

In the Matter of Arbitration)
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 between:)
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 FOX TELEVISION STATIONS, INC.,)
 FOX STATIONS KTTV/KCOP)
)
 and)
)
 NATIONAL ASSOCIATION OF BROADCAST)
 EMPLOYEES AND TECHNICIANS-)
 COMMUNICATIONS WORKERS OF)
 AMERICA, AFL-CIO, LOCAL 53)
)
)
 (Las Vegas Hub))
)

**ARBITRATOR'S
 OPINION
 AND
 AWARD**

Impartial Arbitrator: Fredric R. Horowitz, Esq.

Appearances:

Company: Kevin Casey, Esq.
 Vice President, Labor Relations

Union: Ralph M. Phillips, Esq.
 Wohlner Kaplon Phillips Young & Cutler

Hearings Held: November 14, 2014, and
 January 23, 2015
 Los Angeles, California

Submitted to Arbitrator: June 12, 2015

This arbitration arises under a collective bargaining agreement by and between Fox Television Stations, Fox Stations KTTV/KCOP ("Company" or "Fox") and National Association of Broadcast Employees and Technicians—Communications Workers of America, AFL-CIO, Local 53 ("Union" or "NABET") dated July 1, 2008 – June 30, 2011 ("Agreement") [JX 1]. The

parties concur the instant dispute has been processed pursuant to Article V of the Agreement and is properly in arbitration herein.

MATTERS AT ISSUE

The parties were unable to agree on a joint statement of the issues, so they stipulated the Arbitrator would have the authority to frame the issues after the grievance was submitted for decision [TR 319]. Based on the entire record, the issues are determined to be:

1. Did the Company violate the Agreement by assigning non-bargaining unit personnel at its Las Vegas Hub to perform remotely master control functions for KTTV and KCOP?
2. If so, what shall be the remedy?

BACKGROUND

Fox owns 28 television stations in 16 markets across the United States including KTTV and KCOP in Los Angeles. Fifteen of the 26 stations are staffed in part by employees who are represented by a union. Local 53 represents a variety of job classifications at KTTV/KCOP including the Master Control Engineers. Each Fox station has a Master Control area where programming material is last seen before sent for broadcast and viewing by the public. Master Control is responsible for quality control of a station's programs, commercials, and promos including live, network, syndicated, and news broadcasts.

Historically, Master Control Engineers at KTTV/KCOP have been responsible for a variety of duties. Among them are (1) monitoring the outgoing programming on the playlist, making sure the correct material is being played at the correct time; (2) ingesting material received at the station, checking quality, and storing on the station's servers; (3) monitoring power at the station's transmitters on Mt. Wilson; and (4) show prep, identifying timings on material ingested for commercials and promos.

In 2010, the Company began installation of a centralized "Hub" in Las Vegas, Nevada capable of remotely performing the Master Control functions at all of its stations. According to Vice President of Engineering Tim Redmond, almost all of the Company's competitors had

Hubs to take advantage of technological advances to gain operational efficiency. Prior to the Hub, at least one Master Control technician was required at each local center to perform the requisite duties. The Hub allows one technician in Las Vegas to accomplish those same tasks remotely for four to six stations at one time. The Company connected KCOP to its Las Vegas Hub in August 2011 and followed with KTTV in November 2011.

The Master Control automation equipment and software purchased by the Company which effectuated Hub operations is called "ITX." ITX was installed at the Las Vegas Hub and hard wired with each station so that any Master Control function could be performed either by a technician at the station or from Las Vegas. Any traffic or inputs affecting a playlist appears simultaneously on the ITX equipment visible on screens at both locations. All program content at KTTV/KCOP, however, continued to reside on servers at the station in Los Angeles. Whether a playlist is monitored from Las Vegas or Los Angeles, the material broadcast by KTTV/KCOP is sent by ITX from the station in Los Angeles to the public via transmitters on Mt. Wilson. As a general matter, except for live broadcast of news or sporting events, ingestion, and show prep, the Company has assigned the majority of the Master Control operations for KTTV/KCOP to non-bargaining unit technicians in Las Vegas.

