute because the parties stipulated that employees were not on layoff and were not available, nor were supervisors.
The factor of availability of required equipment is not in issue.
The Company urges that duration of the work was short and that it had to be done promptly.
The Company argues that factors 8 through 11 are not in issue, but the Union did urge factor 8, in a general way.
The Union responds that the new language made a sharp departure from old ways of thinking about and deciding contracting-out cases. Before the new, 1986 language, the Union had the burden of establishing a practice, showing that bargaining unit employees always had done the work.
With the new language, the Union insists the situation has been turned around, with the Company now required to pull the laboring oar. Under Section 3-A, the guiding principle is that work capable of being performed by bargaining unit employees shall be performed by such employees, and that the Company will not contract out any work for performance inside or outside the plant unless it demonstrates that such work meets one of the exceptions that follow. As to work within the plant, production, service, all maintenance and repair work, and all installation, replacement, and reconstruction of equipment and productive facilities (other than the major new construction listed in Subsection B-1) may be contracted out only if the consistent practice has been to have such work performed by contractors and it is more reasonable (within the factors in -C) to contract out the work. Accordingly, this work, agreed to fall within Section 3-B-1-a and -b, maintenance and repair work which the bargaining unit employees are capable of performing, may be contracted out only if the Company establishes a consistent practice of doing so and that it is more reasonable to contract it out than to use bargaining unit employees.
The Union sees the Company position here as an attempt to establish a practice of contractors doing work, any kind of work, when employees and supervisors are fully occupied on other work, and not a practice about performing this very kind of electrical maintenance and repair work. It says the Company is not dealing with a practice about this very work, "such work," but a loose and roving practice about circumstances of availability of employees and supervisors that existed at the time and as applicable to any kind of work. The Union praises that effort as creative but says it is without foundation in the Agreement. It argues that Company position deals with work contracted out in "such circumstances" and not with contracting out of "such work," which is what the language of the Agreement says.
The Union notes that there were three categories of work under the old (pre-1986 language). There was (1) in Section 3-a production, service, and day-to-day maintenance and repair work within the plant; then came (2) 3-b and maintenance and repair work within the plant other than that mentioned in 3-a above, and installation, replacement, and reconstruction of equipment and productive facilities at the plant. The Union says the new language of the 1986 agreement reduced those three categories to two and also subordinated the reasonableness tests to considerations of a consistent practice.
That is, as to work within the plant, there now are only two categories of work, first under -B-1-a, come all production, service, and maintenance and repair work, and all installation, replacement, and reconstruction not covered in -b, and it may be contracted out only if the Company establishes a practice of doing so and that it is more reasonable to do so than to use its own employees. That category covers the work in dispute here. The second category of -B-1-b then covers major new construction, major installation, major replacement, and major reconstruction, which may be contracted out subject to the rights and obligations of the parties existing as of a period beginning August 1, 1963 (advent of the first expressed contracting-out language in Experimental Negotiating Agreements.)
The Union characterizes the Company argument as saying, in effect, it now has on the rolls all the employees it intends to have and that it will contract out all other work for which adequate forces are not available. The Union stresses Company testimony admitting to a significantly higher rate of attrition of employees in the Field Services's Wire Shop than the rate of decrease in the relevant work load. It argues that, within that scheme, the number of bargaining unit employees necessarily will drop constantly with attrition, and Management will contract out more and more work which the smaller number of bargaining unit employees are not able to perform, so that, a time will come when there will be no bargaining unit employees left at work, and everything will be done by contractors.
The Union stresses Company evidence that Notification 226 will require 3000 manhours of work; 470 would need 2000 manhours, and 709 would expend 2600 manhours. It equates every 2040 contractor hours as sufficient work for one employee for a year.

Finally, the Union says the new language makes these decisions relatively easy: If there be no practice of contracting out the work, then it may not be assigned to a contractor, absent agreement with the Union. It is said the very skillful and conscientious negotiators contemplated that such agreements would have to be made under the new language.

FINDINGS

These Notifications are here in arbitration under the Expedited Procedure of Section 3-G of Article 2. The parties agreed, however, because much of the work in question already had been done or then was in progress when these Notifications were heard, that the forty-eight-hour deadline for the arbitration decision should not be applied.

As stated above at the beginning of Background, these are the first contracting-out disputes to be decided under the new, 1986 language in this bargaining relationship. They were not the first to be presented, however. Notifications 128, 334, and 442 were argued several days earlier, and there some of the major doctrinal concepts were presented, as to how the new, 1986 language should be applied. Those positions will be mentioned here where necessary in analysis and decision of these problems.

As shown above, the parties stipulated that all of the work in dispute was maintenance and repair work that bargaining unit employees were capable of performing. It falls, therefore, under Subsections A and B of Section 3 and may be contracted out only if the Company has established a consistent practice of contracting out such work and that it was more reasonable to contract it out than to use its own employees.

No useful purpose would be served by attempting to detail the history of bargaining and decision on this subject in the Steel Industry, in general, or in this bargaining relationship, in particular. Inland Award No. 340 (1961) and sources cited there refer to the early experience of these parties with contracting-out problems during the years when their agreements had no express provisions on the subject. Later on, specific provisions were negotiated dealing with when particular items of work could or could not be contracted out. Ultimately, that language established the three categories of work discussed above, with practices playing a central role in many decisions and the reasonableness factor being decisive on others, as proved by Management, in the middle-ground category of maintenance and repair and installation, replacement, and reconstruction of equipment.

The parties' bargaining over the past several decades thus has brought them from a time when their agreements said nothing expressly about contracting out and arbitrators were left to the reasonable implications arising from other phrases of their agreements, through the period up to 1986 when they had negotiated many detailed provisions for deciding contracting-out disputes which placed rather serious restrictions on Management's contracting-out authority, to the ultimate language of the 1986 Agreement, which raises several additional and substantial hurdles in the way of contracting out and reverses some of the doctrines of burden of proof in such disputes. It is fair to conclude, therefore, that any given contracting-out venture fell into potentially greater difficulty over the years and perhaps got into even deeper trouble in 1986. The difficulty is, however, that, although sufficient to establish a state of mind as to how these problems should be approached, those generalities do not decide specific cases.

The very beginning of the new provisions sets up a "Basic Prohibition" in the heading of Subsection A. That heading and the two following sentences in -A thus make it clear that the parties' negotiated method for dealing with contracting-out cases establishes a general but a very definite disposition against contracting out. That is, after a heading of "Basic Prohibition," the first sentence of -A states the "guiding principle" that work capable of being performed by bargaining unit employees shall be performed by them. But, strong as is the basis of the heading and first sentence of -A, the parties did not stop there and, therefore, specific cases cannot be decided on the basis of that general proclivity, alone. It is necessary to face up to the full sense of all the new language.

