AMERICAN ARBITRATION ASSOCIATION
294 WASHINGTON STREET
BOSTON, MASSACHUSETTS 02108

August 8, 1973

El ctrical, Radio and Machine
Workers, Local 28
c/o Stephen R. Domesick, Esquire
Grady & Kaplan
Suite 810
7 Water Street
Boston, Massachusetts 02109

Monsanto Company
c/o Martin M. Liebman, Esquire
Monsanto Law Department
800 North Lindberg Blvd.
St. Louis, Mo. 63166.

RE: Electrical, Radio and Machin
Workers, Local 28
-and-
Monsanto Company
1130-0724-72

Griev: Removal of Employe from
and for abolishing job clas-
sificiation and for occupation
of solvent operator.

G ntlemen:

This will acknowledge receipt of the Briefs from the parti s in the above-entitled matter. We enclose herewith to each party th Brief of the other. The original Briefs are being forwarded to the Impartial Arbitrator for his consideration.

The proceedings were declared closed as of this date, and the Award of the Arbitrator will be due in thirty days, namely on or before September 7, 1973.

Very truly yours,

George Owen
George Owen
Labor Tribunal Administrator

GO/cb

cc: Mr. Bufford Harris
Mr. Michael Starr
Mr. William Fallon, Esquire

Encl:

AUG 1 1973

AMERICAN ARBITRATION ASSOCIATION 294 WASHINGTON ST., BOSTON, MASS. 02108

(617) 542-1071

JOHN W. CHURCH
Regional Director

July 30, 1973

RE: International Union of Electrical, Radio and Machine Workers, Local 28
and
Monsanton Company
1130-0724-72

Griev: Removal of employee from and or abolishing job classificatic and/or occupation of Solvent Operator

Electrical Radio and Machine
Workers, Local 28
c/o Stephen R. Domesick, Esquire
Suite 810
7 Water Street
Boston, Mass. 02109

Monsanto Company
c/o Martin M. Liebman, Esquire
Monsanto Law Dept.
800 N. Lindberg Blvd.
St. Louis, Mo. 63166

Gentlemen:

This will confirm the Arbitrator's decision as per a conversation with this office on Friday, July 27, 1973, to extend the Union's Brief due date to Thursday, August 9, 1973.

The Union's Brief will be due to be postmarked no later than that date; the Company's Brief will remain in our files until that time.

Yours very truly,

Helen O. Chase

Helen O. Chase (Miss)
Labor Tribunal Administrator

HOC/rpm
c.c. William Fallon

Lois

J. Belschwender JUL 26 73

bcc: ~~Mike Stair~~ John Belschwende

July 18, 1973

Miss Helen O. Chase
Labor Tribunal Administrator
American Arbitration Association
294 Washington Street
Boston, Massachusetts 02108

Dear Miss Chase:

In the Matter of Arbitration Between Monsanto Company, Springfield Plant, and International Union of Electrical Radio and Machine Workers, Local 28

We are enclosing original, along with a copy, of the Company's Post Hearing Brief in the above matter. The original is for the Arbitrator and the copy is for exchange with the Union.

Very truly yours,

Martin M. Liebman
Labor Attorney

MML/ss
Enclosures

RSV0025710

In the Matter of

Arbitration Between

SPRINGFIELD PLANT
MONSANTO COMPANY

and

MONSANTO INDUSTRIAL UNION, LOCAL 288, INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS

Solvent Operator
Reduction Grievance

POST HEARING BRIEF

OF SPRINGFIELD PLANT, MONSANTO COMPANY

BEFORE

WILLIAM J. FALLON

ARBITRATOR

Martin M. Liebman
Labor Attorney
Monsanto Company
800 North Lindbergh Boulevard
St. Louis, Missouri 63166

In the Matter of)
)
Arbitration Between)
)
SPRINGFIELD PLANT)
MONSANTO COMPANY)
)
and) Solvent Operator Reduction Grievance
)
MONSANTO INDUSTRIAL)
UNION, LOCAL 288, INTER-)
NATIONAL UNION OF ELEC-)
TRICAL, RADIO & MACHINE)
WORKERS)

POST HEARING BRIEF

OF SPRINGFIELD PLANT, MONSANTO COMPANY

BEFORE

WILLIAM J. FALLON

ARBITRATOR

Nature of the Proceeding

This case concerns whether the Company violated the contract by removing the eight employees assigned to the Solvent Operator occupation. Through alteration of the equipment and process in this area, including substantial automation, the Company on April 2, 1972, eliminated need for this occupation. This case is concerned solely with the Company's right to totally reduce or discontinue staffing of a particular occupation.

The affected employees have been reassigned in accordance with the contract. The duties of Solvent Operator which remained after the April, 1972 changes have been assigned to other occupations, and these occupations are currently being re-evaluated by a joint Company-Union Evaluating Committee.