Vice President Redmond explained the Hub has enabled the Company to reduce staffing at its 16 broadcast centers from about 10 to four or six technicians depending on the market. As a result, Fox laid off about 85 technicians from those centers at both union and non-union locations. Currently, the Hub is operated by 28 technicians in Las Vegas, 24 hours a day, 365 days a year. None of the technicians in Las Vegas are employed by KTTV/KCOP, and none work exclusively on KTTV/KCOP programming. Those assigned to KTTV/KCOP on any given shift are also simultaneously monitoring at least two other stations. Their salaries are significantly below those of the Engineers at KTTV/KCOP.

The Company first notified the Union in August 2009 of its intent to open a centralized Hub at a yet undetermined location outside California and advised that layoffs would follow at KTTV/KCOP because of this and other cost-cutting initiatives. In April 2010, the Company informed the Union that six unit members would be laid off as a result of the hub. In June 2010, those employees were issued layoff notices to be effective in November 2010 [CX 8]. In October 2010, the six employees received notices the layoffs would be delayed until January 2011 [CX 9]. In January 2011, however, the Company and Union drafted a Special Agree-

ment outlining the parameters of a voluntary layoff which effectively postponed the January layoffs [CX 2]. After the Company notified the six employees on May 6, 2011, they would be laid off on June 6, 2011 [CX 10], the parties executed the Special Agreement on May 13, 2011 [CX 1]. Those six employees were ultimately spared a layoff because six other employees volunteered for separation under the terms of the Special Agreement.

On August 18, 2011, the Union filed the instant grievance alleging as follows:

The Company has transferred work from KCOP to its Las Vegas Hub and is utilizing Non Bargaining unit employees to perform bargaining unit work. . . . This is a violation of Article I, Section 1.01, Article VI, Section 6.01, 6.02, 6.03, 6.04, 6.05, 6.06 and Article XIV, Section 14.05 of the [Agreement] . . .including, but not limited to, all other applicable sections.

The Company denied the grievance on the merits and contested the timeliness of its filing. In a bifurcated arbitration proceeding, Arbitrator Charles Askin on September 10, 2013, ruled the grievance was timely and thereby eligible for a determination on the merits [UX 3]. On December 3, 2013, the NLRB certified NABET-CWA as the exclusive collective bargaining representative of the technicians employed by the Company in Las Vegas [UX 4].

At arbitration, the parties were afforded a full opportunity to call and cross-examine witnesses under oath, introduce documents, and present argument. Upon receipt of post-hearing briefs, the case was submitted for decision. No useful purpose is served in summarizing the entire record of evidence and argument presented, all of which has been reviewed and considered. Only those matters deemed necessary in deciding the timeliness of the appeal at issue are discussed herein.

EXCERPTS FROM THE AGREEMENT [JX 2]

ARTICLE I – SCOPE OF UNIT AND RECOGNITION

1.01 Employees Covered

(a) This Agreement shall apply to all persons employed by the Company for KTTV/KCOP to perform the services set forth in Trade Jurisdiction (Section 6.02) within the area (Section 6.01), except for (4) named Engineering Management personnel at KTTV/KCOP . . . who may perform such services:

ARTICLE III – MANAGEMENT RIGHTS

3.01 Management Rights

In addition to its other rights, the operation of the Company, the assignment of work to be performed, the determination of the number of Engineers necessary to operate the Company and the planning and control of operations, our rights which are vested solely in the Company; provided, however, no management rights shall be exercised in derogation of the express terms and provisions of this Agreement.

ARTICLE V – SETTLEMENT OF DISPUTES

5.01 Grievance and Arbitration

. . . The arbitrator shall not have any authority, power or right to alter, amend, change, modify, add to or subtract from any of the terms and provisions of this Agreement, nor to award any monetary damages for a period prior to ninety (90) days from the institution of Step Number One of the grievance procedure.

