

BEFORE THE ARBITRATOR

In the Matter of the Arbitration
of a Dispute Between

R. SABEE COMPANY

and

UNITED PAPERWORKERS INTERNATIONAL
UNION, AFL-CIO and its affiliate FOX VALLEY
PAPERWORKERS LOCAL 932

Case 1
No. 51230
A-5260

Appearances:

Mr. Gregory Gill, Gill & Gill, S.C., 128 North Durkee Street, Appleton, Wisconsin 54911, on behalf of the Company.

Mr. Robert L. Wolfgram, International Representative, Region 10, United Paperworkers International Union, AFL-CIO, 823 Terrace Avenue, Menasha, Wisconsin 54952, on behalf of Local 932.

ARBITRATION AWARD

According to the terms of the 1992-94 collective bargaining agreement between R. Sabee Company (hereafter Company) and United Paperworkers International Union, AFL-CIO and its affiliate Fox Valley Paperworkers Local 932 (hereafter Union), the parties requested that the Wisconsin Employment Relations Commission designate a member of its staff to act as impartial arbitrator of a dispute between them regarding the assignment of certain work described on a 1992 job posting for the bargaining unit position of Quality Assurance Inspector (QAI). The Commission designated Sharon A. Gallagher arbitrator. A hearing was scheduled and held on January 17, 1995 at Appleton, Wisconsin. A transcript of the proceedings was taken and received by January 27, 1995. At the hearing, the parties agreed to allow the undersigned to act as sole arbitrator of this dispute, thus waiving the Article 27, Step 4 requirement that grievance arbitration proceedings be held before a board of arbitration. The parties filed their post hearing briefs by March 22, 1995, which were exchanged by the undersigned. The parties waived their right to file reply briefs.

Issues:

The parties were unable to stipulate to the issue or issues to be decided in this case. The undersigned agreed to take the following issues, suggested by each party, into consideration in

framing the issues in this case.

The Union suggested the following issues:

Did the Company have the unilateral right to transfer bargaining unit work to non-union personnel?

If not, what is the remedy?

The Employer suggested the following issues:

Did the Company have the right to co-assign the device history records and the stenciling work to non-union personnel?

If not, what is the appropriate remedy?

Having taken into consideration the relevant evidence and argument in this case as well as the fact that Article 27 expressly prohibits the Arbitrator or Arbitration Board from adding to, subtracting from, modifying or extending any of the terms of the labor agreement in reaching an award, I conclude that the following issues shall be determined in this case:

1. Did the Company violate the labor agreement by temporarily assigning either DHR duties or stenciling duties to non-bargaining unit workers?
2. If so, what is the appropriate remedy?

Relevant Contract Provisions:

ARTICLE 2 - MANAGEMENT

Subject to the provisions of this Labor Agreement, the direction of the working forces, the right to plan, direct and control operations, the right to introduce new or improved production methods or facilities, the amount of supervision necessary, schedules of production, establishment of standards of quality, increase or decrease in employment, making and enforcing reasonable rules to insure orderly and efficient plant operations and the right to hire, transfer, promote, demote or discharge or suspend for cause are rights vested exclusively in the Company. Any of the rights the Company had prior to the signing of this Labor Agreement are retained by the Company, except those specifically modified by this Labor Agreement or any other supplementary agreements that may hereafter be made.

. . .

ARTICLE 27 - ADJUSTMENT OF COMPLAINTS/ARBITRATION

. . .

Powers of the Arbitration Board: It is understood that the functions of the Arbitration Board shall be to interpret and apply this Labor Agreement, however, this Board shall have no power to add to or subtract from or to modify or extend any of the terms of this Labor Agreement or any other agreement made supplementary hereto except by mutual consent of the Company and the Union.

Facts:

In 1992, the Company posted the following job posting for an Inspector's position with a listed rate of pay of \$11.40 per hour. In relevant part, that posting read as follows:

. . .

A new bargaining unit position entitled Inspector has been created by the Company.

The general duties of the Inspector will include, but are not limited to, the following:

- Assure all products are manufactured within F.D.A. GMP guidelines
- Assure all products are manufactured according to relevant specifications
- Inspect and properly label incoming raw material
- Prepare device history records
- Assure machine cleaning log is properly filled out
- Assure plant cleaning log is properly filled out
- Assure bathroom cleaning log is properly filled out
- Assure all production records are properly filled out
- Assure all machine maintenance logs are properly filled out
- Prepare all needed stencils
- Assure boxes are properly labeled
- Make sure production orders are available for days

- production
- Spot check product inspection done by packers
- Perform record keeping and information recording as needed

The Inspector will not necessarily be performing the above functions on an eight (8) hour basis. Consequently, the Inspector will be required to do other bargaining unit work as necessary.