Facts

Description of the Monsanto Company, Springfield Plant -- Polyvinyl Chloride Department

The Monsanto Company is engaged in the production of polyvinyl chloride (PVC) or vinyl plastic in the PVC department of its plant in Springfield, Massachusetts. This department consists of two separate buildings, numbered 88 and 92. Staffing in the production area of each building presently consists of the following jobs, designated as "occupations" in the contract: one Control Kettle Operator, two Kettle Operators, and an Assistant Kettle Operator per crew. There are four crews, one per shift. In addition, one Operator Helper per crew is assigned to work between buildings. (Tr. 147-148)

The contract also provides for "classification" of occupations, whereby a new occupation is classified as to the appropriate wage level. Company Exhibit 1 is the accepted Wage Analysis Plan, by which occupations are classified. Company Exhibit 2 is a list of all the occupations in the plant, the end result of the contractual classification procedure. Both exhibits are referred to in Article III, Section 1. (Tr. 69-77)

The Company presently uses 14 reactors or "kettles" for production of PVC. Production is commenced by pumping water and the various raw materials into the kettle. After a five to nine hour reaction, this batch is removed from the kettle, centrifuged, dried, screened and then stored for packing, as described in the flow chart introduced as Company Exhibit 6. (Tr. 188-189)

During the PVC reaction, scale forms on the walls of the kettles, which if allowed to accumulate can flake off into succeeding batches. This flaking results in a defect, a hard particle in the plastic referred to as a "fish-eye." Thus, cleaning of the kettles is an essential part of the production process. (Tr. 190)

Prior to 1964, the kettles were cleaned by a solvent wash system. The Control Kettle Operators and Kettle Operators performed this function. (Tr. 211-212) Since that time, two major changes have occurred in the cleaning process.

Kettle Cleaning and Solvent Recovery
<u>Process from 1964 to April, 1972</u>

<u>A. Cleaning</u>. The cleaning process adopted in 1964 involved two separate phases. First, after each batch, the kettle was flushed with water by the regular Kettle Operator. This process consisted of "buttoning down" the kettle with four "dogs," or latches turned by a wrench; connecting a flexible hose to the kettle; opening a valve in the water line; starting the kettle flush pump. After ten minutes of agitation the water was dumped by the Assistant Kettle Operator. The entire water flush process took about forty minutes. (Tr. 191, 216-218)

The second phase consisted of a solvent cleaning, performed on an average after each seven or eight batches.[1/] A new occupation, Solvent Operator, was created in 1964 to perform the solvent

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1/ Former Solvent Operator Richard Brodowski testified that the average was after each six batches, however, he admitted that in Building 92, the average was between eight and ten batches. (Tr. 241-242) cleaning job and other related tasks, discussed below. Two Solvent Operators were assigned to each shift working between buildings, one associated with cleaning, the other with recovery or purification of the solvent. (Tr. 194, 211)

The solvent cleaning consisted of "buttoning down" the kettle with sixteen "dogs;" placing the kettle under a vacuum by appropriate valving; "charging" the kettle with solvent; monitoring the "stewing" process (during which the solvent was recycled through a heat exchanger back into the kettle); cooling the kettle; flushing with clean solvent; and finally flushing with clean water. This process took about six and one-half hours, or about one hour per batch, although former Solvent Operator Brodowski testified that it could be done in as quickly as five and one-half hours. (Company Exhibit 7; Tr. 192-193, 241-243)

B. Recovery. Prior to the 1972 changes, solvent was recovered in a special recovery vessel in a separate part of the plant. This process was run continually, and occupied one of the Solvent Operators for his entire shift, six and one-half to seven working hours. By 1972, the recovery vessel had become seriously corroded and was nearly unfit for service. Thus, the Company faced a need to replace the vessel at that time. (Tr. 193-194, 196)

C. Problems in the Old Cleaning Process. Polymer build-up inside each kettle is a function both of the cleaning process used and the interior surface of the kettle. As the kettles grew older, the problem worsened, and the water flushing proved inadequate. Late in 1971, the Company began receiving serious complaints from its customers, and actually lost some business, due to the higher "fish-eye" content. (Tr. 195-196)

Description of the Change in the Kettle Cleaning and Solvent Recovery Process Put Into Effect in April, 1972

Beginning in April, 1972, the Company responded to the quality problems by substantially changing both the equipment and procedure involved in the solvent cleaning and recovery operation. These changes involved automation of each step.

A. Cleaning. The periodic solvent cleaning, previously performed after each seven batches by the Solvent Operator was eliminated. The water flush after each batch was replaced by a solvent flush, performed by the Kettle Operator. This change required installation of a new vacuum system, new pipes, switches, valves and pumps, many of which were equipped to operate automatically. (Tr. 200-201, 158-160)

The solvent flush consists of buttoning down the kettle with sixteen "dogs;" placing the kettle under a vacuum; "charging" the kettle by opening a diverter valve and then activating the pump; closing the valve after charge pump automatically shuts off; and finally, after the solvent has automatically agitated for twenty minutes, activating a pump to transfer the solvent back to storage. When the solvent is emptied, the Kettle Operator closes the dump valve and then places the kettle under a second vacuum. This concludes the standard cleaning process. (Company Exhibit 8; Tr. 200-201, 214-216)

The solvent flush takes one and one-half to one and three-fourths hours. Union witness Carl Kelley, a Control Kettle Operator, testified that the solvent flush could take as long as six hours, when problems develop, but admitted that it "usually" took about two hours. (Tr. 201, 163) On the average, the Company now solvent cleans after every other batch, so the solvent cleaning takes forty-five to fifty minutes per batch, compared to forty minutes which was required for the water flush.[2/]

During the early phases of the new process, several adjustments were made as experience accumulated, including heating the solvent, and increasing the agitation period. During this period, the Company assigned Operator Helpers to hand-clean the kettle with hammer and chisel, to remove the previously accumulated scale. Finally, in February of 1973, the Company resorted to dynamiting certain kettles, an accepted technique, to reduce this accumulation. (Tr. 205-207)

B. Comparison of the Solvent Flush and the Water Flush. The solvent cleaning involves placing additional "dogs" on the kettle, and the pulling of a vacuum, and certain other valving to select the proper solvent source, which was not involved in the water flush. However, the solvent flush does not require connecting a hose to the kettle, nor is the Assistant Kettle Operator required to go downstairs to open the sewer valve for dumping in the solvent flush, due to the new piping and other new equipment. (Tr. 214-218)