The second sentence of -A then says that the Company will not contract out any work for performance inside or outside the plant unless it demonstrates that such work meets one of the following exceptions. The first exception treats work to be done in the plant, and the second deals with work done outside the plant. As to this maintenance and repair work to be done inside the plant then, the exception of -B-1-a could warrant its being contracted out only if the Company can demonstrate that the consistent practice has been to contract out such work and that it is more reasonable, within the factors of -C, to contract it out than to use its own employees. Those are the operative decisional considerations to be used in determining the manner in which the general message against contracting out of the heading and first two sentences of -A was meant to be applied to any concrete set of facts.

Thus, the first basic issue here is whether or not the Company, as is its burden, has proved existence of a "consistent practice" of contracting out "such work" as these electrical maintenance and repair tasks.

It is clear that there is nothing "consistent" about such a practice, if attention must be focused on "such work," as if it meant this very kind of work. That is, it is clear from all evidence here, including Company evidence, that over the years this kind of routine electrical maintenance and repair work has been done, probably thousands of times, by bargaining unit employees. Thus, it could not be found that there was a "consistent practice" of contracting out this kind of work. That is the basis of the Union position on the practice argument.

The Company sees that as too narrow a view. It notes its practically uncontradicted evidence to the effect that virtually all kinds of work, including this kind, has been contracted out for years in circumstances when, because they were fully occupied on other necessary work, bargaining unit employees or supervision, or both, were unavailable to do it within the time limit set.

The Company says that satisfied its burden to show a consistent practice of contracting out, but the Union insists that speaks of the wrong kind of practice, one not pertinent to the "consistent practice" for contracting out "such work," and thus not in any way effective to carry Management's burden in this regard.

The Union argues that in dealing with a practice in that allegedly mushy way does not speak to the specifics required by the Agreement. It contends, that is, that this kind of relatively simple electrical maintenance and repair work almost always has been done by bargaining unit employees and only very rarely by contractors and, therefore, that Management's saying it and other kinds of electrical maintenance and repair work always has been done by contractors in situations where the bargaining unit forces, though able, were inadequate in numbers to perform it within the time it had to be done, does not establish the kind of "consistent practice" required by this Agreement. The Union insists that is not a practice warranting contracting out of "such work," that is, routine electrical maintenance and repair work. On the contrary, the Union maintains that is a practice, if it be one at all, about contracting out work under such circumstances, which is not the language of the Agreement.

The Union argues, moreover, that the Company's practice position is an attempt to bootleg into the practice considerations at least two of the factors (availability of employees and supervisors) that the 1986 Agreement expressly puts within the "reasonableness" determination. The Union's point here is that factors 4 and 5 of Subsection 3-C require consideration of the availability of qualified employees and of qualified supervisors. The Company must show, at least on balance, that those and all other of the eleven factors stated in -C are not negative factors as to the contracting out in dispute. If the Company can establish a practice under 3-A and -B-1-a by reliance on alleged unavailability of employees and supervisors, the Union charges it will have subordinated the practice standard of -B-1-a, allegedly meant to be paramount here, to the "reasonableness" factors of -C, in defiance of what the parties just had negotiated.

The Union stresses a higher attrition rate of Field Services's Wire Shop employees than the rate of decreased electrical maintenance work load. It urges, therefore, if successful here, Management simply will continue to insist that its current employment level is all it wants or needs and then will contract out all that that force cannot be available to do, while performing its other work, as well. As employee attrition continues, more and more work that fewer and fewer employees cannot be available to do allegedly will be contracted out until no bargaining unit employees will be left, the Union will be destroyed, and all work, in and out of the plant, will be done by contractors.

It is not necessary to decide here whether or not that is a realistic prediction or only a hobgoblin, slippery-slope argument. It may be left for analysis in later problems. There are sufficiently solid basis for decision here without embracing that argument.

Decision is not simple or crystal clear, however. There is much to be said for both sides. It is true that necessity to glean several thousand more employee manhours and perhaps some supervisory time, as well, cannot be easy. But the Union is right. Those considerations cannot have been meant to be relevant in a -B-1-a case until the practice hurdle has been leaped and analysis has come up against the practical considerations of -C.

Examination here is still dealing with the practice positions, and any realistic assessment of this evidence and all the arguments can conclude only that the Company has not demonstrated a consistent practice of contracting out "such work" as this routine electrical maintenance and repair work, which almost always has been done by bargaining unit employees. The Company admits as much when speaking of the state of the evidence. It agrees, that is, as its own evidence shows, that bargaining unit employees have done "such work" the very great majority of the times and that contractors have done it only when employees, supervisors, or both were unavailable in sufficient numbers. But to allow that to prove a "consistent practice" as to "such work" would rely on the practical administrative difficulties experienced by Management under the older language in handling heavier loads of maintenance and repair work and would

rely also upon factors mentioned in C, and would not be precisely apt in consideration of whether or not the Company has shown existence of a "consistent practice" of contracting out "such work." And requiring these practice arguments to be rather precisely apt seems warranted by the state of mind required to be taken by the Arbitrator under the 1986 language. That is, some clearly different and obviously more restrictive approaches must have been intended by the parties, at least as to -B-1-a work. That is clear enough from Subsection A, and is only confirmed by -B-1-a.

Accordingly, the argument that perhaps serious problems will arise because of necessity to keep more work for the bargaining unit under the 1986 Agreement cannot justify reading the relevant provisions of that Agreement as if the same old results were to occur under the new language as under the old. This is not to say that no -B-1-a work may be contracted out hereafter. Of course it may, but only after first satisfying the new and very much more stringent standards of -A and the practice requirement of -B-1-a. Evidence (Company evidence) establishes that bargaining unit employees have done this ordinary electrical maintenance and repair work so often, probably thousands of times, that it was rare that contractors did it. That is not a "consistent practice" of contracting out "such work."

It may be that one of the negotiating parties privately viewed the "such work" language of -A and -B-1-a as including not only the quality of the work but also its quantity. In that event, "such work" would cover the quality of this ordinary electrical maintenance and repair work and its quantity, when done in this volume and at one time. It is unlikely that both parties entertained any such impression, however, for, if they both had done so, they would have wasted much of their efforts in writing much of this new language since, aside from merely reversing the burden of proof on practice, the old results would have been very likely to continue under the new language, and that is not a sensible assumption in view of the major effort made on this subject.

It is unnecessary also to descend into grammar or semantics to attempt to discern whether the word "such" in -A and in -B-1-a was meant as an adjective, pronoun, or adverb. The fact is that it appears in the sentence of -B-1-a after the words "...all maintenance and repair work..." (ignoring the other descriptive words), and they say nothing about quantity of work but state only quality of work. Thus, the word "such" after those earlier words must be taken to refer to that kind of work and not to any varying quantity of work.

Accordingly, since the requisite practice has not been demonstrated by the Company, and since it must establish both a practice and also satisfy the more-reasonable requirement in order to prevail, it will not be necessary to analyze the standards of -C.

Consequently, this work was, or some it may be, contracted out in violation of the Agreement, and the grievance challenging these four Notifications will be sustained. It must be left to the parties, in light of locally available facts, to search out and identify what employees, if they can be reasonably identified, shall be made whole for earnings and other benefits lost by reason of this improper contracting out.

