

IN THE MATTER OF THE ARBITRATION BETWEEN

PACIFIC NORTHWEST REGIONAL)
COUNCIL, OPERATING ENGINEERS,) ARBITRATOR'S OPINION
LOCAL 302 AND NORTHWEST) AND AWARD
REGIONAL COUNCIL OF THE NATIONAL)
CONSTRUCTION ALLIANCE,)
)
UNION,)
)
and) SUBCONTRACTING
) GRIEVANCE
SEATTLE TUNNEL PARTNERS,)
)
EMPLOYER.)
_____)

BEFORE: JOSEPH W. DUFFY
ARBITRATOR
PO BOX 12217
SEATTLE, WA 98102-0217

REPRESENTING
THE UNIONS: DANIEL M. SHANLEY
JUDY H. JUANG
DECARLO SHANLEY
533 SOUTH FREMONT AVENUE, 9TH FLOOR
LOS ANGELES, CA 90071-1706

REPRESENTING
THE EMPLOYER: CHRIS DIXON
PROJECT MANAGER
SEATTLE TUNNEL PARTNERS
999 THIRD AVENUE, SUITE 2424
SEATTLE, WA 98104

HEARING HELD: JULY 12, 2013
SEATTLE, WA

OPINION

Introduction

Pacific Northwest Regional Council, Operating Engineers, Local 302, and Northwest Regional Council of the National Construction Alliance (“Union”) have entered into a collective bargaining agreement with Seattle Tunnel Partners (“Employer”). The Union and the Employer (“Parties”) submitted this dispute to arbitration under the terms of their collective bargaining agreement, which is entitled the Project Labor Agreement (“PLA”). The Parties introduced a copy of the PLA at the hearing as an exhibit. (J2)

This arbitration arose from a grievance filed by the Union by letter dated May 22, 2013. The grievance alleges that a subcontract entered into by the Employer with Total Terminals International (“TTI”) violates the PLA. (J1)

The hearing took place on July 12, 2013 at the Employer’s offices in Seattle, WA.

The hearing proceeded in an orderly manner. The advocates did an excellent job of presenting the respective cases. Both Parties had a full opportunity to call witnesses, to submit documents into evidence and to make arguments.

The Parties submitted two joint exhibits (J1, J2), and nine Employer exhibits (E1-E9) into the record.

The Parties presented their cases through descriptions of the facts and circumstances provided by the advocates, Mr. Dixon and Mr. Shanley. No witnesses testified. At the conclusion of the presentations, I closed the record.

Over the objection of the Union, I permitted representatives of TTI and the International Longshore and Warehouse Union, Local 19 to attend the hearing as observers.

Issue for Decision

At the hearing, the Parties agreed on the following statement of the issue for decision:

Whether Seattle Tunnel Partners’ subcontracting conveyor operations work it previously contemplated assigning to the Carpenters Union and Operating Engineers pursuant to the Project Labor Agreement to Total Terminals International, Inc., a non-signatory, violates the parties’ agreement.

Background

In October 2010, the Employer and the Union executed the PLA. The PLA has a Mission Statement that includes the following:

It is the intent of the parties to set out uniform standard working conditions for the efficient performance of the bored tunnel and related work; herein to establish and maintain harmonious relations between all parties to this Agreement; to secure optimum quality and productivity, and to eliminate strikes, lockouts or delays in the performance of the work undertaken by the Employer. (J2, p. 1)

The PLA covers work on the Washington State Department of Transportation SR 99 Bored Tunnel Alternative Design-Build Project in Seattle, WA. The PLA also contains the following provision:

All construction work performed at temporary facilities, such as fabrication yards and/or assembly plants located at or adjacent to the Project site, which are integrated with and set up for the purpose of only servicing the construction project rather than to serve the public generally is covered by this Agreement. (J2, p. 1)

STP entered into a lease with the Port of Seattle to lease Port property at Pier 46 located near Alaskan Way S. and S. Jackson Street in Seattle. The lease provides STP with the use of an approximately five acre staging area in the northwest corner of Pier 46. The lease provides that STP can use the five acre site for: 1.) Erection of conveyors and hoppers for transfer of material onto barges. 2.) Trucking in and out of the site for support and maintenance of the conveying system. 3.) Storage of construction material such as tunnel liner segments, precast concrete panels. (E4 and E5, E6)

STP has erected a conveyor system on the five acre site that allows for the loading of “muck” or tunnel spoils, which is the material removed from the tunnel by the Tunnel Boring Machine (“TBM”). The conveyor system loads material onto barges at Pier 46 and also deposits and retrieves material from the surge pile on the site.

The work at issue in this dispute involves a four member crew. One member operates the conveyor and another operates a loader to move material from the surge pile into trucks or into a hopper. Two more crew members operate deck winches to position barges for loading material from the stationary conveyor.

When STP entered into the PLA, STP contemplated assigning the work performed by this four member crew to the Union.

Mr. Dixon stated that STP did not contemplate assigning the work to the International Longshore and Warehouse Union (“ILWU”) because STP is not a member of the Pacific

Maritime Association and therefore cannot directly hire Longshoremen and the ILWU cannot be signatory to the PLA because the ILWU has contracts that prohibit the ILWU from entering into project-specific agreements. In addition, STP believed that assigning the work to the Union would be more efficient because the members of the crew could be used for other work when the conveyor system was not operating and the cost of using the Union crew was lower.

Mr. Dixon explained that STP looked for ways to include ILWU workers in the work that is disputed here. He said that, in discussions with ILWU, STP proposed a composite crew that would have Union workers operate the conveyor and the loader and ILWU workers position the barges. The ILWU workers would be employed through a third party, such as TTI, which would address the fact that STP could not hire ILWU workers directly. He explained that agreement could not be reached on this proposal.

Mr. Dixon explained the events that occurred related to the delivery of the TBM to the work site. The manufacturer of the TBM had the responsibility to deliver the TBM to the site and to assemble it in the tunnel launch pit. The manufacturer needed a stevedoring contract with TTI to handle the unloading, but TTI preferred to contract with STP. Negotiations took place between TTI and STP, and TTI asked that the contract cover all work on the five acre site, including the work at issue here. That would mean that ILWU workers would be performing all of the work in dispute here and the Union would have none of that work. STP proposed two contracts, one for the unloading of the TBM and another for the work on the five acre site, but agreement was not reached on that proposal.

The ship carrying the TBM arrived on April 2, 2013. The ship remained in the harbor because the stevedoring contract had not been executed. The ship had to dock by April 9, or it had the right to leave and the delivery of the TBM would be delayed by about six months. Mr. Dixon stated that STP met with the Union and with the ILWU to try and reach agreement on a composite crew for the work at issue here so that the stevedoring contract could be finalized. TTI did not agree and so STP decided that it had to agree to the single contract that covered the stevedoring and also extended to the work at issue here. Mr. Dixon explained as follows:

STP executed a Stevedoring and Terminal Service Agreement with TTI, after it became clear to STP that the Jumbo Fairpartner would not be allowed to dock at Terminal 46 unless STP executed an agreement with TTI that included both the unloading of the TBM and the conveying and loading of barges with tunnel spoils on Terminal 46. Had this agreement not been executed, the TBM would not have been unloaded at Terminal 46. STP executed this agreement under duress.

The agreement between TTI and STP includes the following statement that ILWU labor will be used for: “Conveyor Operations Conveying Muck Spoils from the TBM to a Surge Pile or Directly onto Barge Operations located on the Washington State Department of Transportation five acre parcel located at the North End of Terminal 46.” (E8, E9)

Tunneling operations are scheduled to begin on July 22, 2013. On July 2, the Employer again offered the ILWU the proposal that a composite crew perform the work at issue here, but that proposal was not accepted.

Mr. Dixon stated that STP wants this dispute settled, consistent with its goal of maintaining labor peace, by establishing a composite crew that has ILWU workers positioning the barges and Union workers operating the conveyor and the loader.

The Union contends that the subcontracting of the work to ILWU workers employed by TTI violates the PLA. The Union argues that the terms of the PLA clearly give the work of the four person crew to the Union and the work cannot be performed by the ILWU because the ILWU is not signatory to the PLA.

The Parties could not resolve this grievance in the grievance procedure and so this arbitration followed.

Discussion

STP has a legitimate and substantial interest in labor peace during the course of the SR99 tunnel project. The project is a complex undertaking with great importance to the region and the general public. As the PLA Mission Statement provides, the Parties want to maintain harmonious relations, secure optimum quality and productivity and avoid delays in the performance of the work.

My authority in this matter derives from the PLA and the mutual agreement of the parties to allow me to serve as the arbitrator. In a contract interpretation case, such as this one, the arbitrator’s task is to resolve the dispute through interpreting and applying the terms of the agreement. In carrying out that task, an arbitrator acting under the PLA is restricted by the provision that states: “The Arbitrator shall have no authority to change, amend, add to, or detract from any of the provisions of this Agreement.” (J2, Section 6.1.A.Step 3.b, p. 12)

Section 3.8.B of the PLA provides as follows:

In the event the Employer subcontracts out any work covered by this Agreement, such subcontractors, at all tiers, shall become signatory to this Agreement, prior to beginning work on the Project. (J2, p. 6)

The work of operating the conveyor and operating the loader clearly falls within the description of the work covered by the PLA. (J2, p. 1) Therefore, I find that subcontracting that work to a non-signatory contractor that employs workers who belong to a non-signatory union violates Section 3.8 of the PLA.

The work of positioning the barges does not fit as neatly into the definition of the work as the conveyor and loader operation work does. Nevertheless, the work of positioning the barges is performed at the temporary five acre site and the work is an integral part of the conveyor operation. The TBM cannot move forward unless the conveyor is operating and the conveyor cannot operate if the barge is not properly positioned to receive the tunnel spoils. Therefore, I find that the work must be included in the work that is defined in the PLA. Consequently, I find that subcontracting this work to the non-signatory contractor that employs workers who belong to a non-signatory union also violates Section 3.8 of the PLA.

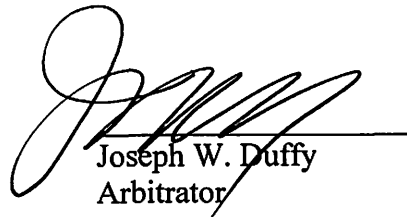
Remedy

The proposed remedy submitted by the Union at the hearing is somewhat broader than the scope of this dispute. I find that the appropriate remedy is as follows:

1. The Employer shall cease and desist from subcontracting the work of the crew that operates the conveyor and the loader and positions the barges to a non-signatory contractor that employs workers who belong to a non-signatory union.
2. The Employer shall assign this disputed work to the Union as originally contemplated.

By agreement of the parties, I shall retain jurisdiction for the sole purpose of aiding the parties in the implementation of the remedy, should that be necessary.

SO ORDERED on July 12, 2013



Joseph W. Duffy
Arbitrator