2/ It is true that when Product 660 is produced in Building 88, solvent flush is performed after each batch. However, it is undisputed that solvent flush is performed for many other products after every other batch, or every third batch. (Tr. 230, 245)

On the whole, by replacing the water flush with solvent flush, the Kettle Operator has picked up a minimum of new duties, involving the turning of a few valves, and spends a few extra minutes per batch in the cleaning function. On the other hand, the cleaning duties of the Solvent Operator have been totally eliminated. (Tr. 203-204)

There has also been substantial savings of time overall. The cleaning process previously took forty minutes per batch for the water flush, plus one hour per batch for solvent cleaning, for a total of one hundred minutes per batch, times nine batches per shift, or fifteen hours per shift. Now cleaning takes about fifty minutes per batch, or seven and one-half hours per shift, a time savings of one-half. (Tr. 201-203).

The changes have dramatically improved the quality of the product. In the first six months after the change, the percent of product meeting the Company's highest quality rating was 98%, compared to 55% before the change. Customer complaints dropped to zero. (Tr. 204)

C. Recovery. To replace the obsolete recovery vessel, the Company converted one production kettle into a solvent recovery kettle, and automated the recovery process. The new process has an automated termination of the charging operation (solvent input), which had previously required the attention of the solvent operator. Heat controls are also now automated, as well as the outlet switch, which controls whether the solvent is placed in strong or diluted solvent storage tanks. Each of these operations had previously been manual. Finally the shut-off operation, which must be at a precise temperature, was automated by use of a temperature switch. (Tr. 196-199)

The recovery process now requires about one to one and one-half hours per shift, compared to six and one-half hours per shift with the older manual vessel. The recovery operation is now run by a Kettle Operator due to the substantially decreased time requirement, and the fact that a production kettle is being used for the process.

D. Reduction of the Solvent Operator Occupation. Because both of the functions of the Solvent Operator were substantially eliminated by the automation, and related process changes, the Company decided to reduce the eight Solvent Operators working in the PVC Department. This decision was announced by a bulletin posted on March 27, 1972, effective April 2, 1972. (Union Exhibit 1). These employees were reassigned to other areas of the plant in accordance with their rights under Article IX, Section 1, of the contract. No grievance as to the procedure involved in reassignment has been filed. (Joint Exhibit 1)

At that time, the Kettle Operators began performing duties related to the new cleaning and recovery procedure, described above. It is undisputed that re-evaluation of the Kettle Operator wage rate is presently being considered by the Evaluating Committee. No complaint had been raised concerning the Kettle Operator rate at the time of the present hearing. (Tr. 167-168)

The Union has introduced Union Exhibits 2, 3, 4, 5, 6 and 7, which are descriptions of the occupations of Control Kettle Operator (Building 88 and 92), Kettle Operator (Building 92 and 88), Assistant Kettle Operator and Solvent Operator, respectively, as they existed prior to the April, 1972, changes. Union Exhibits 2A, 3A, 4A, 5A and 6A are revisions in Union Exhibits 2, 3, 4, 5 and 6, respectively, brought about by the April, 1972, changes. These documents were furnished to the Union by the Company. (Tr. 128-129, 132-133)

Meetings Held with the Union in Connection with the Change in April, 1972

After announcing its decision on March 27, 1972, the Company held a number of meetings at the request of the Union, at which the change was a topic of discussion. The Company agreed to these meetings in order to explain the announced change. The Company also considered suggestions of the Union regarding the change. (Tr. 26-31, 51-52)

The grievance which has given rise to the present arbitration was filed on April 2, 1973, during the course of the aforedescribed meetings. At the Union's suggestion, the meetings were agreed as in satisfaction of the third step of the grievance procedure.[3/] (Tr. 52-54, 143-144) A third step answer denying the present grievance was given orally to the Union on April 4, 1972. (Joint Exhibit 3)

The Union presented evidence of an attempted settlement which was discussed during these meetings. (Tr. 35-36) The Company objected to such evidence, since it arose after the date of the grievance and involved matters of compromise and settlement which the

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3/ The contract states that the parties agree to meet:

> as expeditiously as possible when occasion demands to settle urgent and especially important grievances. (Joint Exhibit 1, p. 35)

Union witness Ted Starzyk expressly stated that at one of the March 27-April 11 meetings, prior to the strike, "it was stated that this (the meeting) would be considered a third step." (Tr. 143)

Company contends are not properly to be considered. (Tr. 58) The Arbitrator reserved ruling on the Company's objection. (Tr. 134) The following is an account of the evidence introduced subject to the Arbitrator's ruling on admissability.

The Attempted Settlement and the Wildcat Strike Commencing on April 11, 1973

During the aforementioned meetings, the parties considered the possibility of reducing four Kettle Operators in Building 88 and four Assistant Kettle Operators in Building 92. (Tr. 35-36, 58) The record is in conflict as to whether this proposal was first offered by the Company or the Union, but it is undisputed that the Union agreed to it, and placed it before the Union membership for advice. (Tr. 36, 170, 134-138, 144-145) The Union introduced Union Exhibit 8, which purports to be an explanation by the Company of how the proposed reduction of Kettle and Assistant Kettle Operators might be carried out.