AWARD

The grievance is sustained as stated in the last paragraph of the accompanying Opinion.

practice of contracting out all types of work under certain circumstances.

Award No. 770
COMPANY: INLAND STEEL CO.
PLANT: INDIANA HARBOR
DISTRICT: 31
ARBITRATOR: CLARE B. MC DERMOTT
DATE OF DECISION: JANUARY 20, 1987

BACKGROUND

These four Notifications are the first contracting-out disputes to be decided under the new language on the subject in the parties' August 1, 1986 Agreement.

The four projects deal with electrical repair and maintenance work performed in the plant by several outside contractors.

In general, Notification No. 226 told the Union on September 22, 1986 that repair or replacement of lighting, switches, and conduit safety systems throughout #2 Coke Plant would be contracted out. The Notification said the work was expected to begin October 1 and to be finished by February 1, 1987.

Notification No. 347 informed the Union on or after October 6, 1986 that outside contractor forces would be used to supplement existing electrical maintenance forces in maintaining all 4 BOF and #1 Slab Caster cranes. The supplementary work was said to be temporary and would last until the Mobile Maintenance

Electrical Force could replace in plant manpower. The work was to begin October 1 and to end December 31, 1986.
Notification No. 470 stated to the Union just after October 29 that outside contractors would install a new fiberglass tray on top of 11 Battery, replace deteriorated conduit there, install new wire and related conduit, install eight 1000-watt lights, new wire, conduit, and switches on the coke-side shed. The work was to begin November 19 and to be finished on December 10, 1986, and it was estimated that it would require 2000 contractor manhours.
Notification No. 709 said on December 2 that outside contractor electricians would be used to supplement existing electrical maintenance forces in maintaining various 12" Bar Mill production equipment, until plant forces could replace them. The work was to begin November 30, 1986 and end February 28, 1987. It was stated that the work would require 2600 contractor manhours.
In each case the outside occupations said to be involved were electricians, and in the last two Notifications the in-plant crafts affected were said to be Electricians and Motor Inspectors.
The parties stipulated several significant elements that are basic to these disputes. They agreed, that is, that all this work is maintenance and repair work capable of being done by in-plant employees, by Field Services Wiremen, department Motor Inspectors, or both; that all Field Service Wiremen and department Motor Inspectors were fully utilized and working substantial amounts of overtime in this period; that no Field Services Wiremen or department Motor Inspectors were on layoff then; and that supervisory forces for Field Services Wiremen and department Motor Inspectors were fully utilized and thus otherwise unavailable.
Possibly pertinent provisions of the 1986 Agreement, which replaced all of the prior contracting-out language of past agreements, read as follows:
"ARTICLE 2-SECTION 3-CONTRACTING OUT. "The provisions of Article 2, Section 3 which appeared in the March 1983 Collective Bargaining Agreement have been wholly eliminated from the August 1, 1986 Agreement and replaced in their entirety by the following new language.
"CONTRACTING OUT. "The parties recognize the seriousness of the problems associated with contracting out of work both inside and outside the plant and have accordingly agreed as follows:
"The parties have existing rights and contractual understandings with respect to contracting out. In addition, the following provisions shall be applicable to all contracting out issues subject to, and arising on or after the effective date of this Agreement.
"A. Basic Prohibition
In determining whether work should be contracted out or accomplished by the bargaining unit, the guiding principle is that work capable of being performed by bargaining unit employees shall be performed by such employees. Accordingly, the Company will not contract out any work for performance inside or outside the plant unless it demonstrates that such work meets one of the following exceptions.
"B. Exceptions
"1. Work in the Plant
"a. Production, service, all maintenance and repair work, all installation, replacement and reconstruction of equipment and productive facilities, other than that listed in Sub-paragraph B-1-b below, all within the plant, may be contracted out if (a) the consistent practice has been to have such work performed by employees of contractors and (b) it is more reasonable (within the meaning of paragraph C below) for the Company to contract out such work than to use its own employees.
"b. Major new construction including major installation, major replacement and major reconstruction of equipment and productive facilities, at the plant may be contracted out subject to any rights and obligations of the parties which as of the beginning of the period commencing August 1, 1963, are applicable at the plant.
As regards the term `new construction' above, except for work done on equipment or systems pursuant to a manufacturer's warranty, work that is of a peripheral nature to major new construction, including major installation, major replacement and major reconstruction of equipment and production facilities and which does not concern the main body of work shall be assigned to employees within the bargaining unit when it is more reasonable to do so taking into consideration the factors set forth in paragraph C or it is otherwise mutually agreed.
"2. Work Outside the Plant
"a. Should the Company contend that maintenance or repair work to be performed outside the plant or work associated with the fabricating of goods, materials, or equipment purchased or leased from a vendor or supplier should be excepted from the prohibitions of this Section, the Company must demonstrate that it is

more reasonable (within the meaning of paragraph C below) for the Company to contract for such work (including the purchase or lease of the item) than to use its own employees to perform the work or to fabricate the item.
Notwithstanding the above, the Company may purchase standard components or parts or supply items mass produced for sale generally ("shelf items"). No items shall be deemed a standard component or part or supply item if its fabrication requires the use of prints, sketches, or manufacturing instructions supplied by the Company or at its behest or it is otherwise made according to Company specifications.
"b. Production work may be performed outside the plant only where the Company demonstrates that it is unable because of lack of capital to invest in necessary equipment or facilities, and that it has a continuing commitment to the steel-making business. In determining whether there is capital to invest in particular equipment or facilities, the Company is entitled to make reasonable judgments about the allocation of scarce capital resources at its plant represented by the Union and its supporting facilities.
"3. Mutual Agreement
Work contracted out by mutual agreement of the parties pursuant to paragraph F below.
"C. Reasonableness.
In determining whether it is more reasonable for the Company to contract out work than use its own employees, the following factors shall be considered.
"1. Whether the bargaining unit will be adversely impacted.
"2. The necessity for hiring new employees shall not be deemed a negative factor except for work of a temporary nature.
"3. Desirability of recalling employees on layoff.
"4. Availability of qualified employees (whether active or on layoff) for a duration long enough to complete the work.
"5. Availability of adequate qualified supervision.
"6. Availability of required equipment either on hand or by lease or purchase, provided that either the capital outlay for the purchase of such equipment, or the expense of leasing such equipment, is not an unreasonable expenditure in all the circumstances at the time the proposed decision is made.
"7. The expected duration of the work and the time constraints associated with the work.
"8. Whether the decision to contract out the work is made to avoid any obligation under the Collective Bargaining Agreement or benefits agreements associated therewith.
"9. Whether the work is covered by a warranty necessary to protect the Company's investment. For purposes of this subparagraph, warranties are intended to include work performed for the limited time necessary to make effective the following seller guarantees:
a. Manufacturer guarantees that new or rehabilitated equipment or systems are free of errors in quality, workmanship, or design.
b. Manufacturer guarantees that new or rehabilitated equipment or systems will perform at stated levels of performance and/or efficiency subsequent to installation.
Warranties are commitments associated with a particular product or service in order to assure that seller representations will be honored at no additional cost to the Company. Long-term service contracts are not warranties for the purposes of this subparagraph.
"10. In the case of work associated with leased equipment, whether such equipment is available without a commitment to use the employees of outside contractors or lessors for its operation and maintenance.
"11. Whether, in connection with the subject work or generally, the Local Union is willing to waive or has waived restrictive working conditions, practices, or jurisdictional rules (all within the meaning of `local working conditions' and the authority provided by this Agreement).
"D. Contracting Out Committee
"1. A regularly constituted committee consisting of not more than four persons (except that the committee may be enlarged to six persons by local agreement), half of whom shall be members of the bargaining unit and designated by the Union in writing to be the plant management and the other half designated in writing to the Union by the plant management, shall attempt to resolve problems in connection with the operation, application, and administration of the foregoing provisions.
"2. In addition to the requirements of Paragraph F below, such committee may discuss any other current problems with respect to contracting out brought to the attention of the committee.
"3. Such committee shall meet at least one time each month.
"E. Notice and Information

