

IN THE MATTER OF THE ARBITRATION
BETWEEN

UNITED ASSOCIATION LOCAL)	
UNION 598)	OPINION AND ORDER
and)	
)	Re: Jurisdictional Dispute
UNITED STEEL WORKERS)	
LOCAL UNION 12-369)	Case No. 11-06

BEFORE

TERRANCE B. McGANN

ARBITRATOR

July 1, 2013

REPRESENTATION

UA LOCAL UNION 598

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Nature of the Proceedings

This is an appeal of a decision made by a five (5)-member panel of the Jurisdictional Committee ("Hearing Committee") of the Hanford Atomic Metal Trades' Council ("HAMTC") over a jurisdictional dispute between the United Association Local 598 ("UA") and the United Steel Workers, Local 12-369 ("USW"). HAMTC is composed of fifteen (15) local unions affiliated with fourteen (14) international unions. Each of the parties agreed to resolve jurisdictional disputes under procedures adopted by HAMTC. Under those procedures, the decisions of the HAMTC Hearing Committee are subject to appeal to the Metal Trades Department of the AFL-CIO, which provides that a neutral arbitrator or referee shall have authority to review the decisions of the Hearing Committee. (UA Exhibits 2 & 3)

On January 31, 2011, the UA through its Business Manager, Richard Berglund, reported to HAMTC President David Molnaa that the UA and the USW were unable to resolve the jurisdictional dispute and requested that a Hearing Committee be convened under the HAMTC Bylaws to address and resolve the dispute. (UA Exhibit 1) After the respective international organizations were unable to resolve the matter, a hearing was scheduled for March 22, 2011. The Hearing Committee awarded the work to USW under Criteria Number 1 of the "Instructions for Jurisdictional Committee" finding that a written agreement between the parties addressed the dispute. (UA Exhibit 5) The UA filed a timely appeal of Hearing Committee's decision to the Metal Trades' Department,

which provides authority to a neutral arbitrator to review the decision of the Hearing Committee and to hear evidence and testimony from the parties. Neither party contests the arbitrability of the dispute or the neutral arbitrator's authority to hear and decide the issue in dispute. An appeal hearing was held in Richland, Washington on December 4, 2012, with each party having a full opportunity to present arguments, witnesses and evidence in support of their respective positions. The parties subsequently submitted briefs on February 8, 2013 in support of their positions.

Work in Dispute

The work in dispute is the unloading, loading, backwashing and dewatering of all resins for the ion exchange on all groundwater project pump and treats, and test skid(s) up to and including connecting and disconnecting all piping, hoses and lines without regard to the mode or method in making of the joints or connections or the dismantling thereof, as awarded in a previous jurisdictional dated April 17, 1984¹, and all steps associated with resin change out on an isolated train skid. (UA Exhibit 5)

Standard of Review

Consistent with prior arbitration decisions under the HAMTC and Metal Trades' Department procedures, the UA must establish by a preponderance of the evidence that the Hearing Committee erred in awarding the work in dispute to the USW. *Heat Frost and Asbestos Workers Local 120 v. USW 12-369, MTD Case 06-08 (2008 MTD Jurisdictional*

¹ As referenced in the USW's brief, the April 17, 1984 jurisdictional decision was not made part of the record.

Dispute case 09-03 (Lindauer, 2008); USW Local 12-369 and IBEW 984, MTD Jurisdictional

Dispute Case 11-03 (McGann 2012)

Statement of the Issue

The issue is whether the UA has demonstrated by a preponderance of the evidence that the award of the Hearing Committee was erroneous.

Relevant Provisions

HMTC has established the following criteria which must be applied by the Hearing Committee:

INSTRUCTIONS FOR JURISDICTIONAL COMMITTEE

The procedure outlined in the Hanford Atomic Metal Trades Council By-Laws – Article IV, Section 2, Subparagraph E – provides for an orderly disposition of all disputes where only delegate members of the Council participate in the decision process, thus taking the employer out of decisions that affect the Council affiliates.