The membership ratification meeting was held during the first week in April, but the exact date is uncertain. At this meeting, the membership rejected the proposed settlement. (Tr. 138) On either April 9 or 11, 1972, a written copy of the April 4 third step denial was delivered to the Union. (Tr. 54-55, 139) On April 11, 1972, after the membership had rejected the settlement, a wildcat strike commenced which lasted for three days and was ended after institution of injunction proceedings in Federal District Court. (Tr. 60, 145-146)

Mr. John Belschwender, Personnel Superintendent, testified that t Union had alluded to the possibility of a strike many times during the March 27 to April 11 meetings. (Tr. 59-60) Belschwender added that safety concerns were also mentioned by the Union as motivation for the strike. (Tr. 113)

It is undisputed that either during or after the wildcat strike, both OSHA and Massachusetts Safety Inspectors toured the kettle area. Neither inspector found unsafe conditions relating to the kettles. (Tr. 218-219, 124) The Company did clean the scale from inside the jacket of one kettle during this period in order to improve heat transfer, however this condition did not involve safety considerations. (Tr. 220) There is also evidence that the Company hand-cleaned the kettles during the strike. (Tr. 157)

Past Practice of the Parties Regarding Combination and Reduction of Jobs

The Company presented detailed testimony regarding past instances of the total or partial reduction of occupations, and the combination of particular occupations within the plant. The Company has never previously sought the approval of the Union prior to making such changes, although the changes are announced to and discussed with the Union after being decided upon. Any employees displaced by such action are handled in accordance with Article IX, as were the employees in this case. (Tr. 77-78, 117-118, 226)

Numerous examples of this practice were introduced:

(a.) November, 1968. Combination of Resin Handler and General Helper in the Resinox Department to create a new occupation, Building Attendant. Combination due to changed volume of production. (Tr. 81-82)

(b.) Early 1969. Reduction of the employees in the Laundry Operator occupation and combination of Laundry Operator and Lead Laundry Operator to create a new occupation, Laundry Service Operator. Excess employees were reassigned. (Tr. 83-84) (c.) January, 1970. Reduction of all the employees in the Process Assistant occupation, Lustrex Department, due to changed shipping patterns. Most of the Process Assistant's duties were phased out, those remaining were incorporated in the Packaging Operator occupation. Excess employees were reassigned. (Tr. 84-85)

(d.) February, 1970. Reduction of the Color Tester occupation, Lustrex Department, and combination of Color Tester with Sample Expediter. Change due to reduced volume of Luxtrex color business. Excess employees were reassigned. (Tr. 85-86)

(e.) April, 1970. Reduction of the Paint Mill Operator, and combination with Color and Material Ware, due to reduced business volume. Excess employees were reassigned. (Tr. 86-87)

(f.) June, 1971. Combination of the occupations of Lead Operator and Extrusion Lead Operator, Blending Department, and creation of a new occupation, Process Controller. This change was due to significant modification in the process control. (Tr. 87-88)

(g.) December, 1971. Reduction of the occupation of Inspector, in the plant laboratories, and combination of that occupation with the occupation of Analyst. This change was due to changes in work method and volume. (Tr. 88)

In each example cited, no prior negotiations were undertaken, although the Union was later notified and informed. Numerous other examples of reduction of occupations, either involving elimination of the occupation or the combination of such occupation with other jobs have occurred, and in each case excess employees, if any, were reassigned. (Tr. 89)

Bargaining Committee Chairman Amerco Natario also stated that the Company had never actually terminated employees as a result of reduction of an occupation, but he admitted being aware of cutbacks in an occupation, with excess employees being assigned to other available jobs, through exercise of their bumping rights. (Tr. 181-184)

Negotiating History of the Parties

The Company has never recognized a specific limitation regarding its right to totally reduce an occupation. Rather, it considers business and production factors, and equipment or process changes, and the amount of work remaining in that occupation. Decisions are made only after thorough consideration of the alternatives and of the effect on employees involved. (Tr. 90, 101-102)

In 1955, the Union proposed to require mutual consent of the Company and Union prior to any change in existing job occupations, as indicated in Company Exhibit 3. This proposal was rejected. (Tr. 93-94) A similar proposal, demanding mutual agreement prior to "changes in any occupation," was made in 1968 and was rejected. (Company Exhibit 4; Tr. 94-95, 99)

In 1972, the Union proposed that a standard be adopted regarding when an occupation could be reduced as had been done in the present case. The suggested standard was whether a "major portion" of that occupation's work remained. This proposal was also rejected. (Tr. 100-101)

The Contract

The relevant provisions of the 1970-72 Collective Bargaining Agreement are as follows:

Article III, Sections 1, 2 and 3. (Job Classification)

Article IX, Section 1. (Layoff)

The Stipulated Issues

Has the Company violated the contract by removing all eight employees from and/or abolishing the job classification and/or occupation of Solvent Operator?

If so, what should be the remedy?

The Contentions of the Union

The Union appears to make two contentions: First, that the Company cannot totally reduce a contractually designated occupation without prior approval of the Union. This argument is based on Section 2, Article III. Second, that the Company cannot reduce eight Solvent Operators in this case because, the Union contends, a substantial portion of their duties remain. This argument the Union bases on Articles III and IX.

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The Contentions of the Company

The Company's contentions appear in headnotes of the Argument below, and are discussed thereunder.

Argument

Introduction

This case concerns the Company's adoption of improved methods of production, which utilized new equipment and technology. As methods were changed, certain jobs were enlarged, while the need for others was reduced. The present grievance disputes the Company's right to eliminate a particular job which has become obsolete.

During the Hearing the parties settled on the term "reduction" to describe the action taken, although as a practical matter elimination is the equivalent. Neither term should be permitted to obscure the fundamental fact that change in technology, equipment or procedure is inevitably linked to change, whether enlargement, reduction or elimination, of jobs. The Company cannot change the former without changing the latter. At stake in this case, essentially, is the Company's right to change both, and thereby to adapt and survive in a competitive industry.

The Company Has the Right, Absent A Specific Contract Provision to the Contrary, To Reduce or Eliminate the Staffing in an Occupation

The right to determine the size of the working force, including the right to determine the number of employees and which employees, if any, are to be assigned to particular jobs is recognized as an important managerial prerogative. Accordingly, Arbitrator's have consistently recognized that the Company may reduce or eliminate staffing in a contractually designated occupation unless the contract very specifically limits such action.

Arbitrator James A. Doyle undertook an exhaustive study of arbitral authority on this question in Omaha Cold Storage Terminal, 48 LA 24 (1967), concluding that:

> The strong and prevailing trend of authority is to the effect that for economic or other reasons an employer may eliminate a classification, designated in an agreement and for which a wage rate has been negotiated, in the absence of a clear limitation in the Agreement limiting its authority to do so.

Numerous other Arbitrators have agreed with this conclusion, in hundreds of awards over the past forty years.[4/]

4/ The Company will not cite all of the available precedent, mentioning only those cases which seem similar to the present situation, or are particularly well-reasoned. The decision of Arbitrator Bothwell in Monsanto Chemical Co., 32 LA 260 (1959), while not involving a similar occupation, is important since a separate plant of this Company was involved. Speaking generally, Bothwell states:

> The principle has been firmly established in many arbitration cases that management has the right to make changes in job duties, to create new job classifications, to eliminate jobs, and to combine jobs by unilateral action, providing it is acting in good faith and exercising its management functions of improving the efficiency of operations and making adjustments to technological changes, unless it is limited by specific contract provisions.

See also, Arbitrator Leflar in Georgia-Pacific Corp., 40 LA 769, 773 (1963):

> A great many cases comparable to the present one have been submitted to arbitration in the last ten or fifteen years. This was inevitable in a nation whose employment economy is changing as is America's. The Arbitrator has read scores of these cases, and finds a regular pattern in them. In general, the more recent cases give greater leeway to management in the change and abolition of job classifications than did the earlier cases. This presumably arises from the realities of current industrial change and growth.

(Footnote 4 continued on page 17)

Some decisions mention the "management's rights" section of the contract, although Arbitrators have recognized that the right is inherent, and does not depend on boiler-plate language of this sort:

> This right (to eliminate and combine jobs by unilateral action) arises from the very nature of the functions of management, and from the management clause usually found in the contract . . . . In the present contract there is no specific management clause, but this does not negate the right. Monsanto Chemical Co., 32 LA 260, 263 (Bothwell, 1959). (Emphasis added)

Management may not, of course, abuse its discretion in making such changes. Arbitrators have recognized that such action should be reversed if proven arbitrary or capricious.5/

4/ (continued)

See also, Sewanee Silica Co., 47 LA 282, 284 (Greene, 1966): ("Change in job classifications would normally be espected in competitive industrial operations, and management would normally have the right to make changes, except insofar as restricted in very specific terms."); Great Atlantic and Pacific Tea Co., 43 LA 353, 355 (Volz, 1964): ("The right of a Company to eliminate and combine jobs . . . is well recognized as one of its most basic, inherent powers . . . ."); Louis Allis Co., 46 LA 329, 332 (Graff, 1966): ("In the absence of such specific limiting provisions, the classifications are not "frozen" or unchangeable if the changes are made for good cause."); Rheem Mfg. Co., 46 LA 1027 (Gross, 1966) Axelson Mfg. Co., 30 LA 444 (Prasow, 1958); St. Joseph Lead Co., 20 LA 890 (Updegraff, 1953); Union Starch and Refining Co., 15 LA 782 (Klamon, 1950).

See generally, Elkouri and Elkouri, How Arbitration Works, 314-316, footnotes 116-118 (Rev. Ed. 1960); Teple, Contract Provisions Affecting Job Elimination, 17 West. Res. L. Rev. 1253 (1966).

5/ "If the motive behind job content changes or reassignment of work duties is to discriminate against certain employees, to evade obligations under the agreement, or to gain advantage in wage rates, then the action would be improper." Axelson Mfg. Co., 30 LA 444, 448 (Prasow, 1958); "(The Company's action) . . . cannot be taken in bad faith; or expressing it another way, the action cannot be arbitrary, capricious, or discriminatory." Great Atlantic and Pacific Tea Co., 43 LA 353, 355-56 (Volz, 1964)

Arbitrator Bothwell in Monsanto Chemical Co., supra, at 264, stated the standard of review as follows:

> Changes in job duties and classifications must be made in good faith and must not conflict with provisions of the contract. If the motive behind job content changes is to discriminate against certain employees, or to gain advantage in wage rates, or to evade obligations under the contract, then changes would then be improper. If a question arises as to the wage rate in making changes in jobs this is a proper subject for bargaining.

In determining whether the Company has acted in an arbitrary or capricious way, Arbitrators have looked to the underlying reason for the change. Changes have been upheld if the Company had a "reasonable basis to do so,"[6/] if it was motivated by "sound business reasons,"[7/] to "promote efficiency in the operation of the plant."[8/]

Many cases involve the introduction of new equipment or the automotion or technical improvement of existing equipment, which eliminates the underlying duties of particular jobs.[9/] Arbitrator Doyle in Omaha Cold Storage Terminal, supra, at 25, recognized at the outset, that:

6/ Morton Salt Co., 44 LA 33, 38 (Howlett, 1965): ("The question here is whether the Company had a reasonable basis for the elimination of (the grievant's) classification.")

7/ Great Atlantic and Paficic Tea Co., 43 LA 353, 356 (Volz, 1964).

8/ Rheem Mfg. Co., 46 LA 1027, 1030 (Gross, 1966).

9/ Phoenix Closures, Inc., 49 LA 874 (Sembower, 1967) (Automation of a threading machine); Sewanee Silica Co., 47 LA 282 (Greene, 1966) (Rearrangement of physical layout in plant); U. S. Steel Corp., 41 LA 300 (Duff, 1963) (New equipment); National Dairy Products Corp., 41 LA 506 (Altieri, 1963) (Subcontracting work). See also, St. Joseph Lead Co., 20 LA 890 (Updegraff, 1953) (Changed nature and location of certain electrical switches); Ohio and Western Penn. Dock Co., 39 LA 1065 (Dworkin, 1962); (Installation of a semi-automatic oiling system replacing manual method).

> The right of a company, in the absence of a limitation in the contract . . ., to adopt labor saving machinery or devices which may eliminate work formerly performed by hand is clear.

However, Arbitrator Doyle goes on to recognize that designated jobs may properly be eliminated or combined without technological change, even when all the duties still exist, but are assigned to other employees for reasons of efficiency or sound management. Such changes might be based on reduced business, a new product, decreased personnel, or simply on the need to run a "tighter" more efficient operation, as was involved in Omaha Cold Storage Terminal.[10/] Arbitrator Doyle added that "consolidation of two jobs into one may warrant a renegotiation of the wage rate for the surviving classification."

The Contract and the Past Practice of the Parties Provides for the Reduction of Staffing of Occupations Without Prior Approval of the Union

The contract in effect at the time this dispute arose directly anticipates that changes in occupations will occur, and that the Company has the right to make such changes, subject to negotiations with the Union regarding the effect of the change.

10/ Similar decisions include: Morton Salt Co., 44 LA 33 (Howlett, 1965) (Decreased work available for carpenter); Great Atlantic and Pacific Tea Co., 43 LA 353 (Volz, 1964) (New product packaging, revised procedures); Rheem Mfg. Co., 46 LA 1027 (Gross, 1966) (Curtailed production); Louis Allis Co., 46 LA 329 (Graff, 1966) (Free time available in other classifications to perform the grievant's duties); Georgia-Pacific Corp., 40 LA 769 (Leflar, 1963) ("Work measurement program" indicated elimination of certain jobs and reassignment of duties would yield greater efficiency). In each of these cases, all the duties of the eliminated job remained and were reassigned to other classifications.

A. Plain Meaning of the Contract. The provisions bearing on the present grievance, principally Articles III and IX, must be read as a whole. Section 1 of Article III refers to occupations to which employees are assigned, and states that such occupations are to be "classified" into their appropriate (wage) levels in accordance with the Wage Analysis Plan . . . ." (Company Exhibit 1) Section 2 provides that once an occupation is classified, it "shall remain so classified," unless re-evaluated pursuant to Section 3.

Section 2, on which the Union rests its case, clearly means that once the appropriate wage level is assigned to a given occupation, that wage level must not be changed, except through the Company-Union Evaluating Committee. Section 2 clearly does not mean that the occupation itself cannot be changed, or eliminated. The Company has the right to change the work content of the underlying occupation, but does not have the unilateral right to change the wage level classification of existing occupations. Had the parties meant to "freeze" existing occupations they would not have used the phrase "shall remain so classified," since classification in this contract clearly refers to the procedure of determining the appropriate wage level.

The concept of designated occupations which are classified as to appropriate wage level is used throughout this contract. Article IV, Section 1, refers to the "wage rate for the levels into which all occupations are classified. Article VI, Section 1 and 2, refers to transfer "from one occupation to another occupation." Other references in the contract include Article IV, Sections 2, 5; Article VI, Section 3; Article VII, Section 4; Article IX, Sections 1 (c, f); Article X, Sections 5, 7; Article XVII, Section 3; Schedule 1.

Section 3 of Article III is based on the concept that the Company may change existing occupations. This section states that when occupations are changed, the supervision concerned shall notify the chairman of the Union Evaluating Committee. The Union may then demand re-evaluation of the job. Section 4 provides for arbitration of disputes "or to whether an occupation has been properly classified . . . ."

Article IX, Section 1, is concerned solely with the procedure to be followed in the event of "cutbacks or reduction in the work force." Section 1(a) states unequivocally that "The Company shall determine the number of excess employees in the department affected." Remaining sections provide for temporary furlough of excess employees by seniority, and reassignment of the remaining employees within the department. Sections 1(d) and (e) provide for negotiations regarding promotions and placement of temporarily furloughed employees.

In short neither Articles III or IX limit in any way the Company's right to change designated occupations. That right is subject therefore only to the generally recognized principle that the Company may not act discriminatorily or in bad faith. The right to change an occupation, obviously includes the right to eliminate it. 12/ This was recognized explicitly by Arbitrator Howlett in Morton Salt Co., supra:

11/ This Arbitrator recognized that the right to change includes the right to eliminate an occupation it in his recent decision involving the Monsanto Company (Everett, Massachusetts Plant) and the Chemical Workers, F.M.C.S. 72 A 167772, rendered on August 25, 1972. That case is similar to the present case in the general principles involved.

> 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.

