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10TH FLOOR 111 MONUMENT CIRCLE
AREA CODE 317
INDIANAPOLIS
46204

March 23, 1973

Mr. Martin M. Liebman
Monsanto Company
800 North Lindberg Boulevard
St. Louis, Missouri 63166

Re: Monsanto Company
Springfield Plant
Elimination of Solvent Operator

Dear Mr. Liebman:

The following letter is in response to your inquiry of March 14, 1973, regarding the "Solvent Operator Reduction Grievance" which was filed on April 2, 1972, at the Springfield Plant. It is our opinion that this grievance lacks merit and will be denied if taken to arbitration.

I. Background

The grievance concerns the kettle cleaning function in the Polyvinyl Chloride Department. Prior to 1964, kettles were cleaned after each use with MEK solvent which was recovered within the cleaned kettle. Regular Kettle Operators performed this function.

In 1964 a separate "recovery still" was added, and the procedure was changed. The production kettles were cleaned only after eight to ten cycles. They were then taken out of production, filled with THF solvent and "stewed" for eight hours. The solvent was recovered in the separate "recovery still," which was located at a physically remote location from the kettle floor.

This new procedure required the employment of eight "Solvent Operators," a new occupation, who worked in crews of two. One operator per crew conducted the stewing process, while the other operated the "recovery still." Regular Kettle Operators had nothing to do with either function while the kettle was being cleaned.

Early in 1972 a new operation was adopted, after a detailed study. First, the kettles were cleaned after each cycle by the regular Kettle Operators. Second, use of the "recovery still" was discontinued and one of the existing production kettles was converted into a recovery kettle, and was automated so that recovery functions could be carried out on the kettle floor. These changes cost the Company about $125,000.

Effective April 2, 1972, the eight Solvent Operators were taken off the job. In effect, the Company eliminated this occupation, by reducing the number of employees in it to zero. This action has given rise to the present grievance.

II. The Grievance

The grievance complains of the Company's violation of "the contract and past practices and procedures by removing all employees from and abolishing the Job Classification and occupation of Solvent Operator, under Schedule 2." The issue, therefore, is whether the Company violated the contract (Sections 2 and 3 of Article III) by discontinuing staffing of the Solvent Operator classification due to changes in equipment and the process involved.

The Company's action also raises potential questions concerning the seniority rights of the displaced Solvent Operators (under Article IX), and the proper evaluation of the Kettle Operator occupation as changed by the incorporation of the cleaning function into that job. (Section 3, Article III) We have assumed for purposes of this letter that these issues have not presently been raised.

III. The Company's Position

A. The contract does not restrict the Company's right to change or eliminate an occupation. There has been an extremely large number of arbitration awards on the subject of elimination or combination of jobs due to automation or technological change. (The best key number reference in LA-CDI is 117.334; the CDI covering volumes 41 through 50 includes 68 such awards.)

As a general rule, the employer may eliminate a job unless the contract expressly states otherwise.[1] However, most contracts which mention or incorporate a list of job classifications are held to require the employer to continue such classification unless the underlying job content is changed or eliminated.[2] Where a change in equipment or incorporation of a new process results in the obsolescence of a particular job, it can be eliminated unless the contract very clearly protects the job.[3] We have discovered no cases which distinguish between reducing staffing to zero and eliminating a job.

Section 2 of Article III provides that all classified occupations should remain so classified during the contract term, subject to Section 3. Section 3 provides for a mechanism to evaluate rates "if a new occupation is established or if there is a change in an existing occupation." Unquestionably the Company has the right to "change" occupations; the narrower question then becomes whether the right to "change" includes the right to eliminate.

Arbitrator Robert Howlett faced this question squarely in Morton Salt Co., 44 LA 33 (1965). The contract provided that the Company could "change the work content of any. . .classification, (or). . .create new classifications." The Company eliminated one job, placing those duties in another classification. The Arbitrator held that:

> Management's right to change the work content of a classification carries with it the power, under some circumstances, to eliminate all work in another classification, and thus effectively to eliminate that classification even though it might remain in the table of job classifications until the end of the contract.

The Arbitrator held that the Company may eliminate a job if it has a "reasonable basis" to do so, arising from reduction in the work content of the eliminated job. However, he added that:

> Management is not required to wait until the work declines to 50% or less. . .before deciding that a combination of jobs will benefit operations. . .(as long as) there are some 'economical or efficient benefits' which are expected to be effected.

Similarly in Sewanee Silica Co., 47 LA 282 (Greene, Arbitrator)(1966) the contract provided the existing classification "will remain in effect," but provided also for rate adjustments in the event of a "change in operations." The Arbitrator held that the elimination of three classifications and the creation of a new classification, resulting from rearrangements of the physical layout, was not a violation of the contract. Many other Arbitrators have likewise recognized the employer's right to eliminate a job classification where a change in job content has occurred.[4]

Thus, it seems clear that the Company has a right to eliminate an occupation under the existing contract due to technological changes. This interpretation is consistent with the reference to "presently existing occupations" in Section 1, Article XII. A contrary interpretation would be inconsistent with Sections 2 and 3 of Article I which state the purpose of the parties to be attainment of "maximum productivity," through "technological progress."