"Before the Company finally decides to contract out an item of work as to which it claims the right to contract out, the Union committee members will be notified. Except as provided in Paragraph I [H] below (Shelf Item Procedure), such notice will be given in sufficient time to permit the Union to invoke the expedited procedure described in Paragraph H [G] below, unless emergency situations prevent it. Such notice shall be in writing and shall be sufficient to advise the Union members of the committee of the location, type, scope, duration, and timetable of the work to be performed so that the Union members of the committee can adequately form an opinion as to the reasons for such contracting out. Such notice shall generally contain the information set forth below:

1. Location of work.
2. Type of work:

a. Service
b. Maintenance
c. Major Rebuilds
d. New Construction

3. Detailed description of the work.
4. Crafts or occupations involved.
5. Estimated duration of work.
6. Anticipated utilization of bargaining unit forces during the period.
7. Effect on operations if work not completed in timely fashion.

"Within ninety (90) days following the effective date of this Agreement, headquarters representatives of the parties shall develop a form notice for the submission of the information described above.

"Either the Union members of the committee or the Company members of the committee may convene a prompt meeting of the committee. Should the Union committee members believe discussion to be necessary, they shall so request the Company members in writing within five (5) days (excluding Saturdays, Sundays, and holidays) after receipt of such notice and such a discussion shall be held within three (3) days (excluding Saturdays, Sundays and holidays) thereafter. The Union members of the committee may include in the meeting the Union representative from the area in which the problem arises. At such meeting, the parties should review in detail the plans for the work to be performed and the reasons for contracting out such work. Upon their request, the Union members of the committee will be provided any and all information in the Company's possession relating to the reasonableness factors set forth in Paragraph C above. Included among the information to be made available to the committee shall be the opportunity to review copies of any relevant proposed contracts with the outside contractor. This information will be kept confidential. The management members of the committee shall give full consideration to any comments or suggestions by the Union members of the committee and to any alternate plans proposed by Union members for the performance of the work by bargaining union personnel. Except in emergency situations, such discussions, if requested shall take pace before any final decision is made as to whether or not such work will be contracted out.

"Should the Company committee members fail to give notice as provided above then not later than thirty (30) days from the date of the commencement of the work a grievance relating to such matter may be filed under the grievance and arbitration procedure. Should it be found in the arbitration of a grievance alleging a failure of the Company to provide the notice or information required under this Paragraph E that such notice or information was not provided, that the failure was not due to an emergency requirement, and that such failure deprived the Union of a reasonable opportunity to suggest and discuss practicable alternatives to contracting out, the arbitrator shall have the authority to fashion a remedy, at his discretion, that he deems appropriate to the circumstances of the particular case. Such remedy, if afforded, may include earnings and benefits to grievants who would have performed the work, if they can be reasonably identified.

"F. Mutual Agreement and Disputes

"The committee may resolve the matter by mutually agreeing that the work in question either shall or shall not be contracted out. Any such resolution shall be final and binding but only as to the matter under consideration and shall not affect future determinations under this section.

"If the matter is not resolved, or if no discussion is held, the dispute may be processed further in accordance with either of the following:

"1. By filing a grievance relating to such matter under the grievance and arbitration procedure described in Articles 6 and 7; or

"2. By submitting the matter to the Expedited Procedure set out in Paragraph G below.

"G. Expedited Procedure
"In the event that either the Union or the Company members of the committee request an expedited resolution of any dispute arising under this Section, except Paragraph H (Shelf Item Procedure), it shall be submitted to the expedited procedure in accordance with the following:
"1. In all cases except those involving day-to-day maintenance and repair work and service, the expedited procedure shall be implemented prior to letting a binding contract.
"2. Within three (3) days (excluding Saturdays, Sundays and holidays) after either the Union or Company members of the committee determine that the committee cannot resolve the dispute, either party (Chairman of the Grievance Committee in the case of the Local Union and the Manager of Labor Relations in the case of the Company) may advise the other in writing that it is invoking this expedited procedure.
"3. An expedited arbitration must be scheduled with three (3) days (excluding Saturdays, Sundays and holidays) of such notice and heard at a hearing commencing within five (5) days (excluding Saturdays, Sundays and holidays) thereafter. An arbitrator (regular arbitrator if available) shall hear the dispute and, if the arbitrator is not available to hear the dispute within five (5) days, another arbitrator shall be selected by mutual agreement of the Step 4 Representative of the Union and the Step 4 Representative of the Company.
"4. The arbitrator must render a decision within forty-eight (48) hours (excluding Saturdays, Sundays and holidays) of the conclusion of the hearing. Such decision shall not be cited as a precedent by either party in any future contracting out disputes."
The Union notes the parties' stipulation that this is Article 2, Section 3-B-1-a maintenance and repair work in the plant which bargaining union employees were capable of performing and that it is not major work. It urges that there is no consistent practice to contract it out and notes that it is the Company's burden to prove existence of any such practice.
The Union contends the Company's position here would subordinate the practice arguments of the new language to the "reasonableness" language of 2-3-C, which would make the new language meaningless. It alleges, finally, that Management's contracting out this work violates also the craft pay guarantee.
Company witness Snearley, Maintenance Planner at #2 Coke Plant, said the first task of Notification 226 was the installation of a new signal system at the Coke Screening Station. He said it had to be done because of near accidents of employees and that it already had been deferred for six months. This work was started October 1, 1986 and was finished before the December 18 hearing in this dispute.
Other work entailed repair of safety cables and limit switches on all conveyors and installation and relocation of starters for the pumping system. The starters had deteriorated to the point that the system could not be locked out safely. The purpose was to remove them from the steamy atmosphere to help reduce deterioration. All those tasks were done for safety reasons, and they were being done at hearing time.
Snearly explained that a number of tasks were done for quality reasons. One goal was to get a better sampling system for coal and coke, and one of these chores was to do the electrical work for the new sampling mechanisms. This work was going on at hearing time.
Next were repairs on lighting, required for safety reasons. Fixtures had deteriorated and were falling from their supports, and conduit had deteriorated. This work was being done at hearing time.
Another phase of this Notification was the repair of a system for the salt and sulfate cranes and a monorail crane at the quenching station. The purpose was to install separate feeds to those units so that, should there be an electrical failure, both would not go down at once. This, too, was in process at hearing time.
The specific tasks mentioned above were completed or in process at the time these Notifications were heard in arbitration. Somehow, additional work was thought of by one party or the other as falling within this Notification, although not yet begun at hearing time. These included electrical work associated with installation of a start-up sequence for a mixer, air cannon which would enable coal to flow in bins, amperage recorders on all pusher rams, new starters for sulfate-absorber circulating pumps, rebuilding a travel-control panel on the door machine, and installation of meters on the silicon-control rectifiers on door and pusher machines. The Company said that subsequent contracting-out notifications would be issued to cover some of those chores.
Snearly said these tasks had to be done because of safety and quality reasons. He insisted they could not be deferred any longer, saying they already had been put back for eighteen months.
The Union referred to other work which it said was not within these Notifications.
Snearly explained that up to late December of 1986 about 500 to 800 contractor manhours had been expended, which he estimated would turn out to be approximately 15 percent of the total that would be required for all the work covered by or thought to be covered by Notification 226. The witness said the