B. Negotiating History. The Union has attempted and failed in the past to negotiate the right to prior approval of changes in designated occupations. In 1955, the Union proposed:

> 1. That Section 2 of Article III be amended to read "all occupations listed in Schedule 2 shall remain so described and classified . . . ."
>
> 2. That Section 3 of Article III be amended to read "if there is a change in an existing occupation as agreed by the parties the procedure outlined below shall be followed . . . etc." (Company Exhibit 3)

In 1968, the Union sought:

> 1. Language in Section 3 which would require negotiations "if there is a change in an existing job description and occupation . . . ."
>
> 2. Language in Section 4 which would give the Union the right to negotiate and arbitrate issues concerning the description of an occupation.
>
> 3. Language in Section 6 stating that: "Nothing in this Article will in any way limit the right of the Union to negotiate a title, or a description or a level when in their opinion there are changes in any occupation. (Company Exhibit 4)

Minutes of the 1968 meetings show that the Union sought to require prior approval by the Union of changes in an occupation. (Tr. 99)

Again in 1972, the Union sought to limit the Company's right to reduce an occupation where a "major portion" of that occupation's work remained. All of these proposals, in 1955, 1968 and 1972, were rejected by the Company and left out of the contract. This rejection means unquestionably that the Company has preserved its right to totally reduce an occupation, either when the duties of that occupation no longer exist, or could more efficiently and sensibly be performed by employees in different occupations.

C. Past Practice. The past practice of the parties was illustrated by several specific examples. Of the examples cited, several involve reduction of the employees in one occupation, and combination of all the former duties of that occupation with those of another occupation. (See examples a., b., d., and e. at pp. 11-12, *supra*; Tr. 81-87) These changes were undertaken to improve efficiency in response to business volume changes.

Other examples involve technical changes or process modifications which eliminated certain duties of particular occupations. These occupations were reduced and the remaining duties combined with other occupations. (See examples c., f., and g. at p. 12, *supra*; Tr. 84-88)

Thus the past practice, in addition to the plain language of the contract and its negotiating history, supports the Company's contention that it has preserved the right to totally reduce an occupation, where sensible management so requires.

The Reduction of Solvent Operators Was Justified by Sound Business Considerations

To summarize the changes described at pp. 5-9, *supra*, the Company has established:

1. That the periodic solvent wash, previously performed by Solvent Operator has been completely eliminated.

2. That a water flush, previously performed by Kettle Operator has been eliminated, and a regular solvent flush is now performed. The Company has extensively reworked pumping and vacuum systems in the Kettle area to facilitate the solvent flush.

3. That the recovery vessel, previously operated by Solvent Operator to reclaim used solvent has been scrapped.

4. That a production kettle, previously occupying a full-time Kettle Operator has been converted to recover solvent, and has been substantially automated for this purpose.

The time now spent to perform functions previously performed by Solvent Operator is substantially reduced. Solvent cleaning has been reduced from fifteen to seven and one-half hours per shift. Solvent recovery has been reduced from six and one-half to one and one-half hours per shift. The total reduction in Solvent Operators' work is, therefore, twelve and one-half hours per shift.

These changes were undertaken to improve product quality by improving efficiency in the solvent cleaning of production kettles. In order to accomplish this, the Company was required to speed up both the solvent cleaning and solvent recovery operations. These changes made it unnecessary and uneconomical to continue the existing staffing level. Had the Company continued to do so, the result would have been an idle period of about one-half of a work day for four employees, two Kettle Operators and two Solvent Operators, each shift.

Because the new solvent flush was very much like the old water flush performed by Kettle Operators, and because the new recovery vessel is a converted kettle, the Company elected to reduce all the Solvent Operators. The Company considered also that the Kettle Operator's pre-existing production duties remained unchanged, and that this occupation had previously been assigned solvent cleaning and recovery duties prior to 1964. This obviously was not the only possible manner in which to carry out re-staffing. It was, however, a sensible and reasonable manner. It was undertaken to improve the PVC process, and it accomplished that result.

The Union presented the testimony of a Control Kettle Operator that in his opinion, the changes did "not necessarily" require reduction of eight employees. Yet no grievance complaining of too much work on the part of the remaining employees has been filed. The Union's self-serving and generalized testimony, in light of the Manufacturing Technology Supervisor's detailed and specific account is not persuasive.

After the Company witness testified as to the time required for particular steps in the new process, the Union witnesses were recalled to testify that lengthier periods were required. Even accepting most of the Union's figures, a substantial reduction in the Solvent Operators' job has occurred. But in each case, it is clear that the time limits referred to by the Union are the maximum limits, encountered when the system is not operating properly. The Company is entitled to evaluate its new process on the basis of the more frequent normal, successful operation, of which the marked quality improvements are evidence.

There is not a shred of evidence that the Company has acted to discriminate against any employees, or to gain unfair advantage in wage rates. Indeed, the Kettle Operator job is currently being re-evaluated. The displaced Solvent Operators were handled in accordance with Article IX, and the Company was able to find a job for each man.

Had the Company decided to reduce Kettle Operators instead of Solvent Operators, it would have faced a grievance from those employees In such a dilemma, the Company's policy was to act impartially, guided by its best business judgment. That decision is entitled to be upheld.

Analysis of the Union's Arguments

A. That a "Substantial Portion" of the Solvent Operator's Duties Remain and Accordingly the Occupation Cannot be Reduced.

(a.) The Union's Premise is False. The Union has assumed that the new solvent flush is a former duty of the Solvent Operator. It is far more logical to compare this duty to the old water flush, performed by Kettle Operators, since the time and procedures involved are quite similar. The pre-existing solvent wash was longer and much more complicated. The fact that solvent rather than water is now involved in the flushing process hardly seems decisive. Likewise, solvent recovery is now arguably in the Kettle Operator's jurisdiction, since it is performed in a converted kettle.

In any event, the time previously spent by the Solvent Operators in handling solvent has now been dramatically reduced. On the other hand, the principal duties of the Kettle Operator, producing PVC and flushing the kettle, remain: there has been no reduction in the time required for these duties. There has, therefore, been a substantial reduction in the work available for the Solvent Operator, exceeding a "major portion" of those employees' duties.