It is also anticipated that the Inspector's work will take the employee from plant-to-plant. The Inspector may be required to work four (4) hours or less in the morning and the balance of the normal work day may be completed at some point later in the day.

Anyone wishing to take this job must understand that he/she may be required to work split shifts. Additionally, the requirements for the job include a strong history of attention to detail and good work performance, together with good communication skills.

. . .

The Company selected employe Kathy Kappell to fill the Inspector's position in 1992, and she remains the sole bargaining unit incumbent of that position. In 1992, the Company also utilized bargaining unit members Shirley Christopherson and Sandy Teats to work on Inspector tasks. Both Christopherson and Teats eventually quit working for the Company and the Company did not replace them as Inspector employes. Kappell's supervisor, Nancy Pingel also performs Inspector work but is not a member of the Union's bargaining unit. When the Company hired Chris Bingham, a temporary employe from Flex-Staff, to perform some of the work listed on the 1992 Inspector job posting, the Union filed the instant grievance. Union witnesses testified that the following job duties were performed by non bargaining unit individuals which had formerly been performed by bargaining unit Inspector employes:

- Assure all products are manufactured according to relevant specifications
- Prepare all needed stencils
- Assure boxes are properly labeled
- Spot check inspection done by packers
- Perform recordkeeping and information recording as needed
- Prepare device history records

From 1984 to 1991, the Company had an informal quality control system. During those years, bargaining unit members Kathy Kappell, Jean Weins, Carol Demil, and Nancy Pingel all performed quality control duties for several hours per day, at the request of Manager Mike Sabee, either before and/or after their regular eight-hour shifts. During this time period, these employees produced Device History Records (DHR), prepared stencils, and performed those tasks enumerated above that are also listed on the 1992 Inspector job posting.

In 1991, however, the Company decided to launch a new Quality Assurance Program which included writing up all procedures, policies and rules for the Program and culminated in the creation of a Quality Assurance Department run by a Quality Assurance Manager who was to supervise Quality Assurance Inspectors. Nancy Pingel, formerly a Union member, was promoted to Quality Assurance Manager in May, 1991. It was Pingel who set up the formal Quality Assurance (QA) Program in 1991 and wrote the Policy, Procedure and Rule Manuals relating to it. The Company's QA policies and procedures were put into effect to meet customer expectations and to meet vendors', suppliers' and government requirements for the products produced by the Company.

Nancy Pingel, the Company's Quality Assurance Manager, who had worked for the Company for 22 years prior to the instant hearing, stated that before she became QA Manager, Ms. Pingel was a member of the Union's bargaining unit and worked in both production and quality control. Ms. Pingel described the following history of the Company's quality control program as well as its newly established QA program, without contradiction, as follows. Prior to 1991, the Company had utilized non-bargaining unit clerical employees as well as management employees to perform quality control work. As the demand for quality control work increased, Company manager Mike Sabee began assigning quality control work to bargaining unit employees. For example, Ms. Pingel stated, management employe Sherry Donovan was the first Company employe to use the hand crank stenciling machine to make stencils for the Company. Thereafter, a bargaining unit employe, Herb Zeinhart took over the stenciling work for the most part because he felt he could do a better job at stenciling than Ms. Donovan had been doing. Stenciling was then assigned to Mr. Zeinhart but non-bargaining unit clerical and management employees also continued to do it.

In regard to the Device History Records (DHR) work, Ms. Pingel stated that these records are a compilation of each customer's order which lists the raw materials used, the inspections made of materials, any certificates of compliance from vendors, and copies of production orders. Each DHR is now updated on an hourly basis. Ms. Pingel stated that originally these records were prepared by non-bargaining unit people in the office area. When the Company established its new QA program in 1991, it decided to add DHR duties to the QA Inspector position so that that position could be employed full-time. If the Company had not assigned DHR duties to the QA Inspector position initially that position would not have had enough work for the three QA Inspectors then employed (1992) to perform the duties of QA Inspector on a full-time basis.

When the Company first began its new QA program in 1991-92, it was running three shifts. The Company had decided at that time that it needed a QA Inspector to inspect work done on each shift. However, Ms. Pingel stated that in February, 1991 when Sandy Teats began performing QA work she was not working full-time. Rather, Ms. Pingel stated, Company records showed that Ms. Teats had normally worked approximately a four hour day, due in part to some medical problems she was experiencing during this time period. In 1994, however, the Company went back to running two full shifts, employing only three employees on third shift. The work of these three third shift employees was insufficient to justify a QA Inspector on that shift. Therefore, the Company thereafter employed just two full-time QA Inspectors as well as the QA Manager. 1/

When Teats and Christopherson quit their employment voluntarily with the Company the Company decided not to hire anyone to replace them. The reason for this, according to Pingel, was that in 1991 many more hours were required to do QA work due to lack of refinement in the system and the need for double checking, whereas in 1994 the system was working much more efficiently and there was less need for redundant work. For example Pingel stated that her review of Company records indicated that 180 hours per week less were needed now to do QA work than had been needed in 1991. Also, Ms. Pingel stated that since at least 1994, all of the stenciling has been done through the use of a computer in the office area. The hand crank stenciling machine is no longer being used by the Company.

In regard to the work which had been performed by Flex-Staff employe Chris Bingham, Ms. Pingel stated that Bingham began working in the Company's office area in January, 1994. Ms. Bingham was computer literate when she was hired. Bingham created the stencils on the computer and checked her work prior to having those stencils printed by the computer printer. The computerized stencils were much more elaborate than the hand cranked stencils had been in the past: the Company began putting special trademarks of their customers' on the boxes of products, the lot numbers, the addresses of their customers and purchase order numbers. According to Pingel, Bingham spent approximately ten hours per week performing stenciling duties. She spent approximately ten hours per week performing clerical paperwork functions in the office area of the Company: sorting, dating, filing and processing paperwork. In addition, Bingham worked on Device History Records (DHR) for up to ten hours per week. Bingham also spent approximately four hours per week performing inventory and supply duties. As of the date of the instant hearing, however, Bingham was no longer working at the Company.

Ms. Pingel stated that during the first year of the new QA Program (1991-92), Office Payroll employe Carol Kuehn performed all of the DHR work at her desk in the payroll area. Ms. Pingel observed that the Payroll Office is not on the production floor. However, production workers can walk directly through a door from the production floor into the Office to make inquiries regarding their rights and benefits with the Company. Ms. Pingel also noted that Chris Bingham performed her stenciling and DHR duties in the same office area where Ms. Kuehn had

1/ QA Manager Pingel has always performed the disputed QA work without objection from the Union at any time.

previously performed DHR duties.

Briefs:

Union:

The Union urged that because the Company had posted the QA Inspector position in 1992 as a "new bargaining unit position" and listed the duties to be performed, the Company thereby permanently acceded the work to the Union. The Union noted, in addition, that Jean Weins, Kathy Kappel, Jim McCloud, Carol Demil and Nancy Pingel (all then members of the bargaining unit) performed QA work for various periods from 1984 through 1992 when the QA Inspector job was posted. In any event, the Union argued, this case should not turn upon who performed the QA duties originally, but upon the contents of the 1992 job posting. Thus, the Union contends that if the undersigned rules in favor of the Company in this case, it "would completely destroy the purpose and intent of all job postings." The Union therefore sought an award sustaining the grievance.

Company:

The Company noted that it never bargained with the Union regarding the content of the 1992 job posting for the QA Inspector position and the Union never sought to bargain thereon. The Company argued that it had also produced substantial evidence to show that (1) originally, QA job duties had been performed by non-bargaining unit employees; and (2) over time, QA job duties changed dramatically. The Company noted that even after the 1991 establishment of the Company's QA Program, various QA duties were performed by both bargaining unit and non-bargaining unit employees without drawing a grievance from the Union. The Company asserted that it has the management right to assign "nonunion work to anyone, including 'temporary' employees."

The Company urged that only DHR and stenciling duties were seriously questioned by the Union and that the Union failed to prove a contract violation thereon. In these circumstances, the Company sought denial and dismissal of the grievance.

DISCUSSION:

There is no specific language in the labor agreement which allows the Company to subcontract unit work and there is no language which purports to preserve or protect bargaining unit work from erosion by management. However, Article 2 of the labor agreement gives

management the right, among other things, to "direct and control operations, the right to introduce new or improved production methods. . . . establishment (sic) of standards of quality, increase or decrease employment. . . ." In addition, Article 2 specifically states that the Company retains "any rights" it had "prior to the signing of this labor agreement", unless those rights are specifically modified by the labor contract or a successor agreement. It is in this context, that the Union has sought to protect Quality Assurance work which it perceives has been taken away from its members and given to non-bargaining unit workers.