contractor had about six men in per day on the average. He agreed that, contrary to the Notification, all this work would not be finished by February 1, 1987, but would go on into March or April.

Snearly thought but was not absolutely sure that the work of Notification 226 began on October 1, and that all the tasks on the signal system, lighting, and conduit were finished and that all else was to be done in the future. He was certain that its starting date was not as late as sometime in December.

No detailed Company evidence was introduced on the nature of the 4 BOF and #1 Slab Caster crane work stated in Notification 347. Supervisor Van Auken said the work was not deferrable and was required for safety, quality, and quantity reasons, and he agreed that all maintenance work is done for one or another of those reasons.

Motor Inspector Ross testified for the Union that the electrical work dealt with in Notification 347 covered a new siren system for crane and drag systems, to warn personnel. He said it was not related to quality of production. He said some of the work simply repaired sodium-vapor lighting and installed heaters on a hot-top buggy.

Company witness Sepeiol, 11 Battery Maintenance Section Manager, said that the "detailed description of the work" in Notification 470 was accurate, that it was necessary for safety, quality, and production reasons and, because of safety concerns, could not be postponed. He was certain the work began in December but that more yet had to be done. He hoped it could be finished by January 10, 1987, weather permitting. The Notification had said it would be done by December 10, 1986. Sepeiol said that the 2000-manhour estimate of the Notification was accurate.

The witness said that conduit on top of the battery had been burned and, since a new coke-side shed was being built, an opportunity was afforded then to improve location of the conduit run and to replace it by conduit within a tray.

No testimony was introduced about details of the work contemplated by Notification 709, but Mobile Maintenance Department Manager Kantowski said the work had not begun as of December 18, 1986. The witness was not aware whether or not a final decision yet had been made to contract out the work, but he said such a decision would be made.

The Union commented that some tasks listed above were not mentioned in the various notifications. The Company said that later contracting-out notifications would be issued to cover additional work.

The Union urged that all maintenance work is required to be done for reasons of safety, quality, or quantity of production. Company witness Snearley said that would not be accurate as to removing obsolete electrical systems.

Union Spokesman Mezo testified that the Union was told by Notification 226 on September 22, 1986 that the work would be done by a contractor. He said that in discussions of that Notification on October 9 the Union asked if the work had started and was told that it had not. Then, in the week of December 8, Company Contracting Out Committee members told Union members that they thought the work had begun. The Union contrasted those statements with Company testimony at the December 18 arbitration hearing that some work had begun and had been completed, that other tasks were in process, and yet others had not yet been started. It said that, after being told in the week of December 8 that the work had not started, it was shocked to hear Company testimony on December 18 say that it had commenced on October 1. The witness said the Union had argued that the description of the work in Notification 226 was not detailed enough. Mezo said that the Union had been told by the Company in the week of December 8 that the work of Notification 470 had not yet started.

Mezo said the Union first discovered that the work at 4 BOF (Notification 347) had started and told the Company of that. He testified that the Company had said that, except for Notification 226 work, work of the other notifications had not begun and that some work might not be contracted out.

Mezo agreed that because of the administrative pressure created by necessity to deal with some 800 contracting-out notifications, the Union, as soon as it receives a notification, routinely sends Management a letter saying that the matter is unresolvable. That is done simply to avoid missing an essential step in processing these hundreds of notifications.

Field Services Manager Stallard introduced what became the heart of the Company case. He has had fifteen years in Field Services or its predecessor Field Forces, going back to 1963. He said that, for all his time in those maintenance and repair departments, and as he was told even before that time, the consistent practice had been to contract out any and all work, including small projects, that the regular department had insufficient forces to perform and that former Field Forces or Field Services could not do within the time limits because all of its employees, too, and its supervisors, or both, were fully occupied on other work. Stallard said, that is, that the practice was to use Company employees to the fullest and then to contract out

peak work that Company employees were not available to do, and that those circumstances covered this kind of work.

The witness said that the ordinary procedure was that the department that wanted to have certain work done but could not do it because its own maintenance forces were fully occupied elsewhere, would ask Field Services to do it. The latter would assess availability of its craftsmen within the time limit stated and would do the work if it could. If its forces were fully occupied on other work for the period of time available, however, the work would be assigned to an outside contractor. Stallard said those circumstances covered each of the four Notifications in arbitration here and justified their being contracted out because in each case neither the home department nor Field Services had sufficient employees or supervisors to do these tasks within the time they had to be done.

Stallard said that there were ninety-two or ninety-three Wiremen currently at work in the Wire Shop and that two years ago there had been ninety-three or ninety-five. Ten Apprentice Wiremen now are on layoff. The witness agreed there had been attrition in the Wire Shop, since some retired employees had not been replaced. Stallard said that the Field Services work load had decreased because of a lower level of overall business, and that the Field Services' Electrical force had been reduced considerably in the past two or three years.

Stallard concluded in general that from about 1963 to mid-1982 there were contractors in the plant constantly. When the "bottom fell out" of business activity in 1982, there were many displaced employees, so that contractors were put off first and then Company employees were laid off. The result was that from mid-1982 to approximately October of 1986, when these Notifications issued, there were no tasks contracted out in these circumstances.

Field Services Wire Shop Maintenance Planner Childress explained that 2 Coke Plant brought a list of thirty or forty chores that it said had to be done immediately, in order to keep the operation running. The Wire Shop had such a level of existing work for 2 Coke Plant that it could not commit its people to do these tasks within three to six months in the future. Similar facts and conclusions applied to requests for two tasks by 11 Battery. Thus, the work of Notifications 226 and 470 were assigned to contractors.

Mobile Maintenance Department Manager Kantowski said his department was set up in August of 1986 to supplement the assigned mechanical and electrical forces in the departments, as needed. He said he was contacted regarding the work of Notifications 347 and 709. He was told the 4 BOF forces (347) and 12" Mill employees (709) could not do those tasks and, therefore, they requested that his people supplement the necessary electrical manpower to perform them. Kantowski coordinated planning with Field Services forces on the availability of employees and determined that none were available. He thus initiated a request for the contracting out of those projects. The work was not deferrable.