(b.) Notwithstanding the Above, the Union's Conclusion is False. There is no requirement, in the contract or in the past practice, that a "substantial" or "major" portion of the duties of an occupation must be eliminated prior to reduction of the occupation.

Several of the examples of past practice involve transfer of all the pre-existing duties of a reduced occupation to new operators. The duties of these occupations had not been substantially eliminated;

rather, it had become more economically sensible to assign them to different occupations. The contract expressly contemplates such changes by providing a means for re-evaluating the combined job. The Union recognized the absence of such a limitation by demanding a "major portion of duties remaining" test in 1972.

In discussing management's right to eliminate designated job classifications, Arbitrators have analyzed the underlying reasons for the change, and have not adopted the categorical test which is suggested by the Union. Management has been upheld if its decision is justified by overall operating considerations.[12/]

Arbitrator Howlett's decision in Morton Salt Co., 44 LA 33 (1965) is typical. In Morton Salt, the Company eliminated two carpenter classifications. The one active incumbent in these jobs was reassigned, and all of the carpenter duties were delegated to the Maintenance Mechanics. At the time of the change, the grievant normally spent 80% to 90% of his time performing carpenter work. That Union argued much as the Union has argued in the present case, that "before the Carpenter classification may be combined with another classification, the remaining Carpenter must be spending less than 50 percent of his time as a Carpenter." The Arbitrator ruled, however, that:

> The contract does not place Morton in the straitjacket for which the Union contends . . . . Management is not required to wait until the work declines to 50% or less of the Carpenter's working time before deciding that a combination of jobs will benefit operations. (Emphasis added)

12/ See the cases cited at footnote 10, supra.

Similarly, in Omaha Cold Storage Terminal, 48 LA 24 (Doyle, 1967), the Company had previously assigned one fireman and one engineer per shift to duties in a refrigerated warehouse. After an efficiency study, the Company learned "that the functions performed by the fireman on each shift could be performed by the engineer, without overburdening him . . . ." Accordingly, the fireman job was unilaterally eliminated, and all his duties were assigned to the engineer. Arbitrator Doyle ruled that the Company:

> . . . had the right in the exercise of its sound business discretion (and not arbitrarily or for discriminatory purposes) to take unilaterally such measures as it saw fit to improve the economical operation of the warehouse. To this end it could assign the duties of the one fireman on each shift to the engineer. (Emphasis added)

In the present case, the Company has undertaken an overall modification of the solvent cleaning and recovery operation. These changes fully justify the reduction of eight Solvent Operators on the grounds of improved efficiency, regardless of the fact that solvent cleaning and recovery is still carried out in the PVC department. In light of the contract, the undisputed past practice and the weight of considerable arbitral authority, the Company's action was proper and should be upheld.

B. That the Company Offered to Settle this Case by Reducing Four Kettle Operators and Four Assistant Kettle Operators.

On this basis, the Union argues that the duties of Solvent Operator must have remained after the change, and that their reduction was unjustified. The Company contends that this offer cannot properly be considered, as discussed below, but adds that the offer is not inconsistent with or damaging to the Company's case.

(a.) Effect of the Offer. The new solvent flush job is similar to but not exactly like duties performed previously by both Solvent Operators and Kettle Operators. It is not surprising that either group could conceivably have taken over the new job. However, as discussed above, it made more sense to assign the work to Kettle Operators, since all of their original production duties remained unchanged. The Company made a reasonable decision, but was willing to consider alternatives.

Likewise, the recovery job could be performed by both groups. Again it is more sensible to retain a Kettle Operator, who could perform production duties during the five hours per shift he is not involved in recovery. In short, the Company is entitled to make a reason able business judgment, and has done so in this case. The existence of other reasonable alternatives does not negate this.

Moreover, if the settlement is to be considered, it must be noted that the Union committee originally agreed to it, agreeing therefore that a reduction of eight employees was proper. This admission is entirely inconsistent with the Union's present position that the reduction of this many employees was unjustified. It is apparent that in all the meetings after the reduction had taken place, the Union disputed only which employees should be reduced, not the total number involved.

(b.) Inadmissability of the Offer. The proposed settlement was discussed during a series of meetings held immediately after March 27, 1972. The Union has admitted that these meetings were expressly deemed by the parties to satisfy the grievance procedure prior to arbitration. The offer was clearly an attempt to settle the grievance.

Arbitrators has long recognized that attempts to compromise or settle grievances should not be used against a party.[13/] Arbitrator Lee Greene expressed this principle in Fulton-Sylphon Co., 8 LA 993, 996 (1947) as follows:

> It is clear that any offer made by either party during conciliation cannot prejudice that party's case . . . . It is the very essence of conciliation that compromise proposals will go further than a party may consider itself bound to go, on a strict interpretation of its rights.

Accordingly, the proposed settlement of this grievance should be disregarded by the Arbitrator in reaching a decision on the merits.

Conclusion

For all the reasons stated above, the Company submits that this grievance should be denied.

Respectfully,

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13/ See generally, Elkouri, How Arbitration Works; 195-196, 213-214; footnote 75, p. 213 (Rev. Ed., 1960).

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July 20, 1973

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RE: International Union of Electrical, Radio and Machine Workers, Loca 28
-and-
Monsnato Company
1130-0724-72
Griev: REmoval of employe from and /or abolishing job classification and/or occupation of Solv nt Operato

Gentlemen:

At the request of the Union and with the consent of the Company, the due date for filing of Briefs has been extended to Monday, July 30, 1973.

Yours very truly,

Helen O. Chase
Labor Tribunal Administrator

HOC/
cc: Mr. Bufford Harris
Mr- M. S. Starr