EFFECT OF ARBITRATORS' DECISIONS IN SUBCONTRACTING CASES UPON MANAGEMENT RIGHTS

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CHAPTER I

INTRODUCTION

Collective bargaining, while solving most of the disputes which arise in union-management contract negotiations, leaves many differences over working conditions in doubt. These differences may arise from an ambiguous contract containing few, if any, references to subcontracting. And such differences in opinion may become major grievances.

The scope of collective bargaining has been broadened to include under "working conditions" many new areas, among them subcontracting. The increased scope and complexity of collective bargaining have brought about the need for an instrument to preserve industrial peace. This need has been partially met by the voluntary submission of grievances to arbitration. Individual arbitrators are selected to decide whether the objecting party has a legitimate claim based upon the contract language (or contractual intent). They must also determine if management has, or has not, through negotiations contractually reduced its unilateral authority in a particular area.

Subcontracting has in recent years become one of the most controversial areas of disputes; therefore, the title of this thesis is, "The Effects of Arbitrators' Decisions in Subcontracting Cases Upon Management Rights."

Problem

Most labor contracts cover the bargaining unit employees and not the operations of the firm. In the absence of specific contractual language,

employers maintain it is their function to operate the business efficiently with the most economical factors available. Historically, management has made unilateral decisions within this realm.

On the other hand the job security of the individual union member and of the bargaining unit as a whole dictates that grievances be filed whenever subcontracting is suspected to be in violation of the meaning and/or intent of the contract. Legitimate functions of both labor and management may be involved within the grievance. And if an extreme position is taken and insisted upon by either party to the contract, a situation can develop where industrial peace will be difficult to achieve.

This thesis addresses itself to one phase of this broad problem, i. e., the effect of arbitrators' recognition of implied limitations upon management's right to subcontract.

Methodology

To establish a basis for the understanding of the issues involved and to determine the pertinent factors, the following methods were used:

1. A review of the literature since 1945 was made. This review sought to determine if there had been any change in the view of either management, labor, arbitrators, or labor economists concerning management rights in general, and subcontracting in particular. Previous studies on subcontracting arbitration were also examined.

2. The question of arbitrability of subcontracting was examined next. Is this a management prerogative that is not affected by the arbitration clause? The 29 relevant decisions by the courts and the nineteen decisions by arbitrators in the Labor Arbitration Reports (Volumes 1-37) were examined to determine important criteria, opinions, and any distinguishable trend.

3. The determinants of the outcome of the arbitration of subcontracting cases were examined next. There were 181 relevant subcontracting grievances examined. These cases were classified into types of work involved, and factors that influence the determination of (a) violations of the contract, and (b) acceptable actions by management. These determinants were analyzed by time periods to distinguish trends in arbitrators' awards.

Terminology

Certain terminology utilized within this thesis warrants explicit definition:

Subcontracting. In its common meaning, subcontracting is simply a practice of letting a contract, under, or subordinate to, a previous contract. From labor's point of view, subcontracting is the practice of transferring work (production or service) or the opportunity to work from the bargaining unit to other workers. These new workers may belong to a union or be non-union workers. The work may be on or off the plant premises. Some cases reported in the Labor Arbitration Reports include work performed by another plant of the same company or one of its subsidiaries. Subcontracting is listed in the Labor Arbitration Reports under sub-titles 2.137, 117,38, and 117.381.[1]

Management Rights. This managerial authority is called by many names, e. g., prerogative, function, privilege. Fundamentally, these refer to the protection of control and authority that management wishes to retain in the operation of the business.

Arbitration. Labor arbitration refers to the settlement of proper

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[1]See pages five and six for limitations.

grievances by an approved third party. In most contracts there is a voluntary submission to the arbitrator of the issues in dispute. The decision of the arbitrator is compulsory upon the parties. After an analysis of the pertinent factors, the arbitrator gives his award. This award is a compulsory settlement--voluntary labor arbitration decisions are final and binding upon the parties. The arbitrator's duty is to interpret the contractual language to determine if the grievance is valid.[2]

Management Rights Clause.[3] This is a statement in the contract attesting to certain basic rights or functions which management explicitly does not surrender.[4] Generally, a statement is included that indicates that the stated functions are not all-inclusive. Also, commonly included is a statement to the effect that this clause does not negate other clauses in the contract.

Arbitration Clause.[5] These contracts have a clause which indicates that all questions of interpretation or application of the contract, which cannot be settled through the grievance procedure, will be referred to an arbitrator for a final and binding decision. Definite procedures are followed from the initial grievance to the selection of the impartial third party and his award.

Arbitrability. This involves the question of whether the parties intended to submit to arbitration the specific dispute. The arbitrability of subcontracting is an illustration of this type of dispute. If the

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[2]See Chapter Three for opinions on this topic.

[3]Each clause is a separate entity and no attempt will be made to include all the terminology used in these clauses. This is only an indication of a general model.

[4]See Appendix A for an example.

[5]See Chapter Three for opinions on this topic.

contract gives the arbitrator jurisdiction, either explicitly or implied[6] through the contractual language then the grievance can be taken through the arbitration procedure.

Limitations

This study was limited to the rights of management to subcontract which are not restricted by law or governmental regulation. Illegal coercive action by a union to limit, or management to initiate subcontracting was not studied.[7] Compulsory arbitration was not considered, nor arbitration that is not: (1) agreed to in advance by the parties, (2) involved within the grievance procedure, (3) or otherwise jointly agreed upon. Further excluded was arbitration that did not include interpretation of the meaning and intent of the terms and provisions of the collective bargaining agreement.

Suits to compel arbitration under Section 301 (A) and (B) of the Taft-Hartley Act were a proper subject of consideration, if directly related to the above-mentioned subcontracting.[8]

Subcontracting in the Labor Arbitration Reports include case listings from the titles 2.137 and 117.38. This includes those cases from Volume 1 through Volume 30. From Volume 31 through Volume 37, the title for subcontracting is listed under 117.381.

The arbitrability of subcontracting grievances has been listed under 94.101, 94.103, and 94.117 from Volume 1 through Volume 30. Volumes 31,

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[6] See Chapter Three.

[7] For a discussion of this see: Ralph Slovenko, ed., Symposium on LMRDA: The Labor-Management Report and Disclosure Act of 1959, (Baton Rouge, 1961), pp. 793-925.

[8] The appropriate parts of Section 301 are included in Appendix B.

through 37 list such titles under 94.166.

These cases for both subcontracting and the arbitrability of subcontracting cover the period from 1945 to 1962. (Labor Arbitration Reports, Volumes 1 through Volume 37.)

Cases listed under these titles that are not applicable to the study of subcontracting were not considered. Exclusions are: Contract negotiations before an arbitration board, grievances that are referred back to the parties for further negotiations, decisions by either arbitrators or courts that are appealed,[9] damages sought by either party from present or prior awards, and case listings under 94.166 not directly related to subcontracting awards.

Basically, arbitrators' opinions were studied; however, in certain cases judicial opinions were studied to determine arbitrability of subcontracting disputes. When arbitrability had been determined, then arbitrators' opinions concerning precedents, trends, peculiarities, and general characteristics were examined in detail.

Plan of Presentation

Chapter II is devoted to a review of the literature concerning labor-management concepts of management rights and the issue of subcontracting. An analysis of the determination of arbitrability is presented in Chapter III. Chapter III also includes a discussion of the Warrior and Gulf decision by the Supreme Court. An analysis of the Labor Arbitration Reports to determine the views of arbitrators is presented in Chapter IV. Chapter

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[9]However see pages 26-34 for a discussion of decisions leading up to, and including, the United States Supreme Court decision in United Steelworkers of America versus Warrior and Gulf Navigation Company.

IV also includes the determinants of subcontracting arbitration and a classification by types of work subcontracted. A detailed analysis of the determinants of subcontracting arbitration by time period is included in Chapter V. Special attention was given to the importance of implied restrictions upon management's right to subcontract in Chapter V. A summary statement of the effect of arbitrators' decisions in subcontracting cases upon management rights is made in the final chapter (Chapter VI).

CHAPTER II

REVIEW OF SELECTED LITERATURE

The expanding scope of collective bargaining has created difficulties over management rights. The rights or prerogatives issues strike at the heart of labor-management functions (job security-versus-direction of the working force or management of the business.)

This chapter will be devoted to a survey of selected literature on management rights and subcontracting arbitration. Have management and labor leaders changed their viewpoints on unilateral managerial actions? What are the opinions of arbitrators and other labor-management authorities on managerial subcontracting? The first section of this chapter contains a statement of two basic theories concerning management rights. The second section is an examination of previous and current thought on arbitration. The third section is devoted to statistical studies on subcontracting. The fourth section is devoted to the criteria used in determining the propriety of subcontracting. The fifth section deals with changes in the viewpoints of arbitrators.

Two Basic Theories

Most managerial authorities list two main areas of thought concerning management rights. The residual theory developed before unions began limiting management's rights to unilateral action. This theory maintained that most powers, whether they be termed functions, prerogatives,

or rights are retained by management.[1] However, with the advent of the large industrial union these powers were limited. Formal contracts restricted unilateral actions of management. The theory currently assumes that management has incurred through collective bargaining certain specific restrictions upon its rights.

Management does not, however, surrender any rights or privileges that have not been specifically negotiated away in the collective bargaining process. Most believers in the residual theory prefer strict enforcement of all the requirements built into the contract. This legalistic attitude often creates an atmosphere which is not conducive to industrial peace.

The more modern, though not necessarily the most popular, theory is the trusteeship theory which emphasizes the different obligations of management.[2] The principal obligation of management is to operate the firm in the most efficient manner possible, so as to maximize profits which accrue to the stockholders. But management's responsibility does not end at this point. Management has a responsibility to labor in the provision of jobs, and a responsibility to the consumer for the product he buys. And management has certain obligations to the community in which it operates. Therefore management's responsibilities are fourfold. Many believe that these responsibilities can best be served by union-management agreements. This theory (trusteeship) takes the position that collective bargaining does not restrict the functions of management. The question of exclusive subjects is not the focus of the problem, but rather, management's proper function is focused upon administration, and upon its

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[1]Lee H. Hill and Charles R. Hook, Jr., Management at the Bargaining Table (New York, 1945), pp. 56-60.

[2]Harold W. Davey, Contemporary Collective Bargaining (Englewood Cliffs, 1959), p. 161.

fourfold responsibilities.

Previous and Current Thought on Arbitration and Management Rights

President's Labor-Management Conference of 1945. One of the first attempts to deal with differences of opinion concerning management's right to manage was the President's Labor-Management Conference in November, 1945.[3]

The Committee on Management's Right to Manage was asked to consider:

> The extent to which industrial disputes can be minimized by full and genuine acceptance by organized labor of the inherent rights and responsibilities of management to direct the operation of an enterprise.[4]

The management members of the Committee on Management's Right to Manage proposed certain exclusive management functions. A summary of these functions includes:

> Determination of products; lay-out and equipment; financial policies; management organization of each producing or distributing unit; job content; and safety, health, and property protection measures where legal responsibility of the employer is involved.[5]

The labor members did not specifically take a negative attitude toward these functions, but instead preferred a flexible approach. These members said that:

> It would be extremely unwise to build a fence around the rights and responsibilities of management on the one hand and the union on the other. The experience of many years shows that with the growth of mutual understanding the responsibilities of one of the parties today may well become the joint responsibility of both parties tomorrow.[6]

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[3]United States Department of Labor, The President's National Labor-Management Conference: 1945. Bulletin No. 77 (Washington, U. S. Government Printing Office, 1946).

[4]Ibid., p. 57.

[5]Ibid., p. 58.

[6]Ibid., p. 61.

Industrial Relations Research Association (First Annual Meeting). Summer H. Slichter was chairman of the session entitled, "Collective Bargaining and Management Rights."[7]

Father Brown contrasted the views of labor and management. In his opinion labor did not want to share in the functional responsibility of management. But labor in pursuing its desires was interested in expansion of the area of collective bargaining. Management on the other hand wished to retain its authority. Management based its authority upon legal and historical grounds, and took the position that the direction and control of business can best be maintained by the preservation of management rights.

Douglas Brown indicated that there are many differing views concerning collective bargaining. From these views he developed three as representative of this area of thought on collective bargaining agreements.

One view is that management retains all the powers or rights which have not been specifically restricted by the collective bargaining agreement.[8] Therefore, the union would not obtain any control over the discretion of management to use its judgment (act unilaterally) except for the definite restrictions that were made during the contract negotiations. The residual rights of management at common law could further be limited only by statutes.