The Assigned Maintenance Agreement of June, 1986, says that the purpose of the Mobile Maintenance Department is to supplement mechanical, electrical, and welding maintenance work associated with scheduled repair downturns in various departments of the plant and to minimize use of outside forces. Kantowski said it was supposed to supplement repair forces also in cases of nonrepetitive and unplanned work. Kantowski said that that agreement contemplated a reduction of assigned maintenance forces and a consequent enlargement of the Mobile Maintenance Department. Retirements (70/80) were anticipated, and the attrition in the assigned maintenance departments would have to be replaced, under that Agreement, on a one for two basis, or by a different, detailed formula.

The witness said it could not be determined until the fall of 1986 which specific craftsmen (Electricians, Mechanics, Welders) would take 70/80 retirements, and that would effect manning of the Mobile Maintenance Department, which thus did not know who its constituents would be until about November 1. In general, as the department forces went down, the Mobile Maintenance Department was to come up, so that there would not be a shortfall in manpower. This was to be done in light of the fact that Management planned to "rationalize" (shut down) some departments permanently. Thus, if nothing were done, with less equipment to maintain and repair, there would be a surplus of employees by 1988 and 1990. Accordingly, the Mobile Maintenance Department was to be staffed so as to deal with a temporary need for maintenance and repair employees, in light of an impending call for many fewer employees.

The Union says that Kantowski's use of Mobile Maintenance Department employees on a "day to day" basis and without a downturn is without support in the Assigned Maintenance Agreement. Kantowski said tasks routinely are done off the downturn that still are "associated" with downturns. The Union argues that 2 Coke Plant, 4 BOF, and 11 Battery had contractors working on a day-to-day basis, which would not have been proper work for the Mobile Maintenance Department forces even if it had thousands of them free.

Kantowski agreed that the rate of attrition of employees in the Wire Shop had proceeded faster than had the decrease in electrical work load. The Union stresses the following language of the Assigned Maintenance Agreement in its Section 12:

"Protections for Field Services Department and Shop Services Department Craftsmen

"The purpose of the M.M.D. is to supplement departmental assigned maintenance crews on work associated with scheduled repair downturns. It is not expected that such work will have any impact on Field Services department or Shop Services Department employees. Furthermore, new contracting out language should enhance job security especially for those departments. The following protections are included in the unlikely event displacements will affect these departments." (Emphasis in original.)

Kantowski said the purpose of his department was to free departmental assigned maintenance employees, who then would be able to do the specialized and sophisticated maintenance and repair work on their peculiar equipment, which they were better able to do, and that his Mobile Maintenance Department people would do the more routine work.

Kantowski agreed that the Coke Plant conducts continuous operations, so that, if the whole Coke Plant be looked to, it has no downturns, so there could be no work for the Mobile Maintenance Department associated with downturns, within the language of the Assigned Maintenance Agreement, but he insisted also that separate parts of the Coke Plant are scheduled down for repair work, which he said would be a downturn.

Union Relations Staff Coordinator Oliver said that in the first discussion of the work of Notification 226 on October 9, the Union said only that the work was maintenance and repair work within the plant which the employees could do and, therefore, that it was an unresolvable dispute and that the Union did not ask for details of the project or whether the work had begun. He said only the same points were raised at an October 13 meeting. Oliver said the work of Notification 347 was discussed on November 3, and the Union asked how long it would last but not for details of the chores.

Oliver agreed that he had told Union Spokesman Mezo on December 12 that the work of Notification 470 had not started, but he testified on December 28 that he had been wrong on that.

Oliver said that the notifications were not supposed to be exhaustive and detailed descriptions of the work to be contracted out. He said the details would come out in the Contracting Out Committee discussions between the parties later.

Former Supervisor of Field Forces Stoddart said there are downturns at the Coke Plant and he knows that because he has assigned Field Forces employees there on downturns to work on certain equipment. A downturn in the Coke Plant is achieved by reducing the pushing schedule and working on only certain equipment there.

Stoddart said the philosophy at the Field Forces Department from its founding in 1952 had been that it would supply additional employees to a department's maintenance and repair work that it could not do with its own maintenance employees. The Company's plan was to do all maintenance and repair work with its own employees but, if not enough of them were available to do a given project in time, it would be contracted out. Company Exhibit 6 shows over 500 contractor employees in the plant on repair and maintenance work every week in the last part of 1979 and over 400 in early 1980.

The Company notes the Preamble to the contracting-out language of the new Agreement, stating that "The parties have existing rights and contractual understandings with respect to contracting out. In addition, the following provisions shall be applicable to all contracting out issues subject to, and arising on or after the effective date of this Agreement."

Management says those rights and understandings have existed for over thirty years and would warrant these instances of contracting out.

The Company stresses it is agreed this is 3-B-1-a work, that is, that it is maintenance and repair work within the plant that bargaining unit employees are capable of performing and, under the new language, "...shall be performed by such employees." The Agreement then continues to say that, accordingly, the Company will not contract out any work for performance inside or outside the plant unless it demonstrates that such work meets one of the following exceptions. Subsection B then sets out the exceptions and, as to this maintenance and repair work within the plant, it may be contracted out only if the Company proves it has been the consistent practice to do so and that it is more reasonable, under Subsection C, to contract out such work then to have it done by employees.

Management then stresses that the uncontradicted testimony of the past and present Field Services Managers said this kind of work had been contracted out since sometime in the 1950s in these