The Union offered a 1992 job posting for the Quality Assurance Inspector position, which it asserted constituted the QA work which the Union believed the Company had given it by said job posting. Furthermore, the Union implied by its arguments, that because the Company had given this work to the Union in 1992, the Company could not thereafter take away the work. The Union argued that at least six items on the job description have been eroded by the Company decisions and the use of non-bargaining unit employees to do the work in question. However, the record failed to support the Union's contention that the Company has removed the work listed or implied in the 1992 QA Inspector job description, except in two instances.

The record showed that only stenciling work and some DHR work has been recently performed by office clerical, Chris Bingham. 2/ In regard to the stenciling work, the record showed that since approximately 1994, stenciling work has been produced by a computer in the office area, making the hand cranked stencil machine, previously used by the QA Inspectors on the production floor, obsolete. The record also demonstrated that stenciling work was never done exclusively by bargaining unit employees. Furthermore, based upon the evidence offered by the Company, the computerization of stenciling work is a "new and improved" method of producing stencils which the Company is privileged to employ under Article II. In this regard, I also note that the Union has never claimed that it is entitled to perform office clerical work at the Company and that the current QA Inspector, Kathy Kappell, is not computer literate. In all of these circumstances, the Company did not violate the labor agreement in removing stenciling duties from the QA Inspector's job duties.

In regard to the issue of Device History Records (DHR), this work had been initially added to the QA Inspector duties in order to make the position an eight hour position. In this regard, I note that although the 1992 job posting did specifically list DHR duties, but it did state that the Inspector would not necessarily perform the duties listed in the posting on an eight hour basis and that the Inspector would (therefore) be required to do other work, as necessary. After this posting was put up, Kathy Kappell, Shirley Christopherson and Sandy Teats were employed to perform the QA work, including DHR duties, until Teats and Christopherson quit.

In addition, I note that the Company's need for QA work as well as for DHR work has decreased over time, according to this record. Notably, prior to 1994, the Company had been working three full shifts, whereas at the time the grievance was filed, the Company was working two shifts with only a skeleton shift on third shift, so that QA Inspector work was not needed on all three shifts. Furthermore, the QA system and program have become more refined and efficient over time, so that no new QA Inspectors needed to be hired upon the voluntary termination of Ms. Teats and Ms. Christopherson. Finally, the Union failed to show that after Teats and

2/ It is significant that Ms. Bingham was never an employe of the Company. Rather, she was employed by a temporary service and was used by the Company in its office area to do various office clerical duties. I note that Ms. Bingham performed DHR duties only about ten hours per week and that she performed stenciling duties on the computer about ten hours per week. As of the date of the instant hearing, neither Ms. Bingham nor any other temporary service employe was working in the Company's office.

Christopherson quit, that Kappell was assigned a heavier work load.

The grievance specifically calls into question the use of Bingham to perform DHR duties during the time she worked at the Company. The evidence offered by the Company showed that Bingham performed DHR duties for approximately ten hours per week during this period of time. It is clear from this record that QA Inspector Kappell and QA Manager Pingel could have performed these duties, but the Union offered no evidence to show that Kappell lost any work

hours during Bingham's work period with the Company. In addition, the Union failed to prove that the Company assigned DHR duties to non-unit employees after Bingham left the Company. Based on this record, therefore, the undersigned must conclude that the Company assigned DHR duties to Kappell and Pingel, as it had done in the past, after Bingham left the Company.

Because Article 2 reserves to the Company all rights it had prior to the signing of the labor agreement and because the Union has pointed to no contract language which purports to limit or modify this broad reservation of rights, the Union has failed to show that the Company gave up its rights to co-assign DHR duties to both temporary non-unit workers and unit employees, as it did here. The undersigned would ask the Union to show her where in the agreement it states that work, once it is assigned to unit members cannot be temporarily performed by temporary service workers, if such assignment does not harm unit employees by denying them work hours or over-burdening them with extra duties.

In all of these circumstances, the greater weight of the record evidence supports a conclusion that the Company did not violate the labor agreement by assigning DHR work to temporary service worker, Chris Bingham, during the period of time that she worked in the Company's office. Therefore, I issue the following

AWARD

The Company did not violate the labor agreement by temporarily assigning DHR duties and stenciling duties to non-bargaining unit workers.

The grievance is therefore denied and dismissed in its entirety.

Dated at Oshkosh, Wisconsin this 23rd day of June, 1995.

By Sharon A. Gallagher /s/
Sharon A. Gallagher, Arbitrator