ARTICLE VI – JURISDICTION

6.01 Area Jurisdiction

(a) The area jurisdiction (“Area”) for KTTV/KCOP, KTTV-DT and KCOP-DT (Digital Transmission) for the Engineers for the work set forth in Section 6.02 shall be the State of California, except:

6.02 Trade Jurisdiction

The trade jurisdiction of this Agreement shall include the work of Engineers within the area engaged in:

- (a) The installation, operation, removal, maintenance and repair of:
 - (i) technical and engineering operational equipment for broadcasting and rehearsal for broadcasting
 - (ii) videotape equipment . . . No matter where such equipment is located. . . .
 - (iii) electronic timing (other than digital clocks), sequencing and storage equipment used in television broadcasting or rebroadcasting, recording or re-recording
 - (v) any apparatus by means of which electricity and/or light is applied in the transmission or transference, production, or reproduction of voice, sound and/or visual images

6.03 New Equipment

(a) In the event the Station introduces machinery or equipment after June 1, 1994, which machinery or equipment replaces, substitutes for, or, if the new machinery or equipment is of the same nature that is being used, operated and maintained by Engineers, supplements the machinery or the equipment then being used, operated and maintained by Engineers, then the Station will negotiate in good faith, in so far as is applicable, for the use, operation and maintenance of such machinery and equipment by the Engineers.

6.04 Transfer of Operations

The Company will not transfer any of the operations covered by this Agreement to any subsidiary for the purpose of evading its obligations hereunder.

6.06 Other Duties

Any Engineer covered under this Agreement may be assigned to perform any duties as assigned by the Stations, for KTTV/KCOP and also for entities other than KTTV/KCOP, provided that performance of such duties is not in violation of any other Collective Bargaining Agreement. . . .

ARTICLE XIV – TRAVEL AND TRANSPORTATION

14.05 Engineer outside Area

If an Engineer is sent outside the Area (Section 6.01) to perform services for the Company, then he/she shall be entitled to the benefits of the Agreement while outside of the area.

POSITIONS OF THE PARTIES

The Union contends the transfer of bargaining unit work to Las Vegas by the Company violates the Agreement. The Union maintains that technicians in Las Vegas are performing Master Control operations on equipment at KTTV/KCOP by pushing buttons from across State lines. The Union argues the work thus remains covered by the Agreement and the province of bargaining unit personnel at the stations. The Union asserts several provisions of the Agreement are implicated by this transfer of work, but even if not the rights of management do not outweigh the reasonable expectations of the Union regarding the scope of unit work. For these reasons, the Union seeks a finding of violation and an appropriate make whole remedy.

In turn, the Company maintains the grievance should be denied because clear and unambiguous language of the Agreement establishes the work performed in Las Vegas is outside the Union's jurisdiction. The Company contends those technicians are not employed by KTTV/KCOP nor performing any work in California. The Company asserts it has the inherent right to transfer work which does not avoid any obligations under the Agreement. The Company also claims the transfer did not violate Section 6.03 because the new equipment involved is not being operated by anyone within California. The Company argues the make whole remedy sought by the Union contradicts the NLRA and undermines collective bargaining negotiations with the unit in Las Vegas. Accordingly, the Company asks the grievance be dismissed.

OPINION BY THE ARBITRATOR

To reduce operating costs at all of its stations in the United States, Fox took advantage of advances in technology to create a Hub in Las Vegas which centralized the Master Control operations in one location. The Company was able to replace 85 of 160 technicians in 16 markets with 28 operators in Las Vegas capable of remotely accessing the Master Control function at multiple stations at one time. At issue here is the Company's use of technicians in Las Vegas to perform remotely the Master Control functions at KTTV/KCOP. The Union contends the transfer of this work violates its labor agreement because the work still belongs to Engineers in Los Angeles. The Company, however, maintains a transfer of work is permitted by the Agreement and work performed outside California by non-KTTV/KCOP employees falls outside the jurisdictional reach of the Union. A review of all the evidence and conflicting argument in this case supports the view of the Union. It follows the grievance will be granted.

Section 3.01 of the Agreement vests in management the right to determine the methods of operation and assignment of work. In this case, the Company elected to establish a Master Control Hub which allowed non-bargaining unit personnel in Las Vegas to perform remotely duties previously accomplished by Engineers at KTTV/KCOP. Section 3.01, however, also provides that the exercise of management's rights in this regard shall not be in derogation of the express terms and conditions of the labor contract.

The Union correctly asserts the Master Control operations transferred to Las Vegas from KTTV/KCOP fall squarely within the "Trade Jurisdiction" of the Union under Section 6.02. The duties in question are specifically embodied in several subsections of Section 6.02(a) and have historically been performed by bargaining unit Engineers at KTTTV/KCOP. Indeed, a substantial portion of Master Control duties continue to be accomplished by Engineers at the station including monitoring live broadcasts, ingesting material, and show prep. Accordingly, a finding the duties related to Master Control are covered by the Agreement is manifest.