circumstances, that is, when neither department nor Field Forces maintenance employees were free from other work to do the task in the required time.
The Company cites statements in Inland Award No. 340 (1961), to the effect that during the hearing in that case the Union had conceded that Management was free to contract out repair and other types of work when Company employees were working forty hours or more, where they lacked some necessary skills, or in an emergency. The Company cites also Inland Award No. 595 (1970) for its definition of a local working condition.
The Company thus insists it has established a consistent practice of contracting out work under these circumstances, that is, when, even though it be maintenance and repair work within the plant which the employees are capable of performing, both department and Field Forces employees are so fully occupied on other work that they cannot be freed to perform the subject work within the time limit stated.
The Company is even more certain that it has shown that it was more reasonable to contract out these tasks than to have them done by employees, under the relevant factors of -3-C.
Considering the factors of reasonableness, the Company notes that no relevant employees were laid off and all were working substantial volumes of overtime. It urges, therefore, that sending the work out had no adverse impact on the bargaining unit.
On the factor of necessity to hire new employees, Management says its current plan to "rationalize" (shut down) certain operations will create a surplus of maintenance employees, as will its "inspection" method of maintenance. Those two items, coupled with the temporary nature of this work, allegedly shows that it would not be a negative factor to hire and train employees for this short-time work.
The next three factors (desirability of recalling employees from layoff, availability of qualified employees (active or on layoff), and availability of adequate, qualified supervision) are not in dispute because the parties stipulated that employees were not on layoff and were not available, nor were supervisors.
The factor of availability of required equipment is not in issue.
The Company urges that duration of the work was short and that it had to be done promptly.
The Company argues that factors 8 through 11 are not in issue, but the Union did urge factor 8, in a general way.
The Union responds that the new language made a sharp departure from old ways of thinking about and deciding contracting-out cases. Before the new, 1986 language, the Union had the burden of establishing a practice, showing that bargaining unit employees always had done the work.
With the new language, the Union insists the situation has been turned around, with the Company now required to pull the laboring oar. Under Section 3-A, the guiding principle is that work capable of being performed by bargaining unit employees shall be performed by such employees, and that the Company will not contract out any work for performance inside or outside the plant unless it demonstrates that such work meets one of the exceptions that follow. As to work within the plant, production, service, all maintenance and repair work, and all installation, replacement, and reconstruction of equipment and productive facilities (other than the major new construction listed in Subsection B-1) may be contracted out only if the consistent practice has been to have such work performed by contractors and it is more reasonable (within the factors in -C) to contract out the work. Accordingly, this work, agreed to fall within Section 3-B-1-a and -b, maintenance and repair work which the bargaining unit employees are capable of performing, may be contracted out only if the Company establishes a consistent practice of doing so and that it is more reasonable to contract it out than to use bargaining unit employees.
The Union sees the Company position here as an attempt to establish a practice of contractors doing work, any kind of work, when employees and supervisors are fully occupied on other work, and not a practice about performing this very kind of electrical maintenance and repair work. It says the Company is not dealing with a practice about this very work, "such work," but a loose and roving practice about circumstances of availability of employees and supervisors that existed at the time and as applicable to any kind of work. The Union praises that effort as creative but says it is without foundation in the Agreement. It argues that Company position deals with work contracted out in "such circumstances" and not with contracting out of "such work," which is what the language of the Agreement says.
The Union notes that there were three categories of work under the old (pre-1986 language). There was (1) in Section 3-a production, service, and day-to-day maintenance and repair work within the plant; then came (2) 3-b and maintenance and repair work within the plant other than that mentioned in 3-a above, and installation, replacement, and reconstruction of equipment and productive facilities at the plant. The Union says the new language of the 1986 agreement reduced those three categories to two and also subordinated the reasonableness tests to considerations of a consistent practice.

That is, as to work within the plant, there now are only two categories of work, first under -B-1-a, come all production, service, and maintenance and repair work, and all installation, replacement, and reconstruction not covered in -b, and it may be contracted out only if the Company establishes a practice of doing so and that it is more reasonable to do so than to use its own employees. That category covers the work in dispute here. The second category of -B-1-b then covers major new construction, major installation, major replacement, and major reconstruction, which may be contracted out subject to the rights and obligations of the parties existing as of a period beginning August 1, 1963 (advent of the first expressed contracting-out language in Experimental Negotiating Agreements.)

The Union characterizes the Company argument as saying, in effect, it now has on the rolls all the employees it intends to have and that it will contract out all other work for which adequate forces are not available. The Union stresses Company testimony admitting to a significantly higher rate of attrition of employees in the Field Services's Wire Shop than the rate of decrease in the relevant work load. It argues that, within that scheme, the number of bargaining unit employees necessarily will drop constantly with attrition, and Management will contract out more and more work which the smaller number of bargaining unit employees are not able to perform, so that, a time will come when there will be no bargaining unit employees left at work, and everything will be done by contractors.

The Union stresses Company evidence that Notification 226 will require 3000 manhours of work; 470 would need 2000 manhours, and 709 would expend 2600 manhours. It equates every 2040 contractor hours as sufficient work for one employee for a year.

Finally, the Union says the new language makes these decisions relatively easy: If there be no practice of contracting out the work, then it may not be assigned to a contractor, absent agreement with the Union. It is said the very skillful and conscientious negotiators contemplated that such agreements would have to be made under the new language.

FINDINGS

These Notifications are here in arbitration under the Expedited Procedure of Section 3-G of Article 2. The parties agreed, however, because much of the work in question already had been done or then was in progress when these Notifications were heard, that the forty-eight-hour deadline for the arbitration decision should not be applied.

As stated above at the beginning of Background, these are the first contracting-out disputes to be decided under the new, 1986 language in this bargaining relationship. They were not the first to be presented, however. Notifications 128, 334, and 442 were argued several days earlier, and there some of the major doctrinal concepts were presented, as to how the new, 1986 language should be applied. Those positions will be mentioned here where necessary in analysis and decision of these problems.

As shown above, the parties stipulated that all of the work in dispute was maintenance and repair work that bargaining unit employees were capable of performing. It falls, therefore, under Subsections A and B of Section 3 and may be contracted out only if the Company has established a consistent practice of contracting out such work and that it was more reasonable to contract it out than to use its own employees.

No useful purpose would be served by attempting to detail the history of bargaining and decision on this subject in the Steel Industry, in general, or in this bargaining relationship, in particular. Inland Award No. 340 (1961) and sources cited there refer to the early experience of these parties with contracting-out problems during the years when their agreements had no express provisions on the subject. Later on, specific provisions were negotiated dealing with when particular items of work could or could not be contracted out. Ultimately, that language established the three categories of work discussed above, with practices playing a central role in many decisions and the reasonableness factor being decisive on others, as proved by Management, in the middle-ground category of maintenance and repair and installation, replacement, and reconstruction of equipment.

The parties' bargaining over the past several decades thus has brought them from a time when their agreements said nothing expressly about contracting out and arbitrators were left to the reasonable implications arising from other phrases of their agreements, through the period up to 1986 when they had negotiated many detailed provisions for deciding contracting-out disputes which placed rather serious restrictions on Management's contracting-out authority, to the ultimate language of the 1986 Agreement, which raises several additional and substantial hurdles in the way of contracting out and reverses some of the doctrines of burden of proof in such disputes. It is fair to conclude, therefore, that any given contracting-out venture fell into potentially greater difficulty over the years and perhaps got into even deeper trouble in 1986. The difficulty is, however, that, although sufficient to establish a state of mind as to how these problems should be approached, those generalities do not decide specific cases.

The very beginning of the new provisions sets up a "Basic Prohibition" in the heading of Subsection A. That heading and the two following sentences in -A thus make it clear that the parties' negotiated method for dealing with contracting-out cases establishes a general but a very definite disposition against contracting out. That is, after a heading of "Basic Prohibition," the first sentence of -A states the "guiding principle" that work capable of being performed by bargaining unit employees shall be performed by them. But, strong as is the basis of the heading and first sentence of -A, the parties did not stop there and, therefore, specific cases cannot be decided on the basis of that general proclivity, alone. It is necessary to face up to the full sense of all the new language.