When the procedure was drafted and accepted by the Council body, there were three criteria that were to be considered by committee members and only those three. There should never be any personal preferences, political considerations or compromises set forth by these jurisdictional committees. The three criteria for jurisdictional decisions are as follows in order of importance:

1. *The first item for consideration is a written HAMTC agreement on the questioned work between the parties. If such an agreement exists, you must base your decision on the agreement. (Emphasis added)*

2. In the absence of a written HAMTC agreement between the parties, you must establish if there has been a material past practice in performing the questioned work under the HAMTC agreement. And, if so, award work accordingly.

3. In event there is no written agreement or an established material past practice under the HAMTC contract, such as might be the case in new work, it would then be acceptable to use outside agreements between the respective affiliates in making your decision.

These are the only criteria that should be used in making your decision. The By-Laws provide for either party to appeal this decision through the Metal Trades jurisdictional procedure.

(UA Exhibit 5)

Statement of Facts

The Hanford Nuclear Site was established by the United States government in 1943 to produce plutonium for the Manhattan Project. During the following twenty-one years, nine plutonium production reactors were built on the site along with multiple facilities required to purify and separate the product into usable forms.

Today the Hanford site is governed by the United States Department of Energy which engages contractors to decontaminate and remediate the site. Operations consist primarily of storage of nuclear materials, preparation of radioactive and other hazardous materials for transportation to other storage and burial sites, the decontamination and decommissioning of unused facilities and monitoring the site for health and environmental safety.

The organized employees working on the site are represented by the Hanford Atomic Metal Trades Council ("HAMTC") which is composed of fifteen local unions affiliated with the AFL-CIO Metal Trades' Department. HAMTC is

the sole collective bargaining representative of the employees who work on the site. While each of the local union's maintain separate collective bargaining agreements, all have adopted and incorporated into their agreements a uniform policy and procedure for resolving jurisdictional disputes. These procedures provide for a 5-member Hearing Committee which is composed of HMTTC representatives who hear evidence and arguments for the parties and who award the work based upon written criteria adopted by HAMTC Bylaws in conjunction with the Jurisdictional Policy of the AFL-CIO Metal Trades Department. A party who is not satisfied with the decision of the Hearing Committee may appeal the decision to a neutral arbitrator.

In this case the Hearing Committee awarded the work in dispute to members of the USW and the UA appeals the decision of the Hearing Committee to the neutral arbitrator.

a. Description of The Work in Dispute

The witnesses and briefs for both parties often refer to the process of decontaminating the ground water as a "pump and treat" process. Throughout the Hanford Site wells were drilled to aquifers which contain piping systems to remove and decontaminate groundwater. The water is pumped from the aquifers to a system of four vessels or tanks which contain resin or filters. Different types of resins are used to attract and remove different types of chemicals from the groundwater. As the water

flows through the tanks, impurities and chemicals are captured by the resin in each tank and the water then flows to an injector well and located back into the ground, cleaner than when the process began. (T.p. 29-34)

During the pump and treat process the resin from the tanks must be replaced. Early in the pump and treat project, this process was very labor intensive and required workers to disconnect the tanks and physically load the resin into the tanks and unload the contaminated resin from each tank. New technology uses the Venturi suction process within the system to run the water over an injection valve which creates the suction necessary to remove the old resin into an empty tote and suction in new resin. Wells are shutdown to slow the flow of water and adjustments are made to the flow of water to accommodate the change. (T.p. 95) This process requires the connection of "jumpers" which is a piece of hose used to facilitate the transfer of resin. Large totes of new resin are then filled with water and get suspended and a rubber line connects a jumper to connect the resin tote to the hard pipe system where the injector transports the resin to the tank. A hose is connected to the tote and the Cam-Lok fitting to the pump. (T.p. 74) The jumpers and hoses are disconnected and the new skid is put back on line so that the process can continue.