The second view (at the other extreme) maintains that the recognition clause or any similar contract language limits unilateral changes by management. No change would be allowed concerning the wages, hours, and

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[7] Industrial Relations Research Association, Proceedings of First Annual Meeting (Madison, Wisconsin, 1949), pp. 132-170.

[8] Hill and Hook, p. 74.

working conditions upon which labor and management had agreed. If a change is desired, the bargaining process must be used. Consultation with the union would be necessary before any action could be taken by management on a non-negotiated subject.

The preceding views were rejected by Mr. Brown as impractical.

The third and the most practical view was expressed by Mr. Brown as one in which "modes of procedure"[9] or past practices are the criteria for unilateral actions. Management can unilaterally exercise those rights which it has customarily exercised in the past. Though the collective bargaining agreement has been reached, the limitations upon management are only pertinent to those courses of action which have not been used before. Conditions of employment not specifically referred to are assumed to follow the pre-existing patterns (modes of procedure).

Messrs. Saugee and Tannenbaum substantially agreed with Mr. Brown's third view. Mr. French, of the National Association of Manufacturers agreed with the third view on most points; however, he would reserve certain functions of authority and responsibility to managerial discretion.

Charles Wiedeman of the International Association of Machinists summarized these papers from the labor point of view. He was critical of the adherence by some to definite prerogatives of management in certain subjects on conditions of employment. He referred to the historical "divine rights" of management as being subconsciously referred to by the discussants. He felt that management should:

> . . . withdraw into a managerial capacity, concerned only with sales, distribution, and technological processes. Let labor

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[9]Industrial Relations Research Association, p. 148.

through its collective agencies handle problems dealing with the human and social aspects of our economy.[10]

National Academy of Arbitrators (Ninth Annual Meeting). "Management's Reserved Rights: An Industry View" was delivered by James C. Phelps.[11] Mr. Phelps referred to management rights as "the residue of management's pre-existing functions which remains after the negotiation of a collective bargaining agreement."[12] But, he pointed out, arbitrators and other interested parties have not been consistent in their approach to the question of managerial initiative after the signing of a collective bargaining agreement. (The views expressed by these parties are similar to those on pages 11 and 12 of this thesis.)

Mr. Phelps pointed out that arbitrators generally, and certainly management, follow the view that management retains the same right it had before collective bargaining, except for the specific restrictions imposed by the contract. But some arbitrators do not follow this principle, and even those who do only partially use the principle in practice. An analysis and interpretation of the existing contract are necessary, but the arbitrator should refrain from stating what he thinks should be in the contract.

The Management Rights Clause has value because it offers written evidence both to arbitrators, who can cite the specific language in decisions, and shop supervisors, who must apply the written contract at the production level. Mr. Phelps indicated that it should be unnecessary to include a statement in the Management Rights Clause that management is not

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[10]Ibid., pp. 169-170.

[11]National Academy of Arbitrators, Management's Right and Arbitration Process, (Proceedings of Ninth Annual Meeting) (Washington: 1956), pp. 102-117.

[12]Ibid., p. 105.

obligated to any further degree than that specified within the contract.

In summary, Mr. Phelps indicated that management's function is to manage the business. He said:

> To read into the mere act of signing a contract implications that may never have been considered by either party is repugnant to the basic concept of the collective bargaining agreement that it is a voluntary act of the parties. To the extent that the parties have not seen fit to limit management's sphere of action, management's rights are unimparied by the contract.[13]

Arthur J. Goldberg, then general counsel for the United Steelworkers of America, discussed "Management's Reserved Rights: A Labor View."[14] Mr. Goldberg indicated that management's traditional view of its rights often is not valid. Labor also has many rights and customs which should not be ignored, and neither party can produce without the other. When the collective bargaining contract is agreed to in writing, it represents a mutual agreement by both parties for the benefit of both. The agreement is not an attempt to impose the will of one party upon another. Labor recognizes that someone must be the manager. But labor has the right to grieve when management unilaterally acts in the supervision of the working force. Mr. Goldberg said:

> It is essential that arbitrators not give greater weight to the directing force than the objecting force[15]... After they /management and labor/ have come to terms, we cannot now assume that somehow one party to the deal brings into it a backlog of rights and powers it enjoyed in dealing with individual employees[16].... To suggest that management can make changes at will unless the contract specifically bars it is unfair and can lead to placing so many bars in the contract as to make successful negotiating increasingly difficult and

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[13] Ibid., p. 117.

[14] Ibid., pp. 118-129.

[15] Ibid., p. 121.

[16] Ibid., p. 125.

> operations less and less flexible, with detailed consideration of the facts and merits of each case replaced by precise rules and regulations.[17]

Sidney A. Wolff indicated that the area of management rights is one of the most troublesome areas.[18] Mr. Wolff tends to agree that management retains all of its "normal and customary rights."[19] "Good faith"[20] should be characteristic of all managerial action. "Just cause"[21] and reasonableness are other criteria for the evaluation of the actions of management. The recognition clause does not limit the right of action as might be inferred by some arbitrators. An inadequate Management Rights Clause may provide a situation where managerial functions could be reduced.[22]

Mr. Wolff believes that Mr. Goldberg's limitation on management rights to only those rights established in the contract is an extreme position. He concluded that positions of both labor and management appear to be extreme at times.[23]

Neil W. Chamberlain developed several interesting aspects of the reserved rights question.[24] He disagreed with Mr. Goldberg's contention that labor grievance and management action should be given equal significance. Basing this view on the organizational way of life, Mr. Chamberlain

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[17]Ibid., p. 126.

[18]Ibid., p. 129.

[19]Ibid., p. 130.

[20]Ibid., p. 134.

[21]Ibid., p. 133.

[22]See Appendix A for what Mr. Wolff considers an adequate clause.

[23]Management Rights and the Arbitration Process, p. 138.

[24]Also see Neil W. Chamberlain, The Union Challenge to Management Control (New York, 1948).

indicated that the managerial action, if reasonable and in good faith, should be upheld. He said.

> Management requires initiative, and initiative requires discretion and the exercise of judgment, and if that judgment is exercised fairly, it should be upheld even though the union-equally fairly--would have it otherwise.[25]

Mr. Chamberlain agrees with Mr. Wolff that Mr. Goldberg's approach to using practices that have developed contractually between the employer and the union to the exclusion of any other managerial action is not acceptable. The philosophy behind our enterprise and legal system would tend to preclude such a relationship. "The right of initiative"[26] belongs to those managements which act in good faith and with reason. Mr. Goldberg's argument concerning the whole agreement was termed"appropriate." There should be, according to Mr. Chamberlain, the understanding that collective agreements involve both explicit and implied obligations of mutual responsibility. Therefore, an arbitrator would be correct if he interprets the contract according to the implications of the explicit clauses. The recognition clause implied greater importance than just the recognition of the union. He concludes:

> I would maintain that recognition of the union-the collective bargaining process itself-binds management to prior consultation and negotiation with the union on a certain generally understood range of subject matter and imposes on it the obligation of seeking agreement in these areas during the lifetime of the agreement, even though it does not deprive management of the power of action, failing an agreement which it is in its interest to secure.[27]

In his paper, "Arbitrability and the Arbitration Process," Jules J. Justin develops the functional relations between arbitration and the

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[25] Managements Rights and the Arbitration Process, p. 140.

[26] Ibid., p. 141.

[27] Ibid., p. 148.

arbitrator.[28] Mr. Justin identifies the function of an arbitrator as the duty to determine the issues of a dispute only on matters involved within the contract. If the contract does not give an arbitrator the appropriate jurisdiction, the dispute is not arbitrable, i. e., the arbitrator cannot determine the merits of the dispute. When a case goes to court, unless the court is specifically asked to evaluate the merits of a particular dispute, it should determine only the jurisdiction of the arbitrator. Reference should not be made by courts to the merits of the cases in questions involving the determination of arbitrability. However, when there is an absence of a written agreement or when the arbitration clause excludes certain issues, arbitrators should attempt to uphold the "contract of settlement."[29] The basic problem, according to Mr. Justin, is the "conflict and confusion resulting from mixing up initially the arbitrator's jurisdiction on the one hand and his authority to decide the merits of the dispute on the other hand.[30]

Harold W. Davey substantially agreed with Mr. Justin's conclusions.[31] Although Mr. Davey disagreed on the relative importance of arbitrability, he agreed on the functional responsibility of the arbitrator in this realm. Jurisdictional arguments tend to be weakened by the merits involved within the case. Mr. Davey's solution to this perplexing problem was the separate analysis of arbitrability and the merits of the case. He concluded with this statement: "Parties who are operating in good faith with a mature understanding of the arbitration function should

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[28] Ibid., pp. 1-34.

[29] Ibid., p. 5.

[30] Ibid., p. 7.

[31] Ibid., p. 40.

rarely disagree on arbitrability."[32]

Review of Statistical Studies

Many studies have been made on the differing aspects of subcontracting. Most of the following studies indicate the degree and nature of the subcontracting.

One study indicated that nine of 51 companies under study had negotiated with a union on managerial subcontracting.[33] Representatives of eight of the nine firms indicated they desired a reduction in the degree of union penetration in this area.[34]

Another study has shown that contracts with non-manufacturing firms contained twice as many restrictions on subcontracting as those with firms whose principal function was manufacturing.[35]

In 1956 the Bureau of Labor Statistics of the Department of Labor made an analysis of 164 contracts in which subcontracting was specifically mentioned. In 12.2 percent of these cases subcontracting was prohibited when employees would be laid off. In the other 87.8 percent subcontracting was conditionally permitted though employees would be laid off. These limits were as follows: the union had to be notified prior to the actual subcontracting (9.8 percent); union permission was required (6.0 percent); subcontracted work must go to a contractor who observes

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[32]Ibid., p. 40.

[33]Milton Derber, W. Ellison Chaimers and Ross Stagner, "Collective Bargaining and Management Functions," Journal of Business, XXXI (April, 1958), p. 109.

[34]Ibid., p. 111.

[35]Bureau of National Affairs, Labor Relations Reference Manual, XXXXVI, p. 21.

union agreement (48.8 percent); subcontracting allowed only if necessary facilities or employees are not available (10.4 percent); and other limitations (12.8 percent).[36]

A study was made of contracts that covered 1000 or more employees in most industries except the airline and railroad industries. This study of contracts in effect in 1959 indicated that 77.6 percent of the cases studied made no reference to subcontracting. Of the 1687 agreements studied four specifically prohibited any type of subcontracting, 379 limited or made subcontracting conditional, and five agreements did not specify the nature of the restrictions (special cases).[37]

When industrial agreements were examined in 1959, it was found that four industries (apparel and other finished products; petroleum, refining and allied industries; utilities: electricity and gas; and construction) had limitations upon subcontracting in over 50 percent of their agreements. Other industries which have a relatively high percentage of limitation on subcontracting in their agreements include: transportation, transportation equipment, and communications.[38]

One study indicated that unionized companies studied subcontracted most of their construction and modernization work--80 percent and 70 percent, respectively. Further, about three-fourths contract out some minor construction--50 percent contract less than one-quarter of this construction

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[36]U. S. Bureau of Labor Statistics, Monthly Labor Review, LXXIX (1956), p. 1388.

[37]U. S. Bureau of Labor Statistics, Subcontracting Clauses in Major Collective Bargaining Agreements, Bulletin No. 1304 (Washington, 1960), p. 4. (Also see Appendix C for subcontracting limitations listed by the Bureau of Labor Statistics).

[38]Ibid. (Also see Appendix D for a listing of those unions which had two or more subcontracting grievances.)

work. Part of their maintenance work was contracted out by approximately 80 percent of the firms studied. However, most of these contracted out less than 25 percent of such work.[39] Other sources indicate that the garment industry also has many restrictions on managerial authority.[40]

It was determined by Chandler and Sayles that the factor of most importance in the decision to subcontract was cost (34 percent). However, past practice (26 percent), number of men on layoff (22 percent), and union pressure (18 percent) were other determinants of this decision.[41]

Criteria Used In Determining The Propriety Of Subcontracting

Several authorities have suggested certain criteria for arbitrators to evaluate when determining the merits of a subcontracting case. The increase of arbitration proceedings in this area suggests that closer attention should be given to these criteria.[42]

Probably the most extensive survey of the standards for evaluating the propriety of subcontracting have been developed by the Elkouri's. They developed the following eleven criteria:

> Past practice; justification; effect on the union; effect of unit employees; type of work involved; availability of properly qualified employees; availability of equipment and facilities; regularity of subcontracting; duration of subcontracted work; unusual circumstances involved; history of negotiations on the right to subcontract.[43]

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[39]Margaret K. Chandler and Leonard R. Sayles, Contracting Out: A Study of Management Decision-Making, Columbia University, 1959), pp. 11-37.

