

with the provisions of the contract relating to special conferences which, indeed, are to be used for "important matters." Certainly subcontracting is an important matter and may, under appropriate circumstances, be the subject of such a conference. To arrange and call for such a conference is the obligation of the union, once informed. The arbitrator points out, consistent with the employer's observation, that needless use of special conference procedures in subcontracting cases will undermine the intent and purpose of the contract.

AWARD

The grievance is granted in part. The contract language must be interpreted as claimed by the union to require that any subcontracting may be subject to special conference discussion between the parties. Certain procedures must be imposed as a practical matter such as informal notification to the union of planned subcontracting and exchange of information. The violation in this case is of a technical nature and there is no evidence that the employer acted in bad faith or that the unit work force was actually deprived of work or earning opportunities. The arbitrator also notes that until this ruling the contract language has been so ambiguous as to be easily misunderstood. For that reason there is no monetary remedy granted here.

The contract provides that the loser pays the full amount of the arbitrator's fees and expenses. In this case, the arbitrator finds that the confusion caused by the placement of clauses in the contract and the construction to be afforded them is equally the fault of both parties. Each bears responsibility for the necessity of this arbitration hearing and should also bear an equal share of the costs. Therefore, the arbitrator's fees and expenses are to be divided equally between the parties.

LAYOFFS

Recall rights — Seniority — Mutual mistake *117.125 *117.252

Company did not violate laid-off janitor's recall rights when union that operates hiring hall referred laid-off co-worker with less seniority, where union incorrectly asserted that co-worker was next qualified person in seniority order, and company depended on union to send right person, but referral should have gone to another laid-off janitor with more seniority than grievant; grievant's seniority rights do not extend to being selected in error.

ARBITRABILITY

Constructive waiver — Estoppel by conduct *94.59 *94.57 *117.125

Grievance concerning company's failure to recall laid-off grievant is arbitrable, where collective-bargaining contract states that either party may request arbitration within five days following period "when the Adjustment Board can meet," and company failed to establish when this period was; company's failure to reserve matter of arbitrability constitutes constructive waiver and estoppel by conduct.

Appearances: For the employer — Greg Passant, consultant. For the union — Stewart Weinberg (Van Bourg, Weinberg, Roger & Rosenfield), attorney.

RECALL RIGHTS

Contract Provisions

CONCEPTION, Arbitrator: — [The contract provisions are: —]

Section 3
Union Membership & Hiring

3.3 (a) When new or additional employees are needed, the Employer shall notify the Union of the number and classifications of employees needed. Applicants for jobs shall be referred by the Union to the Employer for employment on a non-discriminatory basis, without reference to their Union membership or lack of such membership provided that such referral shall not be affected in any way by Union rules, regulations, bylaws, constitutional provisions, or any other aspect or obligation of Union membership, policies or requirements. (b) Each Employer shall have the right at its sole discretion to reject any person referred to it for the first time. After such rejection, the Union will not refer that person to the Employer who rejected him/her. (c) There shall be a thirty (30) shift probationary pe-

**CLEAN-A-RAMA —
Decision of Arbitrator**

In re CLEAN-A-RAMA and BUILDING SERVICE EMPLOYEES UNION, LOCAL 87, SERVICE EMPLOYEES INTERNATIONAL UNION, Arbitrator's Case No. 07-09-92, Union Grievance No. 91-RD-946, July 20, 1992
Arbitrator: David A. Conception

riod for a new employee. This probationary period shall be applicable to each Employer for which the employee works until the new employee works more than thirty (30) shifts for one Employer. Thereafter, the new employee's probationary period shall be five (5) shifts for every other Employer for whom the new employee works. (d) There shall be a five (5) shift probationary period for all employees who have worked at least one shift for any employer prior to the signing of this Agreement. This probationary period shall be applicable to each Employer for which the employee works. However, an employee shall not have a probationary period with any Employer for whom the employee worked six (6) or more shifts prior to the signing of this Agreement. (e) During the probationary period, the Employer may discharge the employee without cause and without recourse to the grievance procedure. Any employee so discharged will not thereafter be referred by the Union to the Employer who discharged that employee.

3.4 The Employer agrees within seven (7) days of the date of hiring to notify the Union of the name or names and addresses of the persons hired and the buildings to which such persons were assigned.

3.5 In hiring, the Employer shall give preference to applicants previously employed in the Building Service Industry in the local labor market area, which shall be defined to mean the City and County of San Francisco.

3.9 Should any dispute arise concerning the rights of the Employer, the Union, the employees, or applicants for employment under this Section, the dispute shall be submitted to a neutral arbitrator in accordance with the arbitration procedure provided in this Agreement. Such decision shall be final and binding on the said Employer, Union, employees, or applicants for employment.

