

In the Matter of
Arbitration Between
EVERETT PLANT
MONSANTO COMPANY

and

INTERNATIONAL CHEMICAL WORKERS'
UNION LOCAL 57

ELIMINATION OF
1ST O.P. + COMBINING
DUTIES OF CHIEF O.P.
+ 1ST O.P.

POST HEARING BRIEF

OF EVERETT PLANT, MONSANTO COMPANY

BEFORE

WILLIAM J. FALLON, ESQ.

ARBITRATOR

Martin M. Liebman
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800 North Lindbergh Boulevard
St. Louis, Missouri 63166
August 4, 1972

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I.

INTRODUCTION

This matter was heard on June 1, 1972 and involves a combination of job classifications in the DOP Department. In keeping with the usual Company policy, and as requested at the hearing (Tr. 4), the Company indicated that it did not desire to have the decision and award published.

A. Submission Question

The submission question as stated simply by the Arbitrator is as follows:

...(W)hether or not there was a contract violation in the actions taken by the Company in eliminating a job in (the DOP Department).

This brief submission question however does not indicate the true nature of the situation. As will be more fully developed

below, the changes made in the classification structure were the result of certain shifts in business and economic conditions which necessitated alterations in the existing operations as to the number and volume of products, and methods employed. These modifications in the process resulted in a substantial decrease in the duties and responsibilities in both the chief operator and first operator classifications to a point where their non-productive time increased markedly. In a department where manufacturing costs are very high, relative to other Company locations, this large addition in idle time became a severe handicap. The only solution arrived at after much deliberation and planning was to change the classification structure in the department so as to make more efficient use of the employees' time. After a great deal of discussion with the Union, the decision was made to eliminate both the chief operator and first operator classifications and to create a new classification, that of premium operator, combining the duties of the discontinued classifications. This new job was upgraded and retitled, "chief operator" prior to implementation of the plan.

When viewed in the light of the clear language of Article V, Section 5, governing changes in classifications, it can readily be seen that the collective agreement specifically sanctioned the Company's course of action. It plainly provides that changes in classifications may be made during the life of the agreement in connection with "changes in existing operations". It is the Company's position that the alterations which resulted in the

modification of the classifications in question were indeed changes in existing operations as contemplated by Article V, Section 5.

II.

FACTS AND ARGUMENT

A. Industry and Plant Economics

As can be seen from the testimony, the instant problem had its origin in the state of business conditions in the plasticizer industry. Manufacturers have been beset with generally falling prices during the last ten years accompanied by expanding capacity (Tr. 197, 198), which has been characterized as a position of "over capacity, eroding prices and disappearing profits". (Co. Ex. 7) Nor has the Everett plant escaped the affects of the downward trend, although capacity at the plant has not increased. On the contrary, as Company Exhibit 3 indicates, production has decreased almost 50% since 1965. This was due to the high cost of manufacture at this location (Tr. 201). The process at Everett dates back to 1952 (Tr. 202), and many new plants have been constructed since that time employing greatly updated technology (Tr. 201). Monsanto Company built two new plants, at Delaware River in 1965 and at Texas City in 1971, both having much greater capacity and much lower conversion costs (Tr. 201, 203). With these new, high volume plants in production, many of the materials formerly manufactured at Everett were transferred there because of the much lower costs involved. In 1970 there were 14 different products made at Everett, and in 1971 that number

was reduced to nine. Three were lost to Texas City and two were discontinued altogether. During the following year the plant lost five more products; one was transferred to Texas City, another to Delaware River and three others were phased out of production (Tr. 112, 113). The significant aspect of this loss of products is the fact that the four remaining are low volume specialty products (Tr. 205). This of course explains the recent drop in production poundage set out in Company Exhibit 3 (Tr. 206).

B. The Cutback from Two Lines to One

With the reduction in the number of products, and those remaining, being of low volume, the prudent decision was made to reduce the facilities used from two lines to one. Prior to the reduction, the department was operating with two lines, five days per week, or 10 line-days per week. The curtailment resulted in one line being used seven days. This was accomplished in December 1971 (Tr. 206).

It was at this point that the entire manning problem was examined. Since the number of shifts was reduced from 10 to seven, and one of the two production lines was shut down, half of the people were no longer needed (Tr. 140, 209) and were transferred to other work strictly in accordance with seniority (Tr. 145). (While the Union made some vague allegation that seniority was not followed in reducing the force, no evidence was introduced to support it and the Company's testimony to the contrary was undenied.)

C. The Combination of Classifications

It was at this point and in connection with this cutback in facilities and employees in the department that the examination of the duties of the chief and first operator were undertaken. It was noted that prior to the change the chief's duties were in the main, administrative in nature. Thus, we see that he "pretty much ran the department during the shift" (Tr. 107). He performed such functions as completing the shift check list (U. Ex. 2), seeing to it that the shift was properly manned, calling employees in on overtime if necessary, together with the foreman writing maintenance work orders (Tr. 109), assisting in trouble shooting, overseeing product change over and acting as liaison with supervision. All of these duties and more are listed on the chief's "General Outline of Instructions" (U. Ex. 1).

In addition to these administrative tasks, the chief has always had some operating responsibilities in connection with the fractionating or T.E.A. still (Tr. 108) and this was his only operating function prior to the realignment of classifications (Tr. 110). Since the T.E.A. plasticizer was one of those lost to the department in 1971 (Tr. 140, 209) and the still was to be dismantled, this operating responsibility would be lost to the chief. Since all that would then remain would be the administrative responsibilities, and since the number of lines would be reduced by half, these duties would also be substantially diminished (Tr. 140). There would only be half the number of people to lead, only one product running at any given time, and all of the administrative duties would be focused on one line rather than two simultaneously.

As to the first operator's job, a similar examination was made. Prior to January 1972 the first operator's sole function was the handling of the initial reaction step. He was responsible for the introduction of the raw materials into the reactor, performing certain operations to facilitate the reaction, and he tested the material for completion before transferring the batch to the refining steps where the second operator took over. By the nature of the process, the reactants must be "cooked" to a certain end point which takes various amounts of time, depending on the product. In addition, the testing is spaced to occur at various intervals throughout the reaction so that the degree of completion can adequately be determined. This results in considerable idle time through the shift for the first operator (Tr. 122, 123). A random sample of the first operator's batch log was selected to show the amount of idle time which existed for each shift on the day chosen. (Co. Exs. 4, 4a) The summary chart (Co. Ex. 5) indicated that the average idle time available per shift was about 4-1/2 hours for the product DCHP and 3 hours per shift for the product DOA. During these periods, the operator is free to take a break, eat lunch, pick up laundry or leave the building for any other purpose (Tr. 123). While it is true that when two reactors are operating simultaneously, the operator may be required to perform some task on the second vessel while he is idle in connection with the first reaction. However, the idle time figures contained in Company Exhibit 6 take this situation

into account. The idle time figures thus presented are net figures, and show the time during which the operator is actually idle. Further, it should be noted that the illustrations are truly representative since they represent 50 per cent of the product line.

The amount of idle time available to the first operator has not always been at so high a level, but has grown to these proportions over the years due to the introduction of many pieces of labor saving equipment and improvements in the process. These were outlined at TR. 117-20 and included the installation of a bulk adipic system which eliminated manual charging of the reactors from 50 pound bags. In addition, vacuum controllers were installed to automatically control air pressure, eliminating manual adjustments and almost constant attention. Other examples cited were the elimination of the carbon treatment step and the permanganate treatment step. The reduction in the number of products has also reduced the number of materials which the operators must handle and be familiar with and hence has contributed to the growth of idle time.

It was this growth and existence of idle time which management examined. The conclusion was obvious. The amount of idle time available was not conducive to efficiency. But more important, it could be used productively for the performance of administrative tasks. Since the chief's responsibilities in this area had been cut substantially by the elimination of one production line, it was determined that they would fit neatly into

the idle time which the first operator had. What's more, the chief's operating tasks were eliminated altogether when the use of the TEA still was discontinued. If the two jobs were combined, the chiefs would again have operating responsibilities and more than enough time for administration (Tr. 141, 209). This was the basis for the change which was effected in January 1972.

One of the Union's principle arguments has been that the workload of the employees involved has been increased substantially, or that they do not have sufficient time to properly perform their jobs. Thus, the direct testimony of Hewitt is primarily concerned with this point (Tr. 34, 35, et seq.). However, his answers on cross examination, and the Company's other evidence indicates quite the contrary. The point has been clearly made that the workload of the chiefs since the change was not unreasonable or burdensome. What the Company did was to combine two jobs with reduced content in order to create one classification to occupy the time of one man.

D. Contract Provisions

It is the Company's position that the action it took was based on the clear language of Article V, Section 5. This provides that classifications may be changed in connection with changes in existing operations. It is submitted that the reduction in the number of products from 14 to four, and the switch to a one line operation is more than sufficient to satisfy the condition precedent as stated in the clause.

This clause should not be read in isolation however. Article XV, setting forth management rights, must also be considered. This article when read together with Article V clearly permits the elimination of classifications, the creation of others and the reassignment of duties. These declarations are positive, and there is nothing in the Agreement to limit their application. It is well established in industrial relations that management retains the right to direct and control the production of its product and to direct and control its working forces unless some or all of these prerogatives are given up by agreement. This is true even in the absence of a management rights clause, under the residual theory. See, Killingsworth "Management Rights Revisited", Proceedings of the Twenty-Second Annual Meeting of the National Academy of Arbitrators, BNA 1969. The contract in this case specifically reserves these rights to the company relating to methods, schedules and means of manufacture. These are not mere theoretical concepts, and the company must be permitted to implement these principles in some practical fashion or they become meaningless. It follows therefore that management may initiate changes in staffing so that changes in the product or process may be accommodated. See, the discussion by Arbitrator Whyte in FMC Corp., 54 LA 807, 814. It is not conceivable that management would not, for example, have the power to install new machinery which may necessitate fewer employees and not have the power to eliminate or combine classifications to adjust to changes in existing operations. In short, the power to eliminate and combine jobs

is reasonable and necessarily implied from the power to control the means of manufacture. FMC Corp., supra.

E. The Union's Contract References

It would appear from an examination of the Union's opening statement that it has placed great reliance on the fact that the wage scale is incorporated into the Agreement. Unfortunately, this is only apparent, since at no point at the hearing did the Union indicate just how the clauses to which it refers affects the situation at hand. Further, certain liberties were taken with nomenclature which are not at all justified by the facts. Thus, we see continued reference to the wage scale (Schedule A, page 58) as a "line of progression". It is also claimed that this "line of progression" is read into the contract through Article XII, Section 2, page 35. A simple reading of the referenced clauses will show that no such incorporation is intended.

First of all, Article V, Section 1-A, entitled "Wage Rates" in incorporating Schedule A into the Agreement refers to it as a "list of job classifications and wage rates:". Nowhere in the contract is this nominated as a "line of progression". Secondly, Article XII, Section 2, does incorporate something into the Agreement referred to as a "line of promotion", but this is made a part of the part as "Schedule D", at page 78. We were not given the benefit viewing the schedule and are therefore unable to determine its contents. In viewing the language on page 78 there is some question as to whether or not such a document exists with reference to the DOP Department since it plainly indicates

that some lines of progression have not yet been drawn. It is the Company's honest belief that there is no such schedule referring to the DOP Department.

It must be assumed therefore that the Union is referring to the classification and wage list in Schedule A, and that the thrust of their argument is that since the classifications are therein set forth, the Company is committed to their continuance throughout the term of the Agreement. Other arbitrators have spoken on this issue, and the overwhelming weight of authority holds that the purpose of these schedules is simply to set out wage rates for the various classifications. In a situation similar to that in question here, Arbitrator Green in Sewanee Selica Co., 47 LA 282, held that the primary purpose of such schedules was to establish wage rates which are differentiated on the basis of an analysis of job classes, and not to determine or freeze these classifications. This too is the opinion of Arbitrator Block. In Rheem Mfg. Co., 46 LA 1027, involving the elimination of a job when the incumbent quit, the Union also relied on a section of the agreement which established wage rates, arguing that the clause limited management rights to reassign the work of the unfilled spot. They claimed that this would dilute the agreed upon classification structure. Block was unimpressed, holding that,

Unless a contract expressly provides otherwise, the rates negotiated and established for a given classification are not, in themselves, a guarantee that the classification will remain unchanged during the term of the agreement. The setting of a rate does not thereafter preclude the Company from altering the duties of a classification where it does so in good faith based upon a change in operations, as in this case.

The opinion went on to uphold the Company's action as a valid exercise of the management rights clause, citing Bernheim Distilling Co., 28 LA 441, 443, Fletcher Enamel Co., 27 LA 466, 467, 468, and others. These cases hold that absent some phrase guaranteeing the continuation of classifications through the contract term that the employer is free to act as long as it has some reasonable basis for its modifications of jobs or job content.

This was also the basis for the holding in American Cement Corp., 48 LA 72, 76, where the arbitrator summarized the holdings of others on this point. It was stated that economic necessity makes it imperative that management have the freedom to adapt the work force to changing conditions in a competitive marketplace, and arbitrators have upheld management's right to eliminate job classifications when such changes were made in good faith based upon such things as changed operations, "technological improvements, substantially diminished production requirements, established past practice, etc." (Emphasis supplied). See, also Great Lakes Carbon Corp., 48 LA 746, 750.

It is therefore submitted that the jobs in question were changed as a result of a change in operations as contemplated by Article V, Section 5, of the Agreement and the above cited cases. The changes were made solely on the basis of economic considerations and pursuant to the Company's rights under the Management clause, Article XV.

F. Performance of Hourly Work by Salaried Personnel

The remaining question concerns the Union's unprecedented attempt to cloud the issue in these proceedings by raising a matter which was never discussed in the grievance procedure. There is little question that where the grievance procedure has not been exhausted a dispute is not subject to presentation before an arbitrator, and similarly attempt to broaden the scope of the grievance for the first time in arbitration has been rejected. Washington Motor Transport, 28 LA 6, 9; Bee Line, Inc., 20 LA 675, 678. While not waiving its right to object to this procedure, the Company submitted to the arbitrator's ruling that introduction of evidence on this subject would be permitted, but an objection was maintained and preserved. Further, it should be borne in mind that the arbitrator is confined to the issue raised by the submission question, and no remedy may be fashioned outside the scope of such question. But assuming, arguendo, that the issue was a proper subject for this hearing, and that in permitting its introduction the arbitrator shall consider it merely for its evidentiary value as it bears upon the issue raised in the submission question, the Union has totally failed in its proof on the subject. What the evidence indicates is that in a few rare, isolated instances the witness observed salaried personnel performing some minor work having little or no significance. Thus, at TR. 54 it was related that a second operator performed an isolated act in unlocking a valve. In another, a chief operator who was filling in as a clerk for a short time (Tr. 52) gave an order to pump a piece of machinery (U. Ex. 6) and one or two other instances, where supervisors

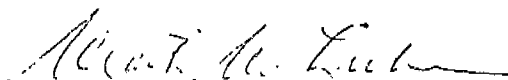
have been observed performing tasks of an emergency nature.

It is submitted that this vague testimony indicates the isolated nature of the acts complained of and does not show that the chief's administrative duties were transferred to salaried personnel. When cross questioned on this point by both the Company and the arbitrator, the Union witness admitted in every instance that he still performs the same administrative duties as he did before the change (Tr. 62-82, inclusive). Certainly, more than de minimus supervisory participation in operating duties must be shown to make out a case, and this was not accomplished.

G. Conclusion

It has been shown that the change in classifications was made because of the press of economic factors both within the plant and the industry as a whole. It has also been indicated that management had complete authority in the contract for the action taken, and that the Union's claims that job classifications are frozen by the contract have no basis in fact, nor in the great weight of arbitral opinion. Finally, the Union's contention that work has been transferred to the salaried workforce has been shown to be completely without foundation. For these and the foregoing reasons, the grievance ought to be dismissed.

Respectfully submitted,


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