On the other hand, the record in this proceeding fails to establish a violation of Section 6.03. This provision requires management to negotiate with the Union in good faith over the use, operation, and maintenance of new machinery or equipment. The evidence reflects the ITX equipment installed at KTTV/KCOP and in Las Vegas was discussed with the Union, and personnel in Los Angeles have been successfully operating and maintaining the equipment installed by the Company at the station. For these reasons, it cannot be found that Section 6.03 has been implicated in this case.

The Company defends its transfer of covered work on grounds duties performed in Las Vegas fall outside the Union's jurisdiction in the labor contract. First, the Company cites Section 1.01 which provides the Agreement applies only to persons employed by KTTV/KCOP. It is recognized the technicians in Las Vegas are not employed by the station, but the focus in this unusual proceeding is on the work transferred, not the non-bargaining unit personnel to whom the work has been assigned. Second, the Company cites the "Area Jurisdiction" provisions in Section 6.01 which specify the area of coverage is the State of California. The Company asserts the fact the technicians in Las Vegas performing this work are outside this geographic territory precludes any application of the KTTV/KCOP contract across state lines. Yet under the unique facts presented, this argument is unavailing.

The question of where the disputed work is performed is not susceptible to a simple answer. On one hand, the Master Control functions on KTTV/KCOP programming at issue are being initiated by technicians sitting at computer terminals in the Las Vegas Hub. Yet the duties they perform remotely from Las Vegas are on programming, commercials, and promos stored on KTTV/KCOP servers and equipment residing in Los Angeles, processed by equipment at the station, and broadcast from the station to the public via transmitters on Mt. Wilson. In this regard, although commands are keyed from Las Vegas, the physical work generated as

a result of those inputs takes place in Los Angeles on servers and equipment at the station in the same manner as if those commands were entered on parallel computers utilized by KTTV/KCOP Engineers at the station. Viewed in this light, it can be seen remote access via ITX to Master Control at KTTV/KCOP from a point outside California does not alter the reality that the actual work being performed remains in Los Angeles on the servers and related equipment at the station. For these reasons, it cannot be found the work being performed remotely by technicians in Las Vegas falls beyond the jurisdictional reach of the Agreement.

Section 6.04 prevents the Company from transferring any operations covered by the Agreement to another subsidiary "for the purpose of evading its obligations" thereunder. The Company insists the Hub was created to achieve operational efficiencies affecting both union and non-union stations across the country and thus not targeted to undermine its collective bargaining relationship with Local 53. Be that as it may, the primary impact of the Hub on the bargaining unit at KTTV/KCOP was to eliminate six positions by transferring the majority of the station's Master Control functions out of state to be operated remotely by fewer employees at significantly lower rates of pay. This evidence supports a finding that the avoidance of paying contractual wages and benefits for Master Control operations at KTTV/KCOP was indeed a principal factor in management's decision to transfer this work from the station. Accordingly, a violation of 6.04 under these facts has been established.

In conclusion, the evidence at arbitration supports the position of the Union that allowing remote access to Master Control at KTTV/KCOP by non-bargaining unit personnel at the Las Vegas Hub violates Sections 6.02 and 6.04 notwithstanding the jurisdictional limitations on the covered persons and geographic area contained in Sections 1.01 and Section 6.01 in the Agreement. The record developed at arbitration, however, is not sufficient to address fully the question of the appropriate remedy. Accordingly, the determination of the remedy shall be remanded to the parties with the Arbitrator retaining jurisdiction at the request of the Company or the Union in the event of a dispute.

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AWARD

1. The Company violated Sections 6.02 and 6.04 of the Agreement by assigning non-bargaining unit personnel at its Las Vegas Hub to perform remotely master control functions for KTTV and KCOP.
2. The determination of the appropriate remedy is remanded to the parties with the Arbitrator retaining jurisdiction at the request of the Company or the Union in the event of a dispute.

DATED: July 24, 2015
Santa Monica, California



FREDRIC R. HOROWITZ, Arbitrator