

In the Matter of the Arbitration Between

US Airways, Inc.

and

Lumexis In-Flight Entertainment System
Grievance #09-23084

IAM and Aerospace Workers
District Lodge 142

Hearing Held October 29, 2009

Before Richard I. Bloch, Esq.

APPEARANCES

For the Union
Bill Frieberger

For the Company
Robert A. Siegel, Esq.
Guy G. Brenner, Esq.

OPINION

Facts

The grievance in this case arose as a result of the company's initiating a Lumexis in-flight entertainment (IFE) test program to be conducted during the early part of 2009. The Lumexis system is a credit card activated, seatback LCD screen IFE system that utilizes fiber optic data cabling from rack-mounted servers, according to the company's Maintenance Policy and Procedure Manual.¹ Installation and maintenance during the eighty-day test was performed by an outside maintenance organization retained by the vendor. Following completion of the trial, the Lumexis IFE system was removed from the aircraft by

¹ Company Exhibit 1.

an outside vendor.² The Company agrees the removal work was the IAM's, inasmuch as the fiber optic cable would not be reused and there would be no special skills or equipment necessary to remove it. It claims, however, that the work fell under a bargained exception³ to the CBA's Scope clause and was properly excluded from any assignment to the bargaining unit as constituting "aircraft base maintenance work."⁴ The Union claims, via this grievance, that all on-board work should have been performed by bargaining unit personnel.⁵

Issue

Did the Company violate the collective bargaining agreement by contracting out installation, maintenance and removal work related to the Lumexis IFE system? If so, what should the remedy be?

Union Position

The Union maintains both the collective bargaining agreement and the practice of the parties support the conclusion this work should have been assigned to IAM members. Conceding technology associated with this IFE was new, the Union nevertheless argues the Company's obligation was to afford training to affected personnel so the work could have been done by bargaining unit members. It requests that the grievance be granted and affected employees be made whole.

² See Tr., pg. 120.

³ Article 2(B)(J).

⁴ Company closing brief, pg. 11.

⁵ "Our position," said the Union Representative, "is that we should have installed [the Lumexis system]. We should have maintained it. And we should have removed it." Tr., pg. 57.

Company Position

The Company maintains both the contract and past practice support its actions in this case. Installation of new equipment, it says, is expressly referenced as an exception to the Scope clause. Moreover, the Company contends, it is work customarily contracted out and, as a result of the new technology, the tasks involved both in installation and maintenance were beyond the skills and training of bargaining unit members. Moreover, the Company lacked essential equipment necessary to install and test the IFE system. It requests, therefore, that the grievance be denied.

Relevant Contract Provisions

ARTICLE 2(B): SCOPE OF AGREEMENT

The Company agrees that the following described work, wherever performed, is recognized as coming within the jurisdiction of the International Association of Machinists and Aerospace Workers, and is covered by this Agreement: the making, assembling, erecting, dismantling, and repairing of all machinery, mechanical equipment, engines and motors of all description, including all work involved in dismantling, overhauling, repairing, fabricating, assembling, welding, and erecting all parts of airplanes, airplane engines, avionics equipment, electrical system, heating system, hydraulic system, and machine tool work in connection therewith, including all maintenance, construction and inspection work in and around all shops, hangars, buildings, and including the servicing, cleaning and polishing of airplanes and parts thereof, and the servicing and handling of all ground equipment performed in and about Company shops, Maintenance bases, Aircraft Base Maintenance bases, and Line service stations.

* * * *

It is understood that the Company reserves the right to continue to return to the manufacturer or its authorized agent, parts and subassemblies for repair or replacement that cannot be repaired on the property due to lack of equipment or because of warranty. It is understood and agreed that this scope rule and agreement

covers Aviation Service Division type work as discussed in negotiations on February 4 and 5, 1964.

CLARIFICATION OF ARTICLE 2(B)

* * * *

(E) Major construction or installation of new facilities, equipment, or machinery when the employees of the Company are incapable, from the standpoint of skill or equipment, of performing the work.

* * * *

(G) Types of work customarily contracted out, such as parts and material, which the Company could not be expected to manufacture, such as engine and airframe parts, castings, cowlings, seats, wheels and other items which are commonly manufactured as standard items for the trade by vendors. Work subcontracted out to a vendor will be of the type that cannot be manufactured or repaired in-house by existing skills/equipment or facilities of the Company.

* * * *

(J) Company base maintenance employees will perform fifty (50%) percent or greater of all aircraft base maintenance work, inclusive of narrow and wide-body aircraft, as follows: On an annualized basis, for every billable hour of work from aircraft base maintenance vendors performing Company base maintenance work; modification work; scheduled drop in maintenance; and any drop-in maintenance relating to fuselage damage or any other damage, there will be an equal or greater number of paid hours to Company base maintenance employees. This includes Company Lead Mechanics, Mechanics, Inspectors, Utility and Lead Utility (combined assigned to base maintenance).

ARTICLE 17: GENERAL AND MISCELLANEOUS

(C) When new equipment or technology is put into service by the Company, employees shall be given the opportunity to be trained, by particular classification, on the new equipment or technology whenever that equipment is maintained or repaired by the Company or the technology is utilized in the maintenance or repair of such equipment by the Company. The Company will make every effort to train sufficient numbers of employees to accomplish this. The Company may utilize those employees trained and qualified based on the needs of the service.

Analysis

This case tests the necessary interaction between competing considerations—maintaining the vitality of the bargaining unit, on the one hand, and retaining reasonable managerial discretion on the other. Resolution of this dispute requires careful scrutiny of both the Collective Bargaining Agreement and its recent history of application. As will be noted, this area is one that has been characterized, from time to time, by uncertainty.

One turns first to the Agreement. As a general matter, the relevant provisions are contained in the broad Scope language of Article 2(B). For purposes of this case, however, these terms must be read in conjunction with certain bargained limitation on the jurisdictional scope contained in a negotiated “Clarification” letter as well as with Training obligations set forth in Article 17. Article 2(B), the contract’s “Scope” clause is, in the words of a prior System Board, “markedly comprehensive.”⁶ In an earlier case, the Board stated:

The parties to this collective bargaining agreement drafted and, since 1949, lived with scope language that is markedly comprehensive. In Article 2(B), the Company has agreed that a notably wide range of work, “including all work involved in dismantling, overhauling, repairing, fabricating, assembly, welding and erecting all parts of airplanes...”, is reserved to the IAM. Over the years, the parties have sought to explain, supplement and, in various ways, refine the language, as will be discussed below, but the overwhelming impact of both the seminal scope clause and several “clarification” letters is to reinforce the jointly bargained intention that aircraft maintenance work will be performed by this bargaining unit.⁷

⁶ See *US Airways Inc. and IAM, District Lodge 141-M (Heavy Maintenance Visits)*.

⁷ *Id.*, pg. 6.

In Article 2(B), the Company has carved out various exceptions to the Union's work jurisdiction, (to be explained in greater detail below), such as the right to return parts to the manufacturer or authorized agents when they cannot be repaired on the property due to lack of equipment or because of warranty considerations, for example.⁸ In apparent recognition that the Scope clause was, in certain respects, insufficiently precise, the parties also drafted a so-called "Clarification of Article 2 (B)," which sets forth listed exceptions to Article 2's scope. Among these are two exceptions relevant to the instant case. Subsection (E) permits contracting out of:

Major construction or new installation of new facilities, equipment or machinery when employees of the Company are incapable, from the standpoint of skill or equipment, of performing the work.

Subsection (G) establishes another exception:

Types of work customarily contracted out, such as parts and material which the Company could not be expected to manufacture, such as engine and airframe parts, castings, cowlings, seats, wheels and other items which are commonly manufactured as standard items for the trade by vendors. Work subcontracted out to a vendor will be of the type that cannot be manufactured or repaired in-house by existing skills/equipment or facilities of the Company.

These exceptions are central to the Company's position in this case, as will be noted. While they relate to different circumstances, both are premised on the Machinists not being able to perform the work, either because of skill or equipment limitations. Application of these provisions requires a certain sensitivity to both parties' needs. On the one hand, there are, and will be, new

⁸ See Article 2(B) *supra*, pg. 3.

techniques, often associated with new technology, that are meaningfully beyond the range of bargaining unit duties, due to training, equipment considerations, or both. The parties agree, in Subsections (E) and (G), that outsourcing such work is permissible. On the other hand, the existence of the exceptions cannot be interpreted to mean that any technological change, one of the hallmarks of the aviation industry, and any associated requirement of new or revised work techniques, can somehow serve to disenfranchise bargaining unit members of the bargained scope of work. Such a conclusion would reduce this critically important aspect of the labor agreement and the relationship reflected therein to an illusory, and manifestly short term, grant. In the final analysis, this Scope language and its exceptions must be interpreted and applied in such a manner as to provide the necessary protection against devitalization of the bargaining unit while, at the same time, maintaining appropriate flexibility for the Company in the appropriate circumstances. The parties foresaw that and required, in Article 17, that employees will be given training opportunities when new equipment or technology is introduced.⁹ The record reflects situations where the parties have exercised flexibility on both sides, accommodating their respective needs by contracting out certain installation functions while, at the same time, protecting bargaining unit jurisdiction as well as accomplishing necessary training functions.¹⁰

⁹ See Art. 17, p. 3, *supra*.

¹⁰ According to the testimony, fuel tank work, and jetway modifications have been performed, on occasion, by bringing in the vendor to do the work, but assigning Mechanics to watch, learn and subsequently do the jobs. (Tr., pg. 63; Union Ex. 10.) See also Un. Ex. 8, reflecting a Company/Union agreement to send 16 IAM members to Holland for training with the vendor to

For several reasons, to be discussed below, the finding is that the grievance in this case should be denied. In so holding, however, the arbitrator deems it important to discuss the specific factual elements that lead to this result and, moreover, to address, at the outset, considerations that do *not* play a part in this conclusion.

Ownership

The Company directs the Board's attention to Letter of Clarification, Paragraph (G), which permits the Company to outsource "types of work customarily contracted," assuming the workforce lacks the skills, equipment or facilities to do the work. The Company claims it has been customary for non-Company-owned IFE systems (such as Lumexis) to be subcontracted rather than repaired in-house.

"Ownership", as a relevant factor in outsourcing, is mentioned nowhere in the collective bargaining agreement: It is not, therefore, a jointly agreed standard in and of itself. The Company claims, however, that past practice associated with non-owned equipment of this nature supports the actions in this case. To elevate a "practice" to the level of contractual status, one must find the type of consistent application that reflects a mutual intent to make this a required method of performing the task.¹¹ However, on this score, the record is markedly mixed.

enable bargaining unit workers to assume new maintenance functions thereafter. (Tr., pgs. 73-74.)

¹¹ Ford Umpire Harry Shulman commented on this:

A practice thus based on mutual agreement may be subject to change only by mutual agreement. Its binding quality is due, however, not to the fact that it is past practice but rather to the agreement in which it is based.

There is evidence both that the Company's intention is to have US Air personnel perform on-board maintenance and that they have done so in the past. Union Exhibit 2, a 1992 memo from the Company to all maintenance personnel, cites, among other things, " a lot of confusion over the maintenance of the [in-flight phone systems]"¹² that were installed and owned by In-Flight Phones. In an attempt to set the record straight, the memo reflects a clear division of responsibility. The vendor was, according to the memo, to be provided office and storage space for parts. The contractor was to "monitor the use of the phones during the operating day and...tell us what repairs need accomplished [sic] on the RONS."¹³ The memo continues on to specify the Company's view concerning Union jurisdiction over these systems:

USAir mechanics will do the maintenance on the aircraft under the direction of the In-Flight Phone personnel. As with any other system, USAir mechanics will record in the aircraft log book all

But there are other practices which are not the result of joint determination at all. They may be mere happenstance, that is, methods that developed without design or deliberation. Or they may be choices by Management in the exercise of managerial discretion as to convenient methods at the time. In such cases there is no thought of obligation or commitment for the future. Such practices are merely present ways, not prescribed ways, of doing things. The relevant item of significance is not the nature of the particular method but the managerial freedom with respect to it. Being the product of managerial determination in its permitted discretion, such practices are, in the absence of contractual provisions to the contrary, subject to change in the same discretion. ...But there is no requirement of mutual agreement as a condition precedent to a change of a practice of this character.

A contrary holding would place past practice on a par with written agreement and create the anomaly that, while the parties expend great energy and time in negotiating the details of the Agreement, they unknowingly and unintentionally commit themselves to unstated and perhaps more important matters which in the future may be found to have been past practice. (Ford Motor Co. and UAW, 19 LA 237 (1952.)

¹² See Union Exhibit 2.

¹³ *Id.*

work performed. In-Flight Phones will provide the parts to us and we will return the removed parts to them for repair.¹⁴

The record in this case demonstrates, if anything, that confusion over IFE systems has not been entirely resolved; surely, one cannot conclude there has been a “practice” that should somehow rise to the level of contractual status. In Philadelphia, according to the record, IAM Mechanics routinely perform troubleshooting and repair work on IFE systems owned by Rockwell.¹⁵ Over the past several years, IAM personnel have filed multiple grievances concerning assignment of just such work.¹⁶ The grievances were settled on a non-precedential, non-referral basis. There is no indication they were intended to settle the general Scope question or that they resulted in the Union’s ceding of the work at issue to the extent of endorsing its being generally outsourced.

GTE-owned phone systems have been deployed on US Airways aircraft from 1996 until 2006. According to the evidence¹⁷, installation of these systems was routinely performed by IAM mechanics. And, in Tampa, IAM Mechanics did the on-board maintenance after initial guidance by GTE representatives.¹⁸ In the overall, the record reflects a mixed bag with respect to the claimed practice. There is no persuasive evidence the parties agreed all work on non-owned IFE equipment may be contracted out.

¹⁴ *Id.*

¹⁵ See Tr., pgs. 171-174.

¹⁶ See Tr., pgs. 169-170, 85-86.

¹⁷ See Tr., pgs. 60-65.

¹⁸ See Tr., pg. 60-63. In Baltimore, Philadelphia and Los Angeles, on the other hand, GTE representatives did the work, without apparent objection from the Union. See Tr., pgs. 138-139.

Equipment Installation

The Company suggests that installation, as distinct from “troubleshooting and on-board maintenance” are separate concepts, dealt with by different areas of the contract. The Company directs the arbitrator’s attention to Paragraph (E) of the Clarification letter, which establishes, as an exception to bargaining unit jurisdiction:

Major construction or installation of new facilities, equipment, or machinery when employees of the Company are incapable, from the standpoint of skill or equipment, of performing the work.

The parties dispute the intended reach of this language, the Company claiming it applies to all installation, the Union arguing the language was limited to major construction and installation of new facilities, such as hangars, and equipment involved in ventures of that nature.¹⁹ Assuming, without deciding, the subsection applies to a case of this nature, and assuming further that some aspects of the installation were beyond the existing skills of bargaining unit personnel, Article 17 would likely require reasonable training opportunities. In this particular case, however, there was no violation.

To be sure, the bulk of the tasks associated with the IFE system at issue were within the bargained scope of Machinist work. Unquestionably, some tasks could not have been immediately performed by unit Machinists. One may reasonably conclude from the evidence submitted in this case that the installation and testing of this particular IFE system involved techniques, generally related to handling fiber optic cables, that were outside the current scope of bargaining unit


¹⁹ Testimony of Victor Mazzocco, Tr., pgs. 37 *et. seq.*

training. Moreover, the contractor was in possession of certain tooling and testing equipment that was, at the time of the installation, outside the Company's range of equipment. Under these specific circumstances—a relatively short-term trial of new technology, installed on a single aircraft for the express purpose of testing and evaluating during a time-limited, relatively short trial run, it is fair to conclude the Company was within its contractual prerogatives in having the tasks performed by the outside vendor. Given these specific facts, the Company was not obligated to train personnel or to acquire relatively costly testing equipment.

The predictable tension between the parties' legitimate stakes in the context of a Scope issue like this one (bargaining unit integrity on the one hand, managerial prerogatives on the other) requires reasoned responses by the parties that are based on careful consideration of the specific facts. As such, resolution of disputes arising in this context must necessarily be accomplished on a case-by-case basis. This case, and these facts, compel the conclusion that this grievance be denied.

AWARD

The grievance is denied.



Richard I. Bloch, Esq.

February 27, 2010