It's important to note that witnesses for each party testified that during the resin changing process, the pump and treat system is not entirely shutdown. (T.p. 34 & 95) While one of the vessels is being changed, water is redirected temporarily to the

remaining three vessels and the system remains "on-line" while the resin from one of the vessels is being changed. (T.p. 34 & 95). However, the tank whose resin is being changed is temporarily shutdown. (T.p. 34)

USW's Position

Not surprisingly the USW relies upon the language of the 1973 Agreement to support the Hearing Committee's decision. The USW maintains that the unloading, loading, backwashing and dewatering of all resins on the pump and treat system is part of the process and is not an isolated event. USW argues that during the resin change out the pump and treat system remains "on-line" and continues to function and is not shutdown. Instead, operators are required to make adjustments to the water flow rates and pressure to accommodate the change. The work requires the use of flexible hoses and a Cam-Lok connection which is addressed in the parties' April 26, 1973 clarification to the 1973 Agreement. The USW defines the hose as a "utility line" and the Cam-Lok connection as a "standard fitting".

UA's Position

In its brief, the UA is again quick to point out that it is not claiming the "operational functions" of the pump and treat process and, in fact, concedes that members of the USW are responsible for "overseeing the operational processes". Like the USW, the UA relies upon its interpretation of the terms of the 1973 Agreement in support of its claim for the work in dispute. The specific terms include that "the

connecting and dismantling" of all piping systems is the sole jurisdiction of the UA. Further, the UA points out that the 1973 Agreement includes in its definition of piping systems piping made from "rubber and plastic" such as hoses used during the resin change out in the pump and treat process. The UA argues that the hoses used are for a specific purpose and cannot constitute a "utility line".

The UA argues that "material past practices" at the Hanford site support its claim to the work in dispute.² It cites various email communications which were entered into the record during the arbitration hearing as well as prior grievances between the UA and the USW over work assignments. In response to the USW's claim that the resin change out is part of the pump and treat process, the UA contends that the work constitutes "maintenance work" and as such falls under its work jurisdiction.

Analysis

The Hearing Committee awarded the work in dispute to the USW based upon a Jurisdictional Agreement entered into between the parties on March 19, 1973, which was further clarified on April 26, 1973. ("1973 Agreement" & "Clarification") Both parties rely upon their interpretations of the Agreement for their claims to the work. Accordingly, our analysis must begin with the terms of the 1973 Agreement.

² Though it is encouraging to consider some of the past practices cited by the UA in its brief and testimony given the lack of definition contained in the 1973 Agreement and Clarification, I am mindful of the criteria to be used in my analysis under the "Instructions For Jurisdictional Committee".

The 1973 Agreement contains the following terms:

ARTICLE I

1. It is understood by both parties that the members of the UA have jurisdiction
over all plumbing and pipefitting systems of all descriptions and sizes
without regard to the mode or method in the making of the joints or
connections or the dismantling thereof.

(Piping above specified means pipe made from metals, tile, glass, *rubber*,
plastics or any other kind of material or product manufactured into pipe
usable in the pipefitting industry, regardless of size or shape)
 - a. The *installing*, handling, rigging, laying-out, fabrication, bending,
welding, testing and stress-relieving of all pipe work of every
description and for every purpose, including pipe railing shall be done
by members of the United Association.
 - b. The setting and erection of bolts, inserts, stands, brackets, supports,
sleeves and hangers required in the performance of all the above work
shall be done by members of the United Association
 - c. Connect and disconnect pipelines to tank cars; thaw out all frozen pipes.
Place and remove all blanks in pipe flange shall be the Work of the
United Association. (Emphasis added)

Article II

1. The Chemical Craft shall do all the timekeeping for the Fitters Craft as we agree it is their jurisdiction.
2. The Chemical Craft shall decontaminate after the Fitters dismantle or disassemble materials to be disconnected.
3. Chemical Craft shall decontaminate all tools used by the Fitter Craft.
4. Chemical Craft shall be the *overseers of the Process and Process Control*.
5. Chemical Craft shall connect and disconnect flange to tank cars, or casks.
6. The Fitters Craft and Chemical Craft shall work in conjunction on their respective work as outlined under the terms of this Agreement
7. The Chemical Craft shall control spread of contamination and the packaging, storage and disposal of all radioactive and contaminated material. The removal of all personal contaminated clothing. (Emphasis added)

On April 26, 1973, the parties entered into a "Clarification" to the March 19, 1973 Agreement which contained the following terms:

In the discussion of this jurisdictional agreement, it was understood that the chemical operators could *connect utility lines such as water, air or steam hoses with standard fittings*, but that adapting, modification or repair on those installations will be the work of the U.A.