The second sentence of -A then says that the Company will not contract out any work for performance inside or outside the plant unless it demonstrates that such work meets one of the following exceptions. The first exception treats work to be done in the plant, and the second deals with work done outside the plant. As to this maintenance and repair work to be done inside the plant then, the exception of -B-1-a could warrant its being contracted out only if the Company can demonstrate that the consistent practice has been to contract out such work and that it is more reasonable, within the factors of -C, to contract it out than to use its own employees. Those are the operative decisional considerations to be used in determining the manner in which the general message against contracting out of the heading and first two sentences of -A was meant to be applied to any concrete set of facts.

Thus, the first basic issue here is whether or not the Company, as is its burden, has proved existence of a "consistent practice" of contracting out "such work" as these electrical maintenance and repair tasks.

It is clear that there is nothing "consistent" about such a practice, if attention must be focused on "such work," as if it meant this very kind of work. That is, it is clear from all evidence here, including Company evidence, that over the years this kind of routine electrical maintenance and repair work has been done, probably thousands of times, by bargaining unit employees. Thus, it could not be found that there was a "consistent practice" of contracting out this kind of work. That is the basis of the Union position on the practice argument.

The Company sees that as too narrow a view. It notes its practically uncontradicted evidence to the effect that virtually all kinds of work, including this kind, has been contracted out for years in circumstances when, because they were fully occupied on other necessary work, bargaining unit employees or supervision, or both, were unavailable to do it within the time limit set.

The Company says that satisfied its burden to show a consistent practice of contracting out, but the Union insists that speaks of the wrong kind of practice, one not pertinent to the "consistent practice" for contracting out "such work," and thus not in any way effective to carry Management's burden in this regard. The Union argues that in dealing with a practice in that allegedly mushy way does not speak to the specifics required by the Agreement. It contends, that is, that this kind of relatively simple electrical maintenance and repair work almost always has been done by bargaining unit employees and only very rarely by contractors and, therefore, that Management's saying it and other kinds of electrical maintenance and repair work always has been done by contractors in situations where the bargaining unit forces, though able, were inadequate in numbers to perform it within the time it had to be done, does not establish the kind of "consistent practice" required by this Agreement. The Union insists that is not a practice warranting contracting out of "such work," that is, routine electrical maintenance and repair work. On the contrary, the Union maintains that is a practice, if it be one at all, about contracting out work under such circumstances, which is not the language of the Agreement.

The Union argues, moreover, that the Company's practice position is an attempt to bootleg into the practice considerations at least two of the factors (availability of employees and supervisors) that the 1986 Agreement expressly puts within the "reasonableness" determination. The Union's point here is that factors 4 and 5 of Subsection 3-C require consideration of the availability of qualified employees and of qualified supervisors. The Company must show, at least on balance, that those and all other of the eleven factors stated in -C are not negative factors as to the contracting out in dispute. If the Company can establish a practice under 3-A and -B-1-a by reliance on alleged unavailability of employees and supervisors, the Union charges it will have subordinated the practice standard of -B-1-a, allegedly meant to be paramount here, to the "reasonableness" factors of -C, in defiance of what the parties just had negotiated.

The Union stresses a higher attrition rate of Field Services's Wire Shop employees than the rate of decreased electrical maintenance work load. It urges, therefore, if successful here, Management simply will continue to insist that its current employment level is all it wants or needs and then will contract out all that that force cannot be available to do, while performing its other work, as well. As employee attrition continues, more and more work that fewer and fewer employees cannot be available to do allegedly will be

contracted out until no bargaining unit employees will be left, the Union will be destroyed, and all work, in and out of the plant, will be done by contractors.

It is not necessary to decide here whether or not that is a realistic prediction or only a hobgoblin, slippery-slope argument. It may be left for analysis in later problems. There are sufficiently solid basis for decision here without embracing that argument.

Decision is not simple or crystal clear, however. There is much to be said for both sides. It is true that necessity to glean several thousand more employee manhours and perhaps some supervisory time, as well, cannot be easy. But the Union is right. Those considerations cannot have been meant to be relevant in a -B-1-a case until the practice hurdle has been leaped and analysis has come up against the practical considerations of -C.

Examination here is still dealing with the practice positions, and any realistic assessment of this evidence and all the arguments can conclude only that the Company has not demonstrated a consistent practice of contracting out "such work" as this routine electrical maintenance and repair work, which almost always has been done by bargaining unit employees. The Company admits as much when speaking of the state of the evidence. It agrees, that is, as its own evidence shows, that bargaining unit employees have done "such work" the very great majority of the times and that contractors have done it only when employees, supervisors, or both were unavailable in sufficient numbers. But to allow that to prove a "consistent practice" as to "such work" would rely on the practical administrative difficulties experienced by Management under the older language in handling heavier loads of maintenance and repair work and would rely also upon factors mentioned in C, and would not be precisely apt in consideration of whether or not the Company has shown existence of a "consistent practice" of contracting out "such work." And requiring these practice arguments to be rather precisely apt seems warranted by the state of mind required to be taken by the Arbitrator under the 1986 language. That is, some clearly different and obviously more restrictive approaches must have been intended by the parties, at least as to -B-1-a work. That is clear enough from Subsection A, and is only confirmed by -B-1-a.

Accordingly, the argument that perhaps serious problems will arise because of necessity to keep more work for the bargaining unit under the 1986 Agreement cannot justify reading the relevant provisions of that Agreement as if the same old results were to occur under the new language as under the old. This is not to say that no -B-1-a work may be contracted out hereafter. Of course it may, but only after first satisfying the new and very much more stringent standards of -A and the practice requirement of -B-1-a. Evidence (Company evidence) establishes that bargaining unit employees have done this ordinary electrical maintenance and repair work so often, probably thousands of times, that it was rare that contractors did it. That is not a "consistent practice" of contracting out "such work."

It may be that one of the negotiating parties privately viewed the "such work" language of -A and -B-1-a as including not only the quality of the work but also its quantity. In that event, "such work" would cover the quality of this ordinary electrical maintenance and repair work and its quantity, when done in this volume and at one time. It is unlikely that both parties entertained any such impression, however, for, if they both had done so, they would have wasted much of their efforts in writing much of this new language since, aside from merely reversing the burden of proof on practice, the old results would have been very likely to continue under the new language, and that is not a sensible assumption in view of the major effort made on this subject.

It is unnecessary also to descend into grammar or semantics to attempt to discern whether the word "such" in -A and in -B-1-a was meant as an adjective, pronoun, or adverb. The fact is that it appears in the sentence of -B-1-a after the words "...all maintenance and repair work..." (ignoring the other descriptive words), and they say nothing about quantity of work but state only quality of work. Thus, the word "such" after those earlier words must be taken to refer to that kind of work and not to any varying quantity of work.

Accordingly, since the requisite practice has not been demonstrated by the Company, and since it must establish both a practice and also satisfy the more-reasonable requirement in order to prevail, it will not be necessary to analyze the standards of -C.

Consequently, this work was, or some it may be, contracted out in violation of the Agreement, and the grievance challenging these four Notifications will be sustained. It must be left to the parties, in light of locally available facts, to search out and identify what employees, if they can be reasonably identified, shall be made whole for earnings and other benefits lost by reason of this improper contracting out.

AWARD

The grievance is sustained as stated in the last paragraph of the accompanying Opinion.