[40]John T. Dunlop and James J. Healy, Collective Bargaining (Homewood, 1955), p. 485.

[41]Chandler and Sayles, pp. 11-37.

[42]M. S. Ryder, "The Collective Bargaining Impact on Management Rights," Address on Industrial Relations, Bulletin No. 25, (1957) p. 7. Also, "AAA Research Report," The Arbitration Journal, XII (1957), p. 134.

[43]Frank and Edna Elkouri, How Arbitration Works, (Washington, 1960), pp. 343-345.

One arbitrator indicated that the propriety of subcontracting could be determined by examining some or all of the following criteria:

> Whether subcontracted work is to be performed continuously or only intermittently; whether it is to be performed permanently or only temporarily; whether an emergency is involved; whether unit employees are qualified to do the work; whether employer has necessary equipment to do it; whether employer has acted in good faith; whether subcontracting has substantially harmful effect on union or members of bargaining unit; whether work is type which is frequently subcontracted in the industry; and whether it is type on which employer normally sustains loss or realizes unreasonably low profits.[44]

Changes in the Viewpoints of Selected Arbitrators

Many arbitrators have changed their viewpoint since 1945. In 1947 arbitrator McCoy[45] indicated "arbitrators are unanimous in holding that employers have the right to subcontract work unless such right is specifically restricted by contract."[46] However in 1956 and 1959[47] McCoy recognized implied limits from the recognition, seniority and other clauses. These clauses implied subcontracting could make a nullify of the contract. Other arbitrators such as Holly,[48] Klamon,[49] Williams,[50] Wallen,[51] have also changed their views since their first subcontracting

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[44] Labor Arbitration Reports, XXV, p. 118, (Washington), (Hereafter referred to as 25 LA 118.)

[45] Arbitrator McCoy's award (12 LA 707) was cited 21 times by other arbitrators. See Appendix E for a listing of subcontracting awards which were cited more than 5 times.

[46] 12 LA 707.

[47] 27 LA 671, 33 LA 278.

[48] 19 LA 815, 36 LA 695.

[49] 20 LA 690, 37 LA 834.

[50] 21 LA 330, 36 LA 714.

[51] 28 LA 491, 34 LA 420.

case.

Some arbitrators have consistently recognized limits to subcontracting. Arbitrator Wolff in 1950 indicated that some subcontracting could be acceptable, but "that neither party will unilaterally take any action which will nullify the contract."[52]

Some arbitrators have been unable to find a consistent trend among subcontracting awards. In 1958 Arbitrator Seward said:

> Beyond revealing that other companies and unions have faced this same question of implied obligations--have presented similar arguments and voiced similar fears--the cases show little uniformity of either theortical argument or ultimate decisions... Within each group of decisions, moreover, there are conflicts of principle and approach. The umpire has returned from his exploration of the cases a sadder--if not a wiser--man, echoing the plaint of Omar Khayyam: 'Myself when young did eagerly frequent Doctor and Saint and heard great argument about it and about: but evermore came out by that same door where in I went.'[53]

Arbitrator Teple in a December, 1961, decision examined many recent decisions of other arbitrators. He was reluctant to adopt the implied limitations on subcontracting even though many arbitrators had. He indicated:

> The right to subcontract is an important one, inherent in the basic function of managing the business, and its abandonment must clearly be based on reasonably clear evidence.[54]

Arbitrator Dash indicated that most arbitrators consider contracting-out to be arbitrable even though the contract is silent on subcontracting. Further Dash found that in only nineteen of 64 cases did the company have the right to contract-out in the absence of contract provisions. In 45

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[51] 14 LA 31. Arbitrator Wolff's award was cited twenty-two times by other arbitrators. Most of these citations were in the years 1958-1962.

[52] 30 LA 678, 682.

[53] 37 LA 892, 898.

decisions the right to contract-out was not completely retained.[55]

Dash established patterns of limitations based upon previous awards of arbitrators. The limits of good faith, economy and efficiency, and past practice were most important. Components of good faith (no intent to harm employees or union and no unreasonable, arbitrary or discriminatory actions) were next in importance. The third item of importance that limited management's right to subcontract was the recognition, seniority, and other clauses. Any attempt to violate the spirit, intent or purpose of the collective agreement was the fourth important item. Dash also emphasized the importance of practices and relationships between the parties.[56]

Donald A. Crawford believed that there could be certain precepts developed from the previous arbitrators' awards. He indicated that implied limits were important. The recognition and other clauses could be limits to subcontracting. He noted that this view was a minority view.[57] Companies generally cannot subcontract to get lower wages. Contracting-out regular plant operations and using non-unit employees to replace bargaining unit employees are limited.[58] Crawford implied that such issues as past practice, business decisions and, in certain cases implications of the contract clauses were not the real justfications used to prevent subcontracting. He said:

> The doctrine seems to be that the company cannot undermine the status of the collective bargaining agent by contracting out work primarily to beat the union prices,

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[55]33 LA 925, 943-944.

[56]Ibid.

[57]National Academy of Arbitrators, Challenges to Arbitration (Proceedings of the Thirteenth Annual Meeting) (Washington, 1960), p. 68.

[58]Ibid., p. 69.

> nor can the company contract out permanent work without compelling reasons other than a seeming desire to reduce the status of the exclusive agent.[59]

Frank and Edna Elkouri have also made an extensive study of management rights. Instead of attempting to delimit the underlying and possibly hidden factors that determine arbitrators' decisions, they accepted the more obvious explanations. They indicated that the recognition, seniority, and other clauses may limit management's right to subcontract. This is especially true in the absence of reasonable good faith-business decisions.[60]

In this chapter the thoughts of management, labor, and arbitrators have been examined. Only the arbitrators appear to have substantially changed their viewpoint in regard to managerial subcontracting rights. Most arbitrators now recognize limitations from the recognition, seniority, and other implied clauses. Many studies show other standards by which to determine the propriety of subcontracting. In Chapters IV and V these criteria will be analyzed.

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[59] Ibid., p. 72.

[60] Frank and Edna Elkouri, p. 342.

CHAPTER III

ARBITRABILITY OF THE SUBCONTRACTING GRIEVANCE

Difficulties have arisen in grievance arbitration because one party of the dispute (in almost all cases management) asserted that the grievance disregarded certain basic rights or functions. Generally management took the position that the decision to subcontract or not to subcontract was a management function, and that this decision was not subject to arbitration.

Topics discussed in this chapter include federal and state court rulings before the Warrior and Gulf decision; the Warrior and Gulf ruling of the United States Supreme Court; state and federal court rulings on subcontracting arbitrability after the Warrior and Gulf decision; and determination of subcontracting arbitrability by arbitrators.

Court Decisions Before Warrior and Gulf

Arbitration of labor disputes has been the result of private labor-management agreements. Many of the early common law decisions were not favorable to contractual arbitration clauses that involved voluntary submission-compulsory settlement agreements. And the statutes in most states were not conducive to the enforcement of these voluntary labor arbitration agreements.

Today, New York has the most favorable state statute on labor arbitration, but unfortunately many states still do not have statutes that promote and effectively enforce labor arbitration proceedings. Common law, supplemented by some federal decisions, rather than statutes, rules

in most of these states.

Even the New York Supreme Court did not wholly uphold the implications of the New York statutes. The New York Supreme Court in the Cutler-Hammer ruling decided that

> If the meaning of the provision of the contract sought to be arbitrated is beyond dispute, there cannot be anything to arbitrate and the contract cannot be said to provide for arbitration.[1]

This 1947 decision indicated that the court did not accept the broad meaning of the arbitration clause. This doctrine was quoted widely by many courts. It hindered to some extent the development of the complete federal policy on labor arbitration as outlined in the Labor-Management Relations (Taft-Hartley) Act.[2]

The question of whether it was permissable to have an agreement to arbitrate a future dispute remained in doubt until 1957. In 1957 the United States Supreme Court held that Section 301 of the Labor-Management Relations (Taft-Hartley) Act of 1947 allowed the court to fashion the necessary substantive law.[3] This decision (Lincoln Mills) allowed for the future enforcement of collective bargaining agreements which called for arbitration of unsettled grievances. The federal court made it explicit that arbitration was the procedure to settle grievance disputes which could not be settled otherwise.

The courts have become involved in determining questions of

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[1] International Association of Machinists v. Cutler Hammer, Inc., 271 app. Div., 917 (N. Y. ct. app.), 6 LA 1031 aff'd 7 LA 959), 1947.

[2] Specifically, Section 301. See Appendix B.

[3] Textile Workers v Lincoln Mills of Alabama, 353 U. S. 448, (40 LRRM 2113), 1957. For an extensive discussion of this and other cases, see Charles O. Gregory, Labor and the Law (New York, 1961), pp. 443-496.

arbitrability in several ways. The court may be asked for a "stay of arbitration"[4] until the question of arbitrability has been decided. A party may "seek a court order compelling the other party to arbitrate,"[5] making it the duty of the court to decide the question of whether the dispute should be taken to arbitration. Another situation involving the courts occurs when an "award is taken to court for review or enforcement."[6]

An examination of the cases reported in the Labor Arbitration Reports on subcontracting arbitrability presented to courts before the Supreme Court's Warrior and Gulf decision in 1960 (discussed below) reveals some interesting facts.[7]

New York Courts. All the cases in New York were decided by the New York Supreme Court and the New York Court of Appeals.[8]

Arbitrators were asked to determine the merits of the dispute in approximately 50 percent of these cases which the New York Courts decided. Only one of the cases involved a contract which specifically limited management's right to subcontract.[9]

The cases declared arbitrable by the New York Courts were decided

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[4]Frank and Edna Elkouri, p. 124.

[5]Ibid.

[6]Ibid.

[7]All of these cases are from the Labor Arbitration Reports, I-XXXVII, sub-titles 94.101, 94.103, 94.117, and 94.166. Those cases that were enforced, appealed or reversed by higher courts were not considered. Neither were actions to recover damages, settle contract negotiations or in any way define or negotiate subcontracting. For a listing of the applicable cases in the Labor Arbitration Reports for courts only see Appendix F. Also see Appendix G for a listing of the awards not considered because of the above factors.

[8]See Appendix F for a listing of these cases.

upon the basis of various criteria. Many mentioned that the acts or relationships between the parties (Labor and Management) that had caused the dispute were within the meaning and application of the contract. The arbitration clause was the principal clause relied on to determine arbitrability. The recognition and other clauses were rarely relied upon as the determining factor. Subcontracting that could be construed as making a nullity of the contract was given secondary importance. This claim had to be supplemented with other clauses of the contract to make a valid argument before the courts.

In cases where the need for arbitration was not established, the merits of the grievances were used by the courts as a basis for finding that there existed insufficient reason for arbitration. Good faith-business decisions based on company practice (past practice) with no contractual limit on subcontracting were the main characteristics of these cases. Also, the finding that there was no dispute concerning the meaning and application of the contract was characteristic of several cases. The courts decided in the rest of the cases that since management had retained its subcontracting prerogative, the arbitrators had no jurisdiction and there could be no restriction on subcontracting.

Other State Courts. Courts in other states followed the general legal pattern of the New York Courts, but prior to the Warrior and Gulf decision no cases in higher courts in other states were declared arbitrable.[10] These courts decided there was no dispute concerning the meaning and application of the contract because management had retained its right to manage the business (subcontract). In one case the arbitrator was not given jurisdiction because there had been no voluntary submission of the issue

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[10]See Appendix F for a listing of these cases.

to the arbitration procedure.[11] In all other cases the courts decided management could subcontract where there were no explicit clauses limiting subcontracting in the contracts.

Federal Courts. The federal courts were equally divided on the question of arbitrability. There were no specific contractual limits on management's right to subcontract in the cases decided by the federal courts.[12] Courts rejected the recognition, job classification and other clauses as creating obligations to arbitrate. These courts relied principally upon the arbitration clause to send to the arbitrator cases which they felt involved a dispute over the relationships between the parties, or a dispute over the interpretation of the meaning and application of the contract.

Federal courts were reluctant to base their opinion on the merits of the grievances. However, when claims of arbitrability were rejected, the courts' supplemental support for the rejected claim included evidence based on the merit of the grievance. This was always in support of evidence that an arbitrator would not have jurisdiction, or that management had specifically retained its subcontracting rights. In certain cases the resistance of union pressure to limit subcontracting in the previous contract negotiations was proof of the retention of management's prerogative.

Warrior and Gulf Decision

Three years after the Lincoln Mills doctrine was established the United States Supreme Court was presented with three cases on

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[11] 23 LA 302.