Examples are the air line to the pulser on columns at shutdown or a steam hose to heat water in a decontamination tank. The lines will have been run and proper connections installed by the U.A.

The hooking up of the above items in no way means removal of integral parts of a piping system even though quick disconnects are provided.

(Emphasis added)

The 1973 Agreement

It's very clear from the terms of the 1973 Agreement that the general rule is that members of the UA perform the installation, handling, rigging, lay-out, fabrication, bending, welding, and testing of all pipefitting systems. However, the "oversight of the process and process control" belongs to members of the USW. Furthermore, the April 26, 1973 Clarification to the 1973 Agreement holds that members of the USW could connect "utility lines" such as "water hoses" with "standard fittings".

The witnesses for the USW at several points in the record and in its brief were very clear to disclaim the work described as "the process" or "operation of the pump and treat system" as opposed to piping work related to "maintenance" of the pump and treat system. (T.p. 9, 54-58, 67)

The change out of the resin for the vessels involves the installation of pipes to facilitate the transfer of the resin from the vessel to the tote and the induction of new resin into the vessel. Under the general rule, this would fall under the work jurisdiction

of the UA. The fact that the pipe is made of rubber is inconsequential to the inquiry at this stage since the Agreement expressly includes piping made from rubber under its definition of piping systems. Under the terms of the April 26, 1973 clarification of the 1973 Agreement, members of the USW could connect utility lines with standard fittings but any adapting, modification or repair of these installations would be performed by members of the UA.

The critical inquiry is whether the work in dispute is "part of the process" of the pump and treat system which falls under the USW jurisdiction or whether the work constitutes "maintenance" which would fall under the UA jurisdiction. The real issue in dispute appears to be whether the resin change out work is part of the operation of the pump and treat system. Unfortunately, the terms of the 1973 Agreement fail to define the work of "overseeing the process and control of the process." Nor does the April 26, 1973 clarification define utility hoses and standard fittings.

The parties agree that during the resin change out, the pump and treat system remains on-line and continues to function with the remaining three vessels. However, UA witness James Millbauer testified credibly and at great length to the pump and treat process. During cross examination, Mr. Millbauer testified that while the pump and treat system continues to function, the vessel containing the resin which is to be discarded is isolated from the pump and treat system and ceases its normal function as part of the system. (T.p. 54-55) USW witness Daniel Connolly testified that during the

change out process, the vessel is taken "off-line" and water flows are adjusted. (T.p. 95)

I note that Daniel Connelly did clarify his testimony when recalled as a witness. (T.p.

141) As the operators of the pump and treat system, members of the USW would presumably be responsible for overseeing and controlling the process involving the three remaining vessels during the transition of the resin from the isolated vessel. This would include valve adjustments and controlling water flow and pressure. Mr.

Millbauer testified that while the vessel whose resin is being changed is isolated, a new piping system is created moving water and resin from point A to point B. (T.p. 55, 57)

USW Witness Daniel Connelly testified that during the resin change out, new clean water is rerouted through the vessel to effectuate the transfer which requires valve and configuration changes. (T.p. 96) Once the old resin is out and the new resin is in, the

hoses are removed along with the piping system and the isolated vessel goes back on-line with the remaining three vessels. Weldon Gilmore testified for the UA that

modification and the addition of piping are necessary to effectuate the transfer of resin.

(T.p. 72-73) I agree with the testimony of James Millbauer that the resin change out procedure constitutes a separate and independent piping system from the operation of the system. (T.p. 55)

Based upon the expansive detailed work jurisdiction of the UA as it relates to pipefitting systems contained in the 1973 Agreement along with the fact that the vessel whose resin is being changed is isolated from "the system", I must find that under the

terms of the 1973 Agreement the work in dispute is not part of the process and belongs to members of the UA. However, the inquiry does not end here. The April 26, 1973 Clarification provides that members of the USW can connect utility lines with standard fittings.

The April 26, 1973 Clarification

The definition of "clarify" is to make clearer or to explain an existing term. Accordingly, the April 26, 1973 clarification was not intended to change or modify the intent of the parties to the 1973 Agreement, but instead was intended to make the intentions of the parties more clear. It is important to note that none of the witnesses who testified during the hearing were parties to the 1973 Agreement or the April 26, 1973 Clarification. Consequently, the record is devoid of any foundation for the parties' intent relative to what constitutes the undefined terms.

As stated earlier, the fact that the resin change out is accomplished with a rubber hose is inconsequential since rubber piping is expressly considered part of the piping system in the 1973 Agreement. The issue is whether the hose used during the resin change out is a "utility line" and whether it is connected with a standard fitting. If the work in dispute involves the connection of the utility line with a standard fitting, the work belongs to the USW. The record contains numerous comparisons to "garden variety hoses". Witnesses for the UA rely upon the intended use of the hose ("clean,

safe and efficient removal of resin") to support its contention that the hose does not constitute a utility line while witnesses for the USW draw parallels to a simple garden hose and in its brief cite to the Webster's Dictionary definition of "utility". Witnesses for each side provided a variety of examples of their definition of utility lines, but none could provide a finite definition. (T.p. 49-51 Millbauer; T.p. 109-111 Connolly)

USW witness James Connelly provided the best example and closest definition when he stated that the hose is "not a permanent" part of the process and not in a "fixed location", which would justify the use of a removable hose as opposed the hard piping which constitutes the permanent part of the pump and treat system.

Furthermore, this comports with the dictionary definition provided by the USW in its brief- "capable of serving as a substitute in various positions". Again, the record is silent on the intentions of the parties in entering into the Clarification to the 1973 Agreement. As a result, we must rely on witness testimony and generic definitions to determine the parties' intentions in entering into the Clarification to the 1973

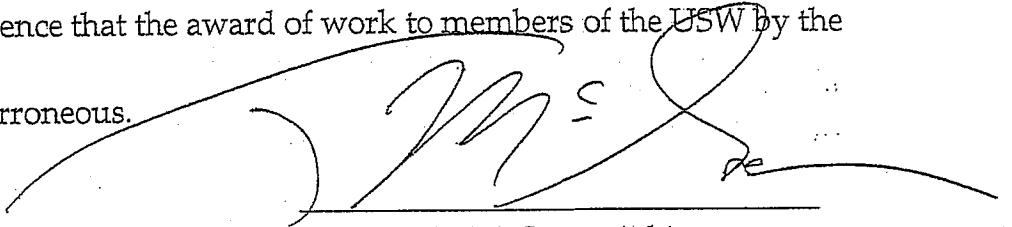
Agreement. UA witness Weldon Gilmore testified that the hose "can be used for water and/or, some them for air and different things like that, any kind of fluid' which appears to support the position of the USW that the hose does constitute a utility line.

(T.p.75) There was no evidence in the record that the hose required any adapting, modifications or repairs which, under the terms of the Clarification, would mandate assignment to members of the UA.

Finally the Cam-Lok fitting used in the connection does constitute a standard fitting in the industry for the work performed at the Hanford site. (T.p. 79) The UA conceded that under the terms of the 1973 Agreement and Clarification that members of the USW handle quick disconnect hoses when those hoses constitute utility lines. (T.p. 49) In addition, tools and specialized equipment is not needed to secure Cam-Lok connections. Accordingly, I find that the hose used in the resin change out of the pump and treat system is a utility line and the connections are made using a standard fitting.

Determination

While this was a very close decision, I find that UA failed to demonstrate by a preponderance of the evidence that the award of work to members of the USW by the Hearing Committee was erroneous.

A large, stylized handwritten signature in black ink, appearing to read 'T. McGann', is written over a horizontal line. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Terrance B. McGann, Arbitrator
July 1, 2013