<u>B. The Company did not violate the contract in this instance.</u> In the present case, a basic change in engineering and procedure has occurred:

1. Cleaning. Kettles are now cleaned for a short period after each cycle, which is a traditional duty associated with PVC Kettle Operators. Kettle Operators in other departments also are primarily responsible for cleaning of their assigned Kettles. The Solvent Operator was only involved in eight hour cleaning after eight to ten cycles while the kettle was "off-line," which required monitoring, valving, flushing, manual cleaning, and other duties, presumably not part of the current cleaning process.

2. Recovery. An isolated special "recovery still" has been replaced with a more automated vessel which presumably eliminates many of the duties of the Solvent Operator such as adding inhibitor and suspending agent, manual cleaning, controlling temperature and pressure, switching, etc. Valving and inventoring of the THF storage tanks is apparently no longer necessary.

In preparation of this case for arbitration a more comprehensive list of specific duties, formerly performed by Solvent Operators, which are now either eliminated or simplified can be prepared. However, this brief analysis indicates that a significant change in job content of the Solvent Operator occupation has occurred, which gives the Company "reasonable basis" on which to eliminate the Solvent Operator occupation, and to combine the residual duties with the duties of Kettle Operator.

<u>C. The Company has acted in accordance with Past Practice.</u> There appear to be at least three examples of the elimination of an occupation which have occurred in the past apparently without a grievance having been filed:

1. Blender Lead Operator, June 7, 1971.

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2. Extender Lead Operator, June 7, 1971.

3. Assistant Packaging Operator, June 4, 1971.

In addition, a prior arbitration award is mentioned in the grievance summary (by Professor Koretz in 1964; p.4) which held that the Company may elect not to fill a vacancy, in effect eliminating a job. Depending on the negotiating history subsequent to 1964, this award could be very helpful.

We have not received enough information on the past practice or prior award to discuss more fully the use of each factor in the upcoming arbitration, except to note that each constitutes a valuable potential supplement to the case-in-chief.

We hope this letter will be helpful in your preparation of this case. We have enjoyed delving into this problem, which must be a fundamental and recurrent problem for you plant-wide. Mr. Starr is certainly to be complemented for his excellent and succinct summary of this grievance.

Yours truly,

Richard E. Parker

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Enclosure

NOTES:

1. "(T)he Company may properly exercise judgment and discretion in discontinuing work customarily performed by particular job classifications or departments. . . . Management may decide to eliminate established work activities, or change its operating procedures and production methods." Marble Cliff Quarries Co., 47 LA 396, 403 (Dworkin, Arbitrator)(1966). See also, U.S. Steel Corp., 41 LA 300 (Duff, Arbitrator)(1963); 41 LA 884 (Altrock, Arbitrator)(1963); 47 LA 1092 (Florey, Arbitrator)(1966); National Dairy Products Corp., 41 LA 506 (Altieri, Arbitrator)(1963); Phoenix Closures Inc., 49 LA 874 (Sembower, Arbitrator)(1967).

See generally, Elkouri and Elkouri, How Arbitration Works, 314-16, footnotes 116-18 (Rev. Ed. 1960). (Arbitrator Sembower in Phoenix Closures Inc., supra, refers to Teple, Contract Provisions Affecting Job Elimination, 17 West. Res. L. Rev. 1253 (1966) which we have not yet had an opportunity to read, but feel might be helpful.) For a detailed review of arbitral authority see Arbitrator Doyle's award in Omaha Cold Storage Terminal, 48 LA 24 (1967).

2. Flintkote Co., 41 LA 120 (Schedler, Arbitrator)(1963); Lone Star Cement Corp., 41 LA 1161 (Dworkin, Arbitrator)(1963); Triangle Conduit, 43 LA 1057 (Nichols, Arbitrator)(1964).

3. Great Atlantic and Pacific Tea Co., 43 LA 353 (Volz, Arbitrator)(1964); International Paper Co., 43 LA 1118 (Marshall, Arbitrator)(1964); Bethlehem Steel Co., 45 LA 778 (Barrett, Arbitrator)(1965).

4. In addition to the cases cited at footnote 3, supra, see: Rheem Mfg. Co., 46 LA 1027, 1030 (Block, Arbitrator)(1966)("For this Arbitrator to find the existence of a manning requirement that fails to take into account actual production needs, the language relied upon would have to spell out this intention in unmistakeable terms.") (Emphasis supplied) See also, General American Transportation Corp., 44 LA 359 (Abrahams, Arbitrator) (1965).