[12] See Appendix F for a listing of these cases.

arbitrability. One of these, the case involving the United Steelworkers of America versus Warrior and Gulf Navigation Company,[13] dealt specifically with subcontracting arbitrability. The case involved a grievance filed by the union that questioned the right of management to lay off about one-half (nineteen of 42) of the employees in the bargaining unit and subcontract the work formerly done by these men.

The company based its case on the fact that there were no prohibitions against subcontracting in the contract even though the union had attempted to limit subcontracting in past negotiations. Management felt that the management rights clause which said, "matters which are strictly a function of management are reserved,"[14] protected management's action in this case. Also, management pointed to past practice, economy and efficiency, and good faith to supplement its case.

The union claimed that by contracting-out management had violated the contract. The union said that subcontracting had created a partial lockout, and further, that the action of management was not in good faith.

The District Judge dismissed the motion to require the employer to arbitrate. He indicated in his decision that:

> The labor contract does not prohibit, and is not susceptible of being interpreted to require that defendant is prohibited from contracting out work.[15]
>
> The right to contract out work is an inherent, traditional right of management which may not be questioned or subjected to arbitration in the absence of agreement

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[13]The Court was presented with three cases. United Steelworkers of America v American Mfg. Co., 80 S ct. 1343 (1960); Steelworkers v Warrior and Gulf, 80 S. ct. 1347 (1960); and Steelworkers v Enterprise Wheel and Car Co., 80 S. ct., 1358 (1960).

[14]31 LA 712, 714-15.

[15]31 LA 712, 714.

> on the part of the defendant or an express limitation thereof set forth in labor contract.[16]

The union appealed to the United States Court of Appeals (Fifth Circuit, New Orleans). The majority report indicated that the company's contracting-out had not been "discriminatory, unjust or unreasonable."[17] The union's claim of a partial lockout was termed a "simple play on words and is insubstantial."[18] The majority further indicated that:

> Whatever may be meant ordinarily by the term 'inherent rights of management' we clearly have here a matter which by the agreement of the parties is 'strictly a matter of management.'[19]

The minority indicated that the union's contention concerning the current situation of subcontracting did meet the requirements for grievance arbitration. The minority believed that the history of the relationships between the parties should not preclude the current grievance.

The Steelworkers appealed to the United States Supreme Court, and in a decision delivered June 20, 1960, this Court ordered arbitration of the merits of the dispute.[20] The Court, in its analysis of the three cases had to deal with the problem of the role of the judicial system in determining arbitrability. The Cutler Hammer doctrine was rejected by the Supreme Court. In rejecting this doctrine the Court indicated that ordinary contract law would not be applicable in this situation. Emphasis was given to industrial stability. Arbitration procedures in the collective bargaining agreements that lead to grievance settlement instead

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[16] 31 LA 712, 714-15.

[17] 44 LRRM 2567, 2569.

[18] Ibid.

[19] Ibid.

[20] 36 LA 695.

of industrial unrest were considered to be the dominant public policy. Therefore, the Supreme Court limited the function of courts, but increased the stature of arbitrators in the determination of the meaning of contractual language. The Court did this by indicating that, unless there was strong language to the contrary, all questions on whether to arbitrate or not should be resolved in favor of arbitration.[21]

The Supreme Court decision did not change certain aspects of arbitration. Courts may still decide arbitrability; however the courts may not review the merits of the case.[22] When the scope of the contract covers the dispute (even frivolous claims), then the court must allow the arbitrator to use his judgment in the final determination of the dispute. The arbitrator is still limited to interpreting and applying the contract.[23]

Not all authorities agree with the implications of the Supreme Court decision. Harold Davey indicated that many parties do not want arbitration of this type. He said that the differing opinions on the functions of arbitrators should be considered.[24] Others objected to the implications that arbitrators have more authority than that contained in the arbitration agreement of the contract.[25]

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[21] 36 LA 695.

[22] Ibid.

[23] Ibid.

[24] Richard Martin Lyon, "Resistance to Grievance Arbitration," Personnel, XXXIX, (March/April, 1962), pp. 40-41. Quoting Harold Davey, "The Supreme Court and Arbitration: Musings of an Arbitrator," Notre Dame Lawyer, (March, 1961), pp. 138-145.

[25] National Academy of Arbitrators, Arbitration and Public Policy. (Proceedings of the Fourteenth Annual Meeting (Washington, 1961), pp. 8, 10. Also see New York University, Twelfth Annual Conference on Labor (New York, 1959), pp. 211-226.

Many agreed with the court decision.[26] Some like Archibald Cox prefer a liberal interpretation of the contractual language of the collective bargaining agreement. He said:

> It is not unqualifiedly true that a collective bargaining agreement is simply a document by which the union and employees have imposed upon management limited, express restrictions of its other wise absolute right to manage the enterprise, so that an employee's claim must fail unless he can point to a specific contract provision upon which the claim is founded.[27]

Court Decisions after Warrior and Gulf

All but one of the decisions on subcontracting by state and federal courts after the Warrior and Gulf decision were decided in favor of arbitration. The one decision declared the grievance was not arbitrable because it would "modify or amend"[28] the agreement. Modification or amendment of the contract was specifically forbidden in the arbitration clause. In the other cases the courts indicated that management does not completely retain its managerial subcontracting prerogative. This is especially true when the arbitration clause indicates that all disputes concerning the meaning and application of the contract are to be arbitrated. Some courts said that any dispute or conflict over any act or relationship between the parties is subject to the arbitration procedure.[29] One court based its decision entirely on the United States Supreme Court's Warrior and Gulf decision.[30] In none of the above cases did the courts examine the merits of the dispute in determining the

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[26] Ibid., pp. 211-226.

[27] Archibald Cox, "Reflections upon Labor Arbitration," Harvard Law Review, LXXII (March, 1959), p. 1116.

[28] 35 LA 168.

[29] 35 LA 255, 35 LA 703, 37 LA 389.

[30] 36 LA 998.

question of arbitrability.

Determination of Subcontracting Arbitrability by Arbitrators[31]

What is the effect of subcontracting arbitrability decisions by arbitrators? What factors are important in these decisions? The implications of subcontracting arbitrability determination by arbitrators will be examined in this section.

Determination of arbitrability is left to the arbitrator for several reasons. Usually the cost of an arbitrator is less than court proceedings.[32] Most agreements provide that questions of interpreting the meaning and application of the contract shall be determined by an arbitrator. The arbitrator often determines arbitrability as part of his third party function. The implications of the arbitration, recognition, and other clauses[33] are the bases for this decision.[34] There is disagreement among arbitrators over whether the merits of the dispute should be introduced before a ruling is made on arbitrability. One view is that arbitrability should be determined before the presentation of the merits of the grievance.[35] The other view, held by only a minority of arbitrators,

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[31]See footnote 7 of this chapter for limitations. Also see Appendix H for a listing of applicable cases in the Labor Arbitration Reports for arbitrators only.

[32]Frank and Edna Elkouri, p. 120.

[33]Job security is the criterion for the filing of grievances based on recognition, seniority, wage and other contract clauses. Employees of a subcontractor replace bargaining unit employees. The union's status as the bargaining representative, the cumulative seniority of the displaced employees, the monetary renumeration from specific positions and the other benefits are all threatened by the contracting-out of work.

[34]New York University, pp. 462-465.

[35]22 LA 456, 460.

is that arbitrability may be decided after the complete case has been heard.[36]

An examination of nineteen cases from 1945 to 1962 in the Labor Arbitration Reports on subcontracting arbitrability shows that arbitrators rule almost unanimously in favor of a review of the merits of the grievance. In only one case did an arbitrator rule otherwise. This involved a dispute in which the arbitrator ruled the contract specifically excluded his jurisdiction.[37] The arbitrator further rejected the recognition and wage clauses as implied limits. He felt that the language of the arbitration clause precluded such clauses from limiting subcontracting.

The one contract that had a contractual restriction limiting subcontracting was declared by the arbitrator to be arbitrable.[38] The arbitrator based his claim on the limitations involved in the scope clause.

All the remaining cases (seventeen) were declared arbitrable even though there were no explicit contractual restrictions limiting subcontracting. These arbitrators based their decisions upon the interpretation of the arbitration clauses. These clauses indicated that disputes over the meaning and application of the contract were arbitrable. Arbitrators in certain cases supplemented this claim by referring to the scope, seniority, recognition, or other clauses of the contract.

Merits of the dispute were introduced in a small minority of the cases. The history of negotiations between the parties, i. e., attempts to limit

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[36] 19 LA 737, 738.

[37] 22 LA 251.

[38] 12 LA 190.

subcontracting in previous negotiations; past settlements; implied recognition of limits on subcontracting; and improper business decisions by the employer, were of importance in several cases.

Most arbitrators did not introduce any merits of the grievance. In eighteen of the nineteen decisions, the arbitrator decided that the dispute was arbitrable. The arbitrator was asked to determine the merits of the grievance in fourteen of these eighteen cases.[39] In three cases arbitrability was the only issue, and in one case the arbitrator decided against further arbitration.

The rulings of courts and arbitrators were examined in this chapter. Before the Warrior and Gulf decision both federal and state courts ruled on questions of arbitrability. Only the arbitration clause was effectively used to find disputes arbitrable. Some of these rulings were based upon the merits of the dispute. The Supreme Court ruling in the Warrior and Gulf case prohibited state and federal courts from deciding these disputes upon their merits. The court indicated that all questions over the meaning and application of the contract should be arbitrated. The only exception is specific contract language forbidding such arbitration. In cases pertaining to the arbitrability of the dispute, arbitrators have consistently decided the disputes were arbitrable; i. e., a determination should be made on the meaning and application of the contract.

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[39]See Appendix H for a listing of these cases.

CHAPTER IV

AN ANALYSIS OF SUBCONTRACTING ARBITRATION CASES CLASSIFIED BY TYPE OF WORK

This has been an era during which most unions have sought to broaden the area of collective bargaining.[1] This has caused unions to appeal to grievance arbitration issues which were negotiated, but not limited in previous contract negotiations.[2] Arbitration can be a device by which a union can seek to bring about limits on unilateral action by management. Has grievance arbitration limited managerial authority? What has been the effect of arbitration decisions upon management's right to subcontract? These are questions with which this chapter will be concerned. This chapter specifically involves the effect of arbitrators' decisions classified by type of work subcontracted.

It would be almost impossible to list completely the differing variables that are involved in grievance arbitration. However, the most important variables are differences in: contract restrictions (most contracts do not explicitly limit subcontracting), companies, unions, arbitrators, types of work, and individual grievances. Certain general determinants of subcontracting arbitration have developed from these differing variables. These determinants become apparent when an analysis

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[1]Nat Goldfinger, "Are There Limits to Collective Bargaining," American Federationists, LXV (December, 1958), p. 2.

[2]Samual Cook, "The Right to Manage," Labor Law Journal, IX (March, 1958), p. 197.

is made of the types of work involved in subcontracting arbitration.[3]

Cleaning Work

There were 21 disputes concerned with the subcontracting of cleaning work performed on the company premises. The arbitrators decided in almost 50 percent of these cases that the employer had violated the contract. Ten percent of these contracts had an explicit limit upon management's right to subcontract. In other cases, it was decided that management could not lay off its own janitors and subcontract the work because of these reasons: economy was not a sufficient justification; the employer would violate the job classification or the recognition clauses; and by such subcontracting the contract could be nullified. In these cases the elimination of jobs by subcontracting was not justified by past practice, good faith, the marginal nature of the work, nor the absence of any showing of an intent to harm the union or the bargaining unit.

Additional reasons that did not uphold the employer's action were: not enough supervisors; consultation with the union prior to subcontracting; absence of ownership rights in the subcontractor; and absence of an agreement not to subcontract though this had been discused in prior contract negotiations.

In the cases where the arbitrators found no violations of the contract there were no explicit limits on subcontracting. The main criteria for

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[3]No importance should be given to the order in which the types of work are placed. See Appendix I for the 181 "rights" disputes on subcontracting arbitration classified by types of work. Those cases that were enforced, appealed or reversed by higher courts were not considered. Neither were actions to recover damages, settle contract negotiations or in any way define or negotiate subcontracting. These cases are all listed in the Labor Arbitration Reports under subtitles 2.137, 117.38, and 117.381.

allowing subcontracting were economy and efficiency, and past practice. Contracting-out cleaning work that was the result of the creation of new jobs (no plant layoffs) was considered a reasonable business decision. In more than half of these cases, wage, work, seniority, and recognition clauses were rejected by arbitrators as the bases for an award. In those cases where employees were laid off, insufficient employees, the temporary (limited) marginal nature of the work, and industry practice were found to be sufficient reasons for subcontracting. In no case was there evidence of bad faith (intent to deprive union employees of work or intent to harm the bargaining unit). And if there had been an attempt to limit subcontracting in contract negotiations and the attempt had failed, then any subsequent contracting-out could not be construed as making a nullity of the contract.

Guarding

Many companies utilize specialized services of an outside contractor to guard the company property. Where this procedure has been followed for many years in the past, there generally is no disagreement as to management's right to follow this practice. But difficulties often arise when work is shifted from bargaining unit employees to an outside contractor.

In each of the eight cases examined, the contracts contained little or no explicit limit on subcontracting. Subcontracting was not justified in one case because of the absence of any showing of economy, and the absence of any showing that present employees were unable to perform the job. In this case, because of the good faith of the employer, the damages were reduced.[4]

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[4]22 LA 390.

In the other seven cases, good faith-business decisions were the predominant determinants. Although departments were eliminated and employees laid off, management's actions were acceptable because of reasonableness, economy and efficiency, and the nature of the special project. Of supplemental importance were the de minimis rule (affecting only one employee) and obsolete equipment. Claims by the union of a violation of the recognition, seniority, and other clauses or an intent to harm the union were inadequate claims because of either the absence of contractual restrictions or the provisions of the management rights clause.

Construction Work

Construction is normally major work relative to the overall operation, for example, the installation of large machines or the building of new plant and equipment facilities. Construction may also involve minor maintenance in conjunction with the primary building and installation.

Arbitrators found violations of the contracts in three of the 26 construction cases brought to arbitration between 1945 and 1962. In two-thirds of these cases it was found that there was more than an implied limit on management's right to subcontract. Avoidance of the terms and conditions of the contract, i. e., recognition, seniority, and other clauses, was the basis for the arbitrators' awards. Prior awards, similar work, and availability of qualified employees were other factors that influenced the arbitrators. Past practice and an overload of work to be done were not applicable justifications for contracting-out.

In the other 23 of these cases no violations were found. An analysis of these cases shows that less than ten percent had more than an implied limit on management's right to subcontract. There were no limits (explicit or implied) in approximately 60 percent of these cases.

Reasonable good faith-business decisions to preserve economy and efficiency summarizes the majority of awards. In addition, arbitrators used components of good faith (no discrimination, no intent to harm employees or the bargaining unit and no monetary harm to employees) to indicate secondary criteria. Much of the construction involved new jobs; temporary, emergency, one shot, or limited work; and/or work not normally performed by these employees. Arbitrators rejected the recognition, overtime, seniority, and work classification clauses as limits to construction subcontracting. If employees were working full time, employees and materials were not available, employees were not qualified, the union had been consulted or was aware of past subcontracting, then layoffs of certain employees in order to subcontract were acceptable.

Prior awards and employees on strike were of minor importance in determining violations of the contract. Managements which successfully resisted attempts to limit subcontracting during contract negotiations were held not to be avoiding the terms and conditions of the contract when they subcontracted during the following contract term.

Cafeteria Operations

Four cases involved the subcontracting of cafeteria operations. None of the cases analyzed had an absolute contractual limit on management's subcontracting right, but in two cases there was an implied limit. These implied limits were found in the scope clause and other terms or conditions of the contract. Limits were also placed on unilateral actions of management that might make a nullity of the contract. Consideration was given to the fact that this work would be performed on the plant premises. Limits were applied even though in certain instances no workers would be

laid off immediately.

In the other two decisions, subcontracting was allowed to continue. Major factors behind the allowance of work placed outside the bargaining unit were economy and efficiency and reasonable good faith business decisions. Good faith (not discriminatory or arbitrary), no violation of the recognition and work classification clauses, and past practice and marginal work (not major work), were of supplemental importance in the allowance of contracting-out.

Maintenance Work

Maintenance is minor installation and repair of equipment and plant facilities. Innovations often require adjustments in the parts of manufacturing equipment. Maintenance, like construction, may involve building. However, maintenance is minor rather than major work. Some of the maintenance of a large industrial firm is of a predictive nature; i. e., schedules of future maintenance work can be determined by an analysis of previous maintenance schedules, type and age and number of equipment, etc.

In six of the 47 maintenance cases the employer was found to have violated the contract. In one-half of the violations there was no explicit prohibition against subcontracting in the contract. The elimination of jobs from the bargaining unit and the possible nullification of the contract by such action were the major cause of violation awards. In certain cases, economy, past practice, reasonable business practices, or maintenance of managerial prerogatives were rejected as defenses of subcontracting. In other cases availability of employees and equipment,

the contract date, and local working conditions were the basic determinants of contract violations. Grievances were upheld in cases where there was little or no injury to the employees, where there had been no objections from the union on previous subcontracting, and when the employees had threatened to strike. The recognition clause was used effectively to substantiate the union claims.

In the other 41 maintenance cases, the arbitrators decided there was no violation of the contract. In one-eighth of these contracts there was a limit, in one-quarter a minute limit, and the other cases no explicit contractual limit on management's subcontracting powers.

Past or prevailing practice was cited by arbitrators as the major deciding factor. Other factors in order to importance were economy and efficiency; good faith; reasonable action; temporary, special, marginal, emergency or limited work. In a majority of these cases there were no plant layoffs. Because the employees of the firm were not available or were fully employed, the decisions to subcontract were upheld. Components of good faith (justification, no intent to harm employees or the bargaining unit) and business decision were not as important as other criteria. In some cases recognition, seniority, job classification, scope, overtime, and wage clauses were rejected by arbitrators as explicit limits on maintenance subcontracting. Local working conditions were rejected when management had subcontracted in the past without union objection. Also obsolete equipment or no qualified employees or supervisors were adequate defenses.

When the company had no ownership rights in the subcontractor and there was a management rights clause, contracting-out was not limited. However, the absence of a management rights clause did not bar future subcontracting. Work performed on the plant premises was acceptable even

during a strike when the union had failed to get limits on subcontracting in previous negotiations. Previous awards were of minor importance.

Printing Labels

The subcontracting of printing labels removes from the employees the process of inscribing information on boxes, wrappers, and tags. There were two such cases, and the employer was found not to have violated the contract in either case. In neither of the contracts involved were there explicit limits on the employer's right to subcontract. The scope, seniority, or recognition clauses did not restrict the good faith-business decisions of the employers to subcontract. Past practices, prior awards, the marginal nature of the work, economy and efficiency were considered to be reasonable suppport for the employers' contentions. There were attempts to limit subcontracting in prior negotiations, but these attempts failed. Therefore, layoffs in these cases were found not to be an avoidance of the terms and conditions of the contracts.

Major Plant Operations

Major plant operations refers to work directly related to the operation of the plant. An example would be a department which contributes directly to the integrated manufacturing process. A majority of the cases in this category were of this type. A few cases involved processes supplemental to a department, e. g., the testing process in a research and development department.

In twelve of these 34 cases, the arbitrator found that management violated the contract by contracting-out work. Many of these contracts specifically limited management's right to subcontract, but a violation

was found in one-fourth of the contracts where there was no prohibition against contracting-out work. When employees were laid off management was declared guilty of making a nullity of the contract, because the subcontracted work was similar work, qualified employees and equipment were available, and the work was performed on the plant premises. Further, such work would avoid the terms of the recognition, seniority, wage, overtime, work, and other clauses of the contract. The contracts were declared to be violated even though the employer had not agreed to limits in previous negotiations, had subcontracted in the past, had an overload of work that needed to be finished or did not have ownership rights in the subcontractor. Economy and efficiency and limited (marginal) contracting-out were rejected as defenses by the arbitrators.

In twenty-two of these cases, the arbitrator found no contract violation. In one-half of these cases the collective bargaining agreement did not limit management's subcontracting rights. In these cases the past practice of contracting-out work was the major factor. Good faith-business decisions based on economy and efficiency were other major criteria. Non-discriminatory decisions based upon special (limited) contracting-out because of emergencies or other similar critera were acceptable justifications. Even though the work had been performed on the premises management did not violate the overtime, wage, lockout, seniority, and other clauses of the contract.

When additional work was needed to be done and the necessary equipment or employees were not available, subcontracting was acceptable. If the union had not objected to past subcontracting and/or had been notified of pending contracting-out, or if management had negotiations, then such actions by management were reasonable. The absence of a management rights clause did not prevent management from contracting-out.

Scrap Operations

There were five cases involving scrap operations. Examination of the one contract violated by the employer shows that there was a limit on subcontracting. This limit was for the maintenance of local working conditions. This prohibition against subcontracting was guaranteed even though the present employees were apparently not qualified. The good faith desire of the employer to achieve economy through subcontracting was held to be not sufficient justification.

In the other four cases, there was no violation of the contract by the employer. In these cases past practice and the increased efficiency and economy that could be derived from subcontracting were allowable justifications. Good faith-business decisions with little or no contractual limits for this special (marginal) work were further justifications. Even though workers were laid off, the recognition and seniority clauses were not justifications to limit the action of the employers.

Power

The subcontracting for a supply of electrical power was involved in two cases. In neither case was there a violation of the contract by the employer. There was little or no limit on subcontracting in the contracts. In one case employees were laid off. The defense of the employer was good faith. Further, the employer noted that the union had not objected to past practice. The work was classified as a special project, i. e., not normal work.

The other case involved subcontracting when the employees were observing picket lines of another union. In this emergency the subcontracting temporarily of power house work was held to be justifiable.

No implied restrictions were involved to preclude the purchase of outside power. The arbitrator indicated a further examination of the situation would be necessary if the purchase continued after the picket lines were removed.

Sales and Distribution

What is the effect of eliminating the sales and distribution function from bargaining unit employees? There were two grievances concerning the sales and distribution function which went to arbitration. In neither case was there any explicit contractual limit on the right to subcontract. The arbitrators decided that there had not been violations of either of the contracts. These actions by the employers were termed good faith-business decisions. Further, in both cases emphasis was given to the retention of the managerial prerogative. That the company had no ownership in the subcontractor and past subcontracting of part of the distribution operations were additional proper claims.

Transportation

Transportation, as a type of work, includes jobs from removing ashes to messenger service--operating public transportation to moving the facilities of an accounting department. Most of these jobs involve special projects, extra runs, or marginal work.

During the years 1945 to 1962, there were a total of twenty-seven cases involving transportation. It was found that the employer violated the contract in seven of these cases. In almost 30 percent of the violations, there were specific limits on management's right to remove the jobs from the bargaining unit. There was no predominant issue which

established the union's claims. The unions based their claims on maintenance of take-home pay, job classifications, recognition, wage, and other clauses; the Railway Labor Act; and prior awards. The layoffs in certain cases were termed an avoidance of the contracts that could, if continued, make a nullity of the agreement. Individual claims of past practice, good faith-business decisions were not allowable claims.

In twenty cases the arbitrator found no violation of the contract. In all of these cases there was little or no explicit limit on subcontracting. The elimination of jobs or layoffs of employees was reasonable because of past practice, economy and efficiency, and the temporary or marginal nature of the work. In almost all awards the arbitrator mentioned that the action was a business decision taken in good faith without a deliberate intent to harm the employees or the bargaining unit. Rejected were claims by the union that recognition, seniority, wage, job classification, and scope clauses had been violated. These rejections were based on the de minimis rule, action by management that was not arbitrary or discriminatory, and the management rights clause. If an unsuccessful attempt had been made during previous contract negotiations to limit subcontracting, or if the union was aware of past contracting-out then the contract was not violated when management acted. In certain other cases if the union was consulted according to the rules of the contract then the employer could contract out even over the union's objection. Minor importance was given to obsolete equipment, work not normally performed by the employees and prior awards.

Can former employees become independent contractors and perform substantially the same functions? If the employer initiates the plan for the employees to become independent contractors then generally they cannot.

But arbitrators are divided in their opinions if employees initiate the plan. In one case the plan, though in good faith, was held not reasonable because the work was performed on the company premises and therefore violated the recognition clause. In the other case the plan was acceptable when there was good faith, no intent to deprive work from the employees or to harm the union, and the employees voluntarily wanted such an arrangement. In both of these cases there was no explicit contractual limits on subcontracting of the messenger service.

Clerical Work

In both of these cases it was found that employers did not violate their contracts when clerical work such as collection and addressing jobs were subcontracted. There were little or no limits in the contracts on subcontracting of such work. Although in certain instances employees were laid off, there were no violations because the actions were found to be good faith-business decisions. Since there appeared to be no deliberate intent to harm the union and the work was off the premises, the employers were found to have the right to continue subcontracting.

In summary, there were twelve classifications of work that were involved in grievance subcontracting. An analysis of Table 4.1 reveals that the subcontracting grievances were composed of these types of work: maintenance (25.97 percent); major plant operations (18.79 percent); transportation (14.92 percent); construction (14.37 percent); cleaning (11.60 percent); and all others (14.35 percent).

There were violations of the contracts in 23.20 percent of the 181 grievances. In cleaning work (47.62 percent) and in major plant operations (35.29 percent), arbitrators found the contract to be violated more than any other type of work. Contracts involving types of work

which could be performed by subcontractors off the plant premises were seldom found to be violated.

TABLE 4.1

TYPES OF WORK SUBCONTRACTED
(Classified by contracts violated and not violated)

Type of Work	No violated contract		Violated Contract		Total	
	Cases	Percent	Cases	Percent	Cases	Percent
Maintenance	41	87.23	6	12.77	47	25.97
Major Plant Operations	22	64.71	12	35.29	34	18.79
Transportation	20	74.07	7	25.93	27	14.92
Construction	23	88.46	3	11.54	26	14.37
Cleaning	11	52.38	10	47.62	21	11.60
Guarding	7	87.50	1	12.50	8	4.42
Scrap Operations	4	80.00	1	20.00	5	2.76
Cafeteria Operations	2	50.00	2	50.00	4	2.21
Printing Labels	3	100.00	0	00.00	3	1.66
Clerical	2	100.00	0	00.00	2	1.10
Power	2	100.00	0	00.00	2	1.10
Sales and Distribution	2	100.00	0	00.00	2	1.10
TOTAL	139	76.80	42	23.20	181	100.00

The major determinants of arbitrators' decisions classified by type of work were examined in this chapter. A more detailed analysis of these determinants on the basis of time periods will be developed in Chapter V.

CHAPTER V

SUBCONTRACTING--TIME PERIOD ANALYSIS

Arbitrability of Subcontracting Grievances by Time Period

For purposes of analysis, the cases on arbitrability may be broken down into six time periods as follows: Time period I covers from September, 1945, to August, 1947, and involves cases found in Volumes I through 37 of the Labor Arbitration Reports; time period II is from August, 1947, to February, 1950,[1] found in Volumes 8 through 13; time period III includes Volumes 14 through 19 (March, 1950, to February, 1953); time period IV includes Volumes 20 through 25 (March, 1953, to February, 1956); time period V includes Volumes 26 through 31 (March, 1956, to February, 1959); and time period VI includes Volumes 32 through 37 (March, 1959, to March, 1962). Only cases decided by arbitrators will be analyzed in this chapter.

As Table 5.1 indicates period VI included twelve (63.15 percent) of the nineteen cases on arbitrability. Period V had two (10.53 percent); period IV, three (15.79 percent); and period II, two (10.53 percent). Periods I and III had no cases on arbitrability. Up to period VI arbitrators placed emphasis on the arbitration clause and other supporting evidence in their determination of arbitrability. The meaning and

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[1]The Labor Arbitration Reports are published weekly. Therefore, one time period or volume may stop, and another time period or volume may begin in the same month.

application of the contract became important in period V. In period VI this was the greatest single determinant of arbitrability.

TABLE 5.1

ARBITRABILITY OF SUBCONTRACTING GRIEVANCES BY TIME PERIODS

Time Period	Years	Labor Arbitration Reports	Number of Cases	Percent of 19 Cases
I	1945-1947	Volumes 1 - 7	0	0
II	1947-1950	Volumes 8 - 13	2	10.53
III	1950-1953	Volumes 14 - 19	0	0
IV	1953-1956	Volumes 20 - 25	3	15.79
V	1956-1959	Volumes 26 - 31	2	10.53
VI	1959-1962	Volumes 32 - 37	12	63.15

Many new criteria were introduced in period VI. The most important of these was the recognition clause and its limit upon the managerial subcontracting prerogative. While two-thirds of the arbitrability cases were in this time period, three-fourths of the limits from the recognition clause and all (100 percent) of the limits on management rights from the seniority, scope and other clauses were in period VI. Increases in the use of the merits of the grievances were a characteristic of period VI.

Individual arbitrators also reflect this trend. There were two arbitrators who had more than one case concerning the arbitrability of subcontracting. Arbitrator Crawford had two cases in period VI.[2] In both cases he indicated that even though there were no specific prohibitions against subcontracting, the grievances were arbitrable because of the recognition or other clauses. Arbitrator Ryder had two cases--one in period IV and one in period VI.[3] Neither contract prohibited subcontracting.

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[2] 33 LA 228, 37 LA 544.

[3] 22 LA 251, 36 LA 912.

However, in period IV no limit on subcontracting was implied from either the recognition or wage clause. In period VI the recognition and bargaining unit provisions of the contract made the subcontracting arbitrable. Therefore, implied limits from the recognition and other clauses have become recognized as determinants of arbitrability. This trend became well established in period VI.

Arbitrators and courts generally agree on the determinants of arbitrability. Since the Warrior and Gulf decision, courts have relied upon the arbitration clause to make any dispute over the meaning and application of the contract arbitrable. This has restricted unilateral subcontracting by management. Arbitrators have put more emphasis on the recognition, seniority and scope clauses of the contracts to determine if there should be an interpretation of the contract.

An Analysis of Subcontracting Arbitration Cases Classified by Time Period

Several determinants of subcontracting arbitration have been noted. What is indicated by a time period analysis of these determinants? Can a trend be established from the criteria noted under the types of work? The same time period analysis as the one developed above will be used to deal with these questions.

As Table 5.2 indicates, time period I had six (3.31 percent) grievances over subcontracting which went to arbitration. Period II had fifteen (8.29 percent) grievances; period III, thirteen (7.18 percent); period IV, 27 (14.92 percent); period V, 43 (23.76 percent); and period VI had 77 (42.54 percent) grievances.

Tables 5.2 and 5.3 show a steady increase in the number of subcontracting grievances that were taken to arbitration. The lack of awards upholding union grievances was reversed in period III. Since period III

the percentage of contracts found to have been violated has remained within the 20 to 30 percent range.

TABLE 5.2

SUBCONTRACTING ARBITRATION GRIEVANCES BY TIME PERIOD

Time Period	Years	Labor Arbitration Reports	Number of Cases	Percent of 181 Cases
I	1945-1947	Volumes 1 - 7	6	3.31
II	1947-1950	Volumes 8 - 13	15	8.29
III	1950-1953	Volumes 14 - 19	13	7.18
IV	1953-1956	Volumes 20 - 25	27	14.92
V	1956-1959	Volumes 26 - 31	43	23.76
VI	1959-1962	Volumes 32 - 37	77	42.54

TABLE 5.3

NUMBER OF SUBCONTRACTING GRIEVANCES BY TIME PERIOD
(Classified by number of violations and non-violations of contracts)

Item	Period						Total
	I	II	III	IV	V	VI	
Total grievances	6	15	13	27	43	77	181
Violations of contract found	0	1	6	8	9	18	43
No violation of contract found	6	14	7	19	34	59	139

TABLE 5.4

PERCENTAGE OF SUBCONTRACTING GRIEVANCES BY TIME PERIOD
(Classified by number of violations and non-violations of the contracts)

Item	Period						Total
	I	II	III	IV	V	VI	
Total grievances	3.31	8.29	7.18	14.92	23.76	42.54	100.00%
Violations of contract found	0.00	6.67	46.15	29.63	20.93	23.38	23.20
No violations of contract found	100.00	93.33	53.85	70.37	79.07	76.62	76.80

Contractual limits on subcontracting. Table 5.5 shows that 47 percent of the findings of violations of contracts which restricted subcontracting

occurred in period VI. Findings of violations of these contracts which restricted subcontracting were not common in the earlier periods. Period I through III had almost nineteen percent (Table 5.4) of the 181 subcontracting grievances that were taken to arbitration, but approximately 25 percent (Table 5.5) of all cases in which the disputes were not upheld despite contractual limitations were in these periods.

TABLE 5.5

ARBITRATORS' FINDINGS OF VIOLATIONS OF CONTRACTS CONTAINING RESTRICTIONS ON SUBCONTRACTING
(Percentages by Time Periods)

Item	Period						Total
	I	II	III	IV	V	VI	
Contractual limitations on subcontracting	5	10	10	10	21	44	100%
Violations of contract found	0	6	17	12	18	47	100%
No violation of contract found	7	11	7	9	23	43	100%

When contracts which had no contract provisions specifically restricting subcontracting are examined, the same pattern exists. In period I and II arbitrators did not uphold any grievances when there were no prohibitions against subcontracting. But the lack of a restriction in the contract upon subcontracting did not prevent arbitrators from upholding grievances by unions in periods III through VI (Table 5.7).

TABLE 5.6

SPECIFIC GOOD FAITH JUSTIFICATIONS IN SUBCONTRACTING GRIEVANCES
(Percentages by Time Period)

Item	Period						Total
	I	II	III	IV	V	VI	
Good Faith (Specifically cited)	5	5	2	18	34	36	100%
Good faith but violation of contract	0	0	0	20	39	41	100%
Good faith and no violations of contract	5	6	3	18	33	35	100%

TABLE 5.7

PERCENTAGE LIMITS BY TIME PERIOD ON SUBCONTRACTING

Item	Period I	II	III	IV	V	VI	Total
No contractual limits on subcontracting	0	11	5	18	26	40	100%
Violations of contract found	0	0	12	24	24	40	100%
No violation of contract found	0	13	4	16	27	40	100%
No intent to harm--							
Bargaining unit	0	5	0	5	14	76	100%
Employees	12	19	0	25	31	13	100%
Reasonable action	0	6	6	7	45	36	100%
Economy and Efficiency	3	5	5	12	21	54	100%
Violation of contract found	0	0	10	10	10	70	100%
No violation of contract found	4	6	4	12	23	51	100%
Temporary-Marginal Work	2	5	2	10	27	54	100%
Seniority Clause	0	5	6	6	11	72	100%
Violation of contract found	0	0	0	24	0	76	100%
No violation of contract found	0	7	8	0	14	71	100%
Other clauses	5	13	9	14	27	32	100%
Violation of contract found	0	0	8	23	23	46	100%
No violation of contract found	11	34	0	0	33	22	100%
Make nullity of contract	0	0	14	16	8	62	100%
Business decisions	5	5	6	8	31	45	100%
Violation of contract found	0	0	5	3	10	82	100%
No violation of contract found	5	6	6	8	33	42	100%

Good Faith. Good faith was used as a proper justification for subcontracting in all periods. As Table 5.6 shows, there were no contracts found to be violated because of an absence of good faith in periods I through III. In periods IV through VI many contracts were held to be violated even though there was evidence of good faith. The implied limits of good faith and its components became more important to subcontracting cases in the later periods. Eighty-eight percent (Table 5.6) of the acceptable justifications of good faith were in periods IV through VI, while only about 81 percent (Table 5.4) of the subcontracting grievances taken to arbitration were in this period. There were specific claims of good faith as a subcontracting justification in more than one-third of the 181 grievances.

"No deliberate intent to deprive employees of work" declined in relative importance during periods V and VI. However "no intent to harm the status of the bargaining unit" became more important in arbitrators' awards (Table 5.7). More than three-fourths of the uses of this criterion (bargaining unit) were in period VI. "Reasonable actions" that were neither arbitrary nor discriminatory have not increased in importance as major criteria. The claim of reasonableness supported by evidence has however become one of the main "supporting" criteria used by arbitrators. Eighty-one percent (Table 5.7) of these supporting evidence claims were made in periods V and VI.

Past Practice. Past, prevailing, company or industry practice of subcontracting bargaining unit work if supported by other evidence was justifiable action. Some type of specific "practice" claim was made in more than one-half of the 181 grievances. Less than ten percent of these "practice" justifications were rejected. As Table 5.6 indicates, more

than 60 percent of the rejections of "practice" justifications were in period VI. More than three-fourths of the past practice justifications were in periods V and VI.

TABLE 5.8

PERCENTAGE OF PAST PRACTICE CLAIMS IN SUBCONTRACTING GRIEVANCES
(By Time Period)

Item	Period						Total
	I	II	III	IV	V	VI	
Past practice claims	2	7	6	9	24	52	100%
Past practice but violation of contract	0	9	12	0	19	60	100%
Past practice and no violation of contract	2	7	5	10	25	51	100%

Economy and Efficiency. Specific claims of economy and efficiency were made in more than 45 percent of the 181 cases. In cases where the arbitrator found no violation of the contract, "economy and efficiency" was one of the major criteria. However, 70 percent (Table 5.7) of the rejections of economy and efficiency as criterion were in period VI. These rejections occurred on the grounds that management could not replace bargaining unit workers with non-bargaining unit workers solely because the new workers were willing to accept reduced wages.

Temporary-Marginal Work. Temporary-marginal work is short duration work. It also involves only a few members of the bargaining unit. Special projects, one-shot, and limited emergency work may be involved. This type of subcontracting arbitration case has become very important in recent periods. While only 66 percent (Table 5.4) of the subcontracting cases were in time periods V and VI, 81 percent (Table 5.7) of the

temporary-marginal work cases were in these two periods.

Work Performed on the Premises. Most of the objections to subcontracting are based on premises work. When outside employees take over the work of cleaning, cafeteria operations, major plant operations and other similar work, arbitrators have a greater tendency to grant the grievance. No discernable trend developed between the first and last periods.

Recognition--Seniority and Other Clauses. Many arbitrators have indicated that management's recognition (recognition clause) of the union as the bargaining agent for the bargaining unit employees carried implied limits against unilateral acts such as subcontracting. Table 5.9 indicates that in periods I and II there were no claims of violations of the recognition clauses. Most of the violations of the contract were in period VI (57 percent). Seventy-three percent of the rejected claims of

TABLE 5.9

PERCENTAGE RECOGNITION CLAUSE VIOLATION CLAIMS BY TIME PERIOD

Item	Period						Total
	I	II	III	IV	V	VI	
Recognition clause cited	0	0	6	6	21	67	100%
Violation of contract found	0	0	7	15	21	57	100%
No violation of contract found	0	0	6	0	21	73	100%

contract violations because of the recognition clause were in period VI. This represents a reversal of the pattern that had been established in the previous tables. This pattern had been that violations of the contract from implied limitations were greater in percentage importance in period VI than the percentage importance of subcontracting justifications (no

violations of the contract) in period VI.

What are the underlying factors of this reversal? First, the Warrior and Gulf decision of the U. S. Supreme Court in 1960 determined that any dispute over the interpretation and application of the contract makes the dispute arbitrable unless specific evidence can be shown that the parties intended such matters to be non-arbitrable. Second, claims of a violation of the recognition clause make most disputes arbitrable. Third, after establishing the arbitrability of the grievance through the recognition clause, many grieving parties attempt to establish the merits of the dispute by claiming violations of the recognition and other contract clauses.

Some arbitrators, while accepting the recognition clause as a basis for an arbitrable dispute, have been reluctant to rely on the recognition clause as the major determinant which violates the contract. Implied limits from the recognition clauses are now accepted by most arbitrators. However, the recognition clause combined with other merits of the dispute is now the most popular method of limiting managerial subcontracting.

Approximately the same trend is found for the seniority clause. One hundred percent of the violations found on the basis of the seniority clause are in periods IV through VI, and 76 percent (Table 5.7) of the violations were in period VI. The use of the recognition, seniority or other clauses that explicitly limit managerial action as a basis for finding a contract violation was practically non-existent in the first two periods.

Other clauses such as the overtime, wage, work and job classification, scope, lockout, and arbitration clause reflect similar limitations and trends. Over 90 percent (Table 5.7) of the total violations from these clauses were in the second half (periods IV through VI). Arbitrators indicated that by unilaterally contracting-out work management could make a nullity of the contract. More than fifty percent (Table 5.7) of these

"nullity" restrictions were in period VI. Further, almost 90 percent of these restrictions were in periods IV through VI. By the implications involved in the above criteria, arbitrators indicated that management had avoided the terms and conditions of the contract. Seventy-five percent of these "avoidance" restrictions were in period VI.

Business Decisions--Management Prerogative. Management's prerogative to unilaterally subcontract work has been limited. Good faith-business decisions as a justification for subcontracting have been reduced in importance. Less than 40 percent (Table 5.7) of the cases based on the "acceptable business decisions" criterion were in period VI. Period VI also contained most of the rejections (90 percent) of "business decisions" as a defense.

Consulting the Union. When the union was consulted according to the contract, then subcontracting was acceptable even over union objections. If the union was aware of past subcontracting, then generally complaints against subcontracting were ineffective. If management has successfully avoided restrictions on contracting-out in previous contract negotiations, then subsequent contracting-out was acceptable. However, in periods V and VI several arbitrators indicated that such negotiations carried implied limitations on management's right to subcontract.

Other Relevant Criteria. Layoffs of bargaining unit employees by management have had a tendency to become more acceptable to arbitrators if management can present evidence of the need for these layoffs. If the employees were not qualified, available, or working full time, then there were generally no violations of the contracts. There were generally no violations of the contracts if equipment and materials were not available

and of the kind necessary to complete the work. Management must, however, attempt in good faith to supply the necessary material and equipment.

Employees on strike did not cause a limitation of subcontracting.[4]

Local practice or working conditions did limit management's subcontracting prerogative. This was true most often in periods V and VI. There was no change in the status of former employees becoming independent contractors. As noted before (pages 48-49 of this thesis) action must be initiated by the employees, and there must not be an intent to harm either the employee's status or monetary positions of the bargaining unit or its members. Management cannot have ownership rights in a subcontractor.

The Warrior and Gulf decision and the Railway Labor Act have been declared by some arbitrators as limits to subcontracting. Other limits on subcontracting not frequently used are: the date of the contract, and whether the work is major or minor in nature. The lack of a management rights clause does not limit management's prerogative to subcontract. A strongly-worded management rights clause can affirm this subcontracting prerogative.

Definite trends have been established in this chapter. Implied limits from most of the above criteria have become real limits on management's right to subcontract. Period VI, contrasted with most of the earlier periods, seems to show a definite trend toward greater utilization by arbitrators of implied limitations.

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[4]23 LA 603, 34 LA 763, 36 LA 510.

CHAPTER VI

SUMMARY AND CONCLUSION

What has been the effect of arbitrators' decisions in subcontracting cases upon management rights? Management's right to subcontract has been limited by arbitrators' recognition of implied limitations. A review of arbitrators' awards and other literature since 1945 shows that arbitrators have recognized limitations from many contract clauses. Management's and labor's views on implied limitations did not change. Labor does favor and management does not favor further utilization of implied limitations upon managerial subcontracting action.

The United States Supreme Court in 1957 (Lincoln Mills) and 1960 (Warrior and Gulf) made decisions which gave emphasis to the public policy implications of industrial stability in the Labor-Management Relations (Taft-Hartley) Act. Section 301 was interpreted by the Supreme Court as allowing for voluntary submission-compulsory settlement through arbitration of grievances.

The Warrior and Gulf decision made questions concerning the merits of grievances strictly a matter to be determined by arbitrators. Courts can still determine arbitrability, but the Supreme Court has indicated that unless there is strong evidence to the contrary all questions of whether to arbitrate or not must be decided in favor of arbitration. After the Warrior and Gulf decision arbitrators have in the cases studied consistently recognized that the implications of the recognition, seniority, arbitration and other clauses make subcontracting disputes

arbitrable. This is true even in the absence of specific contractual limitations on subcontracting.

Each subcontracting grievance is different. The grievance, contractual restrictions, companies, unions, arbitrators, types of work and determinants of the arbitrators' awards are never the same. However there are certain general characteristics that are similar in each case.

The 181 subcontracting grievances were analyzed by types of work. Arbitrators found that many of the contracts involving on-the-premises work were violated (cleaning, major plant operations, and cafeteria operations). Contracts involving work which could be performed off the premises or work which was closely related to exclusive managerial functions were generally not found to be violated when arbitrators examined the merits of the disputes.

When subcontracting arbitrability decisions by arbitrators were analyzed by time period, it was found that twelve of the nineteen subcontracting arbitrability cases were in time period VI. Only 25 percent of the recognition clause limitations were in periods I through V. There were no limitations from the seniority and other clauses (excluding the arbitration clause) in these first five periods. About 37 percent of the subcontracting arbitrability cases were in the first five periods. Therefore, in period VI limits on subcontracting from previously minor criteria (recognition, seniority, and other clauses except the arbitration clause) became important.

Individual arbitrators also reflect this trend. Most arbitrators, who in earlier periods indicated that subcontracting was an inherent right of management, recognized implied limitations upon management in subcontracting arbitrability cases in later periods. It appears that the

Supreme Court's Warrior and Gulf decision was considerably responsible for the increased recognition of implied limitations in period VI.

The time period analysis of the 181 subcontracting grievances taken to arbitration shows that 77 (42.54 percent) were in period VI. This represents a steady increase since the six grievances (3.31 percent) in period I.

There were several non-contractual limitations upon managerial subcontracting. The most important of these specific claims were: practices (past, prevailing, company or industry); economy and efficiency; good faith;[1] temporary or marginal nature of the work and business decisions. Other criteria of minor or supplemental importance were: availability of equipment, materials or qualified employees; whether the union had been consulted; whether employees were on strike; ownership of the subcontractor; de minimis rule; and prior awards. Work that was performed on the premises was an important determinant in certain types of operations.

Contractual restrictions upon subcontracting were effectively used to limit subcontracting in most periods. When there were no specific restrictions in the contract prohibiting subcontracting, contracting-out was still limited. This was especially true of the later periods, e. g., 88 percent of these violations were in periods IV through VI.

One of the most important developments in subcontracting arbitration has been the use of recognition and other clauses as limitations to managerial subcontracting. Since the Warrior and Gulf decision, arbitrators have been besieged with union attempts to establish the merits of the disputes by claiming violations of the recognition and other contract

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[1] Good faith or one of its components (intent to harm employees or the bargaining unit, reasonable actions, no arbitrary or discriminatory acts, etc.) was a criterion in almost all of the 181 cases.

clauses. About 67 percent of the claims of violations of the recognition clause and 72 percent of the claims based on the seniority clauses were in period VI. Arbitrators found implied limitations from these clauses. The recognition or other clauses of the contract combined with the merits of the dispute became in period VI the most popular method of limiting subcontracting.

The cases studied seem to indicate that arbitrators, reinforced by the Supreme Court's decision in the Warrior and Gulf case, have increasingly tended to decide in favor of the arbitrability of subcontracting, and to find implied limitations on subcontracting in many types of contract clauses. It appears that a principal effect of these decisions has been a further limitation on management's right to subcontract.

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A P P E N D I X

APPENDIX A

A MANAGEMENT RIGHTS CLAUSE IN A COLLECTIVE BARGAINING CONTRACT[1]

The management of the plant, the determination of all matters of management policy and plant operation, the direction of the working force, including without limiting the rights to hire, discipline, suspend or discharge, promote, demote, transfer or lay off employees, or to reduce or increase the size of the working force are within the sole prerogatives of the Company, provided; however, that they will not be used in violation of any specific provisions of this agreement. The Company shall be the exclusive judge of all matters pertaining to the products that it manufactures, the location of its plants, the methods, processes and means of manufacturing, the schedules and standards of production, methods, processes, means, and materials to be used, and except as specifically prohibited in this Agreement. The Company shall have the right to continue and maintain its business and productive operations as in the past, and it is understood that except as expressly limited in this Agreement, the Company shall have all the customary rights and functions of management, and its judgment in these respects shall not be subject to challenge.

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[1] Management Rights and the Arbitration Process, Proceedings of the Ninth Annual Meeting National Academy of Arbitrators, (Washington: Bureau of National Affairs, 1956). p. 132.

APPENDIX B

SECTION 301, A AND B OF THE TAFT-HARTLEY ACT

(a) Suits for violation of contracts between an employer and a labor organization representing employees, in an industry affecting commerce as defined in this act, or between any such labor organization, may be brought in any district court of the United States have jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization, which represents employees in an industry affecting commerce as defined in this act and any employer whose activities affect commerce as defined in this Act, shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a District Court of the United States shall be enforceable only against its assets, and shall not be enforceable against any individual member of his assets.

APPENDIX C

ESSENCE OF SELECTED COLLECTIVE BARGAINING CONTRACT PROVISIONS[1]
(Union and Management Functions, Rights and Responsibilities)

Contracting and Subcontracting

Company retains right to subcontract.
Prohibition of contracting.
Prohibition of inside or outside contracting.
No home work.
Numerical limitation on amount of contracting.
Contracting limited to certain types of work.
Mutual consent for contracting of work regularly done by employees in bargaining unit.
Consultation with union when occasion for contracting occurs: management retains final decision.
Advance notice to union; union objection submitted to grievance procedure.
Company to discuss contracting with union and agree on satisfactory disposition of demotion or lay-off resulting from contracting.
No discrimination against union members in contracting.
Contract work to be returned to plant as soon as efficient facilities are available.

Conditions under which contracting is permitted: Full use of space, equipment, and workers.

No contracting as long as machinery and equipment available.
Management right to contract without union interference provided present permanent employees do not lose normal work.
No contracting which results in lost time to present regular employees, excluding emergency or unusual work.
Restrictions on subcontracting: All employees must be on full time and none laid off, subcontractor must be covered by agreement.
No contracting which results in discharge or lay-off of employees customarily doing work.
Outside contracting not to result in lay-off or discharge of employees.
Contracting outside certain locality prohibited for some employers under association agreement: permitted others, provided agreement covers subcontractor.

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[1]U. S. Bureau of Labor Statistics, Bulletin No. 912, (Washington: U. S. Government Printing Office, 1949), 21-24.

APPENDIX C (Continued)

Contractors relations with union.

Union contractors only--same union.
Union contractors only--same union and similar agreement terms.
Union contractors only--not restricted to same union.
Union contractors must have signed agreement and must be registered with union.
Company right to contract work without regard to union membership or affiliation of contractors employees.
No contracting to firm struck or picketed by union party to the agreement.
Union to furnish substitute contractor in event of labor dispute with contractor.

Maintenance of agreement and wage standard.

Contractor to maintain conditions provided in agreement.
No contracting to avoid contract wage scales; no new subcontracts during period of lay-off.
Contractor to pay prevailing wages and hours but not less than minimum job rates set by agreement. Definition of work to which contracting restrictions apply.
No contracting of work customarily done unless more economic and expeditious and contractor conforms to agreement. For other outside work, company will request contractor to pay agreement rates.
Employer responsible for wages owed by contractor.
Employer responsible for compliance with agreement by contractor.

APPENDIX D

UNIONS WHICH HAD TWO OR MORE SUBCONTRACTING GRIEVANCES[1]

Number of grievances	
25	United Steelworkers of America
24	International Association of Machinists
14	United Automobile, Aircraft and Agricultural Implement Workers of America
9	Oil Chemical and Atomic Workers International Union
9	International Brotherhood of Teamsters, Chauffers, Warehousemen and Helpers of America
7	Oil Workers International Union
7	United Mine Workers of America
6	International Brotherhood of Electrical Workers
6	Textile Workers Union of America
5	International Union of United Brewing, Flour, Cereal and Soft Drink and Distillery Workers of America
5	United Papermakers and Paperworkers of America
3	United Electrical, Radio and Machine Workers of America
3	Transport Workers Union of America
3	International Chemical Workers Union
3	United Rubber, Cork, Linoleum and Plastic Workers of America
2	American Newspaper Guild
2	International Union of Operating Engineers
2	International Union of Electrical Radio and Machine Workers
2	Amalgamed Association of Street, Electric Railway and Motor Coach Employees of America
2	United Stone and Allied Products Workers of America
2	American Federation of Grain Millers
2	United Gas, Coke and Chemical Workers of America
2	United Glass and Ceramic Workers of North America
2	Communication Workers of America
2	United Packinghouse Workers of America (Food and Allied Workers)

[1]This Appendix lists only those unions which had two or more of the 181 subcontracting grievances studied. The grievances came from Volumes 1 through 37 of the Labor Arbitration Reports.

APPENDIX E

CASES WHICH ARBITRATORS CITED MORE THAN FIVE TIMES

	Times cited		Times cited
14 LA 31	22	17 LA 790	8
12 LA 707	21	7 LA 474	7
24 LA 158	16	21 LA 330	7
21 LA 267	15	29 LA 67	7
15 LA 111	13	30 LA 678	7
24 LA 33	13	30 LA 1066	7
21 LA 713	12	11 LA 197	6
24 LA 821	11	24 LA 883	6
8 LA 990	10	26 LA 870	6
16 LA 644	10	28 LA 491	6
25 LA 118	10	32 LA 786	6
7 LA 748	9	19 LA 815	5
19 LA 503	9	25 LA 1	5
24 LA 121	9	27 LA 671	5
13 LA 991	8	30 LA 449	5

APPENDIX F

CASE LISTINGS BY COURTS WHICH DETERMINED ARBITRABILITY OF SUBCONTRACTING[1]

9 LA 1045	New York Supreme Court	March 14, 1948
12 LA 290	New York Supreme Court	March 2, 1949
22 LA 586	New York Supreme Court	June 17, 1954
23 LA 168	New Jersey Superior Court	August 24, 1954
23 LA 302	Oregon Circuit Court	September 24, 1954
23 LA 413	New York Supreme Court	November 11, 1954
27 LA 440	New York Supreme Court	November 9, 1956
29 LA 551	New York Court of Appeals	April 4, 1957
30 LA 849	U. S. District Court (Michigan)	February 20, 1958
30 LA 851	U. S. District Court (Massachusetts)	April 30, 1958
32 LA 269	New York Supreme Court	April 3, 1959
32 LA 326	Connecticut Superior Court	February 12, 1959
32 LA 587	New York Supreme Court	April 27, 1959
32 LA 587	New York Supreme Court	May 13, 1959
32 LA 986	New York Court of Appeals	July 8, 1959
33 LA 127	U. S. Court of Appeals (Denver)	September 8, 1959
33 LA 352	New York Supreme Court	November 4, 1959
34 LA 106	U. S. Court of Appeals (Chicago)	March 2, 1960
34 LA 233	New York Supreme Court	March 28, 1960
34 LA 380	U. S. District Court (Pennsylvania)	March 22, 1960
34 LA 552	New York Supreme Court	May 19, 1960
34 LA 561	U. S. Supreme Court	June 20, 1960
34 LA 652	New York Supreme Court	June 20, 1960
34 LA 716	New York Supreme Court	June 13, 1960
35 LA 168	U. S. District Court (North Dakota)	September 12, 1960
35 LA 255	Tennessee Court of Appeals	September 8, 1960
35 LA 703	U. S. Court of Appeals (Philadelphia)	December 20, 1960
36 LA 998	U. S. District Court (New York)	June 20, 1961
37 LA 389	Connecticut Supreme of Errors	October 10, 1961

[1]All these cases were taken from the Labor Arbitration Reports, Volumes 1 through 37 (1945-1962). Those cases that were enforced, appealed or reversed by higher courts were not considered. Neither were actions to recover damages, settle contract negotiations or in any way define or negotiate subcontracting.

APPENDIX G

CASE LISTINGS OF SUBCONTRACTING DECISIONS NOT USED FOR REASONS LISTED

Contract negotiations

5 LA 71
6 LA 470
11 LA 337
11 LA 1023
14 LA 408
18 LA 112
33 LA 451

Enforcement, appeal or reversal by courts

22 LA 108
25 LA 585
26 LA 677
26 LA 835
31 LA 628
31 LA 712
32 LA 943
32 LA 944
37 LA 199
37 LA 499
37 LA 843

No decision-negotiate grievance on subcontracting arbitration

13 LA 652
17 LA 790
26 LA 74

Damages

8 LA 1001
36 LA 61
36 LA 1364

APPENDIX H

CASE LISTINGS AND ARBITRATORS WHO DETERMINED ARBITRABILITY OF SUBCONTRACTING

12 LA 190	Plott, H. H.
13 LA 652	Copelof, M.
21 LA 267	Larson, L. V.
22 LA 251	Ryder, M. S.
25 LA 546	Board (Cahn, S. L., T. L. Burke, H. E. Holman)
26 LA 74	Marshall, P. G.
29 LA 67	Sembower, J. F.
32 LA 366	Schedler, C. R.
32 LA 815	Anrod, C. W.
33 LA 228	Crawford, D. A.
33 LA 925	Dash, G. A., Jr.
34 LA 215	Teple, E. R.
34 LA 420	Wallen, S.
36 LA 695	Holly, J. F.
36 LA 714	Williams, R. R.
36 LA 912	Ryder, M. S.
37 LA 544	Crawford, D. A.
37 LA 685	Young, G. H.
37 LA 944	White, D. J.

APPENDIX I

SUBCONTRACTING ARBITRATION BY TYPES OF WORK[1]

2 LA 254 - M	20 LA 690 - CO	27 LA 704 - T
2 LA 569 - T	21 LA 267 - PO	28 LA 158 - M
6 LA 855 - PO	21 LA 330 - T	28 LA 270 - C
7 LA 133 - PO	21 LA 713 - PO	28 LA 461 - CO
7 LA 474 - M	22 LA 68 - PO	28 LA 491 - PL
7 LA 748 - G	22 LA 124 - T	28 LA 559 - PL
8 LA 91 - PO	22 LA 266 - G	28 LA 737 - CO
8 LA 465 - M	22 LA 390 - G	28 LA 865 - T
8 LA 966 - T	22 LA 484 - PO	29 LA 67 - C
8 LA 990 - PO	22 LA 608 - M	29 LA 555 - T
10 LA 396 - T	23 LA 171 - PO	29 LA 594 - C
10 LA 842 - M	23 LA 400 - PO	29 LA 609 - CO
11 LA 197 - G	23 LA 603 - PO	29 LA 824 - M
11 LA 291 - T	24 LA 728 - T	30 LA 21 - SD
11 LA 419 - M	24 LA 33 - PO	30 LA 26 - M
12 LA 190 - PO	24 LA 121 - PO	30 LA 379 - CO
12 LA 707 - CO	24 LA 158 - M	30 LA 449 - C
13 LA 189 - M	24 LA 821 - C	30 LA 493 - SD
13 LA 399 - M	24 LA 882 - C	30 LA 678 - SO
13 LA 690 - PO	25 LA 1 - T	30 LA 714 - M
13 LA 991 - CO	25 LA 118 - C	30 LA 827 - M
14 LA 10 - PO	25 LA 151 - T	30 LA 893 - PO
14 LA 31 - CA	25 LA 281 - C	30 LA 998 - CA
14 LA 645 - M	25 LA 327 - PO	30 LA 1053 - T
15 LA 111 - C	26 LA 79 - PO	30 LA 1066 - M
16 LA 89 - PO	26 LA 438 - PL	31 LA 482 - M
16 LA 644 - C	26 LA 568 - CO	31 LA 607 - P
16 LA 829 - M	26 LA 723 - T	31 LA 623 - M
16 LA 887 - T	26 LA 870 - C	31 LA 646 - CO
17 LA 493 - PO	27 LA 57 - M	31 LA 880 - M
19 LA 219 - PO	27 LA 111 - CO	32 LA 68 - C
19 LA 503 - PO	27 LA 174 - M	32 LA 131 - M
19 LA 815 - M	27 LA 233 - M	32 LA 351 - M
19 LA 882 - PO	27 LA 413 - M	32 LA 366 - CO
20 LA 60 - M	27 LA 423 - M	32 LA 464 - T
20 LA 227 - CO	27 LA 530 - CO	32 LA 781 - T
20 LA 432 - PO	27 LA 671 - PO	32 LA 799* - 2-SO, 3-CO, M

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[1]All these cases were taken from the Labor Arbitration Reports, Volumes 1 through 37 (1945-1962). Those cases that were enforced, appealed or reversed by higher courts were not considered. Neither were actions to recover damages, settle contract negotiations or in any way define or negotiate subcontracting.

APPENDIX I (Continued)

32 LA 815 - G
32 LA 965 - M
33 LA 51 - T
33 LA 177 - M
33 LA 209 - CL
33 LA 228 - T
33 LA 278 - T
33 LA 282 - CO
33 LA 852* - 2-M
33 LA 874 - CO
33 LA 893 - G
33 LA 965 - G
33 LA 972 - C
34 LA 200 - M
34 LA 215 - C
34 LA 394 - T
34 LA 420 - CA
34 LA 455 - M
34 LA 554 - CO
34 LA 661 - M
34 LA 665 - PO
34 LA 763 - P
34 LA 883 - M
35 LA 330 - CO
35 LA 397 - C
35 LA 403 - M
35 LA 415 - CO
36 LA 106 - T
36 LA 118 - C
36 LA 137 - PO
36 LA 320 - CO
36 LA 409 - G
36 LA 510 - CO
36 LA 631 - C
36 LA 677 - CL
36 LA 714 - M
36 LA 787 - PO
36 LA 861 - SO
36 LA 871 - PO
36 LA 912 - M
36 LA 1079 - PO
36 LA 1147 - C
36 LA 1173 - T
36 LA 1304 - T
36 LA 1341 - PO
36 LA 1396 - T
36 LA 1447 - CO
37 LA 252 - C
37 LA 334 - T
37 LA 342 - CO
37 LA 366 - M
37 LA 442 - PO
37 LA 506 - M
37 LA 544 - T
37 LA 599 - CO
37 LA 685 - C
37 LA 784 - SO
37 LA 834 - PO
37 LA 867 - M
37 LA 892 - CA
37 LA 944 - C
37 LA 984 - M

Code:

CA	Cafeteria Operations	PO	Major Plant Operations
C	Cleaning	P	Power
CL	Clerical	PL	Printing Labels
CO	Construction	SD	Sales and Distribution
G	Guarding	SO	Scrap Operations
M	Maintenance	T	Transportation

* Indicates those case listings which have more than one grievance on subcontracting.

VITA

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