Section 6
Seniority

6.1 Seniority is the right accruing to employees through length of service which entitles them to appropriate preference in layoffs, rehiring and vacation.

6.3 In a case of layoff, the Employer shall give a minimum of five (5) days' notice to the affected employee(s) or pay the employee wages for one (1) week, based on the employee's normal wage, in lieu of such notice.

6.4 Employees on layoff shall receive preference over all new hires in the event the Employer hires employees.

Section 20
Grievance Procedure

20.1 Any difference between the Employer and the Union involving the meaning or application of the provisions of this Agreement shall constitute a grievance and shall be taken up in the manner set forth in this Section. A grievance need not be considered unless the aggrieved party serves upon the other party a written statement setting forth the facts constituting the alleged

grievance. For a discharge case grievance, such notice must be served within ten (10) days from the date of discharge. Such written statement concerning any other type of grievance must be served within fifteen (15) days of its occurrence or the discovery thereof by the aggrieved party. It is the intent of the parties that reasonable diligence be used in the discovery and reporting of alleged grievances so they may be adjusted or dismissed without undue delay. The Employer and the Union agree to use their best endeavors by informal conferences between their respective representatives to settle any grievance within ten (10) days after receipt of such written statement. Upon receipt of a timely written request, there shall be an Adjustment Board consisting of two (2) representatives designated by the Union who have not participated in earlier steps of the Grievance Procedure and two (2) representatives designated by the Employer who have not participated in earlier steps of the Grievance Procedure. The Adjustment Board shall meet as required and shall consider fully all aspects of the issue presented. Any decision by the majority of the four (4) members of the Board of Adjustment shall be final and binding upon all parties, subject to limitations of jurisdiction and authority contained in the contract. If during the period that the Adjustment Board can meet, no majority decision can be reached, either party may, within five (5) days following such period, request in writing that the matter be referred to arbitration. If the parties cannot agree upon a person to act as an impartial arbitrator within five (5) days after service of such demand, then an impartial arbitrator shall be named by agreement from a list of five (5) arbitrators supplied by the State Conciliation Service. Either party may reject in its entirety any list of arbitrators supplied by the State Conciliation Service and thereafter request a new list. The decision of the arbitrator shall be final and binding on both parties hereto. In the event of a willful failure by either party to appear before the Arbitrator, the Arbitrator is hereby authorized to render his/her decision upon the evidence produced by the party appearing. Each party shall bear all costs of presenting its case to the Arbitrator. The Arbitrator's fee and all incidental expenses of the arbitration shall be borne equally by the parties hereto. Proposals to add to or change this Agreement shall not be arbitrable. Neither an arbitrator nor a panel of representatives shall have any authority or power to add to, alter or amend this Agreement.

Exhibit C
Job Dispatching and
Hiring Hall Procedures

C.1 The Union shall establish and maintain open and non-discriminatory employment lists for the use of working people desiring employment on work covered by the various Collective Bargaining Agreements and such working people shall be entitled to use such lists without charge.

C.2 The Employer shall first call upon the Union for workers as they may from time to time need, and the Union shall furnish the Employer the required number of qualified and competent workers in the classifications needed by the Employer.

complaint in the grievant's file, because nothing came of the allegation against her. The Board, which has no one with expertise to question an employee alleged to be under the influence, delegated its authority to the Sheriff's office, and did so on advice of counsel.

The question of liability for E.'s claim that she was distressed by the incident at the Pinecrest Elementary School is the matter of another tribunal to remedy. The Board pointed out she has the option to bring an action against the Sheriff's office or to file for workmen's compensation. Finally, the arbitration process cannot be the vehicle to award E. monetary damages. This is a tort action governed by Florida law.

Discussion and Findings

On the basis of the record before me, I am not persuaded the grievance has merit. Faced with a report by a person who identified E. and her conduct at the finance office, the Board took steps to carry out its responsibilities to protect the children and the public. The fact it decided to be cautious and not spring into instant action is not a flaw in its response. Inasmuch as the grievant was off duty at the time and not due to resume work until her afternoon shift, there was time to seek advice of counsel and decide how to handle this matter. I note that Mrs. Higgins in speaking to the Sheriff's dispatch office was careful to say this was merely an allegation received from a telephone caller.

The decision as to how to handle a complaint, especially one so potentially loaded with danger for all concerned, is appropriately a management decision. Moreover, nothing in the collective bargaining agreement spells out how or by whom the complaint shall be handled. In the absence of language which restricts the School Board, that is a reserved right. Nor is there any contractual impediment to the Board calling in another authority to investigate the matter. This is all the more understandable in view of the allegation of intoxication, which appeared to be a police matter rather than an administrative matter for school officials.

The failure to place a complaint in the grievant's file and then have a School official attach a signed note that it has no merit, in the facts of this case, seems to be an unnecessary and superfluous requirement. I also note that E., contrary to the Union's wishes, does not want this.

It is understandable that the griev-

timing and public viewing of her encounter with the Deputy Sheriff. However, his approach to her has not been shown in this proceeding to be other than low key and professional. Approaching her at home may have spoiled her feelings. But, the obligation to protect the public and the children, if she had indeed been intoxicated, necessitated her being seen as soon as a Deputy could get to the school. Fortunately for all concerned, she was found not to be in that condition, and her employment continues with no adverse report of this incident in her personnel file.

I have no authority to award damages to the grievant for the reasons cited by the Board's attorney. Moreover, unless a contract specifically provides for damages, an arbitrator cannot add to the terms of it to provide what he or she thinks is appropriate.

AWARD

Based on the evidence adduced before me in this matter, I find no merit to the Union's allegation that the School Board violated their collective bargaining agreement. Therefore, the grievance is denied.

In reaching this decision, I have considered all the arguments advanced by the parties. Failure to discuss each and every one of them does not mean they have not been duly considered.

Decision of Arbitrator

In re PT COMPONENTS INC., LINK BELT BEARING DIVISION, Indianapolis, Ind. and UNITED STEELWORKERS OF AMERICA, AFL-CIO-CLC, LOCAL 1150, April 20, 1992

Arbitrator: Fred Witney, selected by parties through procedures of the Federal Mediation and Conciliation Service

SUBCONTRACTING

Outsourcing - Necessary or expedient? - Layoff - Short work week >117.381 >117.385 >117.3873 >117.3877

Employer properly purchased from outside vendors heavy retainers that previously had been produced by its incline press, despite contentions that outsourcing resulted in layoff of one employee and shorter work weeks for others, that company should have devoted part of its \$3.8 million capital investment budget to either rebuilding or replacing press, and that its own employee could have rebuilt press for far less than price quoted by outside bidders, where collective-bargaining contract permits employer to purchase components from outside vendors when it is necessary or expedient even if it was not necessary, contract does not forbid layoffs or short work weeks resulting from outsourcing, and employer's decision to devote most of capital investment budget to its grinding department—based on its need to remain competitive—was not arbitrary or capricious.

Appearances: For the employer - Robert L. Clidence, employee relations director. For the union - Dennis J. Hein, staff representative.

OUTSOURCING

Grievance

WITNEY, Arbitrator: - On June 20, 1990, the Union filed Grievance Number 8087:

The Company has contracted out forty to fifty (40-50) jobs from the Heavy Press Classification in Department 118. The Company at the same time is only working thirty-two (32) hours a week for all employees of Department 118, within Department 118. The Company is not using the grievants to the maximum practical extent before subcontracting work to other companies. It was submitted on behalf of "Robert Biltz and Others." As a settlement of the grievance, the Union requests:

The Company return outsourced work within Department 118 to the grievants.

imum practical extent. Make whole in all respects.

Failing to settle the dispute in the Grievance Procedure, the Parties consented this arbitration for its determination.

Labor Agreement

Article II - Scope of Agreement

1.2 The Company policy is to utilize its own employees to the maximum practical extent in production and maintenance work. At the same time it is recognized that problems of skill, equipment, time, economics, and know-how may render it necessary or expedient to purchase components, sub-assemblies, tools, dies, and materials, or to subcontract for services, installation of equipment or construction of buildings. Whenever the Union feels that purchases or subcontracts involve work which could be done economically and within the prescribed time limits by employees in the Bargaining Unit, the Company will discuss and explain the matter upon request of the Union.

Additional reference to the Labor Agreement may be made later on in this decision.

Stipulated Issue

The Parties stipulated in this arbitration issue to be determined in this arbitration:

Did the Company violate Article II, Section 1.2 of the Labor Agreement when it purchased certain components which were previously produced by bargaining unit employees in department 118, and if so what shall the remedy be?

Background

PT Components operates the Link Belt Bearing Division and Chain Division in Indianapolis, Indiana. Although the Labor Agreement covers both divisions, this case applies to the Bearing Division. PT Components is a subsidiary of Rexnord Corporation.

The Incline Press: At the center of this dispute is the Incline Press, located in the Punch Press Department, No. 118. A 125 ton press, it is situated on an angle and is fed automatically by a roll of steel coil. Operating 40 strokes per minute, it produces heavy and light parts. Blank and form retainers were identified as heavy parts and seal members as light parts.

The press blanks and form parts, but does not perforate their pockets. After the ram forms the parts, they are kicked out of the press, aided by air pressure and gravity resulting from the incline or angle posture of the press.

Press Breakdowns